

58-30,103. Written agency agreements; written transaction brokerage agreements. (a) Except when acting as a transaction broker or solely as a seller, buyer, landlord or tenant, a broker shall act only as a statutory agent in any real estate transaction. A licensee shall not act as a dual agent or in a dual capacity of agent and undisclosed principal in any transaction.

(b) A broker may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent if the broker complies with this act in establishing the relationships for each transaction. A broker who has been working with a seller, landlord, buyer or tenant as a transaction broker may act as an agent for the seller, landlord, buyer or tenant if the broker complies with this act in establishing the agency relationship.

(c) A broker may be engaged as a transaction broker by oral or written agreement with the seller, landlord, buyer or tenant. A broker shall be considered a transaction broker unless:

(1) An agency relationship between the broker and the party to be represented is established pursuant to this section; or

(2) a broker works with a buyer or tenant as a subagent of the seller or landlord by accepting an offer of subagency.

(d) (1) Except as provided in subsection (d)(2), a broker intending to establish an agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented prior to the licensee's engaging in any of the activities enumerated in subsection (f) of K.S.A. 58-3035, and amendments thereto, as an employee of, or on behalf of, the seller or landlord.

(2) If the real estate which is to be offered for sale is owned by any agency of the federal government, a broker may, on behalf of the owner, engage in activities enumerated in subsection (f) of K.S.A. 58-3035, and amendments thereto, after obtaining verbal authorization from the federal agency for which services are to be performed.

(e) To establish an agency relationship with a buyer or tenant, a broker shall enter into a written agency agreement with the party to be represented no later than the signing of an offer to purchase or lease.

(f) An agency agreement or written transaction brokerage agreement shall set forth the terms and conditions of the relationship, including a fixed date of expiration, any limitation on the duty of confidentiality and the terms of compensation, and shall refer to the duties and obligations pursuant to K.S.A. 58-30,106, 58-30,107 or 58-30,113, and amendments thereto. The agreement shall be signed by the party to be represented and by the broker or a licensee affiliated with the broker. A copy of the agreement shall be furnished to the customer or client at the time the customer or client signs the agreement. If, at the time the customer or client signs the agreement, the agreement is not signed by the broker or a licensee affiliated with the broker, the broker or a licensee affiliated with the broker shall furnish a copy of the agreement to the customer or client within a reasonable time after the agreement is signed by the broker or a licensee affiliated with the broker.

(g) An agency agreement with a seller or landlord shall include any potential:

(1) For the seller's agent or landlord's agent to act as a transaction broker;

(2) for an affiliated licensee to act as a designated agent for the buyer and the designated agent's supervising broker or branch broker, and an affiliated licensee if applicable, to act as a transaction broker; or

(3) for the broker to designate an affiliated licensee to act as the designated agent for the seller on the broker's personal listing pursuant to subsection (b)(2) of K.S.A. 58-30,109, and amendments thereto.

(h) An agency agreement with a buyer or tenant shall include any potential:

(1) For the buyer's agent or tenant's agent to act as a transaction broker; or

(2) for an affiliated licensee to act as a designated agent for the seller and the designated agent's supervising broker or branch broker, and an affiliated licensee if applicable, to act as a transaction broker.

(i) An agency agreement or written transaction brokerage agreement shall not contain an authorization for the broker to sign or initial any document on behalf of the broker's customer or client in a real estate transaction or authorization for the broker to act as attorney-in-fact for the customer or client.

(j) An agency agreement or written transaction brokerage agreement with a seller shall not provide that the broker's commission be based on the difference between the gross sales price and the net proceeds to the owner.

(k) The broker shall not assign, sell or otherwise transfer a written agency agreement or written transaction brokerage agreement to another broker without the express written consent of all parties to the original agreement.

(l) A licensee shall not solicit an agency agreement or written transaction brokerage agreement from a seller or landlord if the licensee knows that the seller or landlord has, with regard to the property, an agency agreement or written transaction brokerage agreement granting an exclusive right to sell or exclusive agency to another broker.

(m) A licensee shall not solicit an agency agreement or written transaction brokerage agreement from a buyer or tenant if the licensee knows that the buyer or tenant has a written agency agreement or written transaction brokerage agreement granting an exclusive brokerage relationship to another broker.

(n) A licensee shall not induce any party to break any agency agreement or written transaction brokerage agreement.

(o) If a licensee knows that a buyer or tenant has an agency agreement or written transaction brokerage agreement granting an exclusive brokerage relationship to another broker, the licensee shall not contact the buyer or tenant and shall not initiate negotiations for the sale, exchange or lease of real estate with the buyer or tenant. The licensee may negotiate the sale, exchange or lease of real estate directly with the buyer or tenant with the informed consent of the buyer or tenant. The informed consent shall be evidenced by a consent agreement signed by the buyer or tenant prior to any such direct negotiation. The consent agreement shall acknowledge the buyer or tenant agency agreement or written transaction brokerage agreement and that the buyer or tenant may be liable for compensation under the terms of the agency agreement or written transaction brokerage agreement. The commission, by rules and regulations, shall adopt a consent agreement to be used by licensees pursuant to this subsection.

(p) A licensee shall not contact the seller or landlord or negotiate a sale, exchange or lease of real estate directly with a seller or landlord if the licensee knows that the seller or landlord has an exclusive agency agreement or exclusive right to sell agreement with another broker. A buyer's or tenant's agent or a subagent may present an offer to the seller or landlord if the seller's or landlord's agent is present.

History: L. 1995, ch. 252, § 3; Revived, L. 1997, ch. 65, § 26; L. 1997, ch. 65, § 27; L. 2002, ch. 82, § 7; L. 2010, ch. 104, § 13; July 1.