Chapter 1

BROKERAGE AGREEMENTS AND AGENCY

BRRETA-The Kansas Brokerage Relationships in Real Estate Transactions Act,

Effective Date: October 1, 1997

Why Do We Have the Brokerage Relationships in Real Estate Transactions Act?

Common Law: Many cases over many years made it impossible for the typical agent to understand the intricacies of agency.

Statutory Agency: BRRETA makes the rights and obligations of licensees much clearer. Licensees can now go to a common source for information.

Differences Between the Old Law and BRRETA

Under the Old Law: We chose agency and disclosed-it was unclear as it was based on case law.

Under the Current Law: We give options - and they (the consumer) choose in what capacity they want us to work with them or for them. It is much clearer as it is based on a statute (law).

All transactions are covered by BRRETA. There are two places the statute provides for a difference between commercial and residential property of four units or less. We will cover these later in the lesson.

Definitions

Affiliated Licensee: Any individual licensed as a salesperson or broker under the Kansas Real Estate License Act who is employed by a broker or affiliated with a broker as an independent contractor.

Agency: Every relationship in which a broker acts for or represents another, by the consumer's express written authority, in a real estate transaction. It also means the relationship in which a broker, by verbal authorization, acts for or represents any agency of the federal government in the sale of property owned by the federal agency. Remember you do not have to have a written agency agreement when your client is the federal government or an agency thereof. You must have a written agreement for everyone else such as city, county, state government, schools, etc.

Agency Agreement: A written agreement that sets forth the terms and conditions of the relationship between a broker and a client. **It must be in writing!**

Broker: 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 a corporation, partnership, association or limited liability company, of which the officers and members or persons employed by or associated with the corporation, partnership, association or limited liability company, are licensed under the Kansas Real Estate Brokers and salespersons License Act 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.

> **Note: Broker is a term, which in some instances refers to a licensee who is acting in a legal capacity as an agent of the broker.**

Brokerage Firm: The business entity of a broker.

Buyer's Agent: A broker who has a written agency agreement with a buyer. This term includes the broker's affiliated licensees.

> **Remember: All listings, both seller and buyer listings belong to your broker**.

Client: A seller, landlord, buyer, or tenant who has a written agency agreement with a broker.

Commission: The KREC. (Kansas Real Estate Commission)

Confidential Information: Information made confidential by statute, rule, regulation, or instruction 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.

Customer: 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. The broker would be a transaction broker.

Designated Agent: A licensee affiliated with a broker who has been designated by the broker, or the broker's authorized representative, to act as the agent of a broker's buyer or seller client to the **exclusion** of all other affiliated licensees. The designated agent is the only agent of the client. All other licensees with the broker are free to be designated agents or transaction brokers for the other party.

Landlord's Agent: A broker who has entered into an agency with a landlord. This term includes the broker's affiliated licensees.

Licensee: Any person licensed under Kansas Real Estate Broker's and Salespersons Act who acts as a broker or salesperson.

Ministerial Acts: Acts that a licensee may perform for a person that are informative in nature and **do not** rise to the level of active representation. They may include but are not limited to:

1. Responding to telephone inquiries concerning the availability and pricing of brokerage services
2. Responding to telephone inquiries concerning the price or location of property;
3. Attending or holding an open house and responding to questions about the property from a consumer
4. Setting an appointment to view property

5. Responding to questions from office "walk-ins" 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 inquiries
8. Making a referral to another broker or to a service provider

Seller's Agent: A broker who has a written agency agreement with a seller. The term includes the broker's affiliated licensees and subagents of the broker.

Qualified Third Party: A federal, state, or local governmental agency or any other person whom the broker, affiliated licensee, or a party to the transaction reasonably believes has the expertise to meet the industry standard of practice for the type of inspections or investigation being conducted by the third party in order to prepare a written report.

Statutory Agent: 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.

Tenant's Agent: A broker or his/her affiliated licensees who has a written agency agreement with a prospective tenant.

Transaction Broker: 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 the transaction. The term includes the broker's affiliated licensees.

Rules for Brokers

A broker shall act **only** as a **statutory agent** in any real estate transaction, **except** when acting as a transaction broker or when acting solely as a seller, buyer, landlord, or tenant.

Dual agency prohibited: A licensee shall not act as an undisclosed dual agent or in a dual capacity of agent and undisclosed principal in any transaction.

A broker may work with a single party in separate transactions. Pursuant to different relationships, including, but not limited to: selling a seller's property as the seller's agent and working with that same seller as a buyer's agent in buying another property provided there is a written agency agreement. A broker who has been working with a seller, landlord, buyer, or tenant as a transaction broker may later act as an agent for any of those parties provided that a written agency agreement is established according to this act.

A broker may act as a transaction broker by either oral or written agreement. A broker shall be considered a transaction broker unless:

1. A written agency relationship is established between the broker and the party to be represented
2. A broker works with a buyer or tenant as a subagent of the seller or landlord by accepting an offer of sub-agency

A broker intending to establish an agency relationship with a seller or landlord must enter into a written agency agreement with the party to be represented prior to engaging in any of the activities performed as an employee of or on behalf of the seller or landlord.

Only verbal authorization is required to represent agencies of the federal government. If the real estate that 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 (e) of K.S.A. 58-3035, and amendments thereto, after obtaining verbal authorization from the federal agency for which services are to be performed. The definition of "representation" according to the KREC handbook follows.

Before a broker engages in any of the following activities which are enumerated in subsection (e) KSA 58-3035 Kansas License Law and reproduced below:

1. Sells, exchanges, purchases, or leases real estate.
2. Offers to sell, exchange, purchase, or lease real estate.
3. Negotiates or offers, attempts or agrees to list real estate for sale, lease, or exchange.
4. Lists or offers, attempts or agrees to list real estate for sale, lease, or exchange.
5. Auctions or offers, attempts or agrees to auction real estate or assists an auctioneer by procuring bids at a real estate auction.
6. Buys, sells, or offers to buy, sell, or otherwise deals in options on real estate.
7. Assists or directs in procuring of prospects calculated to result in the sale, exchange, or lease of real estate.
8. Assists in or directs the negotiation of any transaction calculated or intended to result in the sale, exchange, or lease of real estate.
9. Engages in the business of charging an advance-listing fee.
10. Provides lists of real estate as being available for sale or lease, other than lists provided for the sole purpose of promoting the sale or lease of real estate, wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the list.

Agency Agreements

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. In other words you can work with a party as a transaction broker for any length of time and when they determine they want you to represent them you must then enter into a written agency agreement before you work for or advocate for their interest. This can be anytime prior to writing the offer for them. Agency agreements shall set forth the terms and conditions of the relationship including:

1. A fixed date of expiration (no automatic extensions)
2. Any limitation on the duty of confidentiality.
3. The terms of compensation, and
4. Shall refer to the minimum requirement and obligations of the agent, according to 58-30, 106: minimum requirements of seller's agent or 58-30, 107: minimum requirements of a buyer's agent.

The agency agreement must be signed by the broker or, with the broker's permission an affiliated licensee, and by the client.

A copy of the agreement shall be furnished to the client at the time the client signs.

When signed by a client without the broker's signature, the broker is responsible for signing and providing a copy to the client within a reasonable time.

Agency agreements with sellers or landlords shall include any potential for transaction brokerage or designated agency, as follows**:**

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 for the designated agent's supervising 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
4. The supervising broker or branch broker cannot be a designated agent.

Agency agreements with buyers or tenants shall include any potential for transaction brokerage or designated agency, as follows:

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

A licensee may not sign or initial any document on behalf of a client without a duly authorized power of attorney. An agency agreement **shall not** contain an authorization for the broker to sign or initial any document on behalf of the broker's client in a real estate transaction or authorization for the broker to act as an attorney-in-fact for the client. A power of attorney has to be a separate document.

Net listings are prohibited: An agency agreement with a seller shall not provide that the compensation or commission is based on the difference between the gross sales price and the net proceeds to the owner. Agency agreements may not be sold, assigned or transferred without the express written consent of all parties. This applies to the broker and the client.

Solicitation of an agency agreement from a seller or landlord knowing that another agent has an exclusive right to sell or exclusive agency agreement on that particular property is prohibited.

Solicitation of an agency agreement from a buyer or tenant knowing that another agent has an exclusive right to represent agreement is prohibited.

Inducement to break an agency agreement is prohibited: A licensee shall not induce or try to get any party to break an agency agreement.

Licensees may not contact or initiate negotiations with a buyer or tenant knowing that another broker has an agency agreement granting exclusive representation. If the licensee knows that a buyer or tenant has an agency agreement granting exclusive representation 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 client of another licensee.

A licensee may negotiate a sale, exchange or lease directly with a buyer client of another licensee providing that a consent agreement is signed prior to such negotiation. The informed consent may 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 and that the buyer or tenant may be liable for compensation under the terms of the agency agreement.

NOTE: All licensees are required to use the consent agreement form adopted by the KREC. One is included at the end of this chapter.

A licensee is prohibited to negotiate directly with a seller or landlord knowing that another agent has an exclusive listing on the property.

Remember that if another agent is a designated agent, even though they are an agent in your office, you CAN NOT negotiate directly with their client. You are not their agent**.**

A buyer or tenant's agent may present an offer directly to a seller or landlord if the seller or landlord's agent is present. This is not a legal right, it is with the seller's permission that a buyer agent is allowed to do this, and the seller's agent must be there.

NOTE. This is not a legal right. The law permits a buyer or tenant's agent to present the offer if the seller or landlord agent is present. It is often the practice to do so. The final decision is the seller or landlord client's. It is not the seller or landlord agent's decision.

Termination of Relationships

AGENCY begins at the time a client engages broker and continues until one of the following events occurs:

1. A transaction is closed according to the agreement of the parties, or
2. if a transaction is **not** closed according to the agreement of the parties, the earlier of:
   Any date of expiration agreed upon by the parties in the agency agreement or any amendments thereto, or any authorized termination of the relationship.

Obligations Which Continue After Closing

Except as otherwise agreed in writing, a broker owes no further duties to the client after termination, expiration, or the closing of a transaction according to the agreement of the parties, **except:**

a. To account for all money and property relating to the engagement.
b. To keep confidential all information received during the course of the engagement which was made confidential by request of any party unless:
   1. The party permits disclosure by subsequent word or conduct;
   2. Law requires such disclosure.
   3. The information becomes public from a source other than the broker.

The relationship between a **transaction broker** and a seller, buyer or tenant shall terminate when:

a. A transaction is closed according to the agreement of the parties.
b. If a transaction is not closed according to the agreement of the parties, the earlier of,
    1. Any date of expiration agreed upon by the parties;
    2. Any authorized termination of the relationship.

Except as otherwise agreed in writing, a transaction broker owes no further duties to any party to the transaction after termination, expiration, or closing of the transaction according to the agreement of the parties except:

a. To account for all money and property relating to the transaction; and
b. To keep confidential all information received during the course of the engagement which was made confidential by request of any party unless:

    1. The party permits disclosure by subsequent word or conduct;
    2. Such disclosure is required by law or
    3. The information becomes public from a source other than the transaction broker.

Compensation

Compensation is presumed to come from the transaction. Payment of compensation by itself doesn't establish an agency relationship. A broker's compensation may be paid by the seller, the landlord, the buyer, or the tenant**.**

A broker may be compensated by more than one party providing all parties to the transaction consent in writing to the multiple payments at or before the time of entering into a contract to buy, sell, or lease.

A broker may pay and share brokerage and referral fees:

1. Pay a commission or compensation to any licensee affiliated with the broker for performing services under this act;
2. With the written agreement of the seller or landlord, buyer or tenant, share a commission with another broker who acted as a transaction broker, a subagent or an agent of the other party; and
3. Pay a referral fee to a person who is licensed as a broker in Kansas or another state, provided that written disclosure is made to the client of any financial interest that the broker has in the brokerage firm receiving the referral fee.

Minimum Requirements of Seller's or Landlord's Agent

A seller's agent or a landlord's agent shall be a statutory agent with the following, duties and obligations:

1. Perform the terms of the agreement;
2. Promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:
    a. Present all written offers to and from the client in a **timely manner** when such offer is received prior to the closing of the sale unless the seller instructs the broker in the agency agreement not to submit offers after an offer has been accepted by the seller
    b. Disclose all adverse material facts actually known by the licensee about the buyer or tenant
    c. Advise the client to obtain expert advice on material matters known to but beyond the expertise of the licensee

3. Account for all money and property received in a timely manner
4. Comply with this act and its rules and regulations
5. Comply with any applicable federal and state laws including fair housing and civil rights statutes and rules and regulations

If the licensee advised 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, no cause of action for any person shall arise against the licensee pertaining to such material matters.

A seller or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statue or rule and regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller or landlord's agent for making any required or permitted disclosure.

No duty or obligation is owed to a customer except to disclose adverse material facts known to the agent, including but not limited to:

a. Any environmental hazards affecting the property, which are required by law to be disclosed
b. The physical condition of the property
c. Any material defects in the property
d. Any material defects in the title to the property
e. Any material limitation on the client's ability to perform under the terms of the contract

A seller's agent owes no duty to conduct an independent inspection of the property 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 qualified third party.

A seller's agent has no requirement to disclose to a client or customer information about the physical condition of the property if a written qualified third party report has been provided to the client or customer, except; a seller's agent **MUST** disclose any facts, which were omitted from or contradict any information included in a written report furnished by the qualified third party inspection.

Standard of Care

When investigating, inspecting, or disclosing, a licensee must exercise the degree of care expected of a reasonably prudent real estate professional that has the knowledge, skills and training required for licensure as a broker or salesperson.

A seller's agent may assist a customer (the buyer) by performing ministerial acts. Remember that performing ministerial acts for the customer shall not be construed as forming an agency with the customer and is not a violation of the brokerage firm's agency with the seller.

A seller's agent may show and list alternative properties not owned by the seller’s client without breaching any duty or obligation to the client.

A seller or landlord may authorize the broker to offer sub-agency and pay compensation to other brokers in writing.

A seller or landlord may authorize the broker to cooperate and share compensation with a buyer's agent.

A seller or landlord may authorize the broker to cooperate and share commissions with a transaction broker.

If the seller or landlord has authorized the broker to cooperate with other brokers, the listing broker cannot refuse permission to another licensee to show listed property or refuse to receive and transmit to the seller a written offer on a listed property from another licensee unless specifically instructed by the seller in writing. A copy of seller's written instructions will be provided to another licensee upon the licensee's request.

A seller or landlord's agent shall not be liable for punitive or exemplary damages for failure to perform prescribed duties unless such failure is shown by clear and convincing evidence that the licensee acted toward the plaintiff with willful conduct, wanton conduct, fraud or malice.

Minimum Requirements of Buyer's or Tenant's Agent

A buyer's agent shall be a statutory agent with the duty and obligation to:

1. Perform the terms of the agreement;
2. Promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:
    a. Present all offers to and from the client when such offer is received prior to the closing of the sale unless the buyer instructs the broker in the agency agreement not to submit offers after the client enters into a purchase contract
    b. Disclose all adverse material facts actually known by the licensee
    c. Advise 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
    d. Account for all money and property in a timely manner
    e. Comply with this act and its rules and regulations
    f. Comply with any applicable federal and state laws including fair housing and civil rights statutes or rules and regulations

No cause of action for any person shall arise against a licensee who recommends expert advice about material matters known to, but beyond the expertise of the licensee.

A buyer’s or tenant's agent shall not disclose any confidential information about the client unless statues require disclosure or rules and regulation or failure to disclose the information would constitute fraudulent misrepresentation.

No cause of action for any person shall arise against a licensee acting as a buyer's agent for making any required or permitted disclosure.

A buyer's agent owes no duty or obligation to a customer (the seller), except that the licensee shall disclose to any customer all adverse material facts actually known by the licensee, including but not limited to material facts concerning the client's financial ability to perform the terms of the transaction.

A buyer'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 qualified third party.

A buyer's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the client or customer, except;

A buyer's agent **MUST** disclose to the client or customer any facts actually known by the licensee that were omitted from or contradict any information included in a written report described.

Standard of Care

When investigating, inspecting, or disclosing, the licensee must exercise the degree of care expected of a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson.
A buyer or tenant's agent may assist a customer (the seller) by performing ministerial acts. Again remember that performing ministerial acts for the customer shall not be construed as forming an agency with the customer and not a violation of the brokerage firm's agency with the seller.

A buyer's or tenant's agent may show property the client is interested in to other prospective buyers without breaching any duty or obligation to the client. This is intended to allow a buyer's agent to show competing buyers the same property and to assist competing buyers in attempting to purchase or lease a particular property.

A buyer or tenant may agree in writing to their agent receiving compensation from a seller or landlord's agent or from a transaction broker.

A buyer's or tenant's agent shall not be held liable for punitive or exemplary damages for the failure to perform any of the duties set forth unless such failure is shown by clear and convincing evidence that the licensee acted with willful conduct, wanton conduct, fraud, or malice.

Transaction Broker: Obligations and Disclosure of Information

A transaction broker is **not** an agent for either party.

A transaction broker shall have the following obligations and responsibilities:

1. To perform the term of any agreement, written or oral made with any party to the transaction
2. Exercise reasonable skill and care, including:
    a. Present all offers and counter offers in a timely manner, even when the property is subject to a contract of sale
    b. Advise 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 the licensee

c. Timely account for money and property
d. Keep the parties fully informed regarding the transaction
e. Assist the parties in complying with the term and conditions of the contract and in closing the transaction
f. Disclose all adverse material facts actually known by the transaction broker to all prospective buyers or tenants, including but not limited to:
    1. Any environmental hazards affecting the property which are required by law to be disclosed
    2. The physical condition of the property
    3. Any material defects in the property
    4. Any material defects in the title to the property
    5. Any material limitation on the seller's or landlord's ability to perform under the terms of the contract
g. Disclose all adverse material facts actually known to the transaction broker to any prospective seller or landlord, including but not limited to material facts concerning the buyer's financial ability to perform the terms of the transaction.

3. Comply with all requirements of BRRETA and its rules and regulations,
4. Comply with federal, state and local laws, including fair housing and civil rights and rules and regulations.

A transaction broker is not required to disclose information about condition of the property if a written third party inspection report has been obtained, unless required by law to do so. A transaction broker **MUST** disclose any facts actually known by the transaction broker that were omitted from or contradict a written third party report.

No cause of action for any person shall arise against a transaction broker who recommends expert advice about material facts known to but beyond the expertise of the transaction broker.

In any transaction regarding the sale or lease of real estate other than commercial property or residential property of more than four units, a transaction broker without the consent of all parties shall not disclose the following information:

1. That a buyer is willing to pay more that the purchase price offered for the property
2. That a seller is willing to accept less that the asking price of the property
3. What the motivating factors are for any party buying, selling or leasing the property
4. That a seller, buyer, landlord, or tenant will agree to financing terms other than those offered
5. 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

A transaction broker has no duty to conduct an independent inspection of the property for the benefit of any party to the transaction and has no duty to independently verify the accuracy or completeness of statements made by the a seller, buyer, or qualified third party inspector.

No duty to conduct an independent investigation of a buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by the buyer.
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 and
4. Serve as a single agent or subagent for the same or for different parties in other real estate transactions

No imputation of information. This means that any information that is known to a transaction broker shall not be imputed (told) to any party to the transaction or to any licensee within the brokerage firm engaged as a transaction broker.

A transaction broker may cooperate with and compensate other brokers but shall not engage subagents. (Remember, as a transaction broker you are not an agent.)

Commercial Transaction Exception

Information that may be disclosed in commercial transactions **unless** prohibited by the parties:

1. That a buyer or tenant is willing to pay more that the purchase price offered for the property;
2. That a seller or landlord is willing to accept less than the asking price for the property;
3. What the motivating factors are for any customer buying, selling or leasing the property, or
4. That a seller, buyer, landlord, or tenant will agree to financing terms other than those offered.

Information, which may not be disclosed in commercial transactions. Any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party, shall not be disclose unless the disclosure is required by law or failure to disclose such information would constitute fraudulent misrepresentation.

NOTE: Agricultural land is not included in this commercial transaction exception. Agricultural land is considered a residential transaction so the law governing a transaction broker in a residential transaction must be followed

Brokerage Firm Acting as a Transaction Broker; Affiliated Licensees; Designated Agents; Rules and Regulations

In the absence of designated agents, a brokerage firm may act as a transaction broker on an in-house transaction with the informed consent of the seller client and the buyer client. The informed consent shall be evidenced by a transaction broker addendum to the agency agreements and shall be signed by the buyer prior to writing the offer and by the seller prior to signing the contract. Copies of the state mandated TBA forms are attached.

A broker may personally, or through the broker's duly authorized licensed representative, specifically designate, in a written agency agreement, one or more affiliated licensees who will be acting as a legal agent of a buyer or seller client to the exclusion of all other affiliated licensees.

If a buyer client of a designated agent wants to see a property personally listed by the broker; the broker, with the written consent of the seller, may specifically designate an affiliated licensee who will act as legal agent of the seller client to the exclusion of all other affiliated licensees. The written consent of the seller shall contain the names of the prospective buyer and shall acknowledge that the broker shall act as a transaction broker regarding any transaction with the buyer. The written consent of the seller shall be signed prior to presentation of any offer.

