



## Transaction Brokerage and In-House Sales

Can a licensee act as an agent for one party to a transaction and assist the other party to the same transaction as a transaction broker? The answer to this question is a resounding **"No!"** However, rather than providing comfort and reassurance to the licensees, this concise answer seems only to generate more questions.

The biggest concern centers on a licensee selling a home that he has listed or was listed by another agent with the same company, i.e., an in-house transaction. An in-house transaction is defined as a property listed and sold by the same brokerage. There are several important pieces of information to ascertain before the licensee takes any action. A common misconception of many licensees is that they are automatically a transaction broker when they have first contact with a prospective buyer. However, at that initial contact, the first question for a licensee to consider is whether or not he already has an agency relationship established. This is very important since a licensee who has an agency status will not fall under the presumption of transaction brokerage status created by the statute.

If a prospective buyer initiates contact with a licensee and that contact is related to a property that the licensee has either 1) listed as a seller's agent, 2) been designated by his broker as a seller's agent, or 3) listed by an agent within the company and designated agency is not practiced, the licensee has a seller's agency status. If the buyer approaches a licensee and the contact is not related to such a property, the licensee has no agency status and would therefore fall under the presumption of transaction brokerage. It is important to remember that the licensee's relationship with a buyer or seller may evolve or change as the

relationship develops or the transaction progresses. It will also depend on which relationships the broker's written office policy allows. However, it is critical that the licensee understands that **actions** will ultimately determine the relationship, regardless of what the brokerage service agreement and designated broker's written office policy permit. As an example, if a licensee enters into a transaction broker agreement with both sides of the transaction but advocates for the interest of one of the parties, the licensee will in reality be an undisclosed agent for that party. This is not only a violation of the statutes, it could cause litigation as well.

The Commission would advise licensees to use particular caution if the written office policy permits both agency and transaction brokerage

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to be practiced. The licensee must be aware of the potential variables when developing and establishing a brokerage service relationship with either the sellers or the buyers. Licensees should be proactive and anticipate potential changes in his brokerage relationships and address these issues with clients and customers at the earliest opportunity. Licensees are encouraged to consult their attorney if questions arise.

NOTE: It is the intent of the Missouri Real Estate Commission, within the next few weeks, to address some of the possibilities that have been created by the new statute and post these articles on our web page and in the next newsletter.

## **Current Agency Requirements**

Whether you saw September 1, 1997 as a grand day when Missouri licensees were given both direction and protection by a new agency statute, or you believe that the law should have gone into effect on June 6 so that it could be remembered along with D-Day, the law is here. The majority of attorney-approved board and association forms have been found to be in compliance. This article is directed at those of you who are still hanging for dear life to forms approved by legal counsel prior to September 1, 1997.

This article was written in conjunction with the statutes that became effective on September 1, 1997 and address "agency" relationships and agreements. The new statutes, effective January 1, 1999, will add the status of transaction broker and change the statutory presumption from buyer's agency to transaction brokerage. The proposed regulations included in this newsletter are written to correspond with these changes. However, transaction broker status is not addressed in this article. On January 1, 1999, the new statutes will offer additional options with respect to brokerage relationships but will not change the principles discussed below. If any of the regulations that became effective September 1, 1998 are in direct conflict with the statutes that become effective January 1, 1999, the statutes will override the regulation.

The broker's written office policy is to govern the authorized agency activity of the licensees. In a Missouri Real Estate Commission audit, the

examiner will review this policy to determine which relationships are authorized and make sure the relationships are described. If the marked choices on the Broker Disclosure Form are preprinted, this information will be compared to verify that the choices on the form correspond to the relationships authorized by the written office policy. The same choices should be marked on all Broker Disclosure Forms provided to customers.

The statute has created a baseline agency relationship for Missouri licensees as a limited agent. This requires that all written agency agreements contain the duties and obligations pursuant to 339.730, 339.740, and 339.750, RSMo. The statute, 339.780, RSMo, allows these agreements to contain duties, obligations, or responsibilities that are in addition to the items listed in the statute. If the agreement does contain duties, obligations, or responsibilities that are in addition to those described in the statute, the licensee would then be acting under the category of "other". There is nothing in the statute that would allow an agency agreement to contain less duties, obligations, or responsibilities than those required of a limited agent.

Brokers who have continued to use out of date agency agreements and are marking "other" on the Broker Disclosure Form are not in compliance. As stated above, "other" applies to agency agreements that contain duties and responsibilities that are in addition to those of a limited agent. The term agency agreement in this article refers to listing agreements, buyer's agency agreements, landlord agency agreements (property management agreements or one time rental agreements), and tenant agency agreements. If a broker is operating under an agreement that became effective prior to September 1, 1997, the Commission will grandfather these agreements for audit purposes. This would also apply to agency agreements effective prior to September 1, 1997

that have subsequently been renewed, provided the terms of the agreement and the actions of the agent have not been changed. While operating under such an agreement, the broker should consult an attorney and be aware that he or she may not be provided the protection of limited agency.

The statute also requires all agency agreements to specify the terms of compensation and specify whether or not an offer of subagency may be made to any other designated broker. Effective September 1, 1998, all agency agreements, with the exception of property management agreements, have been covered by regulation 4 CSR 250-8.090. The proposed regulations will add transaction brokerage agreements with buyers and sellers to this regulation and further address property management agreements in regulation 4 CSR 250-8.210. All brokers should review current forms to determine whether they are in compliance with both the statute and regulations.

#### *MREC WEB SITE*

The Missouri Real Estate Commission would like to invite everyone to come and visit our new "Web Site" at [www.ecodev.state.mo.us/pr/](http://www.ecodev.state.mo.us/pr/) for information regarding approved schools, forms, rules & regulations, Commission meetings and much much more. Any suggestions you have to improve our site are most welcome.

#### **Internet Advertising Reminder**

All advertising, including advertising on the Internet, is required to conform with 4 CSR 250-8.070. Please consult your MREC rules and regulations handbook to ensure compliance.

#### ***Attention All New Licensees!***

Effective October 1, 1998, any person who has been issued an original resident, nonresident or reciprocal salesperson or broker license shall, prior to the expiration date of your license, satisfactorily complete twelve- (12) hours of continuing education instruction in a classroom course of study entitled Missouri Real Estate Practice. No licensee shall be granted continuing education credit for completing Missouri Real Estate Practice after the expiration date of the initial license.

# Transaction Brokerage Statutes

*effective January 1, 1999*

**Bold** type indicates amendments to the statute while ~~{}~~  indicates information which will be deleted.

339.710. For purposes of sections 339.710 to 339.860, the following terms mean:

(1) "Adverse material fact", a fact related to the physical condition of the property not reasonably ascertainable or known to a party which **negatively** affects the value of the property. **Adverse material facts may include matters pertaining to:**

**(a) Environmental hazards affecting the property;**

**(b) Physical condition of the property which adversely affects the value of the property;**

**(c) Material defects in the property;**

**(d) Material defects in the title to the property;**

**(e) Material limitation of the party's ability to perform under the terms of the contract;**

(2) "Affiliated licensee", any broker or salesperson who works under the supervision of a designated broker;

(3) "Agent", a person or entity acting ~~under~~ **pursuant** to the provisions of **this** chapter ~~339~~;

(4) "Broker disclosure form", the current form prescribed by the commission for presentation to a seller, landlord, buyer or tenant who has not entered into a written agreement for brokerage services;

(5) "Brokerage relationship", the relationship created between a designated broker, the broker's affiliated licensees, and a client relating to the performance of services of a broker as defined in section 339.010, and sections 339.710 to 339.860;

(6) "Client", a seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee pursuant to sections 339.710 to 339.860;

(7) "Commission", the Missouri real estate commission;

(8) "Confidential information", **information obtained by the licensee from the client and designated as confidential by the client**, information made confidential by sections 339.710 to 339.860 or any other statute or regulation, or written instructions from the client unless the information is made public or becomes public by the words or conduct of the client to whom the information pertains or by a source other than the licensee;

(9) "Customer", ~~a~~ **an actual or potential** seller, landlord, buyer, or tenant in a real estate transaction in which a licensee is involved but who has not entered into a brokerage relationship with a licensee;

(10) "Designated agent" a licensee named by a designated broker as the limited agent of a client as provided for in section 339.820;

(11) "Designated broker", the individual licensed as a broker who is appointed by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. Every real estate partnership, association, or limited liability corporation, or corporation shall appoint a designated broker;

(12) "**Dual agency**", **a form of agency which results when an agent licensee or someone affiliated with the agent licensee represents another party to the same transaction;**

(13) "Dual agent", a limited agent who, with the written consent of all parties to a contemplated real estate transaction, has entered into ~~a~~ **an agency** brokerage relationship, and **not a transaction brokerage relationship**, with and therefore represents both the seller and buyer or both the landlord and tenant;

~~[(13)]~~ **(14)** “Licensee”, a real estate broker or salesperson as defined in section 339.010;

~~[(14)]~~ **(15)** “Limited agent”, a licensee whose duties and obligations to a client are those set forth in sections 339.730 to 339.750;

