

**NEWSLETTER CORRECTION  
September 2004 – Volume 153**

**ARTICLE ON  
PROPERTY MANAGEMENT AND COMPLIANCE WITH THE LAW**

**CORRECTION TO PAGE 7 –**

5. Placing funds in the proper account(s).
  - All funds received must be deposited into an escrow or trust account within ten (10) banking days of receipt.
  - Security deposits must be maintained separate and apart from owner and/or broker funds, unless, otherwise agreed to in writing.
  - Owner funds received for property replacement and repairs should be deposited into the property management/rental account or a separate account established as an owner “reserve” or “repairs and replacements” account. Owner funds should **not** be deposited into the security deposit account, **unless otherwise agreed to in writing.**
  - Prepaid rents should be deposited into the **property management/rental account, and never into the** security deposit account.



***Be Sure to Check Your Continuing Education  
Certificates for the Correct Number of Hours  
PRIOR To Marking YES on Your Renewal  
Application***

We are almost at the September 30th deadline for license renewal for sales associates. Let me remind you, especially if you are doing your CE online, it must be completed before you send your application back to the MREC which is due by September 30th. Don't get caught without the correct courses and the right number of hours in case you are part of a random audit that checks for compliance of the appropriate twelve (12) hours of continuing education. I'd like to encourage all office managers, as part of your supervision, to check your individual agents for compliance.

Due to House Bill 600, you must have paid all state income taxes and have filed state returns for the preceding three years or your real estate license may be at risk.

Also, if you didn't receive a renewal notice, perhaps the MREC doesn't have your correct mailing address.

Part of our new website allows you to go on-line and check if your renewal has been processed. Visit <http://pr.mo.gov/> and click on "Licensee Search." Select "licensee name" and you will receive an on-line results page. Click on "Detail" and it will take you to a page where you can check your address information and view your expiration date. If you have renewed, it should have an expiration date of 2006. The later you send in your renewal, the longer it will take to process since so many agents wait until the last minute. Fill out your form correctly and do not forget to include your fee. Please check the website first before placing a call to the MREC about

your renewal. The staff is really busy at renewal time and as always they do an incredible job, but we can ease the number of phone calls if you first check the site.

House Bill 985 passed this year cleaning up a lot of outdated language and clarified many sections of Chapter 339. Those changes are included on our website along with all our Statutes and Rules and Regulations.

Continued success in your business!

Jan Hunt, Past Chair  
Missouri Real Estate Commission

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MREC Newsletter is an official publication of the  
Division of Professional Registration

***COMMISSION MEETING SCHEDULE***

Licensees and members of the public are invited to attend the open session of any meeting. Dates and locations are listed below.

Friday	October 8	Branson
Wednesday	December 1	Kansas City

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***2004 HOLIDAY SCHEDULE***

The Missouri Real Estate Commission will be closed on these State of Missouri holidays:

<b>Holidays</b>	<b>Dates in 2004</b>
Columbus Day	October 11
Veterans Day	November 11
Thanksgiving	November 25
Christmas Day (Observed)	December 24

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***OFFICE POLICY REMINDER***

4 CSR 250-8.097 (2) states: "The brokerage relationship marked as offered on the Broker Disclosure Form shall correspond to the written office policy adopted by the designated broker pursuant to 339.760.1 RSMo."

If you mark "Other Agency Relationship" on the Broker Disclosure Form, you must include a description of these other agency relationships in your written office policy. Brokers are frequently cited during an audit because they have marked this option without including a description of these other agency relationships in their written office policy.

## ***REFERRAL FEES - ARE YOU COMPLIANT?***

If you are paying a referral fee to a real estate company located in any state in the United States or any province of Canada, it is your responsibility to check with the appropriate licensing authority. You must satisfy yourself that the company is properly licensed in its home jurisdiction. You should document your file. Paying a referral fee to an unlicensed company or person is a violation of the license law. It is your job to check them out, as it is your license that is at risk if they are not licensed.

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## ***HOW LONG SHOULD LICENSEES KEEP CE CERTIFICATES?***

Each licensee shall be responsible for keeping a file of their original certificates of completion of MREC approved courses as evidence of fulfilling continuing education requirements.

If you always want to be safe and not have to think so much about dates, just keep certificates for four years, or two renewal cycles. This will take care of any possible scenario. After four years from the completion date of the course, you can safely discard it.

Certificates for courses completed October 1, 2002 through June 30, 2004 for brokers and September 30, 2004 for salespersons should be kept on file in the office or at home. These are the courses you will take to meet requirements for the issuance of the 2004-2006 license. Some time in late 2004 the Commission will begin auditing certificates for these courses. The Commission can continue to audit for CE compliance throughout the entire license period so keep those certificates safe.

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## ***FICTITIOUS NAMES***

4 CSR 250-4.030 requires a broker or entity to file a fictitious name when conducting business under any name other than the broker's or entity's

legally licensed name. The Commission must be provided a copy of this official registration within ten days of receipt from the Secretary of State.

The fictitious name registration form must list the fictitious name being filed, as well as the owner. For our office to accurately reflect the fictitious name in our records, the "owner" section of the form must be completed by listing the actual licensed name. In other words, if the licensed entity filing the fictitious name is a corporation, that licensed corporation name must be listed in the owner section of the form. If the licensee is an individual broker, that licensed broker's name must be listed as the owner. Completing the owner section with anything other than the licensed broker/entity name will require correction and/or re-filing the form with the Secretary of State.

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## ***DISPUTED ESCROW FUNDS - STATUTE CHANGE - EFFECTIVE AUGUST 28, 2003***

**As a reminder, section 339.105.4 of the statutes was revised to include the following:**

“Whenever the ownership of any escrow moneys received by a broker pursuant to this section is in dispute by the parties to a real estate sales transaction, the broker shall report and deliver the moneys to the state treasurer within three hundred sixty-five days of the date of the initial projected closing date in compliance with sections 447.500 to 447.595, RSMo. The parties to a real estate sales transaction may agree in writing that the funds are not in dispute and shall notify the broker who is holding the funds.”