A designated agent for the seller is the same as an agent for the seller discussed under section minimum requirements of a seller's agent. A designated agent for the buyer is the same as an agent for the buyer discussed under section minimum requirements of a buyer's agent.

Unless exempted by law the supervising broker of the designated agent in any transaction involving a designated agent shall act as a transaction broker unless:

1 Designated agents represent both buyer and seller, and the designated agents are supervised by the same branch broker. In that case, the branch broker shall act as the transaction broker.

2 The supervising broker or branch broker, if applicable, may appoint an affiliated licensee to act in the transaction as a transaction broker. (This does not mean that the broker is not a transaction broker. A broker can not be an agent or designated agent on any transaction involving someone from his/her company. He/she must be a transaction broker. The broker can appoint someone else to act as a transaction broker in addition to the broker.)

A designated agent may disclose confidential information of a client to the designated agent's supervising broker and to an affiliated licensee appointed as a transaction broker for the purpose of seeking advice or assistance.

If a buyer client of a designated agent wants to see a property owned by a seller client of the designated agent, the designated agent may act as a transaction broker, with the informed consent of the seller client and buyer client. The informed consent shall be evidenced by a transaction broker addendum to the agency agreements and shall be signed by the buyer prior to writing the offer and by the seller prior to signing the contract.

Licenses are required to use a transaction broker addendum form prescribed by the KREC.

The TBA form you use will be determined either by the property listed or how it was listed. TBA-RES is property listed strictly as a seller's agent; TBA-DA is property listed as a designated agent; TBA-COM is commercial; TBA-AG is agricultural.

Remember:

1. Advance consent to act as a transaction broker may not be given in an agency contract with either a seller or buyer. Each party must sign each addendum and it must be specific to each transaction.
2. A licensee may show property to an unrepresented buyer as a transaction broker until the licensee shows an "in-company" listing to the unrepresented buyer. At this point the licensee must act as a seller's agent unless another licensee is a designated agent for the seller.
3. Because of the above, brokers may choose to establish a policy in which listing agents (seller's agents) are designated agents of the seller. If this policy is established a licensee in an “in-company” transaction may show a buyer prospect as a transaction broker.
4. In this situation the licensee also has the choice, with the broker's authorization and the buyer's consent of entering into a buyer agency contract and representing the buyer as a designated buyer's agent.
5. The TBA form is an addendum to the listing agreement. Not a part of the contract.

Real Estate Brokerage Relationships

The real estate brokerage relationships brochure is important. You will hear this referred to as “the brochure.” Unless exempted by law a licensee shall furnish a prospective buyer or seller with the “real estate brokerage relationships brochure” at the first practical opportunity. It is not required by the KREC that the prospective buyer or seller sign this form or brochure, but many brokers require that their associates have the form signed.

A licensee is **NOT** required to provide a copy of the brochure to a prospective buyer or seller in the following instances:

a. The licensee is acting solely as a principal and not as an agent for another.
b. The communication from the licensee is a solicitation of business.
c. The transaction is regarding the sale of commercial property or the sale of residential property of more than four units;
d. The transaction is regarding the sale of property by public auction;
e. The licensee is only performing ministerial acts; or
f. The customer or client has already received the brochure from the licensee's brokerage firm.

Acknowledgment of receipt of the brochure by the seller and buyer shall be included in any contract for sale.

Disclosure of agency representation between clients must occur, except when a licensee is providing information through an advertisement or other public notice of the licensee's representation of a client:

A licensee representing a client in a proposed real estate transaction shall disclose the representation at the time of the initial contact with another licensee representing the other party.
The disclosure may be made orally or in writing.

Each time a licensee is contacted by another licensee, who requests permission to show property to a prospective buyer, the licensee shall inquire whether or not the licensee represents the buyer. This means

that if you call to show another company's listing you are required to tell them in what capacity you are showing the property. Are you a buyer agent or a transaction broker? Also, if someone calls to show your company listing, you are required to ask them in what capacity they are showing the property.

Disclosure in contracts and lot reservation agreements is required. The disclosure of the brokerage relationship between all licensees involved the seller and buyer and shall be included in any contract for sale and in any lot reservation agreement.

BUYER'S OR TENANT'S CONSENT TO DIRECT NEGOTIATION
WITH SELLER'S OR LANDLORD'S AGENT

Date:_____

Property Address:_____

Seller or Landlord:_____

Seller's or Landlord's Agent:_____

Buyer or Tenant:_____

Buyer's or Tenant's Agent:_____

Buyer or Tenant has an agency agreement granting exclusive representation to another broker. Nonetheless, Buyer or Tenant has requested direct negotiation with the seller's or landlord's agent for the purchase or lease of the above property without the presence or counsel of their agent.

By signing this consent form, Buyer or Tenant acknowledges:

1. Buyer or Tenant may be liable for compensation under the terms of the agency agreement with the buyer's or tenant's agent.

2. Buyer or Tenant will be treated as a customer by the seller's or landlord's agent and will not be represented in negotiations by their agent whom they engaged to promote their interests with the utmost good faith, loyalty and fidelity.

_____ _____

Buyer or Tenant Date Buyer or Tenant Date

Approved by the Kansas Real Estate Commission on April 10, 1997

forms/brreta8:7-00

BUYER'S CONSENT TO INITIATE A CONTRACT
WITH A TRANSACTION BROKER ENAGED BY A SELLER

Date:_____

Property Address:_____

Seller:_____

Transaction Broker
Engaged by Seller:_____

Buyer:_____

Buyer's Agent:_____

Buyer has an agency agreement granting exclusive representation to another broker. Nonetheless, Buyer has requested that the above-named Transaction Broker initiate a contract for the purchase of the above property without the presence of counsel of their agent.

By signing this consent form, Buyer acknowledges:

1. Buyer may be liable for compensation under the terms of the agency agreement with the buyer's agent.

2. Buyer will be treated as a customer by the above-named Transaction Broker and will not be represented by their agent whom they engaged to promote their interests with the utmost good faith, loyalty and fidelity.

_____ _____

Buyer Date Buyer Date

Approved by the Kansas Real Estate Commission on September 10, 1997

forms/brreta9:7-00

Chapter 2:
VALUING REAL PROPERTY

Appraisal versus Comparative Market Analysis (CMA)

As you learned in Principles class, an appraisal is an estimate of the value of a property resulting from an analysis of facts about the property. An appraisal is performed by an appraiser who has gained a high level of expertise through training and experience. Appraisers are licensed and may hold professional designations. Most real estate transactions require an appraisal to achieve an opinion of value. Appraising is not an exact science, but is an opinion of value. In fact, no two appraisals will be exactly the same. There are a number of reasons for "ordering" an appraisal:

1. A buyer requests one when considering a real estate purchase.
2. Sellers preparing to sell a property want to know value.
3. Ad valorem property tax computations.
4. Inheritance tax calculations or to settle an estate.
5. Insurance purposes to establish a loss value or possibly when purchasing insurance.
6. A mortgage company wants an appraisal to be certain a property meets the necessary requirements and value to make a mortgage loan.

Normally the person that pays for the appraisal receives it. When a lender gets an appraisal done, it is at the buyer's expense (unless the contract is negotiated where the seller pays for it). Generally speaking the buyer can get a copy of the appraisal upon request.

A comparative market analysis (CMA) is not an appraisal. It is generally prepared either for a seller to determine a fair listing price for a property at the time it is being placed on the market, or for a prospective buyer to arrive at an appropriate price to offer or pay for a property. A CMA is just what it says. It is a comparison or analysis of price and amenities of similar properties in a given market area. It is imperative that you become familiar with the process. You will use it many times in your real estate career.

We will first discuss the appraisal process. An appraiser uses three basic approaches to appraise property.

Income Approach to Estimating Market Value

Under the income approach you should assume that a purchaser would not pay more for a property than he would have to pay for another property that has the same income. The basic theory to the income approach is that the market value is the present worth of the future income or amenities. This would be when you would use the capitalization rate. It would be used for income producing properties such as apartment buildings, retail shopping centers, office buildings, etc. These properties have a fairly predictable annual income. The appraiser would first have to arrive at a NOI (net operating income). NOI is gross possible income minus vacancy and collection allowances. This would give you the gross effective income minus operating expenses. If the carpet has to be replaced every 5 years you would need to calculate 1/5th of the cost in the operating expenses each year. In other words net-operating expenses will include reserves for replacement. This could include appliances, roof, or any other items that routinely must be replaced.

HUD properties require a reserve account to be set up for replacement items. After you have determined the net operating income you would divide NOI by capitalization rate to arrive at a value. (You don't

calculate any payment or interest payment when arriving at the NOI.) V=NOI/RATE. The capitalization rate, or overall rate of return, might be described, as the rate of return required to attract investors. So it is not the rate of return the present potential buyer is necessarily willing to pay but what other investors have been willing to pay for like properties. The formula to put in place here would be R=I/V (capitalization rate = net operating income divided by value). The appraiser would calculate this ratio for a number of recent sales of similar property; thus, arriving at a market "cap rate." Once the appraiser arrives at the cap rate, he/she can determine the subject property's market value.

EXAMPLE:

Property A: NOI= 9,600/ sold for $106,000 = cap rate of 0.0906 (R=I/V)
Property B: NOI= 13,000/ sold for $144,000 = cap rate of 0.0902
Property C: NOI= 11,000/ sold for $122,000 = cap rate of 0.0902

The appraiser could arrive at a market value by halving the NOI and dividing it by 9 %(0.09). It would be very difficult to arrive at an estimate of market value if there are no recent sales from which to derive the market cap rate.

Cost Approach to Estimating Market Value

The second is replacement cost. With the cost approach appraiser assumes that a buyer would not pay more for a property than it would cost to buy a similar piece of land and build a building that would yield the same level of utility. This one would have to be used for special interest properties such as a church, courthouse, school, etc. There are three basic steps to the cost approach.

First, the appraiser estimates the replacement or reproduction cost of the building and other on site improvements. Replacement cost is the cost of a new building of equal utility. This would be with current technology and construction techniques and materials. **Reproduction cost** is the cost of duplicating the current structure. Replacement cost is used much more frequently than reproduction cost. Reproduction cost might be appropriate for a building listed as a national historic structure since this would require maintaining the historic integrity of the building.

Second, since the building is not new, the appraiser would subtract an amount equal to the actual **depreciation** (also called **deterioration or obsolescence***)* that has occurred. Bear in mind that there are three distinct types of depreciation. **Physical depreciation** is due to the wear and tear of the improvements. **Functional obsolescence** involves a decrease in value due to changes in consumer preferences. Outdated style would be an important consumer preference. The last **is external or economic obsolescence** this refers to a decline in value due to causes outside the property boundaries. This might be nearby buildings that are in poor or run down condition and in need of repair.

As you learned in pre license class depreciation may be either curable or incurable. External obsolescence is always incurable because a property owner cannot cure or fix some thing that does not belong to them. Some types of physical and functional depreciation may be cured. Maintenance items including new paint, new roof, etc. can cure these problems. If depreciation is curable the cost of curing it may be used as the best estimate of past depreciation. These first two steps provide a value estimate of the building and/or improvements, exclusive of the land on which the building sits.

Third, the appraiser has to add in the land value in its highest and best use. The land value would be obtained from the marketplace using the sales comparison approach.

Sales Comparison Approach to Estimating Market Value

Under the sales comparison approach an appraiser assumes a purchaser would not be willing to pay more for a property than he would have to pay for another parcel of similar utility. If two tracts were the same except for price, the purchaser would buy the lower priced tract. This is the method used to appraise homes more than the other two methods. When selecting "comps" (comparable properties) an appraiser has to exercise care. They have to take into consideration the dates of sales, locations, physical features, and financial terms under which the comparable properties exist.

The information from the comparable sales can be of little use if the following happened:

1. The sale involved buyers and sellers who were relatives and did a special price or deal.
2. Financial terms were offered that are not readily available to the general public, or maybe a non-qualifying assumable loan with no closing costs.
3. The comparable sale happened too long ago. Appraisers prefer six months.
4. The seller had to sell quickly, possibly because of financial difficulties, health, job transfer, etc.
5. The market conditions at the time of the comparable sale have changed significantly.

If any one (or more) of these conditions exist for the comparable property sale, the appraiser will have to adjust the sale price or not use the comparable sale. It is impossible to find two properties that are exactly the same in all respects. They are in different locations, possibly built of different materials, have different numbers of bathrooms, garages, etc. An appraiser, therefore, has to be able to recognize when and how to make adjustments for differences in otherwise similar properties. There may have to be adjustments for differences in size, age of improvements, condition of properties, or other improvements.

An appraiser uses all three approaches when appraising a property but when available he/she gives the most weight to the comparable sales approach. In other words, he/she use actual sales and adjust for differences between the subject property and the property he/she is appraising. An appraiser also will consider the four basic characteristics of value. You learned in your pre license study they are **utility, scarcity, effective demand,** and **transferability**. These will most likely not be specifically discussed in the appraisal report. They will however impact an appraiser's estimate of market value. Among the economic principles that are taken into consideration when doing appraisals are **highest** and **best use**.

One final thing to remember - Market value and market price are not necessary the same. Market value is an estimate of the most probable cash sales price. Market price is the actual sales price that occurs in the market place. Market price may be more or less than market value depending on other circumstances. An out of town buyer might pay more for a property than what a local buyer would pay. A seller might have personal circumstances that force him/her to take less than he/she should have to take for a quick sale. So an appraiser is going to be looking for market value. A reasonable estimate of what the property should sell for.

Comparative Market Analysis (CMA)

We're going to discuss how to do a market analysis on residential property, since this is the type you will be dealing with the most. A real estate licensee must be able to get the information about their market area and to interpret the sales and other "comps" used. With this information you are well qualified to prepare a CMA. You can do a CMA for both sellers and buyers. You must remember you will only give them your final recommendation, or suggested price if you are their agent. As a transaction broker you can furnish them with the information but not give them advice.

Information needed to prepare a CMA:

1. Properties in the area of the subject property currently for sale
2. Properties that have sold recently; these are the best indicators of value.
3. Listings that have either expired or were withdrawn and any information you can find about why they didn't sell.

For each of the above items you will need all of the following information about the property:

1. Days on market (DOM)
2. Type of financing offered or if it sold what type financing was obtained.
3. Number of rooms, including bedrooms, baths, etc.
4. Age
5. Other improvements or special amenities.
6. Square footage of living area
7. Patios, decks, pool, garden
8. General condition and appeal.

You should try to find comparables for the immediate subdivision or area of the subject property and also try to use like properties. This means if the subject property is a 3-2-2 (3 bedrooms, 2 baths, 2 car garage) use 3-2-2 “comps,” whenever possible. Also, try to get within 10% either way for square footage.

If you do a complete analysis on the subdivision you’ll find the larger the home the less it brings per square foot. You don't want to use a 1400 square feet home as a comparable on a 2200 square feet home. There could and probably would be a great per square foot price difference between the two.

Many companies have computer programs that will do a very professional CMA for you after you input the necessary information. There are also computer programs available you can purchase and put on your personal PC to do a CMA. On the following page is a form you can fill out quite easily.

Once you complete the CMA it is the responsibility of the owner to make the pricing decision, just as the buyer makes the final decision on how much to offer. A good CMA is helpful to both sellers and buyers in making a good decision. If a seller has an unrealistic price in mind the CMA should make him think more reasonably.

A seller might think cosmetic things make his home more valuable. This is not always true. They might make the home more marketable but not raise the value in terms of actual money. We'll discuss in working with the seller and working with the buyer how to present the CMA. As you fill out the form on the next page make sure you find out the condition and on the “comps” that failed to sell and why they failed to sell. This is your chance to show the seller or the buyer a reasonable price for the property in which they are interested.

COMPARABLE MARKET ANALYSIS

Property Address		Subdivision	
Date		Agent	
Subject		Age	
Bedrooms		Baths	
Living Room		Dining Room	
Kitchen		Family Room	
Livable sq ft		Basement (F/NF/sq ft)	
Basement Bedrooms		Basement Baths	
Other Basement Features			
Lot Size (sq ft/W x L)			
List Price ($)		Terms	
Features:			

SOLDS

Property Address #1		Subdivision	
Date		Agent	
Subject		Age	
Bedrooms		Baths	
Living Room		Dining Room	
Kitchen		Family Room	
Livable sq ft		Basement (F/NF/sq ft)	
Basement Bedrooms		Basement Baths	
Other Basement Features			
Lot Size (sq ft/W x L)			
List Price ($)		Terms	
Features:			
Property Address #2		Subdivision	
Date		Agent	
Subject		Age	
Bedrooms		Baths	
Living Room		Dining Room	
Kitchen		Family Room	
Livable sq ft		Basement (F/NF/sq ft)	
Basement Bedrooms		Basement Baths	
Other Basement Features			
Lot Size (sq ft/W x L)			
List Price ($)		Terms	
Features:			
Average Price Range of SOLDS ($)			

AVAILABLES

Property Address #1		Subdivision	
Date		Agent	
Subject		Age	
Bedrooms		Baths	
Living Room		Dining Room	
Kitchen		Family Room	
Livable sq ft		Basement (F/NF/sq ft)	
Basement Bedrooms		Basement Baths	
Other Basement Features			
Lot Size (sq ft/W x L)			
List Price ($)		Terms	
Features:			
Property Address #2		Subdivision	
Date		Agent	
Subject		Age	
Bedrooms		Baths	
Living Room		Dining Room	
Kitchen		Family Room	
Livable sq ft		Basement (F/NF/sq ft)	
Basement Bedrooms		Basement Baths	
Other Basement Features			
Lot Size (sq ft/W x L)			
List Price ($)		Terms	
Features:			

Average Price Range of AVAILABLES ($)

EXPIREDS

Property Address #1		Subdivision	
Date		Agent	
Subject		Age	
Bedrooms		Baths	
Living Room		Dining Room	
Kitchen		Family Room	
Livable sq ft		Basement (F/NF/sq ft)	
Basement Bedrooms		Basement Baths	
Other Basement Features			
Lot Size (sq ft/W x L)			
List Price ($)		Terms	
Features:			

Property Address #2		Subdivision	
Date		Agent	
Subject		Age	
Bedrooms		Baths	
Living Room		Dining Room	
Kitchen		Family Room	
Livable sq ft		Basement (F/NF/sq ft)	
Basement Bedrooms		Basement Baths	
Other Basement Features			
Lot Size (sq ft/W x L)			
List Price ($)		Terms	
Features:			

Average Price Range of EXPIREDS ($)

CMA Results:

Average Price Range ($) _____

All information is deemed to be from reliable sources. There is no warranty as to the accuracy or completeness of this report.

Suggested List Price ($) _____

Chapter 3
WORKING WITH THE SELLER

PREPARING TO WORK WITH THE SELLER!

At the time you set the appointment you should do as much research as possible. Prior to your appointment you should be able to do a CMA as well. The more information you have, the better prepared you are to assist the seller and obtain the listing. You need information such as taxes, special assessments, lot size, year built, etc. The seller may be able to furnish you with a lot of the necessary information. Be sure to tell them you'd like for them to have available prior to arrival at the home all the papers they have on the property. (Their deed, mortgage, survey, closing papers, and any other items they got when they purchased the property.)

In some of the more populated areas there are tax services available that a broker can subscribe to that will give access to all the information you need. You can also check with you county appraiser's office. The items you will need include:

1. Complete legal description.
2. Lot size
3. Square footage of the structure (this may include the garage--check)
4. Number of bedrooms, baths, garages, and other features
5. Assessed valuation-not necessary the market value.
6. What the owner paid for the property, again this is not the market value. This is for your information and will possibly give you an idea about liens.
7. When the owner bought the property.
8. Any special assessments, when they originated and when they'll be paid off.
9. Possibly a sketch of the property
10. Deed information
11. Mortgage information.
12. Price analysis.

You will have to do some research to obtain all the information needed. This is part of your job. If you don't have the necessary information you can't do a good job for the seller. You can also obtain a lot of information through the MLS if you have one in your area. Some offices keep comparable files as well.

The second thing you need to remember is to take a listing packet with you to the appointment. The packet should have all of the necessary forms and information that you will need to properly service the seller. We will go over how to fill out the forms but remember, your broker will tell you the forms he wants you to use. Again many offices have listing packets ready for you to pick up and go with. If your office doesn't you might want to put a few together for your own use. As we go through this chapter make notes of the items you will need to go over with the seller and be sure they are in your listing packet.

The next items we need to talk about are the different types of listing agreements. Again your broker will tell you the types of listings he will or will not accept.

1. Open listings: remember from pre license class an open listing just says that who ever writes a contract on the property and successfully closes it will be paid the agreed on commission. The seller can try to sell it or other agents can sell it and you will not receive compensation if you are not the one that sells it. If buyers are aware that the seller can sell it alone they will probably want to save money and buy directly through the seller. You worked for free.