~~[(15)]~~ **(16)** “Ministerial acts”, those acts that a licensee may perform for a person that are informative in nature and do not rise to the level of active representation on behalf of a person. Examples of these acts include, but are not limited to:

- (a) Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;
- (b) Responding to telephone inquiries from a person concerning the price or location of property;
- (c) Attending an open house and responding to questions about the property from a consumer;
- (d) Setting an appointment to view property;
- (e) Responding to questions of consumers walking into a licensee’s office concerning brokerage services offered on particular properties;
- (f) Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;
- (g) Describing a property or the property’s condition in response to a person’s inquiry;
- (h) Showing a customer through a property being sold by an owner on his or her own behalf; or
- (i) Referral to another broker or service provider;

~~[(16)]~~ **(17)** “Single agent”, a licensee who has entered into a brokerage relationship with and therefore represents only one party in a real estate transaction. A single agent may be one of the following:

- (a) “Buyer’s agent”, which shall mean a licensee who represents the buyer in a real estate transaction;
  - (b) “Seller’s agent”, which shall mean a licensee who represents the seller in a real estate transaction;
- and
- (c) “Landlord’s agent”, which shall mean a licensee who represents a landlord in a leasing transaction;
  - (d) “Tenant’s agent”, which shall mean a licensee who represents the tenant in a leasing transaction;

~~[(17)]~~ **(18)** “Subagent”, a designated broker, together with the broker’s appointed agents, engaged by another designated broker to act as a limited agent for a client. A subagent owes the same obligations and responsibilities to the client pursuant to [section] sections 339.730 ~~[or]~~ to 339.740 as does the client’s designated broker~~[-]~~;

**(19) “Transaction broker”, any licensee acting pursuant to sections 339.710 to 339.860, who:**

- (a) Assists the parties to a transaction without an agency or fiduciary relationship to either party and is, therefore, neutral, serving neither as an advocate or adviser for either party to the transaction;**
- (b) Assists one or more parties to a transaction and who has not entered into a specific written agency agreement to represent one or more of the parties;**
- (c) Assists another party to the same transaction either solely or through licensee affiliates. Such licensee shall be deemed to be a transaction broker and not a dual agent, provided that, notice of assumption of transaction broker status is provided to the buyer and seller immediately upon such default to transaction broker status, to be confirmed in writing prior to execution of the contract.**

339.720. 1. A licensee’s general duties and obligations arising from the limited agency relationship shall be disclosed in writing to the seller and the buyer or to the landlord and the tenant pursuant to sections 339.760 to 339.780. Alternatively, when engaged in any of the activities enumerated in section 339.010, a licensee may act as an agent in any transaction in accordance with a written agreement as described in section 339.780.

2. A licensee shall be considered a ~~[buyer’s or tenant’s limited agent]~~ **transaction broker** unless:

- (1) The designated broker enters into a written seller’s agent or landlord’s agent agreement with the party **or parties** to be represented pursuant to subsection 2 of section 339.780;

(2) The designated broker enters into a subagency agreement with another designated broker pursuant to subsection 5 of section 339.780;

**(3) The designated broker enters into a written buyer's agent or tenant's agent agreement with the party or parties to be represented pursuant to subsection 3 of section 339.780;**

(4) The designated broker enters into a written agency agreement pursuant to subsection ~~{6}~~ 7 of section 339.780; or

~~{(4)}~~ **(5) The designated broker ~~{is}~~ and the affiliated licensees are performing ministerial acts.**

3. Sections 339.710 to 339.860 do not obligate any buyer or tenant to pay compensation to a designated broker unless the buyer or tenant has entered into a written agreement with the designated broker specifying the compensation terms in accordance with subsection 3 of section 339.780.

4. A licensee may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as **a transaction broker** or a seller's agent ~~{and}~~ working with that seller in buying another property as a buyer's agent ~~{or}~~, as a subagent **or as a transaction broker** if the licensee complies with sections 339.710 to 339.860 in establishing the relationships for each transaction.

339.730. 1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of the written agreement made with the client;

(2) To exercise reasonable skill and care for the client;

(3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(b) Presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;

(c) Disclosing to the client all adverse material facts actually known or that should have been known by the licensee; and

(d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections; and

(6) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

2. A licensee acting as a seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.

3. A licensee acting as a seller's or landlord's agent owes no duty or obligation to a customer, except that a licensee shall disclose to any customer all adverse material facts actually known or that should have been known by the licensee. ~~[The adverse material facts may include facts pertaining to:~~

~~(1) Environmental hazards affecting the property;~~

~~(2) The physical condition of the property;~~

~~(3) Material defects in the property;~~

~~(4) Material defects in the title to the property;~~

~~(5) Material limitation on the client's ability to perform under the terms of the contract.]~~

A seller's or landlord's agent owes no duty to conduct an independent inspection ~~[of the property]~~ **or discover any adverse material facts** for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any independent inspector.

4. A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.

5. A seller or landlord may agree in writing with a seller's or landlord's agent that other designated brokers may be retained and compensated as subagents. Any designated broker acting as a subagent on the seller's or landlord's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections 1 to 4 of this section.

339.740. 1. A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of any written agreement made with the client;

(2) To exercise reasonable skill and care for the client;

(3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;

(b) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;

(c) Disclosing to the client adverse material facts actually known or that should have been known by the licensee; and

(d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections; and

(6) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

2. A licensee acting as a buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information

would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

3. A licensee acting as a buyer's or tenant's agent owes no duty or obligation to a customer, except that the licensee shall disclose to any customer all adverse material facts actually known or that should have been known by the licensee. ~~[The adverse material facts may include facts concerning the client's financial ability to perform the terms of the transaction.]~~ A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any independent inspector.

4. A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section shall not be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

5. A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents. Any designated broker acting on the buyer's or tenant's behalf as a subagent shall be a limited agent with the obligations and responsibilities set forth in subsections 1 to 4 of this section.

**339.755. 1. A real estate licensee may provide real estate service to any party in a prospective transaction without an agency or fiduciary relationship to one or more parties to the transaction. Such licensee shall be called a transaction broker.**

**2. A transaction broker shall have the following duties and obligations:**

**(1) To perform the terms of any written or oral agreement made with any party to the transaction;**

**(2) To exercise reasonable skill, care and diligence as a transaction broker, including but not limited to:**

**(a) Presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent unless otherwise provided in the agreement entered with the party;**

**(b) Informing the parties regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the transaction broker knows but the specifics of which are beyond the expertise of such broker;**

**(c) Accounting in a timely manner for all money and property received;**

**(d) To disclose to each party to the transaction any adverse material facts of which the licensee has actual notice or knowledge;**

**(e) Assisting the parties in complying with the terms and conditions of any contract;**

**(f) The parties to a transaction brokerage transaction shall not be liable for any acts of the transaction broker.**

**3. The following information shall not be disclosed by a transaction broker without the informed consent of the party or parties disclosing such information to the broker:**

**(1) That a buyer is willing to pay more than the purchase price or lease rate offered for the property;**

**(2) That a seller is willing to accept less than the asking price or lease rate for the property;**

**(3) What the motivating factors are for any party buying, selling or leasing the property;**

**(4) That a seller or buyer will agree to financing terms other than those offered;**

**(5) Any confidential information about the other party, unless disclosure of such information is required by law, statute, rules or regulations or failure to disclose such information would constitute fraud or dishonest dealing.**

**4. A transaction broker has no duty to conduct an independent inspection of, or discover any defects in, the property. Nothing in this section limits the obligation of the buyer to inspect the physical condition of the property.**

**5. A transaction broker has no duty to conduct an independent investigation of the buyer's financial condition.**

**6. A transaction broker may do the following without breaching any obligation or responsibility:**

**(1) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant;**

**(2) List competing properties for sale or lease;**

**(3) Show properties in which the buyer or tenant is interested to other prospective buyers or tenants;**

**(4) Serve as a single agent, subagent or designated agent or broker, limited agent, disclosed dual agent for the same or for different parties in other real estate transactions.**

**7. In a transaction broker relationship each party and the transaction broker, including all persons within an entity engaged as the transaction broker if the transaction broker is an entity, are considered to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law between any party and the transaction broker or between any party and any person within an entity engaged as the transaction broker if the transaction broker is an entity.**

**8. A transaction broker may cooperate with other brokers and such cooperation does not establish an agency or subagency relationship.**

**9. Nothing in this section prohibits a transaction broker from acting as a single limited agent, dual agent or subagent whether on behalf of a buyer or seller, as long as the requirements governing disclosure of such fact are met.**

**10. Nothing in this section alters or eliminates the responsibility of a broker as set forth in this section for the conduct and actions of a licensee operating under the broker's license.**

**11. A transaction broker shall:**

**(1) Comply with all applicable requirements of sections 339.710 to 339.860, subsection 2 of section 339.010 and all rules and regulations promulgated pursuant to such sections; and**

**(2) Comply with any applicable federal, state and local laws, rules, regulations and ordinances, including fair housing and civil rights statutes and regulations.**

**12. If any licensee who represents another party to the same transaction either solely or through affiliate licensees refuses transaction broker status and wants to continue an agency relationship**

with both parties to the transaction, such licensee shall have the right to become a designated agent or a dual agent as provided for in sections 339.730 to 339.860.

