



Preparing for September 1, 1997

by Sherry Mariea

Ready or not! Here it comes! The pending enforcement date of the new real estate agency statutes demands the immediate attention of all real estate licensees. In order to ensure that your office is best able to implement this new law with efficiency and professionalism, please review and implement the following noted items prior to September 1:

Item #1: Prepare a written office policy which clearly identifies and describes the types of agency relationships that the licensees in your office may offer to consumers. This written office policy can serve as a valuable resource for guiding you and your affiliated licensees through the intricacies of the new law and their resulting obligations to both clients and customers.

Item #2: Prepare a sufficient supply of broker disclosure forms for distribution in accordance with the statute. The form provides valuable information about real estate agency relationships to potential buyers, sellers, tenants, and landlords. The form will not, however, replace traditional agency disclosure obligations nor will it satisfy statutory requirements of established written agency or subagency relationships. In addition, make certain that all licensees are aware that the form must be presented to potential unrepresented buyers, sellers, tenants, and landlords even when a licensee is selling, purchasing, or leasing property on his or her own behalf without a written agency (or limited agency) agreement.

Item #3: Thoroughly review and analyze the provisions of the new law dealing with a purported presumption of buyer's (or tenant's) limited agency. It is important to recognize the legal

and practical effect of the provisions of the new law dealing with presumptive buyer's limited agency. The new law is necessary to avoid unknowingly creating buyer's limited agency. Under the terms of the new law, no presumption of buyer's limited agency exists where "the designated broker" has a listing agreement or a subagency agreement to represent the seller. Establishing a subagency agreement to represent a seller may require certain additional disclosures to the buyer. Therefore, appropriate disclosures and precautions should be implemented in order to prevent presumptive buyer's limited agency and to avoid giving a buyer the impression that they are being represented.

Item #4: Obtain revised forms. Both the statutes and proposed regulations establish new requirements for written agency agreements. In order to create the limited agency relationships provided by the new law, the forms must detail the duties and responsibilities set forth in the new law. September 1st does not signal that all existing agency agreements are no longer valid. However, if your agency relationship is amended, changed, or renewed, then you must comply with the new statute. (NOTE: "Limited" agency does not necessarily imply that the obligations of the agent are now "limited".) In addition many other forms may need to be revised in order to best address the issues presented by this new law.

Item #5: Determine the role that designated agency will play in your office. The theory of designated agency makes it appear a very desirable alternative to resulting dual agency in many in-house transactions. However,

if and when designated agency is to be used, your office practices must be clearly adapted to such an agency format. First, proper appointment procedures must be implemented. Section 339.820 RSMo simply states that a designated broker "may appoint in writing affiliated licensees as designated agents to the exclusion of all other affiliated licensees." The proposed regulations allow this written designation to be made by office managers or supervising brokers who have been given such authority by their designated broker. The statute requires only that written designation must come from one of these properly authorized licensees, however, the proposed regulations require that the client be given written notice of this arrangement and the licensee should further advise the client of designated agency's effect on the client's relationship with other affiliated licensees.

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Furthermore, office practices and procedures should be clearly designed to prevent excluded affiliated licensees from gaining access to confidential information about clients. Areas for concern include, but are not limited to, facsimile transmissions, files and documents, telephone conversations, in-person conversations and contacts, office meetings, telephone messages etc. Designated brokers and supervisory brokers must make certain that office practices are designed to allow licensees to easily maintain this confidentiality. In addition, because the risk of disclosing confidential information about the client is so great, designated brokers and supervisory brokers should be very cautious in their use of this new concept and should take extra supervisory precautions to assist affiliated licensees in understanding and implementing the necessary protective office practices and procedures.

Item #6: Thoroughly review all provisions of the new statutes and the proposed regulations. All licensees should be encouraged to attend training courses on the new agency law and appropriate broker supervision should be in place in each office to secure a smooth transition of the requirements of the new law into the daily practices of all licensees. While the proposed regulations will not yet be effective on September 1, the requirements contemplated by those regulations provide guidance on numerous issues not addressed in the statutes. Because the proposed regulations clarify and expand upon the existing regulations, compliance with the proposed regulations is recommended.

In conclusion, real estate licensees must devote their attention to understanding and implementing the new law. Certainly, there will be questions concerning this law's implementation. As professionals, it is incumbent upon us to first seek the answers to our questions in the specific language of the statutes. If we work together and dedicate ourselves to understanding the laws with which we must comply, we can ensure and uphold the integrity of the industry.