2. Exclusive agency listing: This is more secure than an open listing. Under this type listing you are the only real estate company that can list the property. The seller has the right to sell the property without your assistance and not pay a commission. Other companies would still co-op with you. Generally, if a seller is ready to hire you, they should hire you all the way so you can give them full service. You need to be sure you'll get compensated for your efforts.

3. Exclusive right to sell listing agreement: this is the one most companies use. It says that if anyone sells the property during your listing term, you will be paid the agreed on commission. If you list the property right, price it right, and take care of business, you will get paid. If you go to get the listing and the seller has prospects that he/she has shown the property to, with your broker's permission you could list the property with an exclusive right to sell agreement and give them name reservations for an agreed on time. You don't want to give them a full listing term to sell it to their "friends". You want them to sell it before you invest a lot of time and money in marketing the property. By giving them a name reservation you can go ahead and secure the listing.

4. When we arrive and begin working with the seller we will need to do the following:

5. The first item you should do when arriving at the seller's home is to present the BRRETA brochure. You should "practice" presenting this brochure. Get familiar with it so you can present it without reading it. The purpose of the brochure is to give the seller their options in agency relationships so that they can make an informed decision.

6. Provide a thorough analysis of the marketplace by presenting a completed CMA. Remember to let the seller make the final decision.

7. Assist the seller in pricing the property. Make sure they understand the financing terms and that they are agreeable to them.

8. Determine if the property was built prior to 1978. If it was complete the lead based paint disclosure form. Make sure it is initialed and signed.

9. If it is your broker's policy, have the seller complete and sign a "Seller's property disclosure statement". Law does not require a seller disclosure statement, but it is common practice of most real estate companies. Buyers feel better knowing all possible about the property they are buying. It also leaves fewer questions and helps cut down on risk.

10. Fill out all the necessary forms for submission to your office and to MLS or co-op if your office is a member. Remember the more information you can put on the property profile sheet, the better job you are doing for the seller. Measure rooms, make notes and give information. You want the property to sell. Be aware that on the sheet where it says remarks, the prospective buyer is going to read that. Many agents think this is for the other agents. That's not necessarily true. When agents have buyers looking at property they very likely will give them several property sheets to read and consider. Write yours like you're selling the house. Don't abbreviate every thing. Does everyone in the public know what 3-2-2 or f/p or b/rm. mean? Keep the consumer in mind when filling out the paperwork. I like to have the seller look over the profile sheet and advertising copy. Let them be a part of the entire process. Let them know you are working for them!

11. If the property has a mortgage or other liens be sure to have the sellers sign a MIL (mortgage information letter) for each one. You can't do a realistic net to seller if you don't know what they owe.

Now it's time to give the seller very necessary information.

1. You should explain to the seller that they have hired you to be their agent and they should not discuss any subject of a confidential nature with anyone except you or your broker. And especially they should not discuss anything with an agent or representative from another company. The subjects include their reason for selling, property conditions, financial problems, or anything that might be a negotiating plus for the other side of the transaction.

2. If you listed the property as a seller's agent then everyone in your firm will be a seller's agent. If you are a designated seller's agent then someone else from the firm could be a designated buyer agent or a transaction broker.

3. Explain to them that if you, their listing agent, have a buyer client you are working with you will then ask for their approval for you to be a transaction broker for both parties for that one particular transaction.

4. If your firm offers sub-agency and someone from another firm has shown the property as a subagent. They can not convert to transaction brokerage.

5. Tell them if you hold an open house on their property you will be acting as their agent. If another agent from your firm holds an open house they will be acting as a transaction broker.

6. Assure them that you will manage the closing process from time of contract through the day of closing and keep them informed.

On the next pages you will find: "Why Pay a Commission from A-Z", “Patterned Interview for Sellers", " 9 Minute Showing Drill" The 9 minute showing drill will give the sellers a good idea of what they need to do to show the house; You’ll also find 8 pages on "Your Listing Presentation to a For Sale by Owner”, and a form called "Evaluating Your Own Performance". These are items that should be helpful in learning to give the seller good service. This of course will make you a better agent. At the end of the chapter is a "Seller's Property Disclosure Statement". This may be different then the one you use in your office. They are not promulgated. (Written or required by the KREC.) You should never fill this out. The seller should. But, you need to be aware of what it says in the event the seller has questions. There is also a sample listing agreement.

Why Pay A Commission?

Homeowners attempting to sell their home without the assistance of a real estate professional generally do so for one and one reason only. It's to avoid paying a commission fee. Is it worth it? Only the homeowner can answer that, but experience has shown that many for-sale-by-owners find that it's not. Before making a costly mistake, consider the benefits, from A to Z, you receive from working with a trained real estate professional:

Advertising-The agent pays all advertising costs.
Bargain-Research shows that 77% of sellers felt their commission was "well spent".
Contract writing-An agent can supply standard forms to speed the transactions
Details-An agent frees you from handling the many details of selling a home.
Experience and Expertise-in marketing, financing, negotiations, and more.
Financial know-how-An agent is aware of the many options for financing the sale.
Glossary-A real estate professional understands, and can explain, real estate lingo.
Homework-An agent will do homework on how to best market your property.
Information-If you have a real estate question, an agent will know (or can get) the answer.
Juggle Showings-An agent will schedule and handle all showings.
Keeps Your Rest Interests in Mind-It's an agent's job.
Laws-A real estate professional will be up-to-date on real estate laws that affect you.
Multiple listing service, the most effective means of bringing together buyers and sellers.
Negotiation-An agent can handle all price and contract negotiations.
Open Houses-A popular marketing technique.
Prospects-An agent has a network of contacts that can produce potential buyers.
Qualifies Buyers-Avoids opening your home to "curiosity seekers."'
Real Estate licensee-has the necessary education and experience to represent you
Suggested Price-An agent will do a market analysis to establish a fair price range.
Time-One of the most valuable resources in an agent!
Unbiased Opinion-Most owners are too emotional about their home to be objective.
VIP-That's how you'll be treated by your agent!
Wisdom-A knowledgeable agent can offer the wisdom that comes with experience.
X Marks the Spot-An agent is right there with you through the initial signing of papers.
Yard Signs-An agent provides a professional sign, encouraging serious buyers.
Zero hour Support-Selling a home can be an emotional experience. An agent can help!

PATTERNED INTERVIEW FOR SELLERS

BE SURE TO COVER THESE POINTS IN YOUR LISTING PRESENTATION!

WHY HAVE YOU DECIDED TO SELL YOUR HOME?
LOOK FOR TYPE OF MOTIVATION AND DEGREE OF URGENCY

WHERE ARE YOU PLANNING TO MOVE?
LACK OF TIME PRESSURE MAY WEAKEN MOTIVATION

HOW DO YOU FEEL ABOUT MOVING?
GET REACTION OF ALL PARTIES INVOLVED

HOW DOES THE REST OF THE FAMILY FEEL ABOUT MOVING?
CHILDRENS ATTITUDES CAN BE IMPORTANT

WHAT WOULD YOU DO IF THIS PROPERTY DIDN'T SELL IN 3-4 MONTHS?
BEWARE OF CONVENIENT ALTERNATIVES AND LACK OF MOTIVATION

WHAT WILL YOU DO WITH THE CASH PROCEEDS FROM THE SALE OF THIS HOME?
EXPLORE THE POSSIBILITY OF BUYING A SMALL INVESTMENT PROPERTY

WHAT WILL YOUR COMPANY DO TO HELP YOU FINANCIALLY?
BE SURE TO COORDINATE WITH AVAILABLE COMPANY BENEFITS.

WHAT EXPERIENCE HAVE YOU HAD WITH OTHER BROKERS?
EXPLORE ATTITUDE TOWARD REAL ESTATE PROFESSIONALS. BECOME AWARE OF ANY PREVIOUS PROBLEMS.

WHAT DO YOU KNOW ABOUT RECENT MARKET ACTIVITY IN THIS AREA?
LEARN HOW MUCH THEY KNOW ABOUT PERTINENT SALES AND CURRENT LISTINGS.

REALISTICALLY, WHAT DO YOU THINK WOULD BE THE REST PRICE OBTAINABLE FOR YOUR HOME?
YOU MUST KNOW AND RESPECT THEIR POINT OF VIEW, DON'T INSULT THEM.

WHY DID YOU DECIDE ON THAT PARTICULAR VALUE?
THIS WILL HELP YOU TO LEARN THE STRENGTH AND VALIDITY OF THEIR OPINIONS.

ARE YOU CONSULTING ANY OTHER REAL ESTATE COMPANIES?
BE AWARE OF YOUR COMPETITION. ALWAYS ASK FOR A "LAST CALL" BEFORE THEIR FINAL DECISION.

9 MINUTE SHOWING DRILL

OCCASIONALLY, YOU WILL RECEIVE A CALL TO SCHEDULE A SHOWING TO TAKE PLACE WITHIN THE NEXT FEW MINUTES.

THE FOLLOWING IS A CHECKLIST FOR THIS TYPE OF PANIC:

SOUND:	TURN OFF THE TELEVISION AND TUNE THE RADIO (LOW VOLUME) TO A SOFT ROCK, MIDDLE OF THE ROAD OR CLASSIC STATION.
SIGHT:	TURN ON EVERY LIGHT IN THE HOUSE (DAY OR NIGHT) AND OPEN EVERY DRAPE AND BLIND (DAYTIME ONLY.)
ODORS:	HEAT SOME FROZEN PASTRY SLOWLY IN THE OVIEN, OR HEAT A PAN OF WATER ON THE STOVE AND DROP IN A FEW DROPS OF VANILLA OR POTPOURRI
KITCHEN:	WIPE COUNTERS, PLACE DIRTY DISHES IN THE DISHWASHER
BATHRMS:	WIPE COUNTERS, FLUSH AND CLOSE TOILETS.
LIV ROOM:	HIDE MAGAZINES AND NEWSPAPERS, REMOVE CLUTTER
FAM RM:	HIDE MAGAZINES, GAMES AND NEWSPAPERS, REMOVE CLUTTER
BEDROOMS:	STRAIGHTEN BEDS, HIDE CLUTTER UNDER BED *(NOT IN* CLOSET)
EXTERIOR:	PUT AWAY TOYS AND CLUTTER. KEEP WALKWAYS CLEAR.
PETS:	THEY ARE A DISTRACTION, SO SEND THEM OUTSIDE. BETTER YET TAKE THEM WITH YOU!
GOODBYE:	SORRY, THIS IS THE SINGLE MOST IMPORTANT THING YOU CAN DO IN A SHOWING TO HELP SELL YOUR HOME. EVEN IF THE SHOWING AGENT INSISTS THAT IT'S 0.K. TO STAY, YOU MUST LEAVE. BUYERS MUST GET EMOTIONALLY COMMITTED TO YOUR HOME TO BUY IT AND THEY CANNOT BECOME EMOTIONAL ABOUT THEIR "NEW HOME" IF YOU, THE CURRENT OWNERS, ARE PRESENT. PLEASE, AT THE VERY LEAST, GO INTO THE BACK YARD. EVEN BETTER--GO TO THE STORE.

YOUR LISTING PRESENTATION TO A "FOR SALE BY OWNER"

1. This presentation is a "sit-down at the dining room table' discussion when both husband and wife are present. It will NOT be successful if any one of the parties who needs to sign your listing is not available.
2. It will NOT be successful if you are not fully prepared to list the property, which means you must have all the forms for their signature when they agree to list.
3. It will NOT be successful if you do not know this presentation thoroughly. Learn it and you will obtain many more listings.
4. It will NOT be successful if you do not know anything about the house you are trying to list. Use the information from the tax appraiser's office, the plat books, or from your own personal inspection.
5. It will NOT be successful if you have not prepared a CMA. The report will help you to show the sellers a fair value for their home, and to protect you from the “overpriced listing". These cost you time, aggravation, and cause unhappy customers.
6. It will NOT be successful if you do not have your information organized in a business like fashion and your mind organized as well.
7. It will NOT be successful if you are not properly dressed and professional in appearance and manner.
8. It will NOT be successful if you are not on time for the appointment.

The presentation is organized in the following sequence:

A. Break the ice
B. Go through the CMA and Cost Disclosure Statement
C. Attempt your first major close
D. Show the sellers why they should use a professional real estate agent.
E. Attempt your second major close.
F. Show the sellers why the agent they use should be you.
G. List the property.

A. Breaking the Ice.

Greet the sellers at the door with a smile, and be yourself. Thank them for the opportunity to visit their home and after some initial small talk, begin taking control of the interview.

1. Ask for a tour of the property. Have a pad to record your observations for each room. Ask questions about the house while on the tour. If you see any items that indicate a hobby, award, or vocation, mention it and try to establish some common ground. Show the owner that you've done your homework by confirming some of the information you've gotten from the tax appraiser.
2. Proceed outdoors to see the property boundaries, making notes of exterior features. Make notes about fences, out buildings, everything exterior. This would also be a good time to look at the exterior of the house itself.

3. Ask to go indoors. Arrange to sit at a table-dining room or kitchen. Ask that the TV be turned down (or off) so that you can hear them well.

4. Ask them how they FEEL about selling. Find out why they are selling. If they are moving to a new town, find out how they FEEL (not think) about the move. Is it scary? Has he or she met the new boss? How do they FEEL about the new job? (When your prospects talk to you about feelings and you LISTEN attentively, a bond is established because you CARE, about more than just a commission. You have shown you CARE about them as individuals.)

B. Go through the CMA and the Cost Disclosure Statement.

1. Explain the report and how you researched the material that's in it. If your conclusions of market value are less than the seller's current price, you have a problem. Do not state your conclusion at this time. Ask the seller what he/she would conclude from the comparable sales. (Often a seller will realize that the price they have in mind is too high and, if motivated to sell, will be open to a price change.)

2. After agreeing on a price range which would be a reasonable listing price, complete a statement showing the sellers what they would 'net' receive from the sale at that price.

C. Attempt the first major close.

1. Ask the sellers, "Could you live with this figure?" (The net to be received.) If the answer is "yes",

2. Ask the sellers, "Do you have any objections to my making the property available to all of the area agents in the city through the MLS?" If the answer is 'O.K" ask for the current mortgage information, and start filling out the listing forms. You have closed the sale!

3. If the answer is "We're not ready to list at this time." or any other no answer, go to the next step.

D. Show the sellers why they should use a professional real estate agent.

1. "Mr. and Mrs._____, your feeling of wanting to try and sell your home yourself is certainly not wrong, nor is it unusual. Probably 1/3 of all owners consider that option, although most end up using a professional. Do you mind if I ask why you want to try it yourself?"

(Listen carefully to the answer. Write it down. If you do not fully understand it, ask them to clarify the answer. You can expect that at least one of the reasons will be that they want to save the commission.)

2. "Mr. and Mrs. _____, I have represented many sellers who have first tried it themselves and who ran into some problems. You may have the same problems, or you may not, but if you know about them in advance, they may be easier to handle, do you agree?"

(Wait for an answer)

3. The Problem of Showing the Property

"Mr. and Mrs._____ before you had your house for sale, if a stranger came to your door and asked to come in, what would your answer be?"

(Wait for an answer. It should be "No".)

"Of course not. Your family's security is much too important for that. But when you put the "For Sale by Owner" sign in front of your house, that same stranger can come to your door and expect to be let in. I can tell you that when I represent you, no one can come into your home without having been qualified, and will always be escorted by a real estate agent. Would this make you more comfortable?"

(Listen for the answer. Acknowledge it.)

"Mr. and Mrs._____, in your opinion, can a prospective buyer know everything about your property by looking at the front of the house?"

(Wait for an answer. Acknowledge it.)

"Of course not. They would never see the beautiful _____, _____ or _____ _____ features of the house not visible from the road) and they would probably keep on driving. In many cases you could well lose that buyer. It's hard to prevent that, because you have to give out the address to anyone that calls and they can drive by."

"When I represent you, I will not give out the address. I'll be sure the buyer is qualified, that this house meets their requirements, and will escort them inside, which is the only place that they can truly evaluate this home. Can you see where I would be beneficial in this way?"

(Wait for the answer. Acknowledge it.)

"Mr. and Mrs._____, are there many times that you aren't home during the day?"

(Wait for the answer. Acknowledge it.)

"Often when a buyer comes by to see a property and there is no one home, the buyer will not return. Every time you leave the house to go to the store, a movie, or even to work, your property is "off the market". When I represent you, the property is on the market 24 hours a day, because there is always an agent who can be reached who will have the information the buyer wants. Can you see why having a professional handle the sale of your property can be helpful?"'

(Wait for an answer. Acknowledge it.)

4. The Problem of Financing

(Use this section only if it is likely that new financing will be required, which is of course most of the time.

"Mr. and Mrs._____, it is probable that a buyer will have to get new financing on this property unless they have over $_____ cash to invest. Would you agree?"

(Wait for an answer. Acknowledge it.)

"Our experience has been that most buyers are not familiar with how to go about financing property and would much rather just find a property where the loan can be assumed. Since they very likely can't do that, you may have to give them all the details on financing plans or you may lose the buyer."
"We it's almost a full time job keeping up with all the loan programs available: FHA, VA, Conventional fixed rate, or adjustable rate loans, closing costs, prepaid items and many more. Most buyers who need new financing tend to use an agent because an agent knows where the best programs are. I can help those buyers get financing to purchase your home, buyers that you may never even see. Does that make sense to you?"

(Wait for an answer. Acknowledge it.)

5. The Problem of Qualifying the Buyer

“Speaking of new financing put yourself in the place of a prospective buyer looking at a property. If the seller began to ask you a lot of questions about how much money you make, what your debts are, how much cash you have, what would your reaction be?”

(Wait for an answer. Acknowledge it.)

“The reaction of most normal people would be to “clam up” or to leave. Whichever, it will be difficult for you to determine whether the buyers can qualify for a new loan. That could result in your taking the house off the market for an extended period, even moving out of the house, only to have the sale fall through.”

“When a buyer uses a professional they are looking for guidance on financing, and are usually very open about their financial situation. We don't lose sales for this reason nearly as often, because we qualify the buyer carefully. Can you see how this might benefit you?”

(Wait for an answer. Acknowledge)

6. The Problem of Small Purchase Binders

“Mr. and Mrs._____if you were thinking of buying a house, and the owner asked you for a $3,000 cash earnest money or purchase binder, would you hand it to him?”

(Wait for an answer. Acknowledge it)

“It would be a little scary, wouldn't it? And yet, if you are the seller, you must get a sufficient binder or you could well lose the sale in 30-60 days. Imagine if the buyers were to find another property comparable to yours, and it was priced $2,000 lower. If you had earnest money of $200, the buyer could lose the deposit and still be $1,800 ahead. You, however, might have moved out of the house and be in a very unpleasant position.”

“Buyers know a professional real estate agent is carefully regulated and their deposit will him safe, and are much more willing to give a large deposit. The result? Fewer lost sales. Can you see how I can get a larger earnest money deposit?”

(Wait for an answer. Acknowledge it.)

7. The Problem of Verbal Negotiations

“Mr. and Mrs._____, yours is but one of _____ houses for sale in this area. Would you agree that the buyer of this house would want to pay as little as possible? That's why he's buying from you. Let me be the buyer for a moment. I've inspected your house, and say I like it. Then I ask, "What’s the least you'll sell for if I buy it today? What are you going to reply?"

(Wait for an answer.)

"If you don't come off the price a little, chances are I'll leave. If you do, I'll leave and promise to call you back. Of course, you expect me to call tonight, but I wait 2 or 3 days, and when I call you, I say, "I like your house best, but my spouse likes one that is $5,000 cheaper. If you can meet that price, I think I can convince her to buy yours today. Can you do it?"

(Wait for an answer.)

"If you say 'no', I probably won't be back. If you say 'yes', I'll arrange to come by tomorrow. When I get there, I might say 'Mr. and Mrs._____, I've made an error in the amount of cash we have. I can only pay $500 less than the price we agreed on. But I'm ready to buy now."
Can you see how a buyer can get your price down quickly by using the verbal negotiation?"

(Wait for an answer. Acknowledge it.)

"Mr. and Mrs._____, when I represent you in the sale and that buyer asks whether you'll take any less, I'll try to get the asking price. But if he still wants to try to go a little lower, I'll write up contract, get a sufficient earnest money deposit and bring the offer to you. If you decide to accept the offer, all you need to do is sign it. That's all. No more tricks. No discussion. Your house is sold. Can you see how a professional can same you money by stopping verbal negotiations?"

(Wait for an answer. Acknowledge it.)

8. The Problem of Writing a Purchase Agreement (Contract)

"Mr. and Mrs._____, if a buyer wanted to buy your house right now, what are your plans about writing a contract?"

(Wait for an answer. Acknowledge it.)
(If the seller says he/she will write it herself/himself.)

"Do you have a contract form, or would you like for me to give you one?"

"Most problems in real estate sales arise from poor communications--misunderstandings. That's why the wording of contracts are so important, and why real estate licensees go through a long education process to be able to write one which will not end up in court. If you are comfortable with contracts, it may work out. If I represent you in the sale, I will write a contract that will prevent misunderstandings. Can you see how this would benefit you?"