**13. In any transaction a licensee may without liability withdraw from representing a client who has not consented to a conversion to transaction brokerage. Such withdrawal shall not prejudice the ability of the licensee or affiliated licensee to continue to represent the other client in the transaction or limit the licensee from representing the client who refused the transaction brokerage representation in another transaction not involving transaction brokerage.**

339.770. 1. At the earliest practicable opportunity during or following the first substantial contact by the designated broker or the affiliated licensees with a seller, landlord, buyer, or tenant who has not entered into a written agreement for services as described in subdivision (5) of section 339.710, the licensee shall provide that person with a written copy of the current broker disclosure form which has been prescribed by the commission. ~~[If the prospective customer refuses to sign the disclosure, the licensee shall set forth, sign and date a written explanation of the facts of the refusal and the explanation shall be retained by the licensee's broker.]~~

2. When a seller, landlord, buyer, or tenant has already entered into a written agreement for services with a designated broker, no other licensee shall be required to make the disclosures required by this section.

~~3. [Before engaging in any of the activities enumerated in section 339.010, a licensee working as an agent or subagent of the seller or landlord with a buyer or tenant who is not represented by a licensee shall provide to the customer the current broker disclosure form prescribed by the commission.]~~

~~4. Before engaging in any of the activities enumerated in section 339.010, a licensee working as an agent or subagent of the buyer or tenant with a seller or landlord who is not represented by a licensee shall provide to the customer the current broker disclosure form prescribed by the commission.~~

~~5. The written disclosure required pursuant to subsections 1, 3, and 4 of this section shall contain a signature block for the client or customer to acknowledge receipt of the disclosure. The customer's acknowledgment of disclosure shall not constitute a contract with the licensee. If the customer refuses to sign the disclosure, the licensee shall set forth, sign and date a written explanation of the facts of the refusal and the explanation shall be retained by the licensee's broker.~~

~~6.] Disclosures made in accordance with sections 339.710 to 339.860 shall be sufficient as a matter of law to disclose brokerage relationships to the public.~~

339.780. 1. All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be 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.

2. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

3. Before or while engaging in any acts enumerated in section 339.010, except ministerial acts defined in section 339.710, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

4. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to act as a dual agent shall enter into a written agreement with the seller and buyer or

landlord and tenant permitting the designated broker to serve as a dual agent. The agreement shall include a licensee's duties and responsibilities specified in section 339.750 and the terms of compensation.

5. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to act as a subagent shall 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.

**6. A designated broker who intends to act as a transaction broker and who expects to receive compensation from the party he or she assists shall enter into a written transaction brokerage agreement with such party or parties contracting for the broker's service. The transaction brokerage agreement shall include a licensee's duties and responsibilities specified in section 339.755 and the terms of compensation.**

7. Nothing contained in this section shall prohibit the public from entering into written contracts with any broker which contain duties, obligations, or responsibilities which are in addition to those specified in this section.

339.800. 1. In any real estate transaction, the designated broker's compensation may be paid by the seller, the landlord, the buyer, the tenant, or a third party or by sharing the compensation between designated brokers.

2. Payment of compensation by itself shall not establish an agency relationship or transaction brokerage relationship between the party who paid the compensation and the designated broker or any affiliated licensee.

3. A seller or landlord may agree that a designated broker ~~for subagent~~ may share with another designated broker the compensation paid by the seller or landlord.

4. A buyer or tenant may agree that a designated broker ~~for subagent~~ may share with another designated broker the compensation paid by the buyer or tenant.

5. A designated broker may be compensated by more than one party for services in a transaction with the knowledge of all the parties at or before the time of entering into a written contract to buy, sell, or lease.

339.810. 1. A client shall not be liable for a misrepresentation of such client's limited agent or subagent arising out of the limited agency agreement unless the client knew or should have known of the misrepresentation.

**2. A client shall not be liable for a misrepresentation of such client's transaction broker arising out of the transaction broker agreement unless the client has actual knowledge of the misrepresentation.**

3. A licensee who is serving as a limited agent or subagent of a client shall not be liable for misrepresentation of such licensee's client arising out of the brokerage agreement unless the licensee knew or should have known of the misrepresentation.

~~[3.]~~ 4. A licensee who is serving as a limited agent of a client shall not be liable for a misrepresentation of any subagent unless the licensee knew or should have known of the misrepresentation. A ~~broker~~ **limited agent licensee** shall not be liable for misrepresentation of an affiliated licensee unless ~~the broker~~ **such agent licensee** knew or should have known of the misrepresentation.

~~[4.]~~ 5. A licensee who is serving as a subagent shall not be liable for a misrepresentation of the limited agent unless the subagent knew or should have known of the misrepresentation.

**6. A licensee who is serving as a transaction broker shall not be liable for misrepresentation of such licensee's client arising out of the brokerage agreement unless the licensee had actual knowledge of the misrepresentation.**

339.820. 1. A designated broker entering into a limited agency agreement with a client for the listing of property or for the purpose of representing that person in the buying, selling, exchanging, renting, or leasing of real estate may appoint in writing affiliated licensees as designated agents to the exclusion of all other affiliated licensees.

2. A designated broker shall not be considered to be a dual agent solely because such broker makes an appointment ~~under~~ **pursuant to** this section, except that any licensee **who is not a transaction broker, and** who personally represents both the seller and buyer or both the landlord and tenant in a particular transaction shall be a dual agent and shall be required to comply with the provisions governing dual agents.

339.830. 1. All designated agents to the extent allowed by their licenses shall have the same duties and responsibilities to the client and customer pursuant to sections 339.730 to 339.750 as the designated broker except as provided in section 339.820.

2. All ~~affiliated~~ licensees have the same protections from vicarious liability as provided in sections 339.710 to 339.860 as does their designated broker.

339.850. ~~[The commission shall adopt and promulgate rules and regulations to carry out sections 339.710 to 339.860. No rule or portion of a rule promulgated pursuant to the authority of sections 339.710 to 339.860 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.]~~ **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated to administer and enforce sections 339.710 to 339.860, shall become effective only if the agency has fully complied with all of the requirements of chapter 536, RSMo, including but not limited to, section 536.028, RSMo, if applicable, after the effective date of this act. All rulemaking authority delegated prior to the effective date of this act is of no force and effect and repealed as of the effective date of this act, however nothing in this act shall be interpreted to repeal or affect the validity of any rule adopted and promulgated prior to the effective date of this act. If the provisions of section 536.028, RSMo, apply, the provisions of this section are nonseverable and if any of the powers vested with the general assembly pursuant to section 536.028 to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void, except that nothing in this act shall affect the validity of any rule adopted and promulgated prior to the effective date of this act.**

**339.855. If any provision of sections 339.710 to 339.860 or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of sections 339.710 to 339.860 which can be given effect without the invalid provision or application and to such end the provisions of sections 339.710 to 339.860 are declared to be severable; however, nothing in this section shall be construed to affect the nonseverable grant of rulemaking authority in section 339.850.**

**Section C. Section B of this act shall become effective on January 1, 1999.**

# PROPOSED AMENDMENTS TO REGULATIONS

Note: These regulations are expected to be published in the *Missouri Register* in February, with a 30 day comment period to follow. It is anticipated these rules (with possible changes depending on comments received) will be effective in May or June. Language which is proposed to be deleted is in ~~[-]~~ and new language and headings are typed in **bold**.

## 4 CSR 250-5.020 Application and License Fees.

(4) The following fees shall be paid for the appropriate transactions:

- |  |  |
|--|--|
| (C) Certification of Licensure                 | \$10.00; <del>and</del>  |
| (D) Professional Corporation Name Approval Fee | \$10.00 <del>[-]</del> ; and                                   |
| <b>(E) Criminal History Check</b>              | <b>Amount determined by the Missouri State Highway Patrol.</b> |

## 4 CSR 250-8.020 Broker Supervision and Improper Use of License and Office.

(5) Individual brokers, designated brokers, and office managers/supervising brokers shall not be considered to be a dual agent **or a transaction broker** solely because such broker makes an appointment under section 339.820, RSMo. However, when such broker supervises the licensees for both sides of a transaction, that broker will be a dual agent **or a transaction broker** upon learning confidential information about either party to a transaction or upon being consulted by any licensee involved in the transaction. Also, when the broker supervises the licensee ~~for~~ **representing** one (1) side of the transaction and personally represents the other side, that broker will be a dual agent **or a transaction broker**.

## 4 CSR 250-8.090 ~~[Brokerage Relationship Agreements or Authorization]~~ **Brokerage Service Agreements.**

(2) A licensee shall not show residential property unless a broker holds a currently effective written ~~[listing agreement, other written agreement for brokerage services, or as a buyer's agent with]~~ **seller's/landlord's agency agreement, seller's/landlord's transaction brokerage agreement, or** other written authorization to show.

(3) Seller's/**Landlord's** Agency (Listing) Agreement.

(A) Every written listing agreement or other written agreement for brokerage services shall contain all of the following:

1. The price;
2. The commission to be paid (including any and all bonuses);
3. A definite beginning date;
4. An expiration date;
5. The licensee's duties and responsibilities;
- ~~6. Specification of whether an offer of subagency may be made;~~
- ~~7. A clear statement to the seller/landlord(s) explaining the effects of the presumption of buyer's agency. This statement shall contain-~~

~~A. Missouri law presumes that, absent some other relationship being established, a licensee working with a buyer represents that buyer; and~~

~~B. That, as a result, any licensee showing property may represent the buyer; and~~

~~C. A licensee working with a buyer may be required to disclose to the buyer any information given to them by the seller;]~~

**6. A statement which permits or prohibits the designated broker from offering subagency to other designated brokers;**

**7. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;**

**8. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;**

**9. Specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by 339.710 to 339.860, RSMo, including but not limited to buyer's agents and/or transaction brokers;**

**10. A statement which confirms that the seller received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the seller's agency agreement, or b) upon the licensee obtaining any personal or financial information, whichever occurs first;**

~~[9-]~~ **11. The signatures of all owners and the listing broker or listing agent as authorized by the broker;**

~~[9-]~~ **12. The type of listing, such as exclusive agency, exclusive right to sell or open;**

~~[10-]~~ 13. The legal description or the complete street address of the property, which includes the city where the property is located; or, in the absence of a legal description or address, a clear description which unmistakably identifies the property; and

~~[11-]~~ 14. All other terms and conditions under which the property is to be sold, leased or exchanged.

(B) The agreement shall contain no provision requiring an owner to notify the broker of intent to cancel the listing after the expiration date.

(C) Any change to the listing agreement or other written agreement for brokerage services must contain the initials of all parties.

(D) The licensee shall give a legible copy of every written listing agreement or other written agreement for brokerage services to the owner of the property at the time the signature of the owner(s) is obtained.

(E) A licensee shall not negotiate or enter into a ~~[listing]~~ **brokerage service** agreement with an owner if the licensee knows, or has reason to know, that the owner has a written unexpired exclusive ~~[agency or exclusive right to sell listing]~~ **brokerage service** agreement as to the property with another broker, unless the owner initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into ~~[a listing]~~ **an agreement** which will take effect after the expiration of the current ~~[listing]~~ **agreement**.

(F) No licensee shall make or enter into a net listing agreement for the sale or lease of real property or any interest in real property; this agreement is defined as one that stipulates a net price to be received by the owner with the excess over that price to be received by the broker as commission.

(G) A listing agreement or other written agreement for brokerage services may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original agreement.

#### (4) Buyer's/~~Tenant's~~ Agency Agreement.

(A) Every written buyer or tenant authorization shall contain all of the following:

1. A description of the type of property sought by the buyer or tenant;
2. The commission or fee to be paid (including any and all bonuses);
3. A definite beginning date;
4. A definite expiration date;
5. The licensee's duties and responsibilities;

~~[6. Specification of whether an offer of subagency may be made;]~~

**6. A statement which permits or prohibits the designated broker from offering subagency to other designated brokers;**

**7. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;**

**8. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;**

**9. Specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by 339.710 to 339.860, RSMo, including but not limited to seller's agents and/or transaction brokers;**

**10. A statement which confirms that the buyer received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the buyer's agency agreement, or b) upon the licensee obtaining any personal or financial information, whichever occurs first;**

~~[7-]~~ 11. The signatures of the buyers or tenants and the broker or agent as authorized by the broker;

~~[8-]~~ 12. The type of agreement, such as exclusive agency, exclusive right to represent or open; and

~~[9-]~~ 13. All other terms and conditions prescribed by the buyers or tenants.

(B) The agreement shall contain no provision requiring a buyer or tenant to notify the broker of intent to cancel the agreement after the expiration date.

(C) Any change to the agreement or other written authorization must contain the initials of all parties.

(D) The licensee shall give a legible copy of every written agreement or other authorization to the buyer or tenant at the time the signatures are obtained and a copy of the written authorization shall be retained in the broker's office.

(E) A licensee shall not negotiate or enter into ~~[an agency]~~ **a brokerage service** agreement with a buyer or tenant if the licensee knows, or has reason to know, that the buyer or tenant has a written unexpired exclusive agreement with another broker, unless the buyer or tenant initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into an agreement which will take effect after the expiration of the current agreement.

(F) A buyer or tenant agency agreement may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original buyer or tenant agency agreement.

#### (5) Transaction Brokerage Agreement Between Broker And Seller/Landlord.

(A) Every written seller's or landlord's transaction brokerage agreement shall contain all of the following:

1. The price;
2. The commission to be paid (including any and all bonuses);
3. A definite beginning date;
4. An expiration date;

5. The licensee's duties and responsibilities;
6. The signatures of all owners and the broker or agent as authorized by the broker;
7. The legal description or the complete street address of the property, which includes the city where the property is located; or, in the absence of a legal description or address, a clear description which unmistakably identifies the property;
8. All other terms and conditions under which the property is to be sold, leased or exchanged;
9. Specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by 339.710 to 339.860, RSMo, including but not limited to buyer's agents and/or other transaction brokers; and
10. A statement which confirms that the seller received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the transaction brokerage agreement, or b) upon the licensee obtaining any personal or financial information, whichever occurs first.

(B) The agreement shall contain no provision requiring an owner to notify the broker of intent to cancel the agreement after the expiration date.

(C) Any change to the agreement must contain the initials of all parties.

(D) The licensee shall give a legible copy of every written agreement to the owner of the property at the time the signature of the owner(s) is obtained.

(E) A licensee shall not negotiate or enter into a brokerage service agreement with an owner if the licensee knows, or has reason to know, that the owner has a written unexpired brokerage service agreement as to the property with another broker, unless the owner initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into an agreement which will take effect after the expiration of the current agreement.

(F) No licensee shall make or enter into a net agreement for the sale or lease of real property or any interest in real property; this agreement is defined as one that stipulates a net price to be received by the owner with the excess over that price to be received by the broker as commission.

(G) Transaction brokerage agreements may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original transaction brokerage agreement.

**(6) Transaction Brokerage Agreement Between Broker And Buyer/Tenant.**

(A) Every written buyer's or tenant's transaction brokerage agreement shall contain all of the following:

1. A description of the type of property sought by the buyer or tenant;
2. The commission or fee to be paid (including any and all bonuses);
3. A definite beginning date;
4. A definite expiration date;
5. The licensee's duties and responsibilities;
6. The signatures of the buyers or tenants and the broker or agent as authorized by the broker;
7. All other terms and conditions prescribed by the buyers or tenants;
8. Specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by 339.710 to 339.860, RSMo, including but not limited to seller's agents and/or other transaction brokers; and
9. A statement which confirms that the buyer received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the transaction brokerage agreement, or b) upon the licensee obtaining any personal or financial information, whichever occurs first.

(B) The agreement shall contain no provision requiring a buyer or tenant to notify the broker of intent to cancel the agreement after the expiration date.

(C) Any change to the agreement must contain the initials of all parties.

(D) The licensee shall give a legible copy of every written agreement or other authorization to the buyer or tenant at the time the signatures are obtained and a copy of the agreement shall be retained in the broker's office.

(E) A licensee shall not negotiate or enter into a brokerage service agreement with a buyer or tenant if the licensee knows, or has reason to know, that the buyer or tenant has a written unexpired exclusive agreement with another broker, unless the buyer or tenant initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into an agreement which will take effect after the expiration of the current agreement.

(F) Transaction brokerage agreements may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original transaction brokerage agreement.

~~{(6)}~~ (7) Other Written Authorization. Written authorization to show residential property without ~~the brokerage agreement~~ an agency agreement or transaction brokerage agreement with the owner/landlord must contain all of the following:

- (A) A definite beginning date;
- (B) An expiration date;
- (C) The signatures of all owners or landlords and the broker or licensee as authorized by the broker;

(D) The legal description or the complete street address of the property, which includes the city where the property is located; or, in the absence of a legal description or address, a clear description which unmistakably identifies the property;

(E) Permission to enter and show the property;

(F) The commission or fee to be paid (including any and all bonuses); ~~and~~

(G) All other terms and conditions prescribed by the owners or landlords~~;~~;

(H) Any change to the written authorization must contain the initials of all parties; and

(I) A statement which confirms that the owner or landlord received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the other written authorization, or b) upon the licensee obtaining any personal or financial information, whichever occurs first.

**4 CSR 250-8.095 Agency Disclosure.** Rescinded.

#### **4 CSR 250-8.095 Brokerage Relationship Disclosure**

**(1) Licensees acting with or without a written agreement for brokerage services pursuant to 339.710 to 339.860, RSMo, are required to disclose such relationships in the following instances and manner:**

**(A) Seller's/landlord's agent or subagent of seller's/landlord's agent:** A licensee acting as an agent of the seller/landlord or subagent of the seller's/landlord's agent shall disclose this agency status to a buyer/tenant who is not represented by or working with another licensee pursuant to 339.710 to 339.860, RSMo, no later than the first showing of real estate. If the buyer is represented by another licensee, the disclosure may be made to the buyer's agent no later than the first showing of real estate. If the seller's agent is cooperating with another licensee under a written agreement of subagency or through a unilateral offer of subagency, the disclosure made by the subagent shall serve as the disclosure of the seller's agent. In a cooperative sale between a seller's agent and a licensee working with a buyer as a transaction broker, the seller's agent is only required to make disclosure of this agency status to the buyer if and when personal or financial information is obtained from the buyer.

**(B) Buyer's/tenant's agent or subagent of buyer's/tenant's agent:** A licensee acting as an agent of the buyer/tenant or subagent of the buyer's/tenant's agent shall disclose this agency status to a seller/landlord who is not represented by or working with another licensee pursuant to 339.710 to 339.860, RSMo, no later than the first showing of real estate. If the seller is represented by another licensee, the disclosure may be made to the seller's agent no later than the first showing of real estate. If the buyer's agent is cooperating with another licensee under a written agreement of subagency or through a unilateral offer of subagency, the disclosure made by the subagent shall serve as the disclosure of the buyer's agent. In a cooperative sale between a buyer's agent and a licensee working with a seller as a transaction broker, the buyer's agent is only required to make disclosure of this agency status to the seller if and when personal or financial information is obtained from the seller.

**(C) Dual agent:** A licensee acting as a dual agent in a real estate transaction shall disclose this agency status immediately upon its occurrence to all parties of a real estate transaction. In a non-designated agency transaction, the disclosure made by the licensee procuring the buyer/tenant (selling licensee) shall serve as disclosure for the listing licensee and designated broker. A designated broker who becomes a dual agent and does not personally represent any of the parties in a designated agency transaction shall not be required to make disclosure of this agency status provided written consent was given by all parties to the real estate transaction pursuant to 339.750.1, RSMo.

**(D) Transaction broker assisting seller/landlord:** A licensee assisting a seller/landlord as a transaction broker who has not been deemed a transaction broker pursuant to 339.710 (19) (c), RSMo, shall disclose this brokerage relationship to a buyer/tenant no later than the first showing of real estate. If the buyer/tenant is represented by another licensee, this disclosure may be made to the buyer's/tenant's agent no later than the first showing of real estate. If the licensee has not entered into a written transaction brokerage agreement with the seller/landlord, the licensee shall disclose the licensee's transaction broker status to the seller/landlord no later than the first showing of real estate.

**(E) Transaction broker assisting with buyer/tenant:** A licensee assisting with a buyer/tenant as a transaction broker who has not been deemed a transaction broker pursuant to 339.710 (19) (c), RSMo, shall disclose this brokerage relationship to a seller/landlord no later than the first showing of real estate. If the seller/landlord is represented by another licensee, this disclosure may be made to the seller's/landlord's agent no later than the first showing of real estate. If the licensee has not entered into a written transaction brokerage agreement with the buyer/tenant, the licensee shall disclose the licensee's transaction broker status to the buyer/tenant no later than the first showing of real estate.

**(F) Transaction broker pursuant to 339.710 (19) (c), RSMo:** A licensee who becomes a transaction broker pursuant to 339.710 (19) (c), RSMo, shall disclose this transaction broker status immediately upon its occurrence to all parties to the real estate transaction to be confirmed in writing prior to the execution of the contract. The disclosure of the licensee procuring the buyer (selling licensee) shall serve as disclosure for the listing licensee and designated broker. A designated broker who becomes a transaction broker and does not personally represent any of the parties in a designated agency transaction shall not be required to make disclosure of this status provided written consent was given by all parties to the real estate transaction.

#### 4 CSR 250-8.096 Brokerage Relationship Confirmation

(1) Licensees acting with or without a written agreement for brokerage services pursuant to 339.710 to 339.860, RSMo, are required to have such relationships confirmed in writing by each party to the real estate transaction on or before such party's first signature to the real estate contract.

(A) Written confirmation must:

1. Identify the licensee's brokerage relationship;
2. Identify the source or sources of compensation;
3. Confirm that the brokerage relationships, if required by rule or regulation, were disclosed to the seller/landlord and/or buyer/tenant or their respective agents no later than the first showing of real estate or immediately upon the occurrence of any change to that relationship;
4. Confirm the seller's/landlord's and buyer's/tenant's receipt of the Broker Disclosure Form prescribed by the commission;
5. Be signed and dated by the seller/landlord and buyer/tenant. If the landlord has entered into a written property management agreement pursuant to 4 CSR 250-8.210, the landlord shall not be required to sign the written confirmation; and
6. Be signed and dated by the disclosing licensees on or before the contract date.

(B) A signed copy shall be given to the seller/landlord and buyer/tenant and a signed copy shall be retained by the disclosing licensee's broker. If any party to the real estate transaction refuses to sign the confirmation, the licensee working with that party pursuant to 339.710 to 339.860, RSMo, shall set forth, sign and date a written explanation of the facts of refusal and the explanation shall be retained by the licensee's broker.

#### 4 CSR 250-8.097 Broker Disclosure Form

(1) At the earliest practicable opportunity during or following the first substantial contact by the designated broker or the affiliated licensees with a seller, landlord, buyer, or tenant who has not entered into a written agreement for services as described in section 339.710.5, RSMo, the licensee shall provide that person with a written copy of the current Broker Disclosure Form prescribed by the Missouri Real Estate Commission. In any event, a licensee shall provide the ~~unrepresented party (customer)~~ **party that has not entered into a written agreement for services** the Broker Disclosure Form upon obtaining any personal or financial information or before the signing of a brokerage service agreement, whichever occurs first. ~~[If the prospective customer refuses to sign the disclosure, the licensee shall set forth, sign and date a written explanation of the facts of the refusal and the explanation shall be retained by the licensee's broker.]~~ **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.**

~~[(2) The licensee providing the Broker Disclosure Form is required to see that the prescribed form is completed in its entirety.]~~

#### 4 CSR 250-8.160 Retention of Records.

(1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; ~~broker disclosure forms and~~ brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.

#### 4 CSR 250-8.210 Management Agreements.

(1) Every written property management agreement or other written authorization between a broker and the owners of the real estate shall—

- (A) Identify the property to be managed;
- (B) State the amount of fee or commission to be paid and when the fee or commission will be paid;
- (C) Specify whether security deposits and prepaid rents will be held by the broker or the owner;
- (D) Contain the beginning date of the agreement;
- (E) Provide the terms and conditions for termination of the property management agreement by the broker or the owner of the property; ~~and~~
- ~~(F) Contain signatures of broker and owner or their authorized agent.~~
- (F) Include the licensee's duties and responsibilities;**
- (G) Contain a statement which permits or prohibits the designated broker from offering subagency to other designated brokers;**
- (H) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;**
- (I) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;**

(J) Include specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by 339.710 to 339.860, RSMo, including but not limited to tenant's agents and/or transaction brokers;

(K) Contain a statement which confirms that the landlord received the Broker Disclosure Form prescribed by the commission: a) on or before the signing of the brokerage relationship agreement, or b) or upon the licensee obtaining any personal or financial information, whichever occurs first; and

(L) Contain the signatures of all the owners and the broker or agent as authorized by the broker.

## Defining Disclosure

The proposed regulations also contained in this newsletter were written to complement the statutes that become effective January 1, 1999. As licensees will observe in proposed regulation 4 CSR 250-8.095, Brokerage Relationship Disclosure, the terms "disclose" and "disclosed" are used with no specification of how the disclosure shall be made. This language has been used intentionally to require disclosure but allow licensees some latitude in the vehicle used for the disclosure. The Missouri Real Estate Commission would like to give licensees some guidance regarding what will be an acceptable means of brokerage relationship disclosure.

The original draft of these regulations included the term "orally" disclosed. Ideally a licensee will make an oral disclosure to the appropriate party as defined in the regulation. However, the Commission realizes that there are times when a requirement of "oral disclosure" would place an undue burden on current industry practices. The main rule to follow when making the disclosure is that the licensee's brokerage relationship status has been communicated and received by the appropriate party. Received by the appropriate party does not necessarily mean acknowledged by the recipient of the disclosure. There is no requirement in the proposed regulation, 4 CSR 250-8.095, which will require that the recipient of the disclosure acknowledge it in writing or otherwise "no later than the first showing". Do not confuse 4 CSR 250-8.095, Brokerage Relationship Disclosure, with 4 CSR 250-8.096, Brokerage Relationship Confirmation. The former is a disclosure, made oral or otherwise, no later than the first showing or upon taking any personal or financial information. This disclosure has no written acknowledgement requirement. The latter is the written confirmation of the first disclosure to be made at the time of contract. A licensee may simplify his or her understanding of the disclosure and timing requirements by thinking of 4 CSR 250-

8.095 as the traditional oral disclosure requirement and 4 CSR 250-8.096 as the traditional written disclosure requirement. The timing of these disclosures is very similar to current industry practices. The timing issue is another topic of discussion and is not addressed in this article.

As indicated above, the ideal vehicle for disclosure as required by regulation 4 CSR 250-8.095 would be an oral disclosure made by the licensee directly to the appropriate party.

When possible, the Commission strongly recommends making this oral disclosure. Since this oral disclosure cannot always be merged with current industry practices, it is recognized that there are additional acceptable means of disclosure. The items listed below are not an all-inclusive list and will not be appropriate for all situations. Again, the licensee should remember the general rule of a communicated and received disclosure.

- Disclosure through a multiple listing service. (This particular vehicle would only be appropriate when the property is in a MLS and the prospective buyer is represented by a buyer's agent or working with a subagent. Also, the buyer's agent or subagent would have to be members of this same multiple listing service.)
- Disclosure by fax.
- Disclosure by phone.
- Disclosure through e-mail.
- Disclosure on a cooperative agreement.
- Disclosure on literature in an open house.

Again, these are not the only possible means of disclosure. If a licensee makes a disclosure through one of the avenues listed above, the licensee has probably not had any direct contact with the party to whom he is required to make disclosure. If a licensee has direct contact with the party, direct oral disclosure should be used for maximum protection to the public and the licensee.

# Transaction Brokerage Questions and Answers

## 1. What is a transaction broker?

A transaction broker assists the parties to a transaction without an agency or fiduciary relationship to either party and is, therefore, neutral, serving neither as an advocate or adviser for either party to the transaction.

## 2. What is a primary distinction between a transaction broker and an agent representing one of the parties?

A transaction broker assists buyers to buy and sellers to sell without being an advisor or advocate to either party. An agent represents a party to the transaction and has certain fiduciary responsibilities to such party and can advocate or advise them as such.

## 3. What is the difference between transaction brokerage and dual agency?

Transaction brokerage and dual agency can be used in a similar way. In dual agency, however, the licensee represents both parties and retains agency duties to both parties as listed in the statute and can provide certain advice to both parties.

## 4. Do ministerial acts apply to transaction brokerage?

Yes. The same ministerial acts that apply to agency also apply to transaction brokerage.

## 5. Can a transaction broker co-op a sale?

Yes. Transaction brokers may cooperate with other brokers, provided cooperation is offered through a MLS or other means from the listing or buyer's broker.

## 6. Can you be a transaction broker to one party and an agent to the other party in the same transaction?

No. You can either be an agent or a transaction broker. You can not be both at the same time in a transaction.

## 7. What kind of advice can I give as a transaction broker? (CMA's? Price recommendations?)

A transaction broker cannot give advice. A transaction broker can assist by providing a wide range of real estate information, including comparable sales data showing a price range of comparable properties.

## 8. Can you switch from representation to non-representation or vice versa?

It depends. If the employment contract has language allowing for the conversion to transaction broker, then you may, with disclosure to all parties, change from agency representation to transaction brokerage. The same would hold true going from transaction brokerage to representation.

## 9. At what point must the relationship be determined? (What do we have to have signed to become a transaction broker? And when?)

The statute states that a licensee shall be considered to be a transaction broker unless a written agency agreement is entered into. Therefore, you must still provide the Broker Disclosure Form at the first practicable opportunity and make disclosure that you are a transaction broker no later than the first showing. However, no written agreement is required unless you expect compensation from the party with whom you are working as a transaction broker (e.g., a transaction broker listing agreement).

## 10. Am I a subagent if the listing salesperson is a transaction broker?

No. There is no agency of any kind with transaction brokerage. If the property is listed by a transaction broker, it will most commonly be offered through a MLS for cooperation with transaction brokers or buyer's agents.

## 11. With the change to presumption of transaction broker, will this affect confidentiality regarding fax machines, files, etc.?

Concerns about confidentiality arise primarily in companies which practice designated agency because each individual agent has agency duties only to their respective clients. If a company has a policy of transaction brokerage only, all licensees in the company act only as transaction brokers and never as agents. In this type of company, all licensees have an obligation to keep confidential

information from both parties to the transaction. In companies which practice disclosed dual agency, a similar obligation exists because all licensees have the agency duty of confidentiality to all clients of the firm.

### **12. Is the presumption or default position changing?**

Yes. Effective January 1, 1999, the presumption will be changing from buyer's agent to that of transaction broker. Unless you or your company have a seller's agency or buyer's agency agreement, you will be presumed to be a transaction broker and should act accordingly.

### **13. Can we establish an "exclusive" transaction brokerage listing and/or buyer agreement?**

Yes. In the states that currently have transaction brokerage, "exclusive" transaction broker listing agreements have been used. Although less likely, the same concept could apply to a transaction brokerage buyer agreement.

### **14. Why was the presumption changed?**

Beginning at a neutral position should allow both licensees and the public more time to decide what relationship each party desires. Transaction brokerage allows the salesperson time to build a rapport with the buyer before asking the buyer to sign an agency agreement. Also, if a buyer does not want to sign an agency agreement, the licensee may continue working with the buyer either as a transaction broker or seller's agent. On co-op sales, the buyer may not want the licensee to represent them, but the buyer may also appreciate the fact that the licensee does not represent the seller.

### **15. Who compensates the transaction broker?**

A transaction broker can be compensated in a number of ways. Typically, a transaction broker is likely to be compensated just as other cooperating licensees are today, that is, through a MLS or similar cooperative compensation system. It is also possible that the transaction broker might be compensated directly by the party with whom he/she is assisting. If payment is expected from the party with whom he/she is working, a written agreement between the transaction broker and that party is required.

### **16. When does the statute go into effect?**

January 1, 1999.

### **17. Available choices: Can I still be a subagent, or practice single agency, dual agency, and designated agency?**

Yes, while transaction brokerage has been added, there has been no change to the types of agency that may be offered.

### **18. Have the rules changed regarding the Broker Disclosure Form?**

Yes, while the Broker Disclosure Form will still be required to be provided to individuals, who have not entered into brokerage service agreements, at the earliest practicable opportunity during or following the first substantial contact, the form will no longer require the customer's signature. The form has been modified to reflect the new statutory changes and is contained within this newsletter.

### **19. Does transaction brokerage apply to both residential and commercial transactions?**

Yes. Transaction brokerage is not limited to certain types of transactions.

### **20. Does the company still need a written policy regarding brokerage relationships?**

Yes, a policy statement that identifies and describes the relationships being offered is still required. It is important that the policy statement be updated if you make changes in the types of relationships you plan to offer.

### **21. Can a broker only offer transaction brokerage?**

There is no statutory or regulatory prohibition from offering only transaction brokerage.

### **22. Can a broker refuse to cooperate with a transaction broker?**

Yes, however, if you make such a choice, since this may be a material fact to your clients, it is important that your client be advised of such a policy.

### **23. What changes in the law do not relate to transaction brokerage?**

The one change not specifically related is that the Broker Disclosure Form no longer needs signatures nor must it be retained in the company files.

#### **24. How do you handle transaction brokerage with value range marketing?**

A transaction broker may provide market data with comparable sales and properties currently on the market. However, the transaction broker may not provide any pricing advice.

#### **25. How will agents receive training?**

Training will be available from qualified instructors. You may call the Commission office to receive information on all approved courses on transaction brokerage.

#### **26. What are the disclosure regulations?**

Disclosure is still required. Confirmation of such disclosure and receipt of the Broker Disclosure Form

shall be incorporated on the brokerage service agreement, sale contract, or other approved disclosure form.

#### **27. If I were a buyer's or seller's agent, why would I want to switch to transaction brokerage?**

A licensee may want to "switch," or convert, to being a transaction broker in some situations, for example:

1. You want to assist both parties but do not want the liability of dual agency.
2. Both parties will not agree to dual agency.
3. Parties prefer that you are neutral, not representing either side.

## **Transaction Brokerage Do's and Don'ts**

Effective January 1, 1999

**DO** establish an office policy that clearly states under what circumstances the company authorizes the practice of transaction brokerage.

**DO** provide the Broker Disclosure Form (signature no longer required) to a buyer or seller, who has not entered into a brokerage service agreement, at the earliest practicable opportunity during or following the first substantial contact, but not later than taking personal or financial information.

**DO** get a written transaction brokerage employment agreement with the buyer or seller if you expect to be compensated by that party.

**DO** confirm your brokerage relationship disclosure in writing on the brokerage service agreement, the contract, or other approved disclosure form.

**DO** confirm that you have provided the Broker Disclosure Form in your written brokerage

service agreement, the contract or other approved disclosure form.

**DO** disclose any adverse material facts which you actually know about the property. Adverse material facts include (1) environmental hazards affecting the property; (2) physical condition of the property; (3) material defects in the property; (4) material defects in the title to the property; and (5) material limitations on the buyers'/sellers' ability to perform under the terms of the contract.

**DO** perform the terms of any written or oral agreement made with any party to the transaction.

**DO** exercise reasonable skill, care and diligence.

**DO** treat all parties honestly.

**DO** assist the party(ies) by suggesting that expert advice be obtained on material matters

about which you know, but the specifics of which are beyond your expertise.

**DO** assist in providing relevant information regarding the area, taxes, schools, comparable sales data, municipality requirements or assessments, etc.

**DO** notify the buyer that, although not required by law in Missouri, if they want to have inspections (such as structural, termite, well, septic inspections or survey), they need to be addressed in the contract.

**DO** assist the party(ies) in reaching agreement of price and terms, acceptable to both parties, without advocating for or advising either party.

**DO** present all offers and counter offers in a timely manner, regardless of whether the property is under contract for sale or lease.

**DO** account to the buyer and seller for all money or property received.

**DO** assist the party(ies) by communicating facts and data concerning the transaction.

**DO** assist the party(ies) in complying with the terms and conditions of the contract, including financing and inspections.

**DO** comply with all license laws, regulations, civil right laws, fair housing laws, and any other applicable laws.

**DO** remain neutral in the transaction.

**DO** keep secret confidential information of both parties to the transaction.

**DON'T** advertise or place a sign on any property offering it for sale or lease to prospective buyers/tenants unless you hold a currently effective written listing agreement or other written authorization signed by all owners.

**DON'T** show residential property unless a broker holds a currently effective written seller's/landlord's agency agreement, seller's/landlord's transaction brokerage agreement, or other written authorization to show.

**DON'T** show unlisted (FSBO) residential property unless you have written authorization from the owner.

**DON'T** disclose the following information about a party without the informed consent of that party:

- a. That the buyer is willing to pay more than the purchase price or lease rate offered for the property;
- b. That the seller is willing to accept less than the asking price or lease rate for the property;
- c. What the motivating factors are for any party buying, selling, or leasing the property;
- d. That the seller or buyer will agree to financing terms other than those offered; and
- e. Any information designated as confidential about the party(ies), unless disclosure of such information is required by law, statute, rules or regulations or failure to disclose such information would constitute fraud or dishonest dealings.

**DON'T** advocate for or advise the party you are working with as a transaction broker.

**DON'T** refer to a transaction broker as an "agent."

**DON'T** imply that you can provide the same level of service as a transaction broker that you can as an agent.

**DON'T** act like an agent after disclosing to a party that you are acting as a transaction broker. Courts are likely to judge licensees by how they act and not by whom they say they are. Remember that a transaction broker is, by definition, neutral.

## **IMPORTANT NOTICE REGARDING BROKER DISCLOSURE FORM**

Included with this newsletter is a camera ready copy of the new Broker Disclosure Form. As with the previous form, 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. Please note that you are no longer required to obtain signatures on the form, however, the regulations do require that brokerage service agreements and broker relationship confirmations document in writing that the form has been provided to the party.

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.

### **Auditor's Corner – FYI**

Every individual broker or entity must have a written policy on the agency relationships that your brokerage would consider offering as required by 339.760.1 RsMo. You must have a written policy even if you are not currently practicing real estate but do hold an active license.

The choices marked on the brokerage's Broker Disclosure Form must mirror the written policy regarding agency relationships adopted by the brokerage.

A licensee who includes his or her personal (home or business) phone number on an advertisement or yard sign must also include the business phone number of the broker or entity with which the licensee is associated.

If any information changes concerning your escrow account, you must notify the Commission within 10 days of the change. This would include either closing your current account or opening a new account. This would also include bank mergers, where the name of the bank changes and/or account numbers change. To register a change, you may obtain a copy of the Consent to Examine form from our website at [www.ecodev.state.mo.us/pr/](http://www.ecodev.state.mo.us/pr/) or you may contact our office to either have a form mailed or faxed.

If any information changes concerning your business name, personal name, or business or home address, you must notify the Commission within 10 days of the change in writing. You may obtain the License/Information Change form from the website previously noted or contact our office.

### ***Disciplines***

**Arenson, Edward R.**  
Ballwin, MO

By settlement agreement with the MREC, Arenson's license was suspended for ninety (90) days, starting July 7, 1998 through October 5, 1998, followed by eighteen (18) months probation from October 5, 1998, through

April 5, 2000.

Violations: 339.100.2 (2), (3), (11) and (18), RSMo 1994

Arenson represented himself to be licensed as a broker to an out-of-state broker, when in fact he was licensed as a salesperson. He then accepted a

referral fee directly from the out-of-state broker and failed to submit the referral fee to his broker. Therefore, Arenson suppressed, concealed, and omitted material facts in his business dealings.

**Emerson, Malia Kay**  
Lexington, MO

By joint stipulation with the MREC, Emerson's license was placed on six-(6) months probation starting June 17, 1998 through December 17, 1998.

Violations: 339.100.2 (17) RSMo 1994

On July 1, 1997, Ms. Emerson pled guilty to the felony charge of possession of a controlled substance. She received a suspended imposition of sentence and was placed on three years probation.

**Hare, Michael**  
Independence, MO

By order of the MREC, Hare's license was revoked effective August 21, 1998.

Violations: 339.100.2 (14) RSMo 1994 and 4 CSR 250.8.170 (1)

Hare practiced real estate without a license from July 1, 1994 to June 26, 1996. Hare also failed to respond within 30 days to a written inquiry.

**Johnson, Michael L.**  
Kansas City, MO

By order of the MREC, Mr. Johnson's license was revoked on March 19, 1998.

Violations: 339.100.2 (18) RSMo 1994

Mr. Johnson participated in the formation of an investment club that collected approximately \$254,352.40 from thirteen public investors. He made several misstatements and omissions in the course of selling the unregistered securities and was subsequently disciplined by the National Association of Securities Dealers.

**Kensinger, Larry F.**  
Springfield, MO

By settlement agreement with the MREC, Mr. Kensinger's license was placed on one year

probation starting March 26, 1998 through March 26, 1999.

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

Mr. Kensinger was the selling agent in a transaction. The buyer requested that the earnest money be in the form of a promissory note, with the note to be converted to cash by a specified date. The note was not converted to cash as required and the transaction never closed. Mr. Kensinger did not provide the seller or seller's agent with written notification that the earnest money was not converted to cash.

**Kniffen, Arthur L.**  
St. Louis, MO

By order of the MREC, the stayed revocation of Kniffen's license continues, however, the existing probation is extended an additional two years with special conditions. Kniffen's license is now on probation until December 1, 2000.

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

In 1993 Kniffen's license was revoked, however, the revocation was stayed and his license was placed on five years probation. An audit of Kniffen's records was conducted by MREC staff while he was on probation. The audit revealed the following: 1) Kniffen used three different fictitious names and had not registered these fictitious names with the Secretary of State; 2) Kniffen renewed his corporation in 1992 and 1996 by indicating the corporation was in good standing with the Secretary of State. The corporation had been administratively dissolved by the Secretary of State in 1991; 3) temporary shortages were found in the escrow account; 4) related transactions were not identified on deposit tickets to the escrow account; 5) an unidentified overage of \$321.36 was found in the property management escrow account; 6) the sales contract did not identify who was to hold the earnest money; 7) the written agency disclosure was not dated by the buyer; 8) the property was not properly identified on the listing agreement; 9) various property management agreements either did not specify who was to hold the security deposits and prepaid rents, were not signed by the broker, did not identify the commission to be paid, or did not include an effective date; 10) earnest money was deposited late into the escrow account; 11)

escrow accounts were not registered and/or properly registered with the MREC; 12) failed to retain some voided or cancelled checks; 13) disbursements were made on behalf of owners who did not have sufficient funds in the account to cover the disbursement; 14) insufficient funds checks were written on a property management account; and 15) Kniffen failed to comply with the terms of his probation.

**LaMar, Scott I.**  
Pacific, MO

By joint stipulation with the MREC, LaMar's license was revoked effective May 29, 1998. The revocation was stayed and the license was placed on probation with special conditions from May 29, 1998 through May 29, 2003.

Violations: 339.040.1 (1) & (2) and 339.100.2 (17) RSMo 1994

On March 20, 1991, LaMar was found guilty of possession of cocaine, given a suspended imposition of sentence, and was placed on probation. On March 6, 1996, the Franklin County Circuit Court found LaMar guilty on his Alford plea to possession of cocaine.

**Mitchell, Arthur L.**  
Kansas City, MO

By order of the MREC, Mr. Mitchell's license was revoked on March 19, 1998.

Violations: 339.100.2(17) and (18) RSMo 1994.

In May of 1993, the United States District Court for the Western District of Missouri found Mr. Mitchell guilty of structuring a real estate transaction to evade bank reporting requirements.

**Moser, Laura Enlow**  
St. Peters, MO

By settlement agreement with the MREC, Ms. Moser's salesperson license was revoked as of April 15, 1998.

Violations: 339.100.2 (14) RSMo 1994 and 4 CSR 250-8.170 (1)

Ms. Moser's association with her broker was terminated. Ms. Moser was in possession of her license and failed to return it to the MREC. Ms. Moser failed to respond to correspondence from the MREC requesting the return of her license.

**Newsome Realty Company and  
Newsome, Travis D.**  
Kansas City, MO

By settlement agreement with the Commission, two years probation from November 25, 1997, to November 25, 1999.

Violations: 339.100.2 (1), (2), (3), (14), and (18) RSMo 1994

An audit of the company's records revealed the following violations: 1) failure to deposit earnest money into an escrow account; 2) failure to timely remit monies which belonged to others; 3) holding funds in escrow without written authorization; 4) failure to remove commission from the escrow account at the conclusion of a transaction; 5) an unidentified shortage was found in the escrow account; 6) the business sign did not bear the name under which the company was licensed; 7) the property was not properly identified on the listing agreement; 8) the written agency disclosure did not identify the type of agency relationship or who was paying the commission; 9) the agent's agency relationship was not disclosed in writing; 10) the written agency disclosure was not signed by the agent; 11) the agents did not identify in the contract who was to hold the earnest money; 12) earnest money was not collected or deposited as directed by the contract; 13) inaccurate closing statements were provided to the buyer and seller; and 14) the broker did not sign the closing statements.

Newsome accepted two checks from a buyer totaling \$1,000 as earnest money for a transaction and deposited these checks into his escrow account. The checks were returned for insufficient funds. Newsome was aware of the insufficient funds checks prior to closing but did not inform the sellers, and proceeded with the closing. Newsome conducted the closing himself and provided the buyer with an inaccurate closing statement. Newsome withheld funds from the buyer and/or seller for the recording of the warranty deed and payment of property taxes. However, he did not pay the taxes nor did he record the warranty deed or the deed of trust until April 25, 1996.

Newsome was the designated broker of Newsome Realty Company.

**Partney, John H.**  
Van Buren, MO

By order of the Commission, Partney's license was revoked on December 27, 1997.

Violation: 339.100.2 (17) RSMo

On August 19, 1996, Partney pled guilty in federal court to one count of selling ammunition to a minor, two counts of conspiracy to transport unlawfully taken wildlife, two counts of transportation of wildlife in interstate commerce taken in violation of state law, one count of conspiracy to remove property to prevent seizure, and one count of the removal of property to prevent seizure.

**Poplar Bluff Center Inc. and Bowen, Karen**  
dba Karen Bowen Realty & Auction Company  
Poplar Bluff, MO

By order of the MREC, the corporation's license was revoked on December 27, 1997 and by order of the MREC, Ms. Bowen's license was revoked on December 27, 1997.

Violations: 339.100.2 (1), (3), (14), (18), 339.105 (1), (2), (3) RSMo 1994; 4 CSR 250-8.090 (3) (B), (4); 8.095 (1) (B), 8.100 (1), (3); 8.110 (1); 8.120 (4), (6); 8.150 (1); 8.160 (1); 8.210 (1) (C); 8.220 (2) (8)

Ms. Bowen was the designated broker for Poplar Bluff Center Inc. – dba Karen Bowen Realty and Auction Company. An audit was conducted on the company records. The following were found: 1) disbursements were made from the sales escrow account either before funds were deposited to cover the disbursement or without any funds being deposited to cover the disbursement; 2) the broker failed to provide a cancelled check to MREC staff and altered the corresponding check stub; 3) insufficient funds checks were noted in the sales escrow account; 4) the property was not properly identified on the sales contract; 5) inaccurate closing statements were provided to buyers and sellers; 6) the related transaction was not identified on the check or corresponding check stub; 7) the contract did not specify who was holding the earnest money; 8) disclosure of the licensee's agency relationship was not made in writing; 9) all of the buyers and/or sellers did not sign the sales contract; 10) changes made to a sales contract were not initialed by the buyer; 11) all of the terms and conditions of the sale were not identified in the sales contract; 12) the listing agreement did not identify the type of agreement; 13) changes made to the listing agreement were not initialed by all of the owners; 14) temporary shortages were noted in the property management escrow account; 15) security deposits were not held in tact in the escrow account; 16) the property management agreement was not signed by the licensee; 17) the property management agreement did not specify if security

deposits would be held by the broker or the owner; 18) funds were being held in the escrow account without written authorization; 19) multiple cancelled checks, voided checks, and deposit tickets were not retained; 20) an escrow account being used by the company was not registered with the MREC; and 21) the MREC was not notified when escrow accounts were closed.

**Realty Systems and Property Management Inc. and Beaver, John S.**  
St. Louis, MO

By joint stipulation with the MREC, Beaver's license is suspended for one (1) year starting October 1, 1998 through October 1, 1999 followed by three-(3) years probation starting October 1, 1999 through October 1, 2002. Realty Systems' license was placed on probation for three (3) years starting October 1, 1998 through October 1, 2001 with special conditions: 2 private audits each calendar year (January and July) by an accountant approved by the MREC.

Violations: 339.105.1 RSMo 1994, 4 CSR 250-8.220 (5), -8.160 (1), 8.210 (1) (A), 8.210 (1) (C), 8.210 (1) (D), 8.210 (1) (E), 8.210 (1) (F), 8.210 (1) (G), 8.210 (1) (I), 8-220 (5), 339.100.2 (1), (14) & (18) RSMo 1994, 339.105.2 RSMo 1994, 4 CSR 250-4.020, 339.100.2 (10) RSMo 1994, 339.105.3 RSMo 1994, and 4 CSR 250-8.220 (8)

Audits conducted on Mr. Beaver's company, Realty Systems Property Management, Inc., revealed the following violations: 1) failure to maintain a separate bank checking account for deposits and rents; 2) unidentified overage in escrow account; 3) placed monies in an account that was not a checking account; 4) failure to retain records; 5) property management agreements failed to identify transactions involved; 6) property management agreements failed to specify when periodic written statements of property income would be provided to the property owner; 7) property management agreements failed to specify which property related expenses would be paid by Realty Systems Property Management, Inc.; 8) property management agreement failed to state when the broker fee would be paid; 9) property management agreements failed to state the amount of the fee or commission to be paid to the broker and when the broker fee will be paid; 10) Property management agreement failed to contain an effective date; 11) property management agreements failed contain signatures of all of the owners and/or the broker; 12) failure to disclose that the property management account was an interest

bearing account; 13) failure to disclose who was to receive the interest from the interest bearing account; 14) unidentified shortage in escrow account; 15) failure to notify the Commission of closed escrow accounts; and 16) renewed the corporation license with false representations.

**Riebold, Hubert A.**  
Springfield, MO

By settlement agreement with the MREC, Riebold's license was placed on six months suspension starting June 25, 1998 through December 25, 1998, followed by two years probation starting December 25, 1998 through December 25, 2000.

Violation: 339.100.2 (17) RSMo 1994.

On or about November 22, 1996, Riebold was convicted in the United States District Court, Western District, of two counts of causing an individual to travel in interstate commerce in the execution of a scheme to defraud. He was also convicted of two counts of conducting a financial transaction with the intent to promote a scheme to defraud.

**Ritzinger, Daniel L.**  
Kansas City, MO

By order of the MREC, Ritzinger's license was suspended for two years starting July 21, 1998 through July 21, 2000, followed by three years probation starting July 21, 2000 through July 21, 2003.

Violations: 339.100.2 (15) and (17) RSMo 1994

In February of 1994, Ritzinger pled guilty to attempted burglary and was placed on probation for three years. Ritzinger violated his probation three times from February 1994 through November 1994, and therefore, his probation was revoked and he was sentenced to serve three years in the Missouri Department of Corrections.

**Roach, Dale E.**  
St. Louis, MO

By settlement agreement with the MREC, Roach's license was placed on one year suspension, with special conditions, starting May 6, 1998 to May 6, 1999, followed by three years probation from May 6, 1999 through May 6, 2002.

Violations: 339.100.2 (2), (3), (14), (15), (18) and (23), RSMo 1994; and 4 CSR 250-8.170 (1)

The MREC received several complaints from individuals concerning the business practices of Mr. Roach and his educational institution, Career Training. The complainants had enrolled in pre-licensing and/or continuing education classes that were offered by Roach through Career Training. The classes were cancelled and Mr. Roach failed to refund the course costs as he had agreed.

**Roark, Donald C.**  
Jefferson City, MO

By settlement agreement with the MREC, Roark's broker license was placed on three years probation from January 22, 1998 through January 22, 2001.

Violations: 339.100.2 (3), (14), (18), and 339.105.2 RSMo 1994; 4 CSR 250-4.030, 250-8.020 (1), 250-8.095 (1) (B) (2), 4 CSR 250-8.160, and 4 CSR 250-8.170 (1).

An audit was conducted on the records of Roark Realtors Inc. and Roark was the designated broker for the company. The audit revealed: 1) an unidentified overage of \$354.68 in the sales escrow account; 2) the broker failed to immediately remove \$1,500 from the escrow account upon the conclusion of a transaction; 3) the broker failed to notify the MREC of a change in the account number for the sales escrow account; 4) the broker failed to notify the MREC that two escrow accounts, which were registered for the company, had been closed; 5) a written agency disclosure was not dated by the agent; 6) three late deposits of earnest money into the sales escrow account; 7) the property was not properly identified on the sales contract and/or listing agreement; 8) the listing agent did not initial changes made to the listing agreement; 9) a definite expiration date was not identified on a listing agreement; 10) a fictitious name was not registered with the MREC; and 11) the broker failed to respond to correspondence from the MREC.



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