Changes! Changes! Changes! With any statute or regulation change comes changes in audit procedures. The following are items that you and your agents must provide for compliance with the new agency law.

Written Office Policy

- The brokerage must prepare a written office policy which clearly identifies and describes in detail the types of agency relationships offered by your company. The examiners will request that you provide a copy of the policy for examination.

Broker Disclosure Form

- The Broker Disclosure Form must be provided to any seller, landlord, buyer, or tenant who has not entered into a written agreement for services as described in the statute. The brokerage's portion of that form must be retained by the brokerage. This form may not be altered in any manner. You may, however, mark the option boxes provided on the form and fill in your company name and address prior to printing this form.

- If a customer refuses to sign the Broker Disclosure Form, a written explanation of the facts of the refusal must be signed and dated by the licensee and be retained by the broker.

Brokerage Agreements

- All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant are entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker.

- A designated broker intending to establish a limited agency relationship with a seller or landlord must enter into a written agency agreement with the party to be represented. The agreement must include the following:

1. Licensee's specific duties and responsibilities (refer to Section 339.730 RSMo);
2. Terms of compensation; and
3. Whether an offer of subagency

may be made to any other designated broker.

- A designated broker acting as a single agent for a buyer or tenant will enter into a written agency agreement with that buyer or tenant. The agreement must include the following:

1. Licensee's specific duties and responsibilities (refer to Section 339.740 RSMo);

2. Terms of compensation; and

3. Whether an offer of subagency may be made to any other designated broker.

- A designated broker intending to act as a dual agent will enter into a written agreement with the seller and buyer/landlord and tenant permitting the designated broker to serve as a dual agent. The agreement must include the following:

1. Licensee's specific duties and responsibilities (refer to Section 339.750 RSMo); and

2. Terms of compensation.

- A designated broker intending to act as a subagent will enter into a written agreement with the designated broker for the client. If a designated broker has made a unilateral offer of subagency, another designated broker can enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client.

Agency Disclosure Form

- Current regulations require written agency disclosure for sellers, buyers and dual agency. These will still be reviewed by the examiners.

- Written agency disclosure for limited, landlord and tenant representation are not addressed under the current regulations, however disclosure for these are included in the proposed regulations. As the proposed regulations are not yet in place, we can only suggest you consider the proposed rules as a guideline to follow until they become effective.

In conclusion, the examiners will request a copy of your written policy. They also will examine your files and review broker disclosure forms, brokerage agreements and agency disclosure forms for compliance and proper retention.

339.710-339. 860 Agency An Abbreviated Index

The following is an abbreviated index of the agency statute that was printed in the January Newsletter. While this may not be all-inclusive of the subject matter in the statute, it will assist you in quickly locating many subjects or issues.

Affiliated licensee

defined 339.710 (2)

Agency agreement

see Brokerage agreement

Agent

defined 339.710 (3)

Adverse material fact

defined 339.710 (1)

buyer/tenant agent, disclosure to customer 339.740.3

seller/landlord agent, disclosure to customer 339.730.3

Brokerage agreement

may exceed duties and responsibilities of limited agency 339.780.6

must be in writing 339.780.2

must specify if subagency is to be offered 339.780.2

must set out: licensees' duties and responsibilities 339.780.2

broker's terms of compensation 339.780.2

Broker Disclosure Form

customer refusal to sign 339.770.1

defined 339.710 (4)

not a contract 339.770.5

provided to whom 339.770.1, .2

signatures required 339.770.5

when provided 339.770.1

Brokerage relationships

defined 339.710 (5)

disclosure, to whom 339.770.1, .2

disclosure, when 339.770.1

may be limited 339.760.1, .2

policy required, in writing 339.760.1

relationships permitted with single party 339.720.4

Buyer/Tenant limited agent

defined 339.710 (16)

resumed 339.720.2

duties 339.740.1 (1) - (6)

disclosures to customer 339.740.3

broker disclosure form 339.770.4

written agreement required 339.780.3

duties after termination 339.790.2

Civil actions

not limited 339.840

Client

defined 339.710 (6)

Commission

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payment of, see Compensation

Compensation of broker

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may be paid by any party 339.800.1, .3, .4

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Competing properties

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(dual) 339.750.4 (1) - (5)

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buyer/tenant agent, no duty to inspect/verify 339.740.3

seller/landlord agent, disclosures to 339.730.2

seller/landlord agent, no duty to inspect/verify property condition 339.730.3

refusal to sign Broker Disclosure Form 339.770.1, .5

Designated agent

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may be appointed by broker 339.820

not necessarily dual agent 339.820

protection from vicarious liability 339.830.2

same duties as broker 339.830

Designated broker

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agreements made on behalf of 339.780.1

may authorize licensee to enter into agreements 339.780.1

Disclosures to customer

see Customer

Dual agent

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defined 339.710 (12)

designated agent becomes dual, when 339.820

disclosures permitted 339.750.3

duties 339.750.2

duties after termination 339.790.2

duties required in writing 339.780.4

written agreement required 339.780.4 is limited agent 339.750.2

Inspection of property

Buyer/tenant limited agent has no duty to customer 339.730.3

Seller/landlord limited agent has no duty to customer 339.740.3

Landlord's limited agent

defined 339.710 (16)

see Seller's/Landlord's limited agent

Licensee

defined 339.710 (13)

Limited agent

defined 339.710 (14)

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seller/landlord 339.730

dual 339.750

designated 339.820

duties to be set out in brokerage agreement 339.780.2

duties after termination 339.790.2

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no misrepresentation in failure to disclose confidential information 339.730.2, 339.740.2, 339.750.5

licensee not liable for client's 339.810.2

licensee not liable for subagent's 339.810.3

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may limit brokerage relationships 339.760.2

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duties 339.730.1
duties after termination 339.790.2
may retain and compensate subagents 339.730.5
may show competing properties 339.730.4
must have written agreement to employ subagents 339.730.5

Single agent

definition 339.710 (16)

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defined 339.710 (17)
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is limited agent 339.730.5, 339.740.5
by unilateral offer 339.780.5

Tenant's limited agent

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Termination of agency

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duties after 339.790.2
when 339.790.1

Vicarious liability

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designated agent 339.830.2

New Education Specialist

On January 15, 1997, Cindy Smith filled the position of Education Specialist. Cindy brings with her seven (7) years experience in the field of education, four (4) of which focused on adult education. Her experience includes: teaching in the public schools, teaching General Education Development (GED) classes to adults, and serving as Director of Staff

Development for the certification of Adult Basic Education faculty across the State of Missouri.

Disciplines

Losada-Brooks, Ruth E.

St. Louis, MO

By agreement with the Commission, one year suspension, starting March 8, 1997 through March 8, 1998, followed by two years probation, starting March 8, 1998 through March 8, 2000.

Violations: 339.100.2 (1), (3), (11), (14), and (18) RSMo 1994

Ms. Losada-Brooks entered into a property management agreement with a homeowner. The real estate company which employed Ms. Losada-Brooks was unaware of the property management agreement. Ms. Losada-Brooks was licensed as a salesperson and engaged in the practice of real estate brokerage. Ms. Losada-Brooks failed to maintain records pertaining to the management of this property and also failed to provide quarterly statements to the property owner. Ms. Losada-Brooks signed a tenant's name to a lease agreement without the tenant's permission to do so. Although Ms. Losada-Brooks received full rental payments from the tenant, she did not pay the property related expenses as mandated by the management agreement.

Miller, Michael L.

Springfield, MO

By agreement with the Commission, six months probation, starting April 10, 1997 through October 10, 1997.

Violations: 339.100.2 (14) RSMo, 4 CSR 250-8.070 (2)(B), (3), and 250-8.110 (1)

Mr. Miller advertised his property for rent by placing a real estate company's sign in the yard and placing his home telephone number on the sign. Mr. Miller was no longer associated with the company when the sign was placed in the yard nor was the property listed with that company. Mr. Miller failed to

display the "broker/owner" designation on the yard sign. Mr. Miller signed a lease for his property and failed to disclose his license status in writing to the lessee.

Roderick, John H.

Branson, MO

By joint stipulation with the Commission, six months probation, starting May 16, 1997 through November 16, 1997.

Violations: 339.100.2(2) and (18) RSMo 1994

Roderick sold on a contract for deed basis a portion of a fifteen acre tract of land he owned. Roderick received payment in full for the contract for deed and issued a general warranty deed for the portion of the property he sold. Roderick failed to obtain a partial deed of release from his mortgage holder before issuing the general warranty deed to the buyer. Roderick also failed to inform his mortgage holder that he had sold a portion of the fifteen acres.

Roos, James

St. Louis, MO

By agreement with the Commission, six months suspension. The suspension is stayed and Mr. Roos' license was placed on probation starting July 17, 1996 through December 31, 1999.

Neighborhood Enterprises Inc.

St. Louis, MO

By agreement with the Commission, six months suspension. The suspension was stayed and the company's license was placed on probation from January 17, 1997 through July 17, 2000.

Violations: 339.100.2 (1), (14), and (18) RSMo Supp. 1992 and RSMo 1994

An audit was conducted on Mr. Roos' company, Neighborhood Enterprises Inc. The audit revealed the following violations: 1) the property management escrow account was not registered with the Commission; 2) records necessary

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Disciplines *(continued from page 4)*

to determine the adequacy of the property management escrow account were not maintained; 3) disbursements were made from the property management account without sufficient funds to cover the disbursements; 4) security deposits were maintained in the property management escrow account without the authorization from the property owner; 5) funds belonging to others were not deposited into a separate escrow account; 6) security deposits were not maintained intact; 7) voided checks, bank statements, and copies of business records were not retained; 8) unidentified money unrelated to a real estate transaction was maintained in the property management escrow account; 9) Roos advertised property in which he had an ownership interest and which was not listed with the brokerage without including the broker/owner designation in the advertisement; and 10) properties were being managed without a written property management agreement.

Roberts, Ronald L.
St. Louis, MO

By joint stipulation with the Commission, two years probation, starting March 28, 1997 through March 28, 1999.

Violation: 339.100.2 (2), and (17) RSMo 1994

On June 6, 1995, Mr. Roberts pled guilty in the United States District Court to the criminal charge, Misprision of a Felony.

Saffa, John T.
St. Louis, MO

By agreement with the Commission, three years probation, starting February 11, 1997 through February 11, 2000.

Violations: 339.100.2 (17) RSMo 1994

On December 19, 1994, Mr. Saffa pled guilty in the United States District Court to Making False Statements to the Social Security Administration.

Taylor, Deborah R.
Sikeston, MO

By joint stipulation with the Commission, five years probation, starting June 20, 1997 through June 20, 2002, with the provision that upon release from her criminal probation, Taylor may petition the Commission to terminate this probation.

Violation: 339.100.2 (17), RSMo 1994

On February 6, 1996, Taylor pled guilty to one count of trafficking drugs in the second degree.

**Escrow
Accounts**

Any change in bank name or account number must be registered with the Commission as required in Section 339.105.2 RSMo. If a change has occurred with your escrow account, contact the Commission office and request a Consent to Examine Escrow Form to register the change in your account.

**Commission Announces
Computer Prelicense Testing
and Instant Scoring**

Effective July 1, 1997, all persons taking the salesperson and broker license examinations will be tested by computer and will receive their test results upon completing the examination. Under a contract recently awarded, Applied Measurement Professionals, Lenexa, Kansas, established test centers in four cities—St. Louis, Springfield, Jefferson City, and Lenexa, Kansas. AMP personnel will administer the examinations daily, by appointment. Examinees will be given instruction about how to operate the computer and will have ample opportunity to answer practice questions before they undertake the examination itself. After completing the

examination, the examinee will be given a personalized report of the test results. Successful candidates will also receive an application for licensure. Monthly testing by pencil and paper is no longer available.

**Home Page-Coming
To MREC**

The Missouri Real Estate Commission will soon have a home page. In the meantime staff may be reached via E-Mail at the following address: jcarde01@mail.state.mo.us.

**On Site Sewage System
Maintenance**

An on-site sewage system is an effective method for waste disposal and treatment ONLY when it is maintained properly.

The Missouri Department of Health offers consumers free information on various types of systems used in the State. Contact the Missouri Department of Health, P.O. Box 570, Jefferson City, MO 65102 Phone 573-751-6095.

**Current License
Count**

Broker	7,209
Broker-Salesperson	4,966
Salesperson	20,176
Inactive Broker	1,320
Inactive Salesperson	3,702
Broker-Officer	3188
Broker-Partner	281
Broker-Associate	150
Co-Partnership	175
Corporation	2,165
Association	102
Total	43,434

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Executive Director

IMPORTANT NOTICE

BROKER DISCLOSURE FORM

Included with this newsletter is a camera ready copy of the required broker disclosure form. This form 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 preprint the choices that your brokerage firm authorizes under "Choices Available To You With This Firm". It is critical that you retain this original to ensure that you may provide quality reproductions in the future.

The information on this disclosure form shall be effectively communicated to all customers, including those who request assistance because of a disability.