

BROKERAGE DISCLOSURE TO BUYER

Duties of Seller's Agent, Buyer's Agent, and Transaction Broker

The Kansas Brokerage Relationships in Real Estate Transactions Act (referred to as BRRETA II) became effective on October 1, 1997. The following summary describes a seller's agent, a buyer's agent, and a transaction broker.

STATEMENT OF REPRESENTATION: Do not assume that an agent is acting on your behalf, unless you have signed a contract with the agent's firm to represent you. If you have not entered into a written agency agreement, you are considered to be a customer rather than a client. As a customer, you represent yourself. Any information that you, the customer, disclose to the agent representing another party will be disclosed to that other party. Even though licensees may be representing other parties, they are obligated to treat you honestly, give you accurate information, and disclose all known adverse material facts.

SELLER'S AGENT: The seller's agent represents the seller only, so the buyer may be either unrepresented or represented by another agent.

The seller's agent is responsible for performing the following duties:

1. promoting the interests of the seller with the utmost good faith, loyalty, and fidelity
2. protecting the seller's confidences, unless disclosure is required
3. presenting all offers in a timely manner
4. advising the seller to obtain expert advice
5. accounting for all money and property received
6. disclosing to the seller all adverse material facts about the buyer that the agent knows
7. disclosing to the buyer all adverse material facts actually known by the agent, including:
8. environmental hazards affecting the property that are required to be disclosed
9. the physical condition of the property
10. any material defects in the property or in the title to the property
11. any material limitation on the seller's ability to complete the contract

The seller's agent has no duty to:

1. conduct an independent inspection of the property for the benefit of the buyer
2. independently verify the accuracy or completeness of any statement by the seller or any qualified third party

BUYER'S AGENT: The buyer's agent represents the buyer only, so the seller may be either unrepresented or represented by another agent.

The buyer's agent is responsible for performing the following duties:

1. promoting the interests of the buyer with the utmost good faith, loyalty, and fidelity
2. protecting the buyer's confidences, unless disclosure is required

3. presenting all offers in a timely manner
4. advising the buyer to obtain expert advice
5. accounting for all money and property received
6. disclosing to the buyer all adverse material facts about the property that the agent knows
7. disclosing to the seller all adverse material facts actually known by the agent, including all material facts concerning the buyer's financial ability to perform the terms of the transaction

The buyer's agent has no duty to:

1. conduct an independent investigation of the buyer's financial condition for the benefit of the seller
2. independently verify the accuracy or completeness of statements made by the buyer or any qualified third party

TRANSACTION AGENT: The transaction broker is not an agent for either party, so the transaction broker does not advocate the interests of either party.

The transaction broker is responsible for performing the following duties:

1. exercising reasonable skill and care
2. presenting all offers in a timely manner
3. advising the parties regarding the transaction
4. suggesting that the parties obtain expert advice
5. accounting for all money and property received
6. keeping the parties fully informed
7. assisting the parties in closing the transaction
8. disclosing to the buyer all adverse material facts actually known by the transaction broker, including:
9. environmental hazards affecting the property that are required to be disclosed
10. the physical condition of the property
11. any material defects in the property or in the title to the property
12. any material limitation on the seller's ability to complete the contract
13. disclosing to the seller all adverse material facts actually known by the transaction broker, including all material facts concerning the buyer's financial ability to perform the terms of the transaction

The transaction broker protects the confidences of both parties:

1. If the transaction is the sale of one to four residential units or the sale of agricultural real estate, the following information shall not be disclosed by a transaction broker without the consent of all parties:
 - that a buyer is willing to pay more than the purchase price offered for the property
 - that a seller is willing to accept less than the asking price for the property
 - what the motivating factors are for any party buying or selling the property
 - that a seller or buyer will agree to financing terms other than those offered; or
 - any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party unless the disclosure is required by law or failure to disclose such information would constitute fraudulent misrepresentation.

2. If the transaction is the sale or lease of commercial property or residential property of more than four units, the transaction broker shall not disclose any information or personal confidences about a party to the transaction which might place the other party at an advantage unless failure to disclose such information would constitute fraudulent misrepresentation. The transaction broker may disclose the following information unless prohibited by the parties:

- that a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property
- that a seller or landlord is willing to accept less than the asking price or lease rate for the property
- what the motivating factors are for any party buying, selling or leasing the property; or
- that a seller, buyer, landlord or tenant will agree to financing terms other than those offered.

The transaction broker has no duty to:

1. conduct an independent inspection of the property for the benefit of any party
2. conduct an independent investigation of the buyer's financial condition
3. independently verify the accuracy or completeness of statements made by the seller, buyer, or any qualified third party