(If the seller says he has an attorney:)

"Most attorneys who are very good are also very busy. I assume that you would have a good, busy, attorney. If so, it could well be 2 or 3 days before you could get an appointment. Those 2 or 3 days may give your buyer time to see other properties or to develop buyers' remorse and back out. When I represent you and show the property, I will write the contract IMMEDIATELY, and the property will be sold, day, night, or weekend. Can you see how this, could benefit you?"

9. The Major Problem: Saving the Commission

"Mr. and Mrs._____ I suspect you have already thought of many of these pitfalls when you decided to sell the house yourself. Yet you are doing it mainly to save the commission, right?"

(Wait for an answer. Acknowledge it.)

"Have you given any consideration as to why the buyer is willing to go to the time and effort to buy a house directly from a seller when an agent could be very helpful? The proven reason is that the BUYER IS BUYING DIRECTLY SOLELY TO SAVE THE COMMISSION!"

"Mr. and Mrs._____if the buyer is buying directly to save the commission, and you are selling directly to save the commission, it won't be possible for both of you to save the commission. The buyer will save the commission because there are enough homes on the market that someone will sell to him on that basis. You will pay the commission, either to the buyer or to a professional who will take care of all the problems for you."
"Would you want to go though all the aggravation, take a chance on the security of your family, have a sale fall through, or even end up in court, just to end up with the same or even less than if you had used my services? Would you?

(Wait for an answer. Acknowledge it.)

E. Attempt your second major close

"Mr. and Mrs._____, can you see how you could benefit from having me represent you?"

(Wait for an answer. Acknowledge it) (If it is 'yes'.)

"Mr. and Mrs._____, would it be convenient for me to bring our sales staff over to the house on _____to inspect it before we begin advertising? Good, I'd like to get some information from you at this time." (Begin filling out the listing paperwork)

(If it is "no", ask the reason. Then go to the next step in your presentation.*)*

F. Show the seller why the professional should be <u>YOU</u>

"Mr. and Mrs._____ I'd like to tell you what I and my office would do to market your home successfully."

This section must be developed specifically by you and your broker and detail your strong points, in marketing homes. Some of the selling points you may use are:

- If your office is in a high traffic location, use that.
- Tell about your training program that makes all of your associates more professional and successful.
- If you tour new listings, tell about that.
- If you will put the home into MLS or a Co-op, tell about that.
- If you will be advertising the home, tell how.
- If you will be holding open houses, tell when.
- If your office is a member of an out of town referral agency, describe it.
- If you offer a warranty program, describe how that will help to sell the property.
- If you will call each week, tell them about how you will communicate with them.
- If you're on the Internet, tell them about that.

G. List the Property

"Mr. and Mrs._____ I would like to represent you on the sale of your property. May I?"

(Wait for an answer.)

If the answer is "yes", begin completing your listing forms.

If it's "no", you must review every point of the presentation point by point. Then ask for the listing again. In many cases the presentation will result in a listing. If for any reason you don't get the listing, visit again in 3 or 4 days. You may never get the listing, but it won't be because you gave up to soon!

GOOD LUCK! HANG IN THERE!

EVALUATING YOUR OWN PERFORMANCE

Use these questions to help you evaluate your performance after each listing presentation whether or not you get a listing. Keep working on your skills until you can answer yes to every question.

1. Was I well prepared? Did I have all necessary documents, information, and material?
2. Did I determine the seller's real needs and concerns?
3. Was I mentally and physically prepared - dress, grooming, attitude?
4. Did I open the appointment property? Was I prompt, friendly, and able to get the sellers relaxed?
5. Was I able to establish and maintain a good relationship?
6. Was each presentation segment delivered well?
7. Did each segment address a specific seller need or concern?
8. Did I turn features of the services my company and I offer into benefits for the seller?
9. Was I flexible and adaptable in delivering the presentation?
10. Did I watch for and use nonverbal cues to help communication?
11. Did I allow for feedback during my presentation?
12. Did I ask for and get agreement after each segment?
13. Did I explain pricing well enough to forestall problems?
14. Did I obtain the listing? If yes, why? If no, why not?

Seller's Property Disclosure Statement

(To be completed by seller)

Property Address:_____Date_____
Seller [] IS [] IS NOT currently occupying the property [] or HAS NEVER occupied the property.

Approximate age of property_____Date Purchased_____
This statement is a disclosure of the condition of the above described property known by the seller on the date at which it is signed. It is not a warranty of any kind by the seller(s) or any real estate licensee in this transaction, and should not be accepted as a substitute for any inspections or warranties the buyer may wish to obtain. The information provided in this statement is the representation of the seller and not the representation of any real estate licensee.

The information contained herein is intended to be part of any contract between the seller and the purchaser.

SELLERS INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether, and on what terms, to purchase the subject real property. Seller herby authorizes any real estate licensee in this transaction to provide a copy of this statement to any person or entity in connection with any actual or possible sale of the real property.

PART 1 – Indicate the condition of the following items by marking the appropriate box. Check only one box.

	None/ Not Included	Included working	Included not working		None/ Not included	Included working	Included not working
Section A – Appliances:							
1.Built-in vacuum system & equipment	[]	[]	[]	9. Microwave oven	[]	[]	[]
2. Clothes dryer	[]	[]	[]	10. Oven	[]	[]	[]
3. Clothes washer	[]	[]	[]	11. Range	[]	[]	[]
4. Dishwasher	[]	[]	[]	12. Refrigerator	[]	[]	[]
5. Disposal	[]	[]	[]	13, TV antenna/satellite sys	[]	[]	[]
6. Freezer	[]	[]	[]	14. Trash compactor	[]	[]	[]
7. Gas grill	[]	[]	[]	15. Other (specify)	[]	[]	[]
8. Range ventilation system	[]	[]	[]	16. Other (specify)	[]	[]	[]
Section B – *electrical systems:*							
1. Electric service (capacity_____Amps)	[]	[]	[]	7. Sauna ([] Steam [] Dry, if included	[]	[]	[]
2. Ceiling fan(s)	[]	[]	[]	8. Smoke/fire alarm	[]	[]	[]
3. Garage door opener/remotes number of remotes_____	[]	[]	[]	9. Vent fan(s)	[]	[]	[]
				10. 220 volt service	[]	[]	[]
4. Telephone wiring/jacks	[]	[]	[]	11. Security system	[]	[]	[]
5. Cable TV wiring/jacks	[]	[]	[]	[] owned [] leased			
6. Intercom or sound system wiring				12. Other (specify)	[]	[]	[]
and built in speakers	[]	[]	[]	13. Other (specify)	[]	[]	[]
Section C – *Heating and cooling systems:*							
1. Air purifier	[]	[]	[]	9. Propane tank [] leased [] own	[]	[]	[]
2. Attic fan	[]	[]	[]	10. Humidifier	[]	[]	[]
3. Whole house fan	[]	[]	[]	11. Fireplace/ fireplace insert	[]	[]	[]
4. Central A/C	[]	[]	[]	[] Blower			
5. Room air conditioners	[]	[]	[]	[] Factory Built [] Masonry	[]	[]	[]
6. Heating system	[]	[]	[]	12.Gas starter (fireplace)	[]	[]	[]
[] Gas [] Forced air gas [] Electric	[]	[]	[]	13 Gas logs	[]	[]	[]
[] Boiler ([] Hot water [] Steam)	[]	[]	[]	14. Woodburning stove	[]	[]	[]
7. Heat pump	[]	[]	[]	15. Other (specify)	[]	[]	[]
8. solar house heating	[]	[]	[]	16. Other (specify)	[]	[]	[]

Buyer's Initials
_____Date_____
_____Date_____

Seller's Initials
_____Date_____
_____Date_____

Section D- *Water Systems:*

	None/ Not Included	Included working	Included not working		None/ Not included	Included working	Included not working
1. Hot tub/whirlpool	[]	[]	[]	9. Well system	[]	[]	[]
2. Plumbing	[]	[]	[]	[] Cistern [] Irrigation well	[]	[]	[]
3. Sump Pump	[]	[]	[]	10. Sewer (specify)	[]	[]	[]
Discharges to_____				[] Lift [] Direct	[]	[]	[]
4. Swimming pool	[]	[]	[]	11. Lagoon	[]	[]	[]
5. Underground Sprinkler	[]	[]	[]	12.Septic	[]	[]	[]
[] Back Flow Preventer	[]	[]	[]				
6. Water heater	[]	[]	[]	13.E.T. bed	[]	[]	[]
7. Water purifier	[]	[]	[]	14. Other (specify)	[]	[]	[]
8. Water softener [] Rent [] Own	[]	[]	[]	15. Other (specify)	[]	[]	[]

_____

Part II- Answer questions to the best of your (seller's) knowledge

Section A- *Structural conditions*

	Yes	No		Yes	No
1. Age of roof (if known)_____years			8. (continued) Has there been an inspection to		
2 Does the roof leak	[]	[]	determine whether the structure has excessive		
3. Is there present damage to the roof	[]	[]	moisture accumulation and/or related damage	[]	[]
4. Have you had any insurance claims?	[]	[]	If yes, attach the results of the inspection		
If yes, were all repairs made	[]	[]	9. Is there any damage to the chimney?	[]	[]
5. Has there ever been leakage/seepage in the			10. Is there any exposed wiring presently in any		
basement or crawl space?	[]	[]	structure on the property	[]	[]
If yes, explain			11. Are there any windows or doors which		
6. Has there been any damage to the real			leak or have broken thermopane seals?	[]	[]
property or any of the improvements due			12. Have you ever experienced any moving or		
to the following occurrences, including, but			settling of the following:		
not limited to, wind, fire, flood?	[]	[]	Foundations?	[]	[]
If yes, Explain			Floors?	[]	[]
7. Are there any structural problems with the			Walls?	[]	[]
property?	[]	[]	Sidewalks?	[]	[]
If yes, explain			Patios?	[]	[]
8. Is any exterior wall covering of the structure			Driveways?	[]	[]
covered with Exterior Insulation and Finishing			Retaining walls?	[]	[]
Systems or Synthetic Stucco	[]	[]	Other_____	[]	[]
If yes, are you aware of any adverse conditions	[]	[]			
if yes, explain					

Section B- *Hazardous conditions:* Are you (seller), to the best of your knowledge, aware of any of the following substances, materials, or products on the real property which may be an environmental hazard?

Yes No				Yes	No
1. Asbestos	[]	[]	7. Toxic materials	[]	[]
2. Contaminated soil or water (including			8. Underground fuel or chemical storage tanks	[]	[]
drinking water)	[]	[]	9. EMF's (electric magnetic field)	[]	[]
3. Expansive soil	[]	[]	10. Gas or oil wells in area	[]	[]
4. Landfill or buried materials	[]	[]	11. Other (specify)	[]	[]
5. Lead-based paint	[]	[]	12. Other (specify)	[]	[]
6. Radon gas in house or well	[]	[]			

Section C- *The disclosures:* Are you (seller), to the best of your knowledge, aware of any of the following which could affect the real property?

	Yes	No		Yes	No
1. Features, such as walls, fences, driveways, which are shared in common w/adjoining landowners who use or have responsibility for maintenance of the feature	[]	[]	9. Any condominium, regime or other deed restrictions or obligations, or any Homeowners Association which has authority over the real property	[]	[]

Buyer's Initials
_____Date_____
_____Date_____

Seller's Initials
_____Date_____
_____Date_____

Section C- continued

	Yes	No
2. Has a boundary survey been performed? Date_____	[]	[]
3. Any mortgage survey or ILC (Improvement Location Certificate) Date_____	[]	[]
4. Easements, other than normal utility easements	[]	[]
5. Any encroachments	[]	[]
6. Any zoning violations, non-conforming uses, or violations of setback requirements	[]	[]
7. Any lot-line disputes or other unusual claims against the real property	[]	[]
8. Any pending or levied assessments on the real estate, including but not limited to those for sidewalks, streets, sewers, water and gas lines	[]	[]
10. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in individual interest with others)	[]	[]
11. Any lawsuits against seller threatening or affecting, this real property	[]	[]
12. Any notices from any governmental or quasi-governmental agency affecting this real property	[]	[]
13. Any planned road or street expansions, improvements or widenings adjacent to the property	[]	[]
14. Other (specify)	[]	[]
15. Other (specify)	[]	[]
16. Other (specify)	[]	[]

Section D- *Other Disclosures:* For property and improvements thereon

	Yes	No
1. Is the property connected to a public water system? [] Rural [] City	[]	[]
2. Is the property connected to a public sewer system? [] Rural [] City	[]	[]
3. Is the property connected to a private or community water system?	[]	[]
4. Is the property connected to a private or community sewer system?	[]	[]
Is the system operational?	[]	[]
5. Is the property connected to a septic system?	[]	[]
Is the system operational?	[]	[]
Are you aware of any problems?	[]	[]
6. Are there any trees or shrubs diseased or dead	[]	[]
Scheduled to be removed?	[]	[]
7. Are there any flooding, drainage, or grading problems?	[]	[]
8. Is the property a flood plain?	[]	[]
9. Trash service [] Public [] Private	[]	[]
10. Do you own the fencing on your property?	[]	[]
11. Are you aware of any structural additions, changes or repairs made to the property without obtaining all necessary permits?	[]	[]
12. Have you ever owned a pet in this property?	[]	[]
Has there been any damage due to urine, odor, stain or other?	[]	[]

Section E- *Insert the most recent year in which the following occurred*

1. Serviced air conditioner_____
2. Cleaned fireplace, including chimney_____
3. Serviced furnace_____
4. Serviced septic system_____
5. Cleaned wood burning stove, including chimney_____
6. Tested well water_____
7. Serviced well water_____
8. Do you have a home warranty? [] yes [] no
   Is it transferable [] yes [] no
   Company name(s)_____

Section F- *Infestations:*

	Yes	No
1. Do you have any knowledge of any damage to the property caused by termites, wood infestation or dry rot?	[]	[]
Is the property currently under warranty? If so, name the company below	[]	[]
2. Have you had any termite/pest control treatments for this property? If so name the company and the year treated.	[]	[]
3. Has the ground been pre-treated for termites	[]	[]

Part III- Miscellaneous

	Yes	No
	[]	[]

1. Are you aware of any other facts, conditions or circumstances, on or off-site, which can affect the value, beneficial use, or desirability of property? If yes explain:_____

Buyer's Initials
_____Date_____
_____Date_____

Seller's Initials
_____Date_____
_____Date_____

Part IV- Additional comments and/or explanations (Use additional pages, if necessary.) reference comments on items responded to earlier by part I or II, section letter and number. (Seller to attach any available property condition or inspection reports.)

If used separate pages, please initial here_____

_____
_____
_____
_____
_____
_____
_____
_____
_____

The information contained in this Disclosure has been furnished by the Seller, who certifies to the truth thereof to the best of Seller's belief and knowledge, as to the date signed by the seller. (Any substantive changes will be disclosed by the Seller to the Purchaser prior to closing)

Seller_____Date_____

Seller_____Date_____

1. I acknowledge that I have read and received a signed copy of the Sellers Property Disclosure Statement from the seller, the Seller's agent' or Transaction broker.
2. I have carefully inspected the property. Subject to any inspections allowed under my contract with the Seller, I agree to purchase the property in its present condition
3. only, without warranties or guarantees of any kind by the Seller or any real estate licensee concerning the condition or value of the property.
4. I agree to verify any of the above information that is important to me by and independent investigation of my own. I have been advised to have the property examined
5. by professional inspectors.
6. I acknowledge that neither Seller nor any real estate licensee involved in this transaction is an expert at detecting or repairing physical defects in the property.
7. I state that no important representations concerning the condition of the property are being relied upon by me except as disclosed above or as fully set forth as
8. follows:_____

_____

—

9. I acknowledge that I have been informed that Kansas law requires persons who are convicted of certain sexually violent crimes after April 14, 1994,
10. to register with the sheriff of the county in which they reside. I have been advised that if I desire information regarding those registrants, I may find information
11. on the home page of the Kansas Bureau of Investigation (KBI) at http://www.ink.org/public/kbi or by contacting the local sheriff's office.

Buyer_____Date_____

Buyer_____Date_____

Seller_____Date_____

Seller_____Date_____

Buyer_____Date_____

Buyer_____Date_____

EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT
SELLER'S AGENT

The exclusive right to sell agreement between the undersigned Seller and Broker for the property known as _____
_____
is exclusive and irrevocable for the period beginning _____ and ending _____
LEGAL DESCRIPTION _____
The property is offered for sale for the sum of _____
on the following terms: _____Cash _____Conventional _____Assumption _____FHA _____VA (Seller understands that certain fees in connection with a VA loan cannot be paid by the Veteran, therefore must be paid by the Seller)____
Owner Carry on the following terms: _____
together with all improvements thereon and the following items, if any: Keys, drapes, curtains, drapery rods, curtain rods, valances, blinds, window and porch shades, screens, shutters, awnings, storm windows & doors, wall-to-wall carpeting, mirrors fixed in place including bathroom mirrors, ceiling fans, mail boxes, television antennas, permanently installed heating and air conditioning units and equipment, built-in kitchen appliances, built-in security and fire detection equipment, lighting fixtures, plumbing fixtures, water softeners (if owned by Seller), all automatic garage door opener equipment including transmitters, attic fans, attached gas grills, attached shelves, water well pumps, shrubbery and all other property owned by Seller and attached to the above described property, except the following exceptions and/or additions: _____.
Broker agrees to market the property and pay the costs thereof. Seller hereby represents and warrants to Broker that this is the one and only exclusive right to sell agreement in effect, and said Seller has the capacity to convey merchantable title upon closing.

1. The Broker agrees to perform the terms of this contract, promote the interests of the Seller with the utmost good faith, loyalty and fidelity, and, subject to the following, present all offers, counteroffers and back-up offers in a timely manner. The Seller agrees that (please initial one):

_____ The Broker shall not be obligated to continue to market the property or present subsequent offers after an offer has been accepted by the Seller unless the purchase contract permits the Seller to continue to market the property and consider other offers until closing.

Or

_____The Broker shall not be obligated to continue to market the property or present subsequent offers after an offer has been accepted by the Seller.

2. The Seller agrees to pay the Broker a brokerage fee of _____% of the selling price if the Broker produces a ready, willing and able buyer for the property at the price and subject to the terms stated, or later agreed upon, or if the sale, lease or exchange of the property is made by the Seller or any other person, during the term of this exclusive right to sell listing agreement. Seller authorizes the deduction of said brokerage fee from the Seller's proceeds at closing.

3. Such compensation shall be paid if property is sold, leased, exchanged, conveyed, or otherwise transferred within _____ days after the termination of this agreement or any extension thereof to anyone with whom the agent has negotiated or to whom the agent has exposed the property prior to final termination, provided Seller has received notice in writing, including the names of prospective purchasers, before or upon termination of this agreement or any extension thereof. However, Seller shall not be obligated to pay such compensation if a valid exclusive listing agreement is entered into during the term of said protection period with another licensed real estate Broker and the sale, lease, exchange, conveyance or transfer of the property is made during the term of said protection period.

4. The Seller authorizes Broker to cooperate with other brokers, and to divide with other Brokers such compensation in any manner acceptable to brokers. The Seller agrees that Broker shall:

	(Please initial)			(Please initial)	
Offer cooperation to sub-agents	_____ Yes	_____ No	Offer cooperation to buyer's agent	_____ Yes	_____ No
Offer compensation to sub-agents	_____ Yes	_____ No	Offer compensation to buyer's agent	_____ Yes	_____ No
Offer cooperation to transaction brokers	_____ Yes	_____ No	Offer compensation to transaction brokers	_____ Yes	_____ No

5. Seller acknowledges receiving the "Real Estate Brokerage Relationships" brochure. Seller understands that Broker may show alternative properties not owned by Seller to prospective buyers, and may list competing properties for sale without breaching any duty or obligation to Seller.

6. Seller acknowledges that Broker may have clients who have retained Broker to represent them as a buyer in the acquisition of property. If a buyer client becomes interested in making an offer on Seller's property, then the Broker would be in a position of representing both buyer and Seller in that transaction unless designated agents have been appointed pursuant to paragraph 7. Such representation would constitute dual agency, which is illegal in Kansas. With the informed consent of both buyer and Seller, Broker may act as a transaction broker. As a transaction broker, Broker would assist the parties with the real estate transaction without being an agent or advocate for the interests of either party. Seller consents to transaction brokerage, subject to both buyer and Seller signing a Transaction Broker Addendum to their agency agreement with Broker, which must be signed by the buyer prior to writing an offer to purchase the property and by Seller prior to signing the purchase contract.

(Please initial) ____ Yes____ No

7. A designated agent is a real estate 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. If a designated agent is appointed to represent Seller, Seller understands:

a. The designated agent will perform all of the duties of a Seller's agent and will be Seller's legal agent to the exclusion of all other licensees in the brokerage firm.

b. Another licensee with the brokerage firm may act as a designated agent for the buyer in the sale of Seller's property.

c. The supervising broker (or branch broker, if applicable), will act as a transaction broker, and may advise and assist the designated agent for the Seller and the designated agent for the buyer, but will not advocate for the interests of either party and will not, without prior consent of both parties, disclose any information or personal confidences about a party which might place the other party at an advantage. The supervising broker (or branch broker, if applicable), may appoint an affiliated licensee to act in the transaction as a transaction broker.

d. If the designated agent for the Seller is also the designated agent of a buyer who is interested in Seller's property, the designated agent cannot represent both Seller and buyer. With the informed consent of both buyer and Seller, the designated agent may act as a transaction broker and assist the parties with the real estate transaction without being an agent or advocate for the interests of either party.

e. If a buyer client of a designated agent wants to see a property which was personally listed by the supervising broker, the supervising broker, with the written consent of Seller, may specifically designate an affiliated licensee who will act as a designated agent for Seller.

