

**58-30,102. Definitions.** As used in the brokerage relationships in real estate transactions act, unless the context otherwise requires:

(a) "Affiliated licensee" means any individual licensed as a salesperson or broker under the Kansas real estate brokers' and salespersons' license act who is employed by a broker or affiliated with a broker as an independent contractor.

(b) "Agency" means every relationship in which a broker acts for or represents another, by the latter's express written authority, in a real estate transaction. "Agency" also means the relationship in which a broker, by verbal authorization pursuant to subsection (d)(2) of K.S.A. 58-30,103, and amendments thereto, acts for or represents any agency of the federal government in the sale of property owned by the federal agency.

(c) "Agency agreement" means a written agreement setting forth the terms and conditions of the relationship between a broker and the broker's client.

(d) "Broker" means: (1) An individual who is licensed as a broker under the Kansas real estate brokers' and salespersons' license act and who has an agency with a seller, buyer, landlord or tenant or acts as a transaction broker; or (2) an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation, of which the officers and members, or persons employed by or associated with the association, corporation, limited liability company, limited liability partnership, partnership or professional corporation, are licensed pursuant to K.S.A. 58-3042, and amendments thereto and which has an agency with a seller, buyer, landlord or tenant or acts as a transaction broker. The term "broker" includes the broker's affiliated licensees except where the context would otherwise indicate. If an individual broker is indicated by the context, the term "broker" means the supervising broker as defined by K.S.A. 58-3035, and amendments thereto.

(e) "Brokerage firm" means the business entity of a broker, whether an association, corporation, limited liability company, limited liability partnership, partnership, proprietorship or professional corporation.

(f) "Buyer's agent" means a broker who has an agency with a buyer. The term includes the broker's affiliated licensees.

(g) "Client" means a seller, landlord, buyer or tenant who has an agency with a broker.

(h) "Commission" means the Kansas real estate commission.

(i) "Confidential information" means information made confidential by statute, rule, regulation or instructions from the client or personal information about the client which might place the other party at an advantage over 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 from a source other than the licensee.

(j) "Customer" means a seller, landlord, buyer or tenant in a real estate transaction in which a broker is involved but who has not entered into an agency with the broker.

(k) "Designated agent" means a licensee affiliated with a broker who has been designated by the broker, or the broker's duly authorized representative, to act as the agent of a broker's buyer or seller client to the exclusion of all other affiliated licensees.

(l) "Exclusive agency agreement" means a written agency agreement that sets forth the terms and conditions of the relationship between a broker and the broker's clients and does the following:

(1) Grants the broker the exclusive right to represent the seller in the sale of the seller's property; and

(2) provides the broker will be compensated if the broker or any other person or entity produces a purchaser in accordance with the terms specified in the agreement or if the property is sold during the term of the listing agreement, unless the property is sold solely through the efforts of the seller or to specifically exempted persons or entities.

(m) "Exclusive right to sell agreement" means a written agency agreement or written transaction brokerage agreement that sets forth the terms and conditions of the relationship between a broker and the broker's clients or customers and does the following:

(1) Grants the broker the exclusive right to assist the seller in the sale of the seller's property; and

(2) provides the broker will be compensated if the broker, seller or any other person or entity produces a purchaser in accordance with the terms specified in the agreement or if the property is sold during the term of the listing agreement to anyone other than specifically exempted persons or entities.

(n) "Landlord's agent" means a broker who has entered into an agency with a landlord. The term includes the broker's affiliated licensees.

(o) "Licensee" means any person licensed under the Kansas real estate brokers' and salespersons' license act as a broker or salesperson.

(p) "Ministerial acts" means 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:

(1) Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;

(2) responding to telephone inquiries from a person concerning the price or location of property;

(3) attending an open house and responding to questions about the property from a consumer;

(4) setting an appointment to view property;

(5) responding to questions of consumers walking into a licensee's office concerning brokerage services offered on particular properties;

(6) accompanying an appraiser, inspector, contractor or similar third party on a visit to a property;

(7) describing a property or the property's condition in response to a person's inquiry; or

(8) referral to another broker or service provider.

(q) "Seller's agent" means a broker who has an agency with a seller. The term includes the broker's affiliated licensees and subagents of the broker.

(r) "Qualified third party" means a federal, state or local governmental agency or any person whom the broker, the affiliated licensee or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare a written report.

(s) "Statutory agent" means a seller's agent, a buyer's agent, a landlord's agent, a tenant's agent or a designated agent in a real estate transaction.

(t) "Tenant's agent" means a broker who has an agency with a prospective tenant. The term includes the broker's affiliated licensees.

(u) "Transaction broker" means a broker who assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to such transaction. The term includes the broker's affiliated licensees.

(v) "Written transaction brokerage agreement" means a written agreement setting forth the terms and conditions of the relationship between a broker acting as a transaction broker and the broker's customers.

**History:** L. 1995, ch. 252, § 2; Revived, L. 1997, ch. 65, § 24; L. 1997, ch. 65, § 25; L. 2010, ch. 104, § 12; July 1.