This revision requires a broker holding disputed earnest money to submit the funds to the state treasurer's office **within** 365 days of the initial projected closing date, unless the parties have agreed, in writing, that the funds are not in dispute. Once the money is turned over to Unclaimed Property, the parties will have to contact the state treasurer's office to file a claim for the funds.

Brokers should contact the state treasurer's office

at (573) 751-0840 for further instructions on how to submit disputed escrow funds.

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**ATTORNEYS - AND THE  
LICENSE LAW**

At a recent meeting, the Missouri Real Estate Commission (MREC) considered the matter regarding the attorney exemption set forth in 339.010.5 (2), RSMo. The MREC recognizes that under 339.010.5 (2), RSMo, a Missouri-licensed attorney is permitted to handle real estate matters as part of the attorney's practice of law.

It is the MREC's position, however, that the attorney exemption does not permit a salesperson to work as a real estate agent under an attorney, unless the attorney is a licensed broker. Support for that position is found in 4 CSR 250-4.050 (2). That regulation provides that, "a broker-salesperson or salesperson license shall be issued only to a person who is associated with a *licensed broker*".

Similarly, it is the MREC's position that the statute does not permit a real estate licensee to pay a commission to an attorney, unless the attorney is licensed by the MREC. Support for that position is found in 339.150.2, RSMo. That statute prohibits real estate licensees from splitting a commission with a non-licensee by paying "any part of a fee, commission or other compensation received by the licensee to any person for any service rendered by such person to the licensee in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate, unless such a person is a *licensed* real estate salesperson regularly associated with such a broker, or a licensed real estate broker, or a person regularly engaged in the real estate brokerage business outside of the State of Missouri." However, attorneys may receive payment from their clients for their legal services.

Opening a Brokerage - In the event that one forms a separate entity, operates through a separate entity, or hires others to engage in the practice of real estate, the MREC directs your atten-

tion to 339.020, RSMo, which makes it "unlawful for any person, partnership, association or corporation...to act as a real estate broker or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission."

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**SUMMARY OF THE TRULY AGREED  
VERSION OF HCS HB 985**

*Effective August 28, 2004*

This bill changes the laws regarding the practice of real estate. A summary of those changes are as follows:

1. Adds Internet websites to the licensing exemption, when in the case of advertising real estate, the advertising is incidental to their normal business operations;
2. Removes the requirement of having on file with the Real Estate Commission a certified copy of a currently effective statement of record from the Office of Interstate Land Sales when land developers sell their own property;
3. Allows the commission to issue temporary work permits to individuals who have satisfied all licensing requirements prior to the final review and issuance of their license;
4. Grants entities providing continuing education the authority to do so by means of distance delivery;
5. Gives the commission the authority, when conducting investigations of complaints involving affiliated licensees, to forward copies of the information regarding the complaint to the affiliated licensee's broker;
6. Gives the commission authority, when a licensee fails to renew or surrender his or her license and the commission finds the licensee to be in violation of certain provisions, to cause complaints to be filed with the Administrative Hearing Commission;
7. Increases the amount of compensation each

member of the commission receives from \$50 to \$75;

8. Requires designated brokers who have affiliated licensees to adopt a written policy describing their relationships in regard to their real estate activities; and

9. Repeals the provisions relating to escrow agents.

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## **HOUSE BILL 600**

*From the Director -  
Marilyn Taylor Williams*



House Bill 600 (2003) and House Bill 978 (2004) were enacted to increase the tax revenue collected by the State of Missouri. There are several "income tax accountability" provisions requiring the Department of Revenue to take steps to collect income taxes

owed by state employees and licensed professionals. As most of you know, one provision was specifically aimed at professionals licensed by the Division of Professional Registration. The language is as follows:

"324.010. All governmental entities issuing professional licenses, certificates, registrations, or permits pursuant to sections 209.319 to 209.339, RSMo, sections 214.270 to 214.516, RSMo, sections 256.010 to 256.453, RSMo, section 375.014, RSMo, sections 436.005 to 436.071, RSMo, and chapter 317, RSMo, and chapters 324 to 346, RSMo, shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to each such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be suspended within ninety days after notice of such delinquency or failure to file,

unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy. Tax liability paid in protest or reasonably founded disputes with such liability shall be considered paid for the purposes of this section."

This statute requires the Department of Revenue to notify licensees, at the time of application or renewal, that they must file delinquent income tax returns or pay any delinquent taxes owed to the state. Since May of 2003, the Division of Professional Registration has been working with Revenue and the Attorney General's Office to establish procedures and to define each agency's responsibilities under this new law. As of July 2003, the effective date of the new law, the Division has been transmitting licensee data for each renewal cycle. Because of the amount of time that the Department of Revenue has needed for technical implementation of the law, their first notices did not go out to licensees until January of this year.

During the month of January, there were 12,000 licensees who received notices either to file delinquent returns or pay delinquent taxes. Licensees were given 90 days to resolve the issue or have their license disciplined as a matter of law. On July 21, 2004, the division disciplined over 800 licenses.

The law, as written, gives no discretion to either the Department of Revenue or the Division of Professional Registration. Revenue must send notices to every licensee who has no record of filing a return or paying taxes in the three years prior to renewing or applying for licensure. The Division must suspend the license of any licensee that fails to either respond that he or she does not live or work in Missouri, or resolve his or her tax delinquency. There are no appeal rights built into the law, and no right to cure the default after the 90-day period. If a licensee pays his or her taxes or files his or her return even one day after the 90-day period, the license may still be disciplined.

I cannot stress enough to our licensees the importance of responding promptly to any notification received from the Department of Revenue, even

if the licensee has not lived or worked in Missouri in the last three years. Failure to respond could result in disciplinary action against your license. For some health-care professionals, this means reporting the disciplinary action to the federal health care databases - which may affect his/her ability to practice anywhere in the United States.

Marilyn Taylor Williams  
Division Director

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## ***PROPERTY MANAGEMENT AND COMPLIANCE WITH THE LAW***

The following outline is being provided to assist brokers and their property managers in complying with the Missouri Real Estate Commission statutes and regulations:

1. A broker license is required to manage property unless acting as an owner or employee;
  - An owner may choose to manage his/her own property as a broker, rather than as an owner. Such a relationship may be presumed to exist if:
    - ♦ the broker/owner maintains a management agreement which includes his/her own properties;
    - ♦ the broker/owner deposits rents and/or security deposits into the property management trust account(s);
    - ♦ the owner/property manager advertises or places a sign on the property using the brokerage name or otherwise indicates that the property is offered by a broker. If managing the property solely as an owner, and not as a broker, advertising and signage should include the terms, "owner/broker" or "owner/agent."
  - A property manager working under the direct supervision of a broker is not required to hold a real estate license. For example, an on-site property manager, working as an employee of ABC Management Co., would not have to be licensed so long as ABC Management Co. was licensed and the designated broker of ABC Management Co. supervised the activities of the on-site property manager and the on-site property manager's activities are limited to listed items

under 339.010.5 (5).

2. A management agreement is required under 339.780, RSMo and 4 CSR 250-8.200.

- Management agreement must be in writing;
- Management agreement must contain all the requirements of 4 CSR 250-8.210 (1);
- A common mistake made is that the broker does not carry out the terms of the management agreement. Generally, this is because the broker is not familiar with the agreement he/she signed, or the management agreement has been verbally modified. During an audit, the auditor will review the terms of the written agreement between the owner and the broker and check to see that the broker is following the terms of the management agreement.

3. Disclosure requirements are not exempt for managers and leasing agents of residential property.

- Property managers must give the owner a Missouri Broker Disclosure Form at the earliest practicable opportunity, and always prior to the owner entering into a management agreement or other written agreement for brokerage services.
- Likewise, a prospective tenant, who is not represented by another broker, must be given a Missouri Broker Disclosure Form prior to showing the tenant a property or obtaining any personal financial information.
- Oral disclosure of the property manager's brokerage relationship should be made to the tenant prior to showing the tenant a property or obtaining any personal or financial information.
- Written disclosure of the property manager's brokerage relationship should be made to the tenant and the disclosing manager on or before the signing of the lease. An unlicensed property manager, working for a broker, may sign a disclosure on behalf of the broker/brokerage if authorized by the broker. A broker, who holds a written property management agreement with a landlord, may sign and date the disclosure on behalf of the landlord if the agreement allows for such activity.

4. Escrow account(s) is required if rents, security deposits, or owner funds are to be held by the

broker.

- Any account under the broker's control, which holds funds belonging to another, is considered an escrow or trust account (even if the account is maintained in the owner's name).
- Escrow or trust accounts shall be maintained in a separate bank account in a financial institution.
- All escrow or trust accounts must be registered with the MREC within 10 days of opening.
- The MREC must be notified within 10 days of a change (most commonly this involves a change in bank name or account number due to a buy-out or merger of banks).
- The MREC must be notified within 10 days of the closing of an escrow or trust account. Most commonly this occurs when the broker stops managing a property. Often the accounts are not physically closed, but transferred to another broker or to the owner. When the broker ceases to maintain control over the accounts, he/she should notify the Commission of the account's closure (for use as an escrow account by that particular broker/brokerage).
- Escrow or trust accounts should be registered, changed or closed on a MREC form entitled Consent to Examine and Audit Escrow or Trust Account. This form is available on the MREC website.

5. Placing funds in the proper account(s).

- All funds received must be deposited into an escrow or trust account within ten (10) banking days of receipt.
- Security deposits must be maintained separate and apart from owner and/or broker funds, unless, otherwise agreed to in writing.
- Owner funds received for property replacement and repairs should be deposited into the property management/rental account or a separate account established as an owner "reserve" or "repairs and replacements" account. Owner funds should never be deposited into the security deposit account.
- Prepaid rents should be deposited into the security deposit account.

6. Accounting for the funds of others.

- The broker must have written authorization to hold any funds belonging to another. Such writ-

ten authorization may include, but, is not limited to, a management agreement, escrow agreement, loan servicing agreement or sales contract. Any funds held without written authorization would be considered an overage to the escrow account.

- The broker must properly account for all funds. If more than one owner's funds are maintained in the property management account, the broker must account for each owner's money separately. Under no circumstances is the balance of any individual owner's account to keep a check from another owner's properties from bouncing. It is improper to use the funds of one owner to pay the bills of another.
- Security deposits must be held intact, unless otherwise agreed in writing, by the parties having an interest in the funds.
- Before disbursing any funds from the property management account, the broker should be certain that the owner's account balance is sufficient to cover the disbursement. Also, note that 4 CSR 250-8.220 (8) requires that each disbursement from an escrow or trust account contain a related transaction (i.e. property address or number, tenant or owner name, etc.)
- All escrow or trust accounts should be reconciled regularly. In addition to reconciling the checkbook balance with the bank balance, the broker should also reconcile the bank balance with the accounting report prepared for the owner. In other words, compare the reconciled bank balance to amount of cash reported to the owner on the corresponding balance sheet or cash flow statement. If the account holds the funds of several owners, add the reported owner's balances together to determine the amount of funds that should be in the account. Then compare that amount to the reconciled bank balance. If they are not exactly the same, there is a problem with the account or the accounting. This same reconciliation process should be used on the security deposit account.

7. Avoid common audit pitfalls.

- Keep all records for a period of no less than three years. This includes copies of all invoices paid on behalf of an owner. If any records are released to an owner or another manager, the broker should make copies or keep a detailed receipt or letter of transmittal.

- Remove management fees each and every month. Management fees left in the property management trust account will be considered an overage to the account and may constitute commingling.
- If the security deposit account is interest bearing, and the interest belongs to:
  - ♦ The tenant - An accounting record must be maintained to determine the amount of interest belonging to each tenant who has funds in the account.
  - ♦ The broker - the interest must be removed (made payable to the broker/brokerage) each month in which interest is received/earned.
  - ♦ The owner - Interest should be periodically removed from the security deposit account and deposited to the property management account, credited to the owner. During an audit or review, the broker will be asked to substantiate all interest that remains in the account.
- Provide periodic statements to the owner, accounting for all receipts, disbursements, security deposit liabilities, and cash on hand. Before issuing such statements to an owner, review them for accuracy. A broker's actions may be deemed improper and untrustworthy for providing inaccurate statements to an owner.

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## ***IS DESIGNATED AGENCY RIGHT FOR YOUR OFFICE?***

*By John D. Mayfield*

*Mr. John Mayfield is not a member of the Missouri Real Estate Commission or its staff. The views and opinions expressed in the following article are those of the author and do not necessarily reflect the views and opinions of the Missouri Real Estate Commission, its staff, or the State of Missouri, Department of Economic Development, Division of Professional Registration.*

### **IN THE BEGINNING**

I've been selling real estate since the age of 18, and have seen many changes in our real estate industry. In fact, when I began my real estate career we only had to worry about a couple of

issues on agency; we worked for the seller, the buyer was a third-party, and all other agents and agencies were sub-agents. Wow, how times have changed! But the good ole' days of agency as previously described, and the one page contracts are history, and will never beckon our doors again. So with change comes good, and although many agents dislike how agency and rules have changed I believe it is for the better.

### **DISCLAIMER**

Before I begin my journey on explaining why my office changed to "designated agency" let me first say that this policy might not work well in your office. Read the article with an open mind, and think about how your agents work in your environment. If designated agency is not for you, then choose what is right and will work best.

### **WHY THE CHANGE?**

What I thought was the perfect way to run my office for many years began to change in my mind as I started to notice the way agents worked on in-house transactions. Here's the classic scenario in many offices who do not practice designated agency and choose to offer the normal buyer's and seller's agency with disclosed dual agency.

#### **Problem #1: The written buyer's agency agreement:**

A buyer walks into your office and wants to preview one of your listings. The agent arranges the appointment and continues to show the property to the buyer. The buyer wants to write an offer on the property and you come back to the office and begin to fill out the offer to purchase agreement. When confronted on the sales contract of what your agency status is, you mark "dual agent." Are you correct in this decision? No! The license law clearly says that "before" performing any of the acts... you should have a "written" agreement with the client. (Section 339.780.4)

#### **Problem #2: Whose side are your agents on?**

Using the previous example, suppose the listing agent is someone other than the showing agent in

your office, and, suppose the buyer's agent followed the proper requirements of the law and had their agreement signed "before" they performed any acts as an agent. What's the problem now you might ask? Human nature!

There's just a natural tendency to work for the person whom you have a close relationship with. When you think about this, then designated agency makes sense. How can an agent in an office who enters a buyer's agency agreement with a client turn around and be an agent for the seller on the same transaction? Especially when they have never said two words to the seller or even know who the seller is? In larger offices, they may have never said two words to the other agent in the office. Yet in most offices across Missouri this is exactly what we expect them to be, dual agents. Under a designated agency both of these agents have the ability to work for their own clients without the need or worry to juggle another fiduciary obligation for someone they don't know.

### **DESIGNATED AGENCY PROBLEMS**

So what about these issues:

- Faxes open to the office?
- Discussing information around the watercooler?
- Files locked up?
- Selling my own listings?

These are a few of the issues that everyone raises when discussing designated agency. Let's look at each one individually.

#### **FAXES OPEN TO THE OFFICE**

Yes, the faxes that come in about listings and sales contracts must now have some privacy to them. In my office we have a policy that all faxes that come in go straight into an interoffice envelope and then in the agent's mailbox. The rule is that no one is to look or read faxes for other agents, period! It's our policy and the agents abide by it. I do encourage agents to have faxes sent to their computer or fax machine at home, or, make sure they can be next to the fax machine when an important document is on its way. I've asked the MREC if this policy is permissible to

fulfill the requirements for a designated agency office and they have said yes. If you're still worried about this issue, go to your local office supply store and buy a \$70-\$80 fax machine and install it at your home. Have your faxes sent there to preserve privacy.

### **DISCUSSING INFORMATION ABOUT YOUR CLIENT**

I read an article a long time ago where a person said the easiest way to handle confidential information is that if you would not say it if your client or their attorney was standing next to you, then don't say it! This isn't a big issue since we should not be discussing our client's business anyway. Offering designated agency reminds everyone of the need to stop talking about your client's affairs. You should also be careful when presenting contracts over the telephone to your clients while other agents are sitting nearby. Good common sense can keep everyone out of trouble when it comes to "confidential information."

### **FILES LOCKED UP**

Most agents make copies of their own files, so what's the big deal if you lock up the files? In larger offices this is policy anyway, but smaller offices should follow suit too. Files should only be available for agents when the broker is available and when the broker knows you need access to the file. Designated agency reminds everyone of the need to keep the files locked up and out of everyone's reach.

### **SELLING YOUR OWN LISTINGS**

Can you sell your own listings under designated agency policy? Sure, there is nothing that says you cannot sell your own listings. You'll either be a disclosed dual agent (provided you entered a written agreement "before" you performed any acts needed of a licensee during the transaction with all parties) or, you can continue to represent only the seller in the transaction.

### **DECISION TIME**

So after careful discussion with my agents and much soul-searching and thinking about agency

and my office, I decided that we needed to make a change and carry out a choice that I thought was best for my office and for our consumers we meet daily. Was it hard to get use to? Yes! Are we still asking questions? Yes! Are agents now practicing what they are preaching? Yes! To me, that's why I made the change, so our office would walk the way we talked! As my friend Bruce Aytz always says, "if you're going to act like a duck, then walk like a duck!"

## CONCLUSION

In conclusion, deciding which agency is right for your office is up to you. Designated agency might not be right for your office, but whatever decision you choose, make sure you have a written policy for your office to follow. Rehearse possible scenarios with your office staff. Talk about objections buyers and sellers may have to your agency policy, and above all else, make sure everyone knows and explains who is representing who in the transaction. The better we can become at informing our proper role to the buy-

ing public, the better everyone will profit in the transaction.

*John Mayfield received his real estate license at the age of 18 in 1978. John has earned the ABR®, ABRM, CRB, e-PRO® and GRI designations throughout his real estate tenure. He currently serves on the Missouri, Arkansas and Nebraska Association of REALTORS® GRI staffs. John is author of "5-Minutes to a Great Real Estate Sales Meeting" by Thomson-Southwestern in November of 2003, and the soon to be released "5-Minutes to Sending a Great Real Estate Letter" due out in September of 2004. John is also one of the contributing editors to the "Sales Coach" section for REALTOR® Magazine Online, and HP's Real Estate web site.*

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## ***BROKER DISCLOSURE FORM NOTICE***

Included with this newsletter is a new camera ready copy of the revised Broker Disclosure Form. As with previous forms, it cannot be altered in any fashion except to include your preprinted company name and address in the area designated "Broker or Entity Name and Address" and to mark the preprinted choices that your brokerage firm authorizes. As always the regulations do require that brokerage service agreements and broker relationship confirmations document, in writing, that the form has been provided to the party.

The form has been modified to cover a typographical error on the last form and to add an additional sentence under Seller's or Landlord's Limited Agent and Buyer's or Tenant's Limited Agent.

This form must be put into use and must replace previous forms no later than January 1, 2005.

It is critical that you retain this original to ensure that you may provide quality reproductions in the future.

### Other Agency Relationships

Missouri law does not prohibit written agency agreements which provide for duties exceeding that of a limited agent described in this pamphlet.

This brokerage authorizes the following relationships:

- Seller's Limited Agent
- Landlord's Limited Agent
- Buyer's Limited Agent
- Tenant's Limited Agent
- Sub-Agent
- Disclosed Dual Agent
- Designated Agent
- Transaction Broker
- Other Agency Relationship

Broker or Entity Name and Address

## MISSOURI BROKER DISCLOSURE FORM



This disclosure is to enable you, a prospective buyer, seller, tenant or landlord of real estate, to make an informed choice BEFORE working with a real estate licensee.

Missouri law allows licensees to work for the interest of one or both of the parties to the transaction. The law also allows the licensee to work in a neutral position. How the licensee works depends on the type of brokerage service agreements involved. Since the sale or lease of real estate can involve several licensees, it is important that you understand what options are available to you regarding representation and to understand the relationships among the parties to any transaction in which you are involved.

Missouri laws require that if you want representation, you must enter into a written agreement. This may or may not require you to pay a commission. You do not need to enter into a written agreement with a transaction broker unless you intend to compensate this licensee. These agreements vary and you may also want to consider an exclusive or nonexclusive type of relationship.

If you choose not to be represented by an agent, the licensee working with you may be working for the other party to the transaction.

## CHOICES AVAILABLE TO YOU IN MISSOURI

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### Seller's or Landlord's Limited Agent

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Duty to perform the terms of the written agreement made with the seller or landlord, **to exercise reasonable skill and care for the seller or landlord, and to promote the interests of the seller or landlord** with the utmost good faith, loyalty and fidelity in the sale, lease, or management of property.

Information given by the buyer/tenant to a licensee acting as a Seller's or Landlord's Limited Agent will be disclosed to the seller/landlord.

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### Buyer's or Tenant's Limited Agent

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Duty to perform the terms of the written agreement made with the buyer or tenant, **to exercise reasonable skill and care for the buyer or tenant and to promote the interests of the buyer or tenant** with the utmost good faith, loyalty and fidelity in the purchase or lease of property.

Information given by the seller/landlord to a licensee acting as a Buyer's or Tenant's Limited Agent will be disclosed to the buyer/tenant.

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### Sub-Agent (Agent of the Agent)

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Owes the same obligations and responsibilities as the Seller's or Landlord's Limited Agent, or Buyer's or Tenant's Limited Agent.

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### Disclosed Dual Agent

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With the written consent of all parties, represents both the seller and the buyer or the landlord and the tenant.

***A Disclosed Dual Agent may disclose any information to either party that the licensee gains that is material to the transaction.***

- A dual agent may not disclose information that is considered confidential, such as:
- Buyer/Tenant will pay more than the purchase price or lease rate
  - Seller/Landlord will accept less than the asking price or lease rate
  - Either party will agree to financing terms other than those offered
  - Motivating factors for any person buying, selling or leasing the property
  - Terms of any prior offers or counter offers made by any party.

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### Designated Agent

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Acts as your specific agent, whether you are a buyer or tenant, or seller or landlord. When the broker makes this appointment, the other real estate licensees in the company do not represent you.

There are two exceptions with both resulting in dual agency:

1. The agent representing you as a buyer or tenant is also the agent who listed the property you may want to buy or lease.
2. The supervising broker of two designated agents becomes involved in the transaction.

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### Transaction Broker

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Does not represent either party; therefore, does not advocate the interest of either party.

A transaction broker is responsible for performing the following:

- Protect the confidences of both parties
- Exercise reasonable skill and care
- Present all written offers in a timely manner
- Keep the parties fully informed
- Account for all money and property received
- Assist the parties in complying with the terms and conditions of the contract
- Disclose to each party of the transaction any adverse material facts known by the licensee
- Suggest that the parties obtain expert advice.

A transaction broker shall not disclose:

- Buyer/Tenant will pay more than the purchase or lease price
- Seller/Landlord will accept less than the asking or lease price
- Motivating factors of the parties
- Seller/Buyer will accept financing terms other than those offered.

A transaction broker has no duty to:

- conduct an independent inspection of, or discover any defects in, the property for the benefit of either party
- conduct an independent investigation of the buyer's financial condition.

## CHOICES AVAILABLE TO YOU IN MISSOURI

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Information given by the buyer/tenant to a licensee acting as a Seller's or Landlord's Limited Agent will be disclosed to the seller/landlord.

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### **Buyer's or Tenant's Limited Agent**

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Duty to perform the terms of the written agreement made with the buyer or tenant, **to exercise reasonable skill and care for the buyer or tenant and to promote the interests of the buyer or tenant** with the utmost good faith, loyalty and fidelity in the purchase or lease of property.

Information given by the seller/landlord to a licensee acting as a Buyer's or Tenant's Limited Agent will be disclosed to the buyer/tenant.

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### **Sub-Agent (Agent of the Agent)**

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- Disclose to each party of the transaction any adverse material facts known by the licensee
- Suggest that the parties obtain expert advice.

A transaction broker shall not disclose:

- Buyer/Tenant will pay more than the purchase or lease price
- Seller/Landlord will accept less than the asking or lease price
- Motivating factors of the parties
- Seller/Buyer will accept financing terms other than those offered.

A transaction broker has no duty to:

- conduct an independent inspection of, or discover any defects in, the property for the benefit of either party
- conduct an independent investigation of the buyer's financial condition.

## Other Agency Relationships

Missouri law does not prohibit written agency agreements which provide for duties exceeding that of a limited agent described in this pamphlet.

This brokerage authorizes the following relationships:

- Seller's Limited Agent
- Landlord's Limited Agent
- Buyer's Limited Agent
- Tenant's Limited Agent
- Sub-Agent
- Disclosed Dual Agent
- Designated Agent
- Transaction Broker
- Other Agency Relationship

Broker or Entity Name and Address

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If you choose not to be represented by an agent, the licensee working with you may be working for the other party to the transaction.

## ***HOW TO NAVIGATE THE MREC WEBSITE TO FIND VALUABLE INFORMATION FOR LICENSEES***

Those of you who are not familiar with the Commission's website, you will find it contains some valuable information.

It is convenient and easy to use and will save you time by having the ability to get the information **now** rather than wait for the mail or a phone call.

Start by simply typing in the web address: [www.pr.mo.gov](http://www.pr.mo.gov)

- Click on the upper top right button marked Regulated Professions;
- Look down the list of boards in Professional Registration and click on Real Estate Agents, Brokers; and
- You are now at the MREC's web site.

Listed below are some of our most popular sites and how to get there.

### **Rule Book:**

To view or print the MREC's Statutes & Rules Handbook click on "Rules & Statutes." To attain a full copy of our Handbook you will need to view the *Adobe PDF Version of Statutes/Regulations*, and the *Adobe PDF Version of Addendum to September 2003 Statutes/Regulations* (September 2004).

### **Newsletters:**

To read or print out past Newsletters click on "Newsletters." The most recent Newsletter is listed first. Just click on the date of the Newsletter you wish to read or print.

### **Checking License Status After You Send in Your Renewal:**

You may use the Division's website at [www.pr.mo.gov](http://www.pr.mo.gov) to verify that your license has been renewed. Click on the "Licensee Search" icon, select "Licensee Name," enter your name in the box provided and click the Search button. Click on "Detail" to verify your expiration date has changed to a 2006 expiration date. While this data is updated on a daily basis be sure to allow at least 1-2 weeks processing time, especially late in the renewal period.

Also, remember that the designated broker and entity renewals must be received and processed before affiliated licenses can be issued. So, if your license has not been renewed, check with your broker to make sure they have submitted their renewal.



***DISCIPLINARY ACTIONS***

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**Adams, Robert L.**

Napoleon, MO

By Order of the MREC, Adams was issued a three-year probated real estate salesperson license on April 9, 2004.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about December 17, 2001, Adams pled guilty to assault in the second degree, a felony, and unlawful use of a weapon, a misdemeanor.

**Adams, Stephen R.**

Blue Springs, MO

By Order of the MREC, Adams was issued a four-year probated real estate salesperson license effective October 22, 2003.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about December 17, 2001, Adams pled guilty to a felony count of driving while intoxicated - alcohol - persistent offender.

**Badgett, Theresa L.**

St. Louis, MO

By Settlement Agreement with the MREC, Badgett's salesperson license was placed on five years probation effective September 27, 2003.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about March 8, 2001, Badgett pled guilty to falsely representing a social security account number.

**Barnes, Dewayne C.**

St. Louis, MO

By Order of the MREC, Barnes was issued a probated real estate broker-salesperson license effective October 21, 2003 for a period of three years, or until such time as he successfully completes his criminal probationary period.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about May 28, 1997, Barnes was convicted of one count of illegal possession of marijuana in the state of Texas, and was placed on probation for ten years.

**Berger, Sheryll**

Washington, MO

By Order of the MREC, Berger was issued a 5-year probated salesperson license on February 26, 2004.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about August 13, 2002, Berger entered an Alford plea to the criminal offense of fraudulent use of a credit device, received a suspended imposition of sentence in Franklin County, Missouri, and was placed on probation. On or about January 24, 2003, Berger pled guilty to the offense of fraudulent use of a credit device in St. Louis County, Missouri, received a suspended imposition of sentence, and was placed on probation.

**Bolden, Rodney Patrick**

St. Louis, MO

By Order of the MREC, Bolden was issued a three-year probated real estate salesperson license effective December 19, 2003.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about January 31, 1997, Bolden pled guilty to possession with the intent to distribute in excess of 500 grams of cocaine.

**Carter, Richard H.**  
Bowling Green, MO

By Order of the MREC, Carter's license was revoked effective December 29, 2003.

Violation: 339.100.2 (17) RSMo.

On or about February 11, 2002, Carter pled guilty to conspiracy to commit forcible rape and forcible sodomy.

**Cook, Donald Lee**  
Osage Beach, MO

By Joint Stipulation with the MREC, Cook's license was placed on probation for two years effective October 11, 2002.

Violations: 339.100.2 (10) and (14) RSMo.

On or about June 6, 2000, Cook applied to renew his broker license and attested that he had met the appropriate continuing education requirements. It was subsequently learned that certain courses Cook had attended did not meet the continuing education requirements, thus he obtained his license renewal by false representation.

**Creech, Gary A.**  
Kansas City, MO

By Order of the MREC, Creech was issued a one-year probated real estate salesperson license effective December 31, 2003.

Violations: 339.100.2 (10), (15), (17), and (18) RSMo.

On or about September 29, 2003, Creech submitted an application for a salesperson license. Creech represented on his application that he had not pled guilty to or been convicted of any criminal offenses. The MREC office subsequently learned that Creech had previously pled guilty to and been convicted of the misdemeanor criminal offenses of stealing and passing a bad check, as well as a felony count of passing a bad check.

**Crutcher, Sharon K.**  
Springfield, MO

By Order of the MREC, Crutcher was issued a three-year probated real estate salesperson license effective August 12, 2003.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about June 15, 2000, Crutcher pled guilty to the Class C felonies of involuntary manslaughter and second degree assault.

**Damons, John W.**  
Florissant, MO

By Order of the MREC, Damons' license was revoked effective October 25, 2003.

Violations: 339.100.2 (15) and (17) RSMo.

On or about September 28, 2000, Damons was found guilty, in the United States Court for the Eastern District of Missouri, of possession with the intent to distribute 50 grams or more of a mixture containing methamphetamine.

**Downton, Phyllis**  
Kansas City, MO

By Order of the MREC, Downton was issued a three-year probated salesperson license effective May 25, 2004.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about January 24, 2003, Downton pleaded guilty to possession with intent to distribute cocaine.

**Duff, Michael J.**  
Leawood, KS

By Order of the MREC, Duff was issued a three-year probated broker-officer license beginning May 25, 2004.

Violations: 339.100.2 (15) and (18) RSMo.

Duff was a vice-president of a real estate company. Duff did not notify the MREC that the designated broker of the company had passed away until Duff submitted an application to obtain a broker-officer license with the company. Duff submitted his application for a broker-officer license approximately eleven months after the designated broker's death.

**Ewharekuko, Bright O.**  
St. Louis, MO

By Order of the MREC, Ewharekuko was issued a three-year probated salesperson license effective June 2, 2004.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about January 9, 2002, Ewharekuko pled guilty to harboring an illegal alien.

**Fairchild, Russell D.**  
Long Lane, MO

By Order of the MREC, Fairchild was issued a three-year probated real estate salesperson license on April 9, 2004.

Violations: 339.100.2 (15), (17), and (18)

RSMo.

On or about September 26, 1996, Fairchild pled guilty to possession with intent to distribute methamphetamine.

**Florido, Luis F.**  
Independence, MO

By Order of the MREC, Florido was issued a 5-year probated salesperson license on February 19, 2004.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about November 1, 2001, Florido pled guilty in the U. S. District Court, Western District of Missouri, to conspiracy to distribute marijuana.

**Hamilton, Jennifer Mara**  
St. Peters, MO

By Order of the MREC, Hamilton was issued a two-year probated real estate salesperson license effective July 26, 2002.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On August 20, 1997, Hamilton pled guilty to three counts of Felony Stealing. Hamilton misappropriated approximately \$23,000 in money and checks from her employer.

**Hickman, Patricia A.**  
Florissant, MO

By Joint Stipulation with the MREC, Hickman's license was revoked on January 6, 2004.

Violations: 339.100.2 (10), (14), and (15) RSMo.

On or about September 30, 2000, Hickman completed an application to renew her real estate salesperson license wherein she asserted that she had completed the continuing education requirements required for licensure renewal. Upon request, Hickman failed to provide documentation evidencing her successful completion of the required 12 hours of continuing education within 30 days of the MREC's written request.

**Hill, Gerard P.**  
St. Louis, MO

By Settlement Agreement with the MREC, effective May 25, 2004, Hill's broker license was placed on probation to run concurrent with his criminal probation.

Violations: 339.100.2 (15) and (17) RSMo.

On or about June 14, 2002, Hill entered an Alford plea to the criminal charge of unlawful use of a weapon.

**Hillman, Harry Fred IV**  
Arnold, MO

By Order of the MREC dated October 15, 2003, Hillman's two-year probation, initiated on January 2, 2003, was extended an additional year to January 2, 2006.

Violations: Terms of probation.

Hillman's license had previously been placed on probation with special conditions. Under the terms of his probation, Hillman was to complete an approved broker pre-license course and provide satisfactory evidence of completion within the first six months of the probationary period. Hillman violated the terms of his probation.

**Johnson, John A.**  
Sikeston, MO

By Settlement Agreement with the MREC, Johnson's broker license will be placed on probation for three years upon reactivation.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about May 1, 2000 Johnson pled guilty to the federal crime of conspiracy to commit wire fraud.

**Keys, Eva Marie**  
St. Louis, MO

By Order of the MREC, Keys was issued a one-year probated real estate salesperson license on August 12, 2003.

Violations: 339.100.2 (10), (15), (17), and (18) RSMo.

On or about August 4, 1987, Keys pled guilty to the class C felony of involuntary manslaughter.

**Lacey, Elisabeth A.**  
Independence, MO

By Order of the MREC, Lacey was issued a five-year probated real estate salesperson license on August 12, 2003.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about July 28, 2000, Lacey pled guilty to two counts of the class C felony of second-degree assault.

**Littmann, Bridgett T.**  
St. Louis, MO

By Order of the MREC, Littmann was issued a

two-year probated license on October 20, 2003.

Violations: 339.100.2 (15) and (17) RSMo.

On or about April 25, 2003, Littmann pled guilty to the felony criminal offense of possession of a controlled substance.

**Lovadina, Karen A.**

St. Louis, MO

By Order of the MREC, Lovadina was issued a one-year probated broker license on October 17, 2003.

Violations: 339.100.2 (15), (17), and (18) RSMo.

Lovadina disclosed on her application for a broker license that in or about 1992 she pled guilty, in the United States District Court for the Northern District of Illinois, to the offense of transportation of stolen property.

**Mehl, Edward**

Camdenton, MO

By Order of the MREC, Mehl was issued a two-year probated license on October 20, 2003.

Violations: 339.100.2 (10), (15), and (17) RSMo.

On or about December 30, 1999, Mehl pled guilty to the felony offense of criminal nonsupport, received a suspended imposition of sentence, and was placed on probation for five years. Mehl did not disclose his guilty plea to this criminal offense on his application.

**Merrill, Kenneth Lee**

Troy, MO

By Order of the MREC, Merrill was issued a two-year probated real estate salesperson license effective December 31, 2003.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about February 8, 1999, Merrill pled guilty to distribution of a controlled substance.

**Pruett, Lisa Gail**

Kennett, MO

By Settlement Agreement with the MREC, Pruetts salesperson license will be placed on probation for two years immediately upon reactivation.

Violations: 339.100.2 (1), (3), (14), (15), (17), and (18) RSMo.

On or about September 12, 2001, while working in a real estate office, Pruetts accepted \$300 in earnest money from a potential buyer. Pruetts submitted the money to her broker, but later removed the money from her broker's desk drawer. On or about October 9, 2001, Pruetts pled guilty to misdemeanor theft in the Circuit Court of Dunklin County, MO.

**Roark, Donald C.**

Jefferson City, MO

By Order of the MREC, Roark was issued a three-year probated broker license on February 18, 2004.

Violations: 339.100.2 (3), (14), (15), and (18) RSMo.

Roark previously held a broker license and in January 1998 he entered into a Settlement Agreement with the MREC placing his license on probation for a period of three years. In June 1998 Roark failed to renew his broker license. By not renewing his license Roark failed to comply with the terms of the Settlement Agreement, as he was required to keep his license current and active during the disciplinary period.

**Rubel, Joyce S.**

Scott City, MO

By Order of the MREC, Rubel's real estate broker license was revoked on April 3, 2004.

Violations: 339.100.2 (14) and (15) RSMo.

An audit conducted on Rubel's real estate business revealed: 1) an escrow account was closed and the MREC was not notified of this change; 2) Rubel did not adopt a written policy that identified and described the agency relationships in which she and affiliated licensees may engage with sellers, landlords, buyers, or tenants; 3) a business sign was not displayed outside of the regular place of business; and 4) Rubel failed to respond in writing to a letter from the MREC within 30 days.

**Sanford, Mary Lynn**

Reeds Spring, MO

By Order of the MREC, Sanford's salesperson license was revoked as of October 25, 2003.

Violations: 339.100.2 (10) and (14) RSMo.

Sanford's license had previously been placed on probation with special conditions. Sanford was to complete an approved salesperson pre-license course of study within the first sixty days of the probationary period and provide proof of completion to the MREC. Sanford violated a term of her probation.

**Shattuck, Lynnette D.**

Liberty, MO

By Order of the MREC, Shattuck was issued a three-year probated real estate salesperson license on October 15, 2003.

Violations: 339.100.2 (15), (17), and (18) RSMo.

Shattuck disclosed on her application for licensure that on or about February 26, 2001 she pled guilty to the criminal offense of forgery.

**Stickney, Timothy R.**

Kirkwood, MO

By Order of the MREC, Stickney was issued a five-year probated real estate salesperson license effective January 16, 2004.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about April 10, 1997, Stickney pled guilty to the felony charge of driving while intoxicated - persistent offender.

**Tackett, Kathleen M.**

Portage Des Sioux, MO

By Order of the MREC, Tackett's license will be placed on probation for one year immediately upon obtaining a salesperson license that is current and active.

Violations: 339.100.2 (10), (14), and (15) RSMo.

Tackett attested on her renewal application for the 2002 - 2004 licensing period that she had met the appropriate continuing education requirements in order to renew her license. Tackett failed to provide proof that she had met the continuing education requirement.

**Thompson, Mary Lou**

Gravois Mills, MO

By Settlement Agreement with the MREC, Thompson's broker-salesperson license was placed on probation for one year beginning May 11, 2004.

Violations: 339.100.2 (14), (15), and (18) RSMo.

Thompson's license was expired from July 1, 2002 until April 15, 2003. Thompson received a referral fee during the time her license was expired.

**Walker, Corey P.**

St. Louis, MO

By Settlement Agreement with the MREC, Walker's license was placed on probation effective January 3, 2004, and is to run concurrent with his criminal probation.

Violations: 339.100.2 (15), (17), and (18) RSMo.

On or about October 8, 2002, Walker pled guilty to use of a communication facility to facilitate a drug trafficking crime.

**Walrath, Jacquelyn M.**

Springfield, MO

By Settlement Agreement with the MREC, Walrath's license was suspended for three years beginning August 15, 2003 to August 15, 2006, followed by two years probation starting August 15, 2006.

Violations: 339.100.2 (1), (3), (5), (14), (15), and (18) RSMo.

Walrath entered into a contract to purchase real property. Financial figures on the copy of the sales contract submitted to Walrath's broker varied from the figures on the seller's copy of the contract. No earnest money for the transaction was given to Walrath's broker. The broker had an addendum to the contract removing the earnest money deposit requirement. The sellers denied signing the addendum. Walrath's broker was in possession of an Authorization to Show Property that contained the sellers' names and initials. The sellers had not signed or initialed this document.

**Weathers, Laura M.**

Bryan, TX

By Order of the MREC, Weathers' license was revoked effective February 9, 2004.

Violations: 339.100.2 (10), (15), and (17) RSMo.

Weathers submitted an application for a salesperson license. Weathers answered "no" to the question on the application that asked about misdemeanor and felony criminal guilty pleas and convictions. Subsequent to receipt of Weathers' application and issuance of a license, it was learned by the MREC that Weathers provided a false social security number on her application. A criminal history background check was conducted using Weathers' correct information, which revealed multiple felony criminal convictions.

**Whitlock, Julie R.**

Marshall, MO

By Order of the MREC, Whitlock's salesperson license will be placed on probation for five years immediately upon reactivation.

Violation: 339.100.2 (17) RSMo.

On or about August 17, 2000, Whitlock pled guilty to the felony criminal offense of driving while intoxicated - persistent offender. Also, on or about April 16, 2002, Whitlock pled guilty to the felony criminal offense of leaving the scene of a motor vehicle accident.

**Williams, Robert Mitchell**

St. Louis, MO

By Order of the MREC, Williams was issued a one-year probated salesperson license effective May 25, 2004.

Violations: 339.100.2 (15), (17), and (18)  
RSMo.

On or about August 27, 1999, Williams plead-  
ed guilty to stealing a motor vehicle.

**Young, Thomas Gary**  
Peculiar, Missouri

By Joint Stipulation with the MREC, Young's  
salesperson license was placed on probation  
beginning September 16, 2003, to run concur-  
rent with his criminal probation.

Violations: 339.100.2 (15) and (17) RSMo.

On or about July 16, 2001, in the Circuit Court  
of Cass County, Missouri, Young pled guilty to  
the class D felony of driving while intoxicated  
- persistent offender.

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Anyone wishing to contribute ideas or articles for consideration for inclusion in the Newsletter,  
please send your ideas and/or articles to Janet Carder.

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