Seller consents to designated agent relationship. (Please initial) _____ Yes _____ No
If applicable, Broker, or Broker's authorized representative, hereby designates _____ to act as designated agent on Seller's behalf.

Pursuant to paragraph 6, Seller consents to the above-named designated agent acting as a transaction broker in the event the designated agent is also the designated agent for the buyer, subject to both buyer and Seller signing a Transaction Broker Addendum to their agency agreement with Broker, which must be signed by the buyer prior to writing an offer to purchase the property, and by Seller prior to signing the purchase contract.
(Please initial) ____ Yes____No

8. Seller hereby acknowledges the availability of home protection programs (please initial one):
_____ Seller chooses to provide such coverage and hereby acknowledges receipt of home protection policy application. (Broker may receive an administrative fee.)
_____ Seller does not choose to provide such coverage.

9. Seller also understands and agrees that as part of marketing the property, Broker will be showing buyers properties other than Seller's and providing buyers with information on selling prices in the area.

10. The Seller agrees to divide equally with the Broker any earnest money deposited with a contract and forfeited by a buyer, but not in excess of the amount to which the Broker would be entitled had the transaction closed.

11. The Seller gives the Broker the right to place a For Sale sign on the property and to remove all other signs during the term of this listing agreement.

12. The Seller agrees to refer all inquiries and offers received during the term of this listing agreement to the Broker.

13. The Seller agrees to provide the buyers of the property with evidence of clear title and to provide inspection reports, if any, when called for in a sales agreement. The Seller hereby agrees to indemnify and hold harmless the Broker, Broker's agents and employees from any liabilities, costs, or expenses with respect to said inspections.

14. Seller agrees to leave utilities on during the term of this listing or until final settlement of a sales transaction, whichever is later.

15. Seller agrees to thoroughly review the listing information prepared by the Broker and advise the Broker immediately of any errors or omissions. Seller further stipulates that the age of the property and the dimensions of the lot as shown on the listing information are accurate to the best of Seller's knowledge.

16. SELLER HAS BEEN ADVISED AND UNDERSTANDS THAT THE LAW REQUIRES DISCLOSURE OF ANY KNOWN MATERIAL DEFECTS IN THE PROPERTY TO PROSPECTIVE BUYERS AND THAT FAILURE TO DO SO MAY RESULT IN CIVIL LIABILITY FOR DAMAGES. SELLER AGREES TO INDEMNIFY AND HOLD HARMLESS BROKER AND BROKER'S AGENTS FROM ANY CLAIMS THAT REQUIRED DISCLOSURES WERE NOT MADE, INCLUDING REASONABLE ATTORNEY FEES OF BROKER AND BROKER'S AGENTS. SELLER hereby warrants that the information provided to the Broker as well as the information provided herein is true and correct according to the Seller's best knowledge and belief, and agrees to hold Broker and Broker's agents and any cooperating brokers and agents harmless from any damages, costs, attorney fees, or expenses whatsoever arising by reason of Seller not disclosing any pertinent information, giving any incorrect information, or the breach of any terms and conditions of this agreement.

17. Seller authorizes Broker to contact any lending institution or mortgage holder to obtain any information that may be appropriate.
18. The Broker will disclose to the Seller all adverse material facts actually known by the Broker about the buyer and advise the Seller to obtain expert advice as to material matters known by the Broker but the specifics of which are beyond the Broker's expertise. When the Seller has been so advised, no cause of action for any person shall arise against the Broker pertaining to such material matters. The Broker will disclose to any customer and Seller any adverse material facts actually known by Broker, related to the physical condition of the property, which contradict any information included in a written report that has been prepared by a qualified third party and provided to a customer or Seller. However, Broker owes no duty to conduct an independent inspection of the property to verify accuracy or completeness of any statements made by Seller or any qualified third party. Broker will account in a timely manner for all money and property received. The Broker will comply with all requirements of the Brokerage Relationships in Real Estate Transactions Act of Kansas and comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes and rules and regulations. The Broker will keep all information about the Seller confidential unless disclosure is required by statute, rule or regulation, or unless failure to disclose would constitute fraudulent misrepresentation. The Broker will disclose to any customer all adverse material facts actually known by the Broker, including but not limited to: environmental hazards affecting the property which are required by law to be disclosed, the physical condition of the property, any material defects in the property or title thereto, or any material limitations on the Seller's ability to perform under the terms of the contract.
19. The Broker may enter the property at reasonable times for showings to prospective buyers and for inspections and appraisal. The Seller agrees to furnish the Broker a key to the property and permit the Broker to place a Multiple Listing Service lock box on the premises during the term of this listing agreement or until final settlement of a sales transaction, whichever is later.

20. The Broker is not responsible for vandalism, theft, or damage of any nature to the property.

21. It is understood and agreed that the Broker will submit pertinent information concerning this property to the Multiple Listing Service of the Wichita Area Association of REALTORS® in accordance with its rules and regulations. Seller acknowledges and understands that the sales data and/or expiration data can and may be distributed at the discretion of the Wichita Area Association of REALTORS®, Inc. to its authorized members, and authorizes Broker to release all data on the herein described property. It is further understood the Broker will timely furnish MLS notice of all changes of information concerning the property as authorized by the Seller. The Seller authorizes the Broker to notify MLS of a signed sales contract on the property and authorizes the dissemination to others, including the County Appraiser, of sales information (including the sales price after the closing of the sale) to be used in establishing market value for other properties.

22. THIS PROPERTY WILL BE OFFERED, SHOWN AND MADE AVAILABLE FOR INSPECTION AND SALE TO ALL PERSONS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN.

23. _____

_____

Seller hereby acknowledges receipt of a copy of this agreement.

_____	_____
Brokerage	Seller Date
_____	_____
By Date	Seller Date
_____	_____
Broker's Address	Seller's Address
_____	_____
Broker's Phone Number	Work Phone Home Phone

SELLER CLOSING COST ESTIMATE

PROPOSED SALES PRICE **$**_____
PROPOSED CLOSING COSTS (BELOW) **$**_____
PAY OFF OLD LOAN(S) APPROXIMATE **$**_____
FINANCING CARRIED BY SELLER **$**_____

CLOSING COSTS:

1.	½ OF Owner's title policy	$_____
2.	Real Estate Brokerage Fee @_____%	$_____
3.	½ of closing fee	$_____
4.	loan discount fee paid to lender @_____%	$_____
5.	Termite Inspection	$_____
6.	Mechanical inspection	$_____
7.	Health Department Inspection (Septic/water well)	$_____
8.	Structural Engineer Inspection	$_____
9.	Estimated cost of contract/appraisal requirements	$_____
10.	Compliance inspection fee	$_____
11.	Home Warranty Plan	$_____
12.	Loan Costs Paid by Seller per contract	$_____
13.	Survey	$_____
14.	Flood Determination Letter	$_____
15.	Prepayment penalty	$_____
16.	Attorney's fees	$_____
17.	Recording fees	$_____
18.	Messenger or delivery fees	$_____
19.	Interest proration for present mortgage	$_____
20.	Proprated General Taxes from ____to_____	$_____
21.	Prorated Special Taxes from _____to_____	$_____
22.	Taxes for prior years	$_____
23.	Loan costs or buyer costs to be paid by seller (per contract)	$_____
24.	other_____	$_____
25.	Other_____	$_____

Total Estimated Costs $_____

Estimated credits:

ESTIMATED **NET TO SELLER** **$**_____

POSSIBLE OTHER FUNDS TO SELLER:

Impound or escrow balance (refunded 3-6 weeks after closing) $_____
(this may be included in the mortgage company pay off)
Other_____ $_____

_____ _____

SELLER DATE SELLER DATE

_____

LICENSEE DATE

Chapter 4
WORKING WITH THE BUYER

When Are Buyers Clients?

What is the first thing you ask any prospective buyer? Are you working with any other agents? Have you signed an agency agreement with another agent? Be sure they are "free" to become your client. If they have an agency agreement with another agent, tell them to talk to their agent. That is why they hired their agent. Don't try to get them to break the agency agreement. You would be breaking the law!

What is the first thing you do when you first meet the prospective buyer (or seller) in person? Present the BRRETA brochure. The license law says you will present the brochure at the first practical opportunity. This does **NOT** mean to just hand it to them. It also doesn't mean show them a house or two first. You **MUST** explain the brochure and what relationships are available in Kansas and what relationships your firm offers. If you don't know, ask your broker. After you have fully explained the brochure and if it is your broker's policy to have it signed, ask the prospect to sign it. Explain that it does not obligate them to you and that it does not obligate you to them. If they don't want to sign it, don't push it. Make a note on your portion of the brochure of the date you presented it and that they declined signatures.

If you do a good job of presenting the brochure you have a much better chance of gaining a client or customer agreement and have fewer problems as you proceed. Here are a few ideas of things you can say:

After or While Reviewing the Brochure

There are many simple ways of explaining the Brochure. You need to practice and know how to explain it ahead of time. We are of course working with a prospective buyer here. You can use a similar technique for a seller. Following are a few things you could say.

Prospects names: I am required by law to disclose to you the "Real Estate Brokerage Relationships" available to you. You have a choice.

I can work with you as a transaction broker and not represent you or the seller. I will not disclose any confidential information about you to anyone else, including the seller or his/her agent. I will not be able to assist you in negotiating strategies, including price or value. I have to be a neutral party when I am a transaction broker. I cannot be an advocate for your interests. In other words, I would put the deal together according to your instructions without offering you any advice or my expertise.

Or

I can work with you, but for the seller, and you would then represent yourself. This would mean that I would try to get the best price and terms for the seller. I would also disclose to the seller anything that you might tell me that could be beneficial to them. I would be required by law not to disclose to you any confidential information about the seller. (This would be applicable only if other agencies offered sub-agency. If your company doesn't offer sub-agency, don't go through this one.)

Or

I can work with you and **FOR YOU**! In this case I will owe all of my loyalty to you and I would try to get the best possible price and the best possible terms for you. In other words, I would be advocating for

your interests. I would disclose everything I know or find out about the seller's situation that could be of benefit to you in negotiating the purchase of a property. I would not disclose any confidential information about you to the seller. I would, however, be required by law to tell the seller of any adverse material facts actually known by me, including material facts concerning your financial ability to complete the transaction. Generally the listing broker would share the commission paid by the seller with me. In that case there would be no additional cost to you. Which do you prefer?

Many buyers know about the law of agency, however, many don't understand it or they believe there is a catch to it. You need to explain it to them and following is a simple explanation. This may even help you understand it better.

For many years buyers, in most cases, did not have a choice. They always worked with an agent that represented the seller. In a lot of cases they didn't realize for who the agent worked. In fact, generally they thought the agent was working for them, when in fact, the agent worked for the seller.

It is the law in Kansas that you are given a choice and the right to make an informed decision. If you, the buyer, want to represent yourself, then I would take a neutral position. You can choose to work with an agent who represents you as the buyer or you can choose to work with an agent who represents the seller. Remember that if the agent works for the seller he/she would be obligated to tell the seller any thing they learn about you, the buyer. The fee for the agent's services usually comes from the transaction unless different arrangements are needed or made. We will discuss the fees when we go through the agency agreement. The important thing is that it is your choice and I want you to make an informed decision.

Under any of the following circumstances you would need to be a buyer agent:

- You, buying for yourself or for you and your spouse.
- A relative of yours buying
- A close friend of yours buying
- A business associate or partner of yours buying
- A buyer who wants to remain anonymous
- A buyer who requests buyer agency

Expectations of a buyer agent: Once you enter into an agreement to become the client's buyer agent you should carefully review the Exclusive Buyer Agency Agreement and advise the prospective buyer:

1. That you will seek a property that is acceptable to them within the guidelines of the agency agreement.

2. That you will disclose adverse material facts a**ctually** known by you about any property or transaction including anything you find out about the seller.

3. That you will advise them to obtain expert advice about material matters which you **know** about, but which are beyond your field of expertise. Explain that you are not a plumber, electrician, roofer, engineer, etc. That they have the right and are encouraged to have a qualified third party inspection of the property they are interested in or have a contract on and request a written report of the existing physical condition of the property. That you will comment on the written report if you **know** of any **facts** that contradict any information in the report.

4. Explain that once they have signed a buyer agent agreement with you, you will be acting as their exclusive buyer's agent, representing them on all of your in company listings as a designated buyer's agent. Also, explain to them that if they become interested in a property that is your own personal listing you would have to ask them and the seller both to sign a transaction broker addendum allowing you to act as a transaction broker for them and the seller and represent neither one. Before you have the buyer client sign the agency agreement be sure they understand it fully and have initialed all

applicable paragraphs. One thing to keep in mind is if they want to purchase a property that does not offer compensation to you, the buyer agent, you would need to negotiate a price which would allow you to add your fee on top of the purchase price, or the buyer would need to be aware of his need to pay you separately.

During the Buyer Counseling Session You Will Inform the Buyer of:

1. Community and school information of interest to them.
2. Standard documents that will be used in the purchase.
3. Financing information including requirements. This would be an ideal time to do your buyer qualification.
4. Tell them about the inspections available and what to expect from an inspector and how to pick their inspector. Tell them it is their choice!
5. Determine what the buyer's needs and wants are, their motivation, and price range. There are forms following for qualifying and determining what they want in their new home.
6. Talk to the buyers about showing procedures. They should be careful when looking at a home not to appear "excited" or "madly in love" with it since this could minimize your negotiating, in the event someone is home. They should make notes about each property as they view them. Again there is a form, "Hunting for Your Dream Home," at the end of this chapter. You can use this one, one of your own design, or your broker may have one available. If a buyer sees three or more properties and does not make notes, they will confuse the homes, forget things they saw and liked, and have a much more difficult time making a decision.

While Working with the Buyer You Will:

1. Give them information about the area they are looking in. This would include a CMA on a property they are going to make an offer on.
2. Educate them on financing requirements, rates at various lending institutions and make sure to tell them it takes time to get a loan processed and approved. Many people are **very** uneasy about the loan process. Educate them up front and it may help. Talk to them about pre-qualifying and pre-approval. These are two different instruments. Pre-qualifying is qualified according to the information given to the loan officer and possibly in a file credit report. Pre-approval means they have processed the loan and been approved for a set amount.
3. Talk to the buyer about what properties you will make available to them. Are you going to show them a **FSBO** and listings that companies have that are not in your **MLS**? These take extra effort on your part. You might tell the buyer that if they are driving through an area they are interested in and see a sign, you will get them the information and show them the property. Explain that you can't always know that a "for sale by owner" sign has gone up. Again there is a form in the end of this chapter for "one time showing agreement" that can be used for **FSBO**s.
4. Be sure you don't promise a buyer they can make a "quick sale" if they buy a property and then want to "get out of it." If a buyer buys today the property has to increase in value 10% plus above what she/he paid for it, for her/him to break even. Absolutely **never** promise anyone they will make a profit.

A Final Note on Buyer Agency:

Being a buyer agent is considered by many to be much more of a liability then being a seller's agent. If you are a seller's agent it's not difficult to represent their property all day everyday. You put a sign in the yard; advertise the property, and your office sets up showings. You don't personally have to do it all. If you are a buyer's agent on the other hand, if they want to see a property or have questions they need to talk to you unless you have a working partner who is on the agency agreement as well. This is assuming you work under designated agency. If you strictly list them as a buyer client of the entire firm**,** then anyone can help them. The buyer will most likely want to talk with you when decision time comes.

Now, let's go one step further. Let's assume you are in the office. The telephone rings and someone on the other end of the line says they are calling about a sign in the yard, or on an ad in the newspaper. What are you going to say? First you need to train yourself to answer the phone in a professional manner at all times. Hello, this is ***your name*** and may I ask with whom I am talking?

You need to immediately begin building rapport. You would be amazed at the number of agents who will answer the phone, give out all the information, and never find out with whom they are talking. It is a well-known fact that when someone calls from a newspaper ad or even a sign call, that is **not** usually the home for which they are looking. It is your job to find them their "dream home." How are you going to do that if you don't get their name, phone number, and begin the qualifying process?
Decide what you are going to ask and how you are going to keep track of with whom you have talked and when you called them back! Some agents use a spiral notebook. Some use index cards. Following is a copy of a card that will get you started. If you fill out this information as you're talking with them you'll be prepared to help them. You need to do this and more to gain their confidence and build your career! You want to be known as the agent that works hard for your clients! Get familiar with the questions on this form and ask them on a regular basis.

Prospect Data Card

Name:	[] Buy [] Rent
Home Address:	Date:
	Home Phone:
Office Address:	Office Phone:
Price Range ($):	Cash Down ($):
Monthly Payments ($):	[] VA [] FHA [] Conventional
Type of Home:	
# Bedrooms:	# Baths:
Special Requirements & Notes:	
Present Home Address:	[] Own [] Rent
Occupation:	
Heard of Us from:	
Agent::	

Record of Properties Shown or Submitted to Prospect

Date	Address	By	Remarks

Some Items Needed for Loan Applications

Application Check List

Income Verification

1. Pay stubs, showing year to date earnings, to cover the most recent 30 days on both full and part time employment.
2. W-2 statements for the past two years
3. If self-employed, complete last two years personal and business tax returns (including K-1's, W-2's, 1099's) with year to date Profit & Loss and balance sheet.
4. Rental Income will require last 2 years complete tax returns and lease agreements.
5. Social Security Income will require most recent award letter and deposit verification.
6. Income from alimony/child support will require copy of divorce decree and property settlement, one-year history of checks received or printout from District Clerk records, and two years tax returns.

Source of Funds Verification

1. Three most recent month's statements on all banking, retirement, and investment accounts, not **teller printouts**. Will need explanation of any large deposits.
2. Completed gift letter, copy of cashier's check, and deposit slip to Borrower account.
3. Names, addresses, account numbers, and balances for all checking and savings accounts.

Additional Data Needed

1. Names, addresses, account #'s, balances, and Monthly payments on all open loans and credit cards.
2. Names, address, and phone numbers of landlords at present time and all previous residences for past two years or 12 most recent months canceled rent checks.
3. Names and addresses of employers for last two years.
4. Driver's License and Social Security Card.
5. Addresses and names of Mortgage Holder for all real estate owned.
6. Check or money order for $_____ Credit Report and $ _____ Appraisal.

And if These Circumstances Pertain

1. Complete copy of bankruptcy, list of creditors, and discharge if less than 10 years.
2. Copy of divorce decree and property settlement.
3. Copy of contract and estimated seller net or closing statement on sale of current home.
4. VA Certificate of Eligibility.
5. _____
6. _____

Helping Your Buyers Find the Home They Are Looking For?

You can make several copies of the form on the next page, "Hunting for Your Dream House," and write the address of each property you are showing your buyer before you go out to view property. It really helps them!
Remember you are required to tell a buyer what they will need to close and what their payments are going to be before you ask them to sign a purchase agreement. This is a good form for that.

This is a form you could print out and give to buyers when you are preparing to show them properties. It is a way for them to make notes about the different properties and will help them remember.

Hunting for Your Dream House

Address:	
Description:	
Date/Price:	Date: Price($):
Monthly Taxes:	
Monthly Fees:	
Monthly Util:	
#Bedrooms:	
#Baths	
Kitchen:	
Closets:	
Garage:	
Heating:	
Cooling:	
Electric:	
Siding:	
Yard:	
Community:	
Services:	
Transportation:	
Extras:	

Buyer's Estimated Expense Sheet

Buyer		Property		Price ($)	
		FHA/VA Pay Breakdown		Conv Payment Breakdown	
	Down Payment		P & I		P & I
					% of Base
	Loan Costs		Taxes		Taxes
	Prepaids		Hazard Ins		Hazard Ins
	Other		Escrow, etc		PMI
	Total Est Cost		HOA Dues		Escrow. Etc
	to Close		Total Est Pay		HOA Dues
					Total Est Pay
Loan Amt ($)		Loan Amt ($)		Loan Amt ($)	
Years	Rate (%)	Years	Rate (%)	Years	Rate (%)
FHA/VA Loan Cost		Conv Loan Cost		Cash/Assumption Escrow	
	Credit Report		Credit Report		Equity-approx
	Appraisal Fee		Appraisal Fee		½ Title Ins
	Inspect Fee		Inspect Fee		Doc Prep Fee
	½ Title Ins		½ Title Fee		Loan Trans
	Lender's Cov		Lender's Cov		Quality Fee
	Loan Orig Fee		Loan Orig Fee		Prorate Interest
	Mort Reg Fee		Mort Reg Fee		Reserve Acct
	Record Fee		Record Fee		Hazard Ins
	Survey Fee		Survey Fee		Flood Ins

Buyer's Estimated Expense Sheet (cont'd)

	MIP(FHA)		Doc Prep		Credit Report
	Discount Pts		Attorney Fee		Record Fee
	Funding (VA)		½ Close Fee		Mort Reg Fee
	Home Wart'y		Envir Inspect.		Escrow Prep
	Pest Inspect		UW Fee		Pest Insp
	Envir Inspect.		Tax Serv Fee		Health Insp
	Health Insp		Health Insp		Ind Insp
	Ind Prop Insp		Ind Prop Insp		Survey Fee
	Other		Other		Other
	Total		Total		Total
FHA/VA Prepaids		Conventional Prepaids		Prepared by & Notes	
	Mon Spec Tax		Mon Spec Tax		
	14 Months Ins		14 Months Ins		
	1st Int Paym't		2 Mon PMI		
	14 Months Flood		90% 1st PMI		
	HOA Init Fee		1st Int Paym't		
	Total Prepaids		14 Mon Flood		
			HOA Init Fee		
			Tot Prepaids		

We the undersigned, understand that these are estimated costs. We further acknowledge receipt of a copy of these estimated costs.

Buyer: Date:	Buyer: Date:

SELLERS AGREEMENT FOR ONE TIME SHOWING

DATE_____RE: PROPERTY ADDRESS:_____

We hereby grant_____(your name goes here)_____ agent for ___(your company name)_____ permission to show the above property and authorize Agent to quote a sale price of $_____. This price includes a Buyer Agency brokerage fee to ____(your company name)___ of ___% of the purchase price agreed upon by Buyer(s) and Seller(s).

It is understood and agreed that should the property be sold to the person(s) listed below or anyone acting on their behalf within six (6) months from above date, we agree to pay __(your company name)__, the commission as set forth above.

Buyer Information

_____

_____

_____

This agreement applies to the person(s) and their representative mentioned above.

Your company name
Real Estate Brokerage Firm

_____
Seller/owner of Subject Property

By Your name goes here
Licensee

_____
Seller/owner of Subject Property

EXCLUSIVE RIGHT TO BUY AGREEMENT
BUYER'S AGENT

1. THIS AGREEMENT is between _____ described hereinafter as the "Buyer" and _____ described hereafter as the "Broker". By this Agreement the Buyer retains and appoints the Broker as Buyer's Exclusive Agent to assist Buyer in the procurement of property and to negotiate terms and conditions acceptable to the Buyer for the procurement of certain property as generally described in this Agreement.

2. Buyer desires to purchase real property which meets the following description:

Type: _____ Residential _____ Income _____ Vacant Land _____ Commercial

_____

Approximate price range $_____ to $_____

General location: _____

Preferred terms: _____

3. This agreement shall begin _____ , 19____ and continue until midnight _____ 20_____ . In the event of termination, compensation due Broker shall be subject to provisions of paragraph 4.

4. For performing the services herein, whenever possible, Broker's fee shall be paid from the proceeds of the transaction, in which event Broker's fee shall be as provided in seller's listing agreement; or, if the property is listed under a cooperating agency, Broker's fee shall be that portion of the commission offered by the cooperating agency. If Broker's fee is not paid from the transaction, Buyer shall pay Broker, upon the closing of the purchase or exchange, a sum equal to
_____ % of the purchase price.

Broker's fee is deemed earned and payable if Buyer, or any person acting for Buyer, purchases or exchanges any property of the nature described herein during the Agreement term, whether through services of Broker or otherwise. The fee is also deemed earned if Buyer, or any person on Buyer's behalf, purchases or exchanges any property exposed to Buyer by Broker within _____ days after termination of this Agreement. However, Buyer shall not be obligated to pay such compensation if a valid exclusive right to buy agreement is entered into during the term of said protection period with another licensed real estate broker and the purchase or exchange of the property is made during the term of said protection period.

If seller enters into a Real Estate Purchase Agreement and fails to close, with no fault on the part of Buyer, Buyer shall be relieved of any obligation to pay the fee described herein. If such transaction fails to close because of the fault of the Buyer, Broker's fee will not be waived, but will be payable immediately by the Buyer.

5. Broker agrees to perform the terms of this Agreement, promote the interest of the Buyer with the utmost good faith, loyalty and fidelity, and, subject to the following, present all offers, counteroffers and back-up offers in a timely manner. The Buyer agrees that (please initial appropriate paragraph):

_____Broker shall not be obligated to seek other property, or present them to Buyer, after Buyer has entered into a contract to purchase.

or

_____Broker shall not be obligated to seek other property, or present them to Buyer, after Buyer has entered into a contract to purchase, unless the purchase contract permits Buyer to continue to seek other property, and purchase it instead of the subject property, until closing.

6. Buyer acknowledges that Broker may have clients who have retained Broker to represent them as a seller in the sale of property. If Buyer becomes interested in making an offer on a seller client's property, then the Broker would be in a position of representing both Buyer and Seller in that transaction unless designated agents have been appointed pursuant to paragraph 7. Such representation would constitute dual agency, which is illegal in Kansas. With the informed consent of both Buyer and Seller, Broker may act as a transaction broker. As a transaction broker, Broker would assist the parties with the real estate transaction without being an agent or advocate for the interests of either party. Buyer consents to Broker acting as a Transaction Broker, subject to both Buyer and Seller

signing a Transaction Broker Addendum to their agency agreement with Broker, which must be signed by Buyer prior to writing an offer to purchase the property, and by Seller prior to signing the purchase contract. (Please initial): _____ Yes _____ No

7. A designated agent is a real estate 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. If a designated agent is appointed to represent Buyer, Buyer understands:

a. The designated agent will perform all of the duties of a buyer's agent and will be Buyer's legal agent to the exclusion of all other licensees in the brokerage firm.

b. Another licensee with the brokerage firm may act as a designated agent for a seller in the sale of the seller's property.

c. The supervising broker (or branch broker, if applicable) will act as a transaction broker and may advise and assist the designated agent for the Buyer and the designated agent for the seller, but will not advocate for the interests of either party and will not, without prior consent of both parties, disclose any information or personal confidences about a party which might place the other party at an advantage. The supervision broker (or branch broker, if applicable) may appoint an affiliated licensee to act in the transaction as a transaction broker.

d. If the designated agent for Buyer is also the designated agent of a seller in whose property Buyer is interested, the designated agent cannot represent both Buyer and seller. With the informed consent of both Buyer and seller, the designated agent may act as a transaction broker and assist the parties with the real estate transaction without being an agent or advocate for the interests of either party.

e. If a buyer client of a designated agent wants to see a property which was personally listed by the agent's supervising broker, the supervising broker, with the written consent of seller, may specifically designate an affiliated licensee who will act as a designated agent for seller.

Buyer consents to designated agent relationship. (Please initial) _____ Yes _____ No
If applicable, Broker or Broker's authorized representative hereby designates _____ to act as designated agent on Buyer's behalf.

Buyer consents to the above-named designated agent acting as a transaction broker in the event the designated agent is also the designated agent for the seller, subject to both Buyer and seller signing a Transaction Broker Addendum to their agency agreement with Broker, which must be signed by Buyer prior to writing an offer to purchase the property, and by the seller prior to signing the purchase contract.
(Please initial) _____ Yes _____ No

8. Broker will disclose to the Buyer all adverse material facts actually known by the Broker and advise the Buyer to obtain expert advice as to material matters known by the Broker but the specifics of which are beyond the Broker's expertise. Broker shall account in a timely manner for all money and property received, comply with all requirements of the Brokerage Relationships in Real Estate Transactions Act of Kansas and comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes, rules and regulations. The Broker will keep all information about the Buyer confidential unless disclosure is required by statute, rule, or regulation or failure to disclose would constitute fraudulent misrepresentation. No cause of action for any person shall arise against Broker for making any required or permitted disclosure. Broker will disclose to potential sellers all adverse material facts actually known by the Broker, including but not limited to material facts concerning the Buyer's financial ability to perform the terms of the transaction.

9. Broker advises Buyer to seek legal, tax and other professional advice relating to any proposed real estate transaction. Broker does not make any representation or warranty with respect to the advisability of or the legal or tax effect of any transaction contemplated by Buyer and shall cooperate fully with any legal or tax counsel of Buyer's choice. Broker is not expert in matters relating to law, tax, financing, surveying, structural condition, hazardous materials, environmental consultants, engineering, or other highly specialized areas, and Buyer is encouraged to seek expert assistance in these areas.

10. At the time of initial contact, Broker shall inform all prospective SELLERS and their agents with whom Broker negotiates pursuant to this Agreement, that Broker acts on behalf of a Buyer. Buyer authorizes Broker to cooperate with other brokers and share any compensation due under this Agreement.

11. Unless otherwise requested in writing, Broker may disclose Buyer's identity to prospective sellers and their agents.

12. Broker shall not obtain or order products or services from outside sources unless Buyer agrees in writing to pay for the same immediately when payment is due. Examples of such products or services would include, but are not limited to, surveys, soil tests, title reports, engineering studies, and inspections.

13. Other potential buyers may consider, make offers on, or purchase through Broker the same or similar properties as Buyer seeks. Buyer consents to Broker's representation of such potential buyers before, during, and after the expiration of this Agreement. In such a situation, Broker will not disclose to either buyer the terms of the other's offer.

14. Buyer agrees to provide Broker, upon request, with relevant personal and financial information to assure Buyer's ability to acquire property of the character and quality described above. Buyer agrees to inform all real estate licensees and sellers Buyer comes in contact with that Buyer is a party to this exclusive contract.

15. The parties shall not discriminate against any prospective Seller or Lessor because of the race, color, religion, sex, handicap, familial status, or national origin of such person.

16. In the event of litigation concerning the rights of Buyer or Broker pursuant to this Agreement, the parties agree that the court shall award reasonable attorney's fees and court costs to whichever party shall prevail in such action, to the extent allowed by law.

17. Buyer agrees to indemnify and hold harmless Broker on account of any loss or damage arising out of this Agreement, provided Broker is not at fault, including but not limited to attorney's fees reasonably incurred by Broker. Broker is not responsible for accuracy or extent of information relative to any property and Buyer shall satisfy himself with respect thereto.

18. Buyer and Broker understand and agree that the relationship created by this Agreement is a personal one and that neither the Buyer nor the Broker shall have the right to assign this Agency Agreement to third parties without the consent of the other.

19. This Agreement constitutes the entire agreement between the parties and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. There shall be no modification of this agreement unless in writing and signed by both parties.

CAREFULLY READ THE TERMS BEFORE SIGNING. WHEN SIGNED BY ALL PARTIES, THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING.

Buyer hereby certifies that he/she has received the "Real Estate Brokerage Relationships" brochure and a copy of this Agreement.

Brokerage	Buyer Date
By Date	Buyer Date
Broker's Address	Buyer's Address
Broker's Telephone Number	Work Phone Home Phone

Chapter 5
FINANCING & CLOSING COSTS

Financing is a vital part of your real estate career. If you can't find financing for a buyer, you can't sell them a house. Most people don't have the money in the bank to write a check and pay cash. The money has to be borrowed. In this chapter we will discuss the different types of financing. Even after learning all you can, you will still have to ask lenders about the loan programs they have. They vary from lender to lender.

Conventional Financing

A conventional loan is a real estate loan defined as not being insured or guaranteed by an agency of the government. The conventional loans comprise the majority of the mortgage loan market. A conforming conventional loan means they conform to underwriting guidelines that have been established by FNMA (Fannie Mae) and FHLIC (Freddie Mac). Most lenders try to make loans which can conform. This way the loan can be sold or exchanged in the secondary mortgage market to Ginnie May, Fannie Mae, or Freddie Mac, which frees up the lender's money. Even portfolio or shelf lenders (those who do not normally sell their loans but service them themselves) generally prefer to make conforming loans so they will have the flexibility of being able to sell the loans in the event they need to free up some funds. Lenders use almost identical qualifying rules under the Fannie Mae/Freddie Mac mortgage guidelines. This makes it easier for you, the licensee, to determine the price home for which your buyer can qualify.

The advantages of Conventional loans are they require less time to process and the loan amounts can exceed those offered by government-insured loans. Almost all lenders offer conforming conventional loans. Loans with a 5% down payment are readily available. There are special programs at times with even lower down payments. Some of these are under a bond money program.

The disadvantages compared with government loans are that they require larger down payments and the borrower generally must have more income to qualify for a conventional loan.

A discount point is used to lower the interest rate for a borrower and increase the yield for a lender or investor. One discount point is equal to one percentage point of the loan amount. Discount points may be paid by a buyer or seller and MUST be negotiated at the time of contract.

Points will generally be more on a smaller loan since they involve smaller amounts of loan funds over which to spread the overhead costs associated with the loan. Discount points can be deducted on income tax returns as interest. The origination fee is not a point. It is equal to 1% of the loan amount just like a discount point. It's the fee the mortgage lender or loan company charges for "putting the loan together" or originating the loan. Some loan officers are paid a portion or all of the origination fees they collect as their wages. Origination fees are not deductible as interest. Some loan officers are salaried; hence, the origination fee may be smaller.

Interest Rates

Interest rates can and do change daily. Generally at the time of application a lender will "lock in" the rate of interest for a specified period of up to 60 days. That interest rate would be guaranteed for that length of time even if the rates go up or down. Some lenders will take the application and allow the rate to "float" until the time the borrower locks it in. This has to be prior to submitting the loan for approval.

A borrower may not want to lock in the rate if interest rates are on a decline. The borrower must be made aware that if they lock in at time of application and the rates go down, they will still have to close at the locked in higher rate unless they have a different agreement with their lender. Of course, if rates go up it would be to the borrower's advantage to have a locked in rate. In the event you have a "marginal" buyer,

i.e., one that is close on his qualifying ratios, they may be well advised to lock in a rate. A slight rise in interest might make them unable to qualify.

A borrower will have many different lenders to choose from. He/she should discuss with the lender, prior to loan application, what the interest rate will be and if there are discount points to be paid for that interest rate. He/she needs to know when the interest rate will be locked in and how long the lock is good for. What are his/her options in the event the loan does not close prior to the expiration date of the locked in rate. If the rate changes after lock, will this favor the borrower?

Also, some lenders charge more "junk" fees than other lenders. Junk fees are charges made for things like warehousing fees, underwriting, administration fees, courier or delivery fees, etc. These fees can make a big difference in the actual amount of money it takes for your borrower to get into their new home. Lenders may set different interest rates on different LTV (loan to value) ratios.

Each lender or investor determines interest rates. Usually there will be little difference in interest rates from lender to lender. Some lenders will have a slightly higher interest rate or possibly charge more points however the lender may be somewhat more flexible in their qualification ratios. Other lenders may offer a lower interest rate; however, they are interested in borrowers with impeccable credit and/or a higher income to payment ratio.

Some of the factors that influence interest rates are the discount rates the Federal Home Loan Bank charges to member banks for borrowing money, T-bill rates, etc.

Private Mortgage Insurance (PMI)

Conventional loans are available for as little as 5% down. Conventional loans requiring less than 20% down payment generally require private mortgage insurance (PMI). This private mortgage insurance is through private mortgage insurance companies. PMI is how lenders manage their risks. It insures a percentage of a mortgage loan against default. The cost is passed on to the borrowers in the form of a PMI insurance premium (see the table below). The cost is added to the regular mortgage payment. Once the owner's equity reaches the point that it is no longer risky, the borrower can request the lenders to drop the PMI. This is generally when the loan to value (LTV) is 80% or less.

The required PMI coverage and premium rates vary, depending on the loan-to-value being sought. If there is negative amortization the PMI will be higher because of additional risk. The current rules are:

Loan to Value (%)	PMI Cov (%)	PMI Premium
97	35	1.04/12=0.087
95	30	0.78/12=0.065
90	25	0.52/12=0.043
85	12	0.32/12=0.027

(For a 95% loan you would take .78% x the loan amount divided by 12 gives you the monthly pmi payment.)

Types of Conventional Mortgage Loans and Terms

There are several types of conventional mortgages. The most common are as follows:

Fixed Rate Mortgage (FRM) Loans have interest rates which remain the same for the entire term of the loan. These loans are generally for a period of 15 or 30 years. FRM loans are fully amortized. This means that the principle and interest payment remains the same for the entire life of the loan. Generally the monthly premium on a loan will include a principal repayment and interest parts. In addition, many lenders require a monthly escrow payment to cover the amount of required insurance premium and

property and special taxes. The only change in payments comes from an adjustment or change in the taxes or insurance on the property (escrow).

With this loan program each payment made credits a little more towards the principal balance and a little less toward interest month-by-month. Remember that interest is always paid in arrears and calculated based on the unpaid principal balance. The 15-year loans are typically at a slightly lower interest rate then the 30-year loan as the lender faces less risk on shorter-term loans. There is a substantial savings in interest over the life of a 15-year loan versus the life of a 30-year loan.

Since 1979, most of the standard forms used to create a mortgage contain a clause which requires the lender to notify the borrower their FRM loan is to be sold; thus, allowing the borrower the opportunity to pay the remaining loan balance instead of allowing it to be sold.

These mortgages are not generally assumable at the "old" or original interest rate. Escalation clauses in these forms permit assumption at "whatever interest rate the lender shall require". This is typically the current market rate. It costs considerable less to assume a loan that to secure a new loan, so assumptions still hold some attraction for buyers/borrowers. A buyer agent should always keep this in mind.

The fiduciary relationship under agency law requires you tell the buyer all information that it is in their best interest to know. FRM loans are most attractive when mortgage interest rates are expected to rise during the time the buyer expects to own the home. The average length of ownership is 7.5 years. Corporate employees can often predict shorter periods. Some buyers also feel more comfortable when they know that their payment will remain the same for the entire length of the loan.

Adjustable Rate Mortgage (ARM) Loans are loans that are made for a definite period of time, 15 or 30 years, as a rule. The interest rate adjustments depend on the terms of the mortgage and the level of the index at the time of an adjustment. There are several important concepts that are associated with an ARM, including margin, annual cap, lifetime cap, adjustment period, and the index specified.

A **margin** is the difference between the index level and the mortgage interest rate. Borrowers will always prefer small margins to large ones since this means a lower interest rate.

An **annual cap** can be explained in two different but important ways. The first is it the maximum change in interest rate that can occur in a one-year period. Most ARM loans in today's market have annual caps of either 1% or 2% points. This means the interest rate on the loan can adjust either up or down according to the loan (1% or 2% points maximum per year).

It is also possible that an annual cap may be expressed as a payment rather than an interest rate cap. If this were the case, only the payment size is subject to the cap. If the interest rate rose more than proportionally to the payment, negative amortization could result. (If the interest rate called for an increase in monthly payment of $35 and the cap was $20 then $15 per month or per payment would be added back in to the loan amount. That is negative amortization.) It is important that you and the buyer be aware of the type of annual cap involved. Ask if there is a possibility of negative amortization.

A **lifetime cap** sets the limit on how much the interest rate can be adjusted, either up or down, over the life of the loan. In other words, if you got an 8% loan and had a lifetime cap of 5% points, the maximum interest rate you could have would be 13% or the minimum would be 3%. Again, the lender provides the value of the lifetime cap for their ARMs.

An **adjustment period** is the time period between interest rate adjustments. Some of common adjustment periods in the market today are 6 months, 1 year, 2 years, 3 years, and 5 years. There are also "fixed/adjustable" 3/1 ARM and 5/1 ARM loans. This means that on the 3/1 ARM, the rate remains the same for the first 3 years and then can be adjusted each year thereafter. Likewise on a 5/1 ARM, the rate remains the same for the first 5 years and then can be adjusted each year thereafter. Some ARM loans also

give the borrower the right to convert to a fixed rate mortgage within a specified period of time for a set fee. These are called **convertible mortgage loans.**

There are three **types of indices** available for ARMS. The first is the **treasury bills (t-bill);** usually these match the maturity of the bill or bond with the adjustment period. These can spike sharply either up or down, and therefore, they are considered the most volatile of the three indices.

The second index is **the cost of funds** index. This index may use a variety of regional or national measures of the cost of funds that a lender faces.

The final index available for an ARM is the **average mortgage contract interest rate**. This rate is computed by calculating the average of all mortgage loans issued by banks and savings and loan associations during the first five days of a given month. This is index is not widely used.

The margin, annual cap, lifetime cap, adjustment period, and index are specified in the mortgage and cannot be changed without the agreement of both parties. There are many ARM loan products available with a variety of margins, caps, etc. You need to be aware of what is available and make your buyer/borrower aware as well.

Graduated Payment Mortgage (GPM) Loans With this type of loan, the payments increase by a specified amount at specified times. For example, the payment might increase by a specified amount each year for the first 5, 7, or 10 years of the loan; then the payment remains constant for the rest of the loan's life. In the early years, the payment is typically not sufficient to cover the interest due, so the unpaid interest is added to the principal balance. Thus, the GPM loan is characterized by negative amortization. If the loan is a negative amortization loan, the mortgagee may be required to carry a higher amount of title insurance coverage on the mortgagee's policy. 125% of the loan amount is not uncommon.

Buy Down Mortgage (BDM) Loans With this loan, there are additional points or up front payments paid to the lender in exchange for a lower interest rate for 1, 2, or 3 years. This is a very attractive loan for young professionals who are just beginning their careers. These loans might be offered by builders with a surplus in inventory. Rather than continue to pay construction interest they will pay the additional costs to buy a loan down, thus making their home more attractive.

Package Mortgage (PM) Loans A package loan involves both real and personal property. The licensee must be aware that these mortgages must be recorded in both the local county register of deeds office for the real estate, and the Secretary of State's office for the personal property as they cover both real and personal property.

Blanket Mortgage Loans This mortgage refers to a loan covering more than one tract of real estate. This would be the type of loan used to acquire a tract of land, plat it as a residential subdivision with individual lots and then sell the lots or build homes on the lots and sell them. This type of loan typically has a **partial release clause** that makes it possible to transfer a fully marketable title on each separate lot. It is not unusual for the loan to be paid off when 20% or more of the lots remain to be marketed. The lender doesn't want to be in the position of having only a few of the less desirable lots remaining with a balance still on the loan.

Balloon Mortgage Loans There are two types of balloon mortgages. The first we will discuss is a **term mortgage loan**. With this type of loan the borrower only pays interest throughout the loan term. The entire amount of principal is then due at the end of the loan term. This type of loan may be especially attractive to investors. This loan minimizes the debt service and maximizes the cash flow for the investor. These are sometimes called "bullet" loans. A short-term loan can be somewhat risky as the borrower must "bite the bullet" and accept the market rate of interest when the loan comes due and he has to refinance. A longer-term loan would be less risky.

The second type of balloon note financing is a **partially amortized mortgage loan**. This loan is amortized over a longer time period than the actual term of the loan. What this means is you could have a 5 year loan, amortized over 30 years, which means at the end of the 5 years the entire balance then would be due. When we think of a balloon mortgage this is typically the one we would have in mind. This is not an unusual loan for both farms and commercial real estate. Many times, the lender is willing to rewrite the note at the end of the note, or when the balloon is due.

Prepayment Penalties

It used to be very common for a lender to charge a prepayment penalty if a borrower paid off the loan early. A law was passed in the early 1980s in Kansas which put an end to prepayment penalties being charged on home loans, except during the first 6 months, as the lender has not had the opportunity to recoup his overhead costs associated with making the loan. It is still common to see lenders charging prepayment penalties on commercial loans.

Lock in Clauses

Some loans made for commercial property may contain "lock in" clauses. When these clauses are in the mortgage, they entirely prohibit prepayment for specified periods of time.

Contract for Deed

This is the primary substitute for a mortgage in the state of Kansas. It is also called an escrow contract or installment contract in some areas. When the property is financed by a contract for deed, this means the seller finances or carries the note for the buyer. Typically the buyer does not receive a deed to the property until the last payment is made. There is no judicial foreclosure process required if the buyer defaults on their payments, as the buyer does not hold ownership. Kansas's law does protect buyers against the forfeiture of built up equity by giving them redemption rights as if judicial foreclosure were involved.

Title companies will not insure title under a contract for deed. If the seller were to have financial problems, the land title is an asset that might go through bankruptcy proceedings. The escrow contract arrangement is different. The seller signs the deed and delivers it to an independent escrow agent. The buyer still does not receive the title until the land payment is made, so default will still not require judicial foreclosure. This type contract for deed is recommended. The contract for deed or escrow contract typically is not recorded in the county register of deeds office. The buyer is permitted under Kansas law however, to file an **affidavit of equitable interest**. This instrument gives public notice that the buyer is in the process of acquiring title to the property being purchased under contract. This provides protection for the buyer against subsequent land title claimants.

Buyer Qualification

There are three primary factors that influence a lender's decision on whether or not to make loans on single family residences. These properties are typically owner occupied and do not produce income. This is true for all types of loans, government (FHA & VA) and conventional.

First, determination of the borrower's ability to pay is made by checking his income and permanency of employment. This is usually done by getting confirmation of wage and salary income from an employer, by showing the lender recent pay stubs, or by two years income tax returns.

Self employed people are generally more difficult to qualify. They generally attempt to minimize their annual income tax liability. This results in showing less income for qualification purposes. Income is evaluated by the most recent two years of employment. If one of the buyers has only been working six

months, his income will not be used to qualify. The exception to this rule is if they came directly out of college to the job. Changing jobs may not hurt the approval process providing the applicant moved to better jobs in the same line of work

Commission and bonus income may be used so long as they can be documented for a two-year period. Part time employment can also be used, again, providing it can be documented for a two- year period. Income received from child support or alimony counts if it can be verified that it is current and will continue for at least another five years. Privacy concerns make it illegal to ask about the receipt of either child support or alimony.

Income from real estate rental properties has special rules applied to it. 75% of rental income is counted. This sum must be reduced by the PITI (principal, interest, taxes, and insurance/monthly payments). This assumes operating costs and vacancy loss of 25%.

Second, a lender will evaluate a borrower's willingness to pay. This is done with a credit report. Having a number of late payments or a repossession because there were items not paid for are red flags to lenders. They will look at the borrower's present housing and verify how timely they have paid their present mortgage or rent. Late payments are sometimes excusable providing it is a good excuse and the borrower can write an explanation satisfactory to the lender. Also, credit reports sometimes contain errors, so applicants should correct these.

Third, the lender evaluates the sufficiency of the collateral. Having an appraisal of the property does this. The lender wants to be sure he does not make a loan that exceeds the value of the property. They may also want the appraiser to indicate the remaining economic life of the property and whether or not the house is located within the 100-year flood plain. If it is, federal flood insurance will be required. Also, flood certifications are required on loans sold to Fannie Mae and Freddie Mac.

Qualifying a Buyer

Qualifying a buyer is a two-step process, the front end and back end of the qualification. This will not be exact, but a rule of thumb for a conventional mortgage loan is 28% for the front end which will be the housing payment. The total housing payment, long term debt, and any installment payments of 10 months or longer, should not exceed 36% of a buyer's income. This is the back end. The higher the LTV (loan-to-value) ratio, the more the lender will look at the qualifications of the buyer.

A buyer can use gift funds for the required down payment, closing costs, prepaids, or cash reserves, subject to certain limitations such as:

1. The donor should be a close relative.
2. The purpose of the funds is a gift and that it is not to be repaid.
3. The borrower is required to have 55% of their money invested if it is an insured loan.

The donor will be required to write a gift letter stating that it is gift, not a loan, and will not be repaid. Some mortgage companies will want to verify the money in the donor's account. This gives them more assurance that it is not a loan. Coborrowers are permitted to help a borrower qualify. The coborrower must be a blood relative and make application for the loan in the same manner as the borrower. They will have the same liability for repayment of the loan. Their income and credit history will be considered just as strongly as that of the borrower.

Second mortgages are permitted by most conventional lenders as long as the borrower can qualify for the payment on the second mortgage as well as on the first mortgage loan. Some lenders do require that the borrowers have at least 5% of their own funds.

The Appraisal

In order for the buyer to get a conventional loan he will be required to pay for an appraisal. The costs may vary from appraiser to appraiser, however, as a general rule they average $300 or more. The lender selects the appraiser. This is not the buyer's choice. Generally the conventional appraisals don't have as many property condition requirements as a VA or FHA appraisal. Many knowledgeable sellers will not offer their property for sale on a VA or FHA loan, as they are aware of the additional costs and requirements for them to sell this way.

Closing Costs and Prepaid Expenses

The seller is permitted to pay all or part of the buyers closing costs required to obtain a conventional loan. As a general rule buyers should pay their own prepaid items. The total amount paid by the seller is usually subject to limitations such as follows: (LTV = loan to value)

LTV (%)	Maximum Seller Contribution
95	3% of the sales price
90	6% of the sales price
75	8% of the sales price

Prepaid items consist of the buyer's first year homeowner's insurance premium, prepaid interest from the date of closing through the end of the mouth of closing, and 2 months escrow each of insurance, property taxes, and PMI, if applicable. That is the same as saying 14 months insurance, prepaid interest, and 2 months taxes and PMI, if applicable.

Conventional Case Study # 1

You have been showing Mr. and Mrs. Bill Williams a property; they have located the home they wish to buy at 1750 Claiborne. You take them back to your office and obtain the following information. They wish to write an offer of $100,000 on the property. They will be paying for a 5% down payment, credit report $52, appraisal fee $295, one half of the title insurance (their portion $290), lender's coverage $75, recording fees $26, survey $200, underwriting fee $150, one half of the closing fee $100, termite inspection $30, tax service fee $30, property inspections $250, and flood certificate $25. They are getting a 7.5 % 30 year loan. The homeowners insurance will be approximately the sales price times 0.0050 annually and taxes are $150 per month. They will be closing on the 15th day of next month. Bill works for MCI and earns $35,000 a year. Susan works for an advertising firm and her annual salary is $36,500. They have a car payment of $295 and a truck payment of $460. They also have 2 credit cards with balances of $750 and $900. (Credit card payments are 5% of the balance, monthly.) They have savings of $12,500. They will put $1,500 earnest money down. Do the following: qualify the buyers and complete a buyer estimated cost to buy. Then calculate their estimated monthly payments.

CONVENTIONAL QUALIFICATION

1	Total monthly income	$	
2	Times installment debt ratio	36%	#1 x #2 = #3
3	Total allowable monthly debt obligations	$	
4	Minus actual mo. installment payments	$	
5	Allowable monthly PITI payment	$	#3 minus #4 = #5
6	Mortgage debt ratio limit	28%	
7	Maximum monthly PITI payment	$	#1 x #6 = #7
8	Maximum monthly PITI payment	$	smaller of #5 or #7
9	Monthly taxes & ins. @ .22 of payment	$	Payment x 22%

10	Maximum monthly P & I payment	$	#8 - #9
11	Divided by amortization factor		(see below)
12	Maximum mortgage loan amount	$	#10 divided by #11
13	Divided by loan to value ratio		#12 / ratio
14	Maximum affordable home price	$	

The factor used in #9 of 0.22 is generally close for an estimate of taxes and insurance. When you do a closing statement and calculate payments on a particular property for a buyer, use the values available for the taxes and insurance. Don't forget special taxes! The amortization factors are: 7.5% 30-year loan is 6.99 per thousand (0.00699) 7% 15-year loan is 8.99 per thousand (0.00899). Once you complete the 7.5% loan calculate maximum affordable home price for a 15 year 7% loan.

Conventional Case Study # 2

Rick Waterman has been employed at the same job for 8 years. He is currently making $38,500 per year. His wife Sarah has been a housewife for several years, but 7.5 months ago she started a catering business from her home. It's doing quite well. She earns $1,500 per month on average. They have a payment on the new van they purchased for her catering business of $330 a month. Rick drives a 4.5-year-old truck that was financed for 60 months with payments of $235. They have a total credit card debt of $800. They live in a home they paid $35,000 for and they owe $12,500 on it. They have savings of $8,000. They want to buy the maximum amount of house they can qualify for. They don't want to pay PMI insurance. They plan to make a 20% down payment. Based on an interest rate of 7.5 % for 30-years, what can they afford? Using the same information based on a 7% loan for 15-years, what can they buy?

CONVENTIONAL QUALIFICATION

		30 year 7.5 %	15 year 7%
1	Total monthly income	$	$
2	Times installment debt ratio	36%	36%
3	Total allowable monthly debt obligations	$	$
4	Minus actual mo. installment payments	$	$
5	Allowable monthly PITI payment	$	$
6	Mortgage debt ratio limit	28%	28%
7	Maximum monthly PITI payment	$	$
8	Maximum monthly PITI payment	$	$
9	Monthly taxes & ins. @ 0.22 of payment	$	$
10	Maximum monthly P & I payment	$	$
11	Divided by amortization factor	$	$
12	Maximum mortgage loan amount	$	$
13	Divided by loan to value ratio	$	$
14	Maximum affordable home price	$	$

The factor used in #9 of 0.22 is generally close for an estimate of taxes and insurance. When you do a closing statement and calculate payments on a particular property for a buyer, use the data available for the taxes and insurance. Don't forget special taxes! The amortization factors are for a 7.5 % 30-year loan is 6.99 per thousand (0.00699) and for a 7% 15-year loan is 8.99 per thousand (0.00899). After you complete the 7.5% loan calculations; calculate for a 15 year 7% loan.

Conventional Case Study # 3 – Net to Seller

You have made calculations for the buyer, change hats. Perform an **Estimated Net to Seller** worksheet. It is on the same property. The sellers' names are: James J. Hedgeworth and wife, Stephanie K. They are going to pay their share of the title insurance, the real estate brokerage fee of 6%, one half of the closing fee, the mortgage loan balance owing on the property of $53,200 with interest at 8%, prorated taxes, attorney fees $45, and recording the release $9.50. Always calculate interest for 3-5 days more than the actual day of closing. For these sellers' net we will assume that our closing date is June 26. Do your calculations accordingly.

The loan is not paid off until the closing agent gets the money to the mortgagee. Also, if it is an FHA loan, be sure you allow 3-5 days before the end of the month. FHA loans do not prorate interest. If it is not paid off before the end of the month, they will be charged interest for another full month. When you do an actual closing statement for a seller you will go according to the contract. There are times that a buyer asks for certain items to be paid. Read the contract and don't leave out anything. It is better to overestimate costs to the seller rather than underestimate. The seller needs to know the MINIMUM amount of money they will have at closing.

Don't let the seller calculate the pay off and use his/her data. Ask them for a copy of the latest statement or year end statement from last year and take the loan balance from it, if you have a MIL (mortgage information letter) from their present mortgage company. Sellers and buyers sometimes mistakenly believe that they are paying more towards the principal on their loan than the actual payment. If you use to low a pay off value, when they actually do close, they will get less money than they expected. This can cause serious problems. Many times sellers calculate what they are going to net out of the sale of their present home and need all of the money to pay down on the next home. BE CAREFUL!

Forms

At the end of this chapter you will find the following forms. These should be useful to you for many years to come.
1) Amortization Factors: You can find the amortization factor for interest rates from 1% to 16% for 15 & 30 year fixed mortgage loans.
2) Loan information and closing cost estimates. This one includes closing costs; title insurance charges, homeowners insurance rates (these may differ slightly from your area to another area), and common VA, FHA and CONVENTIONAL loan rules. These were presented in Chapter 4.
3) A page detailing usual buyer and seller expenses. See Chapter 4.
4) A flow chart of a typical loan. This will help you and your customers/clients understand what has to be done in order to "put a loan together."
5) Don't forget. Information needed for your loan application.

FHA Financing

A FHA loan is a real estate loan insured by the Federal Housing Administration; however, FHA does **NOT** lend the funds. Loans are originated and funded by the private sector. There are many kinds of FHA loan programs. The most often used program is the 203(b), which was created in the 1930's to help pull America out of the great depression. It still continues today to help middle income Americans become homeowners. It is the loan that we focus on in this chapter.

Other loans in need of mention are the FHA-245. This is a graduated payment mortgage. There is also a special section FHA-203(k). This program is available to both owner/occupants and investors. It is used to purchase and rehabilitate residential structures. There are also loan programs to help low income buyers become homeowners. Check with local mortgage lenders that are approved to do FHA loans for other programs if needed.

Advantages: A minimum cash investment is required, closing costs can be financed, and the qualifying ratios are more lenient.

Disadvantages: The FHA has maximum loan amounts, the property must meet FHA minimum conditions, and there is an up front MIP, explained below.

There have been many changes in the FHA program since October of 1998. There are 3 pages explaining the down payment and other pertinent information at the end of the section on FHA. Under an FHA loan there are no minimum loan amounts. There are however special rules for new homes. In order to get the largest FHA loan possible, one of three different sets of rules will have to be applied: 1) the home must be at least one year-old, 2) if under construction, the home must be 95% complete, be inspected by a HUD inspector and be covered by an approved 10-year home warranty; have the soil treated for termites, and be approved by FHA on first submission, or 3) if construction has not yet started, the ground can not be broken until the FHA appraisal is issued, the home must either be covered by a 10-year home warranty or inspected three times during construction: a) after the footing is poured, b) after the dwelling is enclosed, wired, plumbing roughed in, and is ready for sheet rock, *(***called dried-in***)* and c) finally inspected upon building completion, and the soil must be treated for termites. There are also available low ratio FHA loans (90% loan to value) for new construction if 90% completed.

Compliance inspections are not required, but unfinished items must be noted and finished prior to closing. Termite treatment and 10-year warranty policies are not required for low ratio FHA loans.

FHA Mortgage Insurance Premium (MIP)

There is an up-front lump sum MIP charged on FHA loans in the amount 1.5 % of the loan amount. In addition, there is a 0.5% annual premium added to the payments. The 1.5 % can be paid in cash at the time of closing or financed in the mortgage. The cost does not have to be reflected in the appraisal.

Appraisal

An FHA appraisal is required and is good for six months from the date it is issued. Any personal property included in the sale of the home will reduce the appraisal amount. It is advisable to show the sale of personal property by a separate bill of sale. Some of the typical appraisal requirements you will find on an FHA appraisal are:

1. Install concrete splash blocks under all gutter down spouts.
2. Replace, repair, and align all damaged gutters and down spouts.
3. Replace all decayed, damaged or missing siding, fascia, and soffits with new material.
4. Paint exterior wood and metal to full, even coverage after proper preparation.
5. Clean window wells at basement windows around the house, 10 inches below the sill.
6. Remove loose putty, re-glaze glass, and paint exterior window sash and putty.
7. Install new 235lb or better asphalt shingle roof and flashing.
8. Provide or repair screens for all operable exterior windows and doors.
9. Backfill along foundation as necessary to obtain positive drainage away from foundation.
10. Correct cause of wet basement, crawl space conditions, and submit full details of all work performed prior to request for inspection to establish acceptability.
11. Loosen material in joints (cracks) of foundation, inside and out to minimum depth of 0.5 inch and acceptably appoint with mortar.
12. Install acceptable painted (metal wood) access door to crawl space.
13. Install insulation throughout attic ceiling area, certified to have a value of at least R-13.
14. Provide combustion air for closeted water heater and furnace and approved pop-off valve.

Processing Time and Direct Endorsement

The FHA has approved many lenders as Direct Endorsement Underwriters. If the lender is not approved, the processing time will typically be 6-8 weeks but may be reduced if they are later approved as a direct endorsement lender. The interest rates are set by local lenders. Lower interest rates may be negotiated with the payment of discount points up front, and 15-year loans are generally lower interest rates than 30-year loans. As was mentioned earlier, lenders feel a shorter-term loan is less risk.

Alternative Documentation is an option approved by FHA, in place of mailing out verifications, FHA will accept the following: To verify employment, they will accept one month pay stubs and 2 years W-2 forms. To verify deposit, they will accept three months bank statements. To verify current loan payments, they will accept one year of canceled checks to the current lending institution.

Special Assessments

The borrower may assume the remaining installments due on any special assessments of record on the property, providing the other homes in the area also have special taxes. If they don't, FHA may reduce the maximum loan amount based on the special taxes.

Closing Costs

FHA will allow the borrower to finance up to 100% of their allowable closing costs or allow the seller to pay such costs. The FHA will allow a borrower to finance the following costs: loan origination fee, credit report, appraisal fee, survey, termite inspection, title insurance, closing fee, recording fees, home inspection fee, and mortgage tax. FHA will not allow the borrower to pay the following: tax service fee, application fees, escrow fees, loan payoff fees, and underwriting fees. The sellers may pay all or part of any required discount points and other closing costs (including buy downs) on behalf of the borrower as long as the total amount paid does not exceed 6% of the loan amount. Remember that the borrower must pay at least 3% down. The borrower is no longer required to pay their own prepaid costs for property taxes, mortgage interest, and insurance.

Qualifying rates on FHA loans are a little more lenient than on a conventional loan. The mortgage payment may be 29% of the income and the installment debt with mortgage payment may be 41%. You can use the conventional qualifying sheet using the different ratios.

Assumption of FHA loans: (check with the lender to be sure) FHA mortgage loans originated prior to December 15, 1989 are non-qualifying assumable by both owner occupants and investors. FHA mortgage loans originated after 1989 make assumptions possible only with the approval of the Mortgage Company. The buyer must qualify and be approved. Investors are not eligible to assume FHA mortgages originated after 1989. If a buyer buys a home on a non-qualifying assumption the seller should be advised that he/she will still be liable for any loan deficiency or default until it is paid in full. It would be advisable to have an attorney prepare a mortgage to secure the assumption. That way, if the buyer defaults, the seller can foreclose, make up the back payments and save his credit rating. He, of course, then would have the house back with the payments and other obligations.

Homes located in areas with MANDATORY homes associations are not eligible for FHA financing, unless the Homeowner Associations have been approved by FHA or VA.

The FHA will not allow the borrower to pay:

1. Tax service fee
2. Application fees.
3. Escrow fees.
4. Loan payoff fees.
5. Underwriting fee.

Gift Letters

The FHA does allow the borrower to obtain a gift for 100% of their down payment and/or closing costs. The gift must come from a close relative, must be verifiable in the borrower's savings or checking account, and the donor will be required to write a gift letter containing the following information:

1. The relationship of the donor to the borrower
2. The amount of the gift and the purpose of the gift
3. A statement that it is a gift not a loan and that repayment is not required
4. It must be signed by the donor(s) and should include the donor's address and telephone number.

New FHA Program

FHA totally revamped their loan program beginning October 22, 1998 and adjusted the loan amount again in January of 1999. Following is a summary of the **new** program.

FHA Financing New Guidelines: October 22, 1998

98.75%: for Properties with Values/Sales Prices Equal to or Less Than $50,000.

97.75%: for Properties with Values/Sales Prices in Excess of $50,000.

Recent Legislation amended the National Housing Act to provide a revised mortgage calculation process for most purchase transactions using FHA mortgage insurance (MIP). The new formulas permit the maximum mortgage amount to be based on a fixed percentage of the property's sales price (or appraised value, if less) exclusive of closing costs. The borrower's minimum investment will be at least three percent into the property, which may include closing costs. FHA has determined that the minimum cash investment, be based on sales price without considering closing costs to further Congressional objectives of simplifying the FHA maximum mortgage amount calculation without significantly increasing FHA's risk. Closing costs will not be included in calculating the 3 percent cash requirement, but may be included in satisfying the 3 percent requirement.

These revised mortgage amount calculations apply to 203(b), home mortgages, 203(I) outlying areas, 203(n) cooperative units, 203(k) home mortgages in older declining urban areas, and 234(c) condominiums. It does not, at this time, apply to 203(h) housing for disaster victims, and 221 (d) (2) low cost and moderate income loans since these programs have their own loan to value limits.

Sellers may continue to provide financing concessions up to 6 percent of the sales price, with amounts exceeding 6 percent subtracted from the sales price (or value, if less) before applying the appropriate loan to value multiplier shown. Other inducements to purchase must also be subtracted from the sales price or value, as appropriate, in calculating the maximum mortgage amount. (This includes personal property included in the sale.)

While the 3 percent cash investment requirement applies to all eligible transactions in all states, regardless of value, the legislation provides a sliding scale for mortgage calculations based on average state closing costs and values/sales prices. The maximum mortgage may not exceed the amounts first named above. The effect of the new legislation is to eliminate closing costs in the mortgage calculation process on nearly all purchase transactions. Borrowers must have the 3% minimum cash investment, and that investment cannot also consist of discount points, prepaid expenses, etc., or any portion of such charges.

VA Financing

Purpose and Properties Eligible

The VA mortgage loan program is designed to make loans to qualifying veterans so they can become homeowners. Most VA loans are made on single family residential loans, but VA loans are also available on duplexes, triplexes, fourplexes, condominiums, and mobile homes used as a veteran's residence. Suburban residential properties can not be more then 10 acres and the land value can't exceed 30% of the purchase price. VA publishes a pamphlet titled "Questions and Answers about VA Guaranteed Loans" which is an excellent source of information for the most common questions asked about VA loans.

It normally takes 6 - 8 weeks to process a VA loan. Sometimes the time may be shorter if your buyer picks a lender who has an automatic underwriter (In-house underwriter). VA loans are only available to veterans who are going to occupy the home. They are not available to investors who plan to rent the home.

Appraisal

Before a VA loan can be approved, the house must be appraised and inspected by a VA approved appraiser. FHA and conventional loan agencies will accept a VA appraisal. VA does not accept any other appraisals except VA. If the inspector/appraiser finds structural deficiencies, he may make property repair a condition for obtaining a VA guarantee. Also, if the purchase price exceeds the appraised value, the veteran will not be obligated to purchase the property. If the home is in an area where there is a homeowner association, the association must be approved before VA will place a loan on the property. One further note, in order to qualify for a VA loan, newly constructed homes must meet **one of the following** criteria: the home must be covered by a 10-year warranty program; must have been built in accordance with VA specifications (and subject to inspections during construction); or the home must be at least one year old.

If the transaction to be financed with a VA loan includes the sale of personal property, VA may reduce the appraised value of the home by the value of such personal property. As we mentioned on FHA loans, for this reason, it is best to sell the personal property by a bill of sale.

Eligibility Requirements for VA Loans

In order for a Veteran to be eligible for a VA guaranteed mortgage loan, the veteran must have a minimum of 90 days continuous active duty (basic training does not count) during wartime, or at least 181 days of continuous active duty during peace time. The veteran can inquire at the regional VA office for answers about their eligibility. Below are the specific time periods of service and minimum continuous active duty requirements:

Dates of Service	Length of Service
9/16/40-7/25/47	90 days
7/26/47-6/26/50	181 continuous days
6/27/50-1/31/55	90 days
2/01/55-8/04/64	181 continuous days
8/05/64-5/07/80	90 days
5/08/75-9/07/80	181 continuous days
9/08/80-8/01/90	2 years (enlisted personnel)
8/02/90-date	2yrs/period called to active duty (Not <90 days)

Note: Under the final entry above, reservists called up during the Gulf War conflict are specifically eligible for VA loans.

In addition to the continuous active duty requirements, the veteran must have received either an honorable or general discharge. If the Veteran has not already received his certificate of eligibility, he should request one early in the house hunt and buying process since this may take considerable time.

VA Entitlement and Guarantee

There is a limit on a VA loan of $203,000 unless the buyer makes a down payment. The guarantee amount is as follows:

Loan amount	Guarantee
$45,000 or less	50% of the loan
$45,001-56,250	$22,500
$56,251-144,000	40% of the loan
$144,001-203,000	$36,000 plus 25% of the amount over $90,000
$>203,000	$50,750

The veteran's entitlement is $36,000. The program started after World War II, and the entitlement has been raised several times since its beginning. For loans above $144,000 the VA increased the guaranty amount to $50,750.

Once the veteran knows how much eligibility he/she has remaining he/she can multiple times four to arrive at the loan they can get with no down payment. If veteran bought a home when his/her entitlement was $20,000, he/she would now be eligible for $16,000 entitlement because of the increase. A veteran can use his/her VA loan and get reinstatement of full VA loan guaranty benefits if he/she pays off the original VA loan in full, or if he/she sells the property on an assumption, he/she will get his/her eligibility back if another eligible veteran substitutes their eligibility for the selling eligibility and is approved by the lender. If he/she sells the property to a non-veteran he/she may be released from liability without being reinstated for VA benefits. The loans are fully assumable by either veteran or non-veteran buyer at the fixed rate in the mortgage. VA does not set the maximum or minimum interest rate. They allow the veteran to negotiate with the lender of his/her choice for the best rate, etc.

VA Funding Fee, Closing Costs, and Prepaids

On new mortgages there is a VA funding fee. There is a scale for active duty or veteran and National Guard or reservist. The National Guard or reservist is shown in *Italics* beside the active duty or veteran rate in the table below:

Down Payment	First Use	First Use	Subsequent Use	Subsequent Use
0%-4.99%	2.00%	*2.75%*	3.00%	*3.00%*
5%-9.99%	1.5%	*2.25%*	1.5%	*2.25%*
10% or more	1.25%	*2.00%*	1.25%	*2.00%*

The veteran or seller can pay the funding fee in cash at the time of closing or it can be added to the loan and financed.

VA allows the seller to pay the veteran's closing costs and or prepaid expenses. However, any of the following combined items paid by the seller that exceed 4% of the CRV (Certificate of Reasonable Value) will be considered excessive: VA funding fee, prepaid taxes and or/insurance, discount points paid to provide a permanent buy down, or escrow funds paid to provide a temporary buy down.

Qualifications

The veteran must demonstrate that he/she has an adequate amount of income available for family support. The amount required depends on the family size and gross monthly income. The amount available for family support is determined by subtracting federal state, and local taxes, Social Security, revolving debts, child support, alimony, child care, house maintenance and utilities, and the total proposed mortgage payment.

In addition to the family support requirement, the veteran's total monthly payment plus long-term debt should not exceed 41% of the veteran's gross monthly income. Following is a chart showing the residual income guidelines that are based on a combination of family and mortgage loan sizes.

Family Size	Loans <$70,000 ($)	Loans >$70,000 ($)
1	375	433
2	629	726
3	758	874
4	854	986
5	886	1,021
6	961	1,101
7	1,036	1,181

VA CHART OF COSTS

MAINTENANCE & UTILITIES (KS)			FAMILY SUPPORT		
Sq Ft	Maintenance	Utilities	Family	to	Above
			Size	$69,999	$70,000
700	38	104	1	375	433
800	39	108	2	629	726
900	40	112	3	758	874
1000	42	113	4	854	986
1100	43	131	5	886	1021
1200	44	134	6	961	1101
1300	45	136	7	1036	1181
1400	47	138			
1500	53	142			
1600	55	148			
1700	56	156			
1800	57	164	Add $2 for single garage		
1900	58	174	Add $4 for double garage		
2000	59	179			
2100	60	185			
2200	62	191			
2300	63	196	Add $20 for Central Air Conditioning		

FEDERAL WITHHOLDING ESTIMATOR

GROSS MONTHLY INCOME	$
LESS ($212.50 PER DEPENDENT)	$
NET	$
MARRIED PERSONS	
IF NET IS BETWEEN	MONTHLY WITHHOLDING WILL BE
$535 & $3,688	15% of the excess over $535
$3,688 & $7,477	$472.95 Plus 28% of excess over $3,688
$7,477 & $12,654	$1,532 plus 31% of excess over $7,473
$12,654 & $22,325	$3,138 pus 36% of excess over $12,654
SINGLE PERSON	
IF NET IS BETWEEN	MONTHLY WITHHOLDING WILL BE
$219 & $2,121	15% of the excess over $219
$2,121 & $4,477	$285.30 plus 28% of excess over $2,121
$4,477 & $10,229	$944.98 plus 31% of excess over $4,477
$10,229 & $22,100	$2,728.10 plus 36% of excess over $10,229

Other Types of Financing

We have already talked about a contract for deed and an escrow contract. These are used often when the property or the borrower would have a difficult time passing loan approval. Sellers might feel they get a better return on their money by loaning it on the property than they would a savings account. It also may be a safer investment.

Other places a buyer could look for the funds to buy a home or property would be commercial banks. Many small town areas do almost all their home financing through a local bank. The disadvantage with this financing is that they nearly all require 20% down payments. For the most part, the qualifying and other loan costs and procedures are almost non-existent. The RD (Rural Development) loan was formerly, Farmers Home Administration (FmHA). They make home mortgage loans for low and moderate-income home buyers. They only make loans to rural areas, including towns of population of 20,000 or less. You should check with your local FmHA office for their definition of low and moderate income. It is different from one locale to another. The loans we are talking about here are originated through an approved lender. There are also RD loans made directly by the Federal Government to farms and low income buyers.

Credit Unions are a source of home mortgage loans that are well accepted. They usually have market rates for the interest but sometimes charge their members lower loan fees. Other sources of money are charitable and religious organizations and pension funds. Both of these groups generally make their money available to lenders to loan out. A lot of your financing programs available will depend on the area you live and work in.

Following is a list of information needed at the time of loan application. You might want to make copies of this page and give to your buyers prior to their appointment. Many times a lender will have a form they will furnish to give the buyer the information that they at closing. If they don't have a listing like that given below, this is a good list to give them.

Information Needed at your Loan Application

Social security cards
Driver's license and one other picture identification
Addresses and landlords or mortgage companies for the last 2 years
Names and addresses of employers for 2 complete years, current pay stubs
Last year's tax return and W2's
Names, addresses, account #s, and balances of all checking and savings accounts
Names, addresses, account numbers, balances, and monthly payments for all open accounts.
All credit card accounts (even if paid off), minimum monthly payment required, and balances owed
Addresses of all real estate owned
Loan information on all real estate owned
Estimated replacement value of furniture and other personal property
DD214's or statement of service certificate of eligibility for VA loans
Last 2 bank statements for each account
Automobiles owned approximate value (any clear titles)
Divorce decree if applicable
Child care expenses
Nearest living relative (Name, phone number and complete address)
Money for credit report $_____
Money for appraisal $_____

This is an estimate. It will vary in different regions.

USUAL BUYER/SELLER EXPENSES

CONVENTIONAL	FHA BUYER	FHA SELLER	VA BUYER	VA SELLER
Origination fee	1%		1%	1%
Appraisal	$300-400		$300-$400	$300-$400
Credit Report	$ 60		$60	$60
Recording Fees	$25		$25	$25
Survey	varies		varies	varies
Title Insurance				
Mortgagee	$75		$75	$75
Title Co closing	$75	$75	$75	$75
Flood Certificates		$30	$30	$30
Tax Service Fee		$70	$70	$70
Termite Inspection		$50	$50	$50
FHA MIP	2.25% of loan			
VA Funding fee			$2% - 3% of loan	
PMI				95% loans 1.5 % up-front .49% monthly 90% loans .65% up-front .34% monthly

Kansas Registration Tax: $2.60 per thousand (of loan) on all loans

Pre Paid Expenses include:

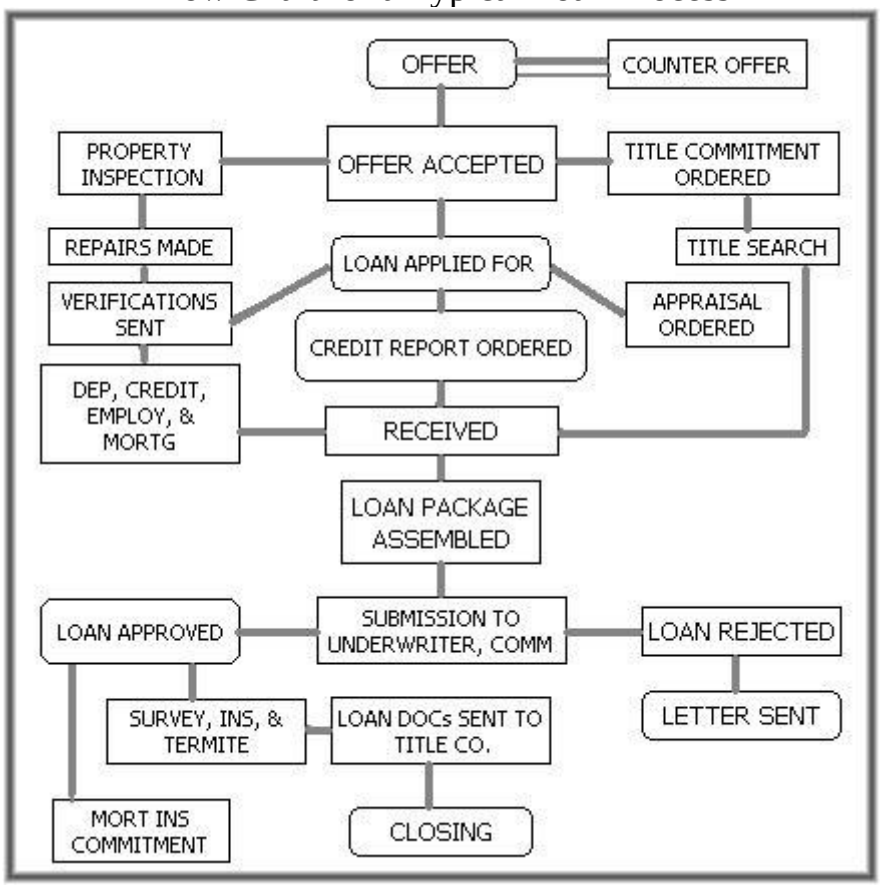
Interest from date of closing to the end of month
First year insurance plus 2 months for escrow account
3 months real estate taxes for escrow account
2 months MIP or PMI when applicable

Amortization Factors for Interest Rates (1% to 16% for 15 and 30 yrs per $1,000)

Rate %	15yr	30yr	Rate %	15yr	30yr	Rate %	15yr	30yr
1.000	5.98	3.22	6.000	8.44	6.00	11.000	11.37	9.52
1.125	6.04	3.27	6.125	8.51	6.08	11.125	11.44	9.62
1.250	6.10	3.33	6.250	8.57	6.16	11.250	11.52	9.71
1.375	6.15	3.39	6.375	8.64	6.24	11.375	11.60	9.81
1.500	6.21	3.45	6.500	8.71	6.32	11.500	11.68	9.90
1.625	6.26	3.51	6.625	8.78	6.40	11.625	11.76	10.00
1.750	6.32	3.57	6.750	8.85	6.49	11.750	11.84	10.09
1.875	6.38	3.64	6.875	8.92	6.57	11.875	11.92	10.19
2.000	6.44	3.70	7.000	8.99	6.65	12.000	12.00	10.29
2.125	6.49	3.76	7.125	9.06	6.74	12.125	12.08	10.38
2.250	6.55	3.82	7.250	9.13	6.82	12.250	12.16	10.48
2.375	6.61	3.89	7.375	9.20	6.91	12.375	12.24	10.58
2.500	6.67	3.95	7.500	9.27	6.99	12.500	12.33	10.67
2.625	6.73	4.02	7.625	9.34	7.08	12.625	12.41	10.77
2.750	6.79	4.08	7.750	9.41	7.16	12.750	12.49	10.87
2.875	6.85	4.15	7.875	9.48	7.25	12.875	12.57	10.96
3.000	6.91	4.22	8.000	9.56	7.34	13.000	12.65	11.06
3.125	6.97	4.28	8.125	9.63	7.42	13.125	12.73	11.16
3.250	7.03	4.35	8.250	9.70	7.51	13.250	12.82	11.26
3.375	7.09	4.42	8.375	9.77	7.60	13.375	12.90	11.36
3.500	7.15	4.49	8.500	9.85	7.69	13.500	12.98	11.45
3.625	7.21	4.56	8.625	9.92	7.78	13.625	13.07	11.55
3.750	7.27	4.63	8.750	9.99	7.87	13.750	13.15	11.65
3.875	7.33	4.70	8.875	10.07	7.96	13.875	13.23	11.75
4.000	7.40	4.77	9.000	10.14	8.05	14.000	13.32	11.85
4.125	7.46	4.85	9.125	10.22	8.14	14.125	13.40	11.95
4.250	7.52	4.92	9.250	10.29	8.23	14.250	13.49	12.05
4.375	7.59	4.99	9.375	10.37	8.32	14.375	13.57	12.15
4.500	7.65	4.07	9.500	10.44	8.41	14.500	13.66	12.25
4.625	7.71	5.14	9.625	10.52	8.50	14.625	13.74	12.35
4.750	7.77	5.22	9.750	10.59	8.59	14.750	13.83	12.44
4.875	7.84	5.29	9.875	10.67	8.68	14.875	13.91	12.54
5.000	7.91	5.37	10.000	10.75	8.78	15.000	14.00	12.64
5.125	7.97	5.44	10.125	10.82	8.87	15.125	14.08	12.74
5.250	8.04	5.52	10.250	10.90	8.96	15.250	14.17	12.84
5.375	8.10	5.60	10.375	10.98	9.05	15.375	14.25	12.94
5.500	8.17	5.68	10.500	11.05	9.15	15.500	14.34	13.05
5.625	8.24	5.76	10.625	11.13	9.24	15.625	14.43	13.15
5.750	8.30	5.84	10.750	11.21	9.33	15.750	14.51	13.25
5.875	8.37	5.91	10.875	11.29	9.43	15.875	14.60	13.35
6.000	8.44	6.00	11.000	11.37	9.52	16.000	14.69	13.45

To use these amortization factors, select the interest rate and the number of years the mortgage loan will be in force (lifetime of the mortgage loan). The value at the row/column interface is the amortization factor. Divide the mortgage loan by $1,000 and multiply the quotient by the amortization factor to obtain the monthly payment that must paid to the mortgage company over the lifetime of the mortgage loan. Example: $100,000 mortgage loan for 15 years at 5%/yr gives an amortization factor of 7.91; thus, the monthly payment is ($100.000/$1,000) x 7.91 = $791/month for 15 years.

Flow Chart for a Typical Loan Process



Chapter 6
CONTRACTS & EARNEST MONEY

Contracts

Where would we be without contracts? Contracts dictate every aspect of our real estate career. We write a contract with a seller listing his/her property and possibly him/her as our clients. We write a contract with a buyer listing them as our buyer client or customer. We write lease agreements for one year or longer. We write earnest money contracts to sell property. We have to have the basic understanding of contract law to be able to do a good job for our clients and customers, and to keep ourselves out of trouble. When you talk about purchase contracts, then you have to be aware of the proper handling of earnest money.

As you learned in principles class a contract is an agreement between two or more parties that is enforceable. It is an executory contract. It is not executed until the closing or final sale takes place. In order to have a contract that is enforceable there are five elements that must exist. If any one of the five does not exist, you don't have a contract. The five are the following:

Competent parties: The parties must be sane and of legal age to enter into an enforceable contract. Thus, it is not legally possible for someone to take unfair advantage of a person who does not have the maturity or mental capacity to exercise good judgment about his/her own best interest.

Legal or property subject matter: A contract can not be enforceable if it involves some kind of conduct that is illegal or against public policy. In other words, a contract can not exist unless the subject matter is both legal and proper.

Offer: An offer is a promise to do some act such as buy real estate or transfer ownership of real estate. Remember that an offer can be withdrawn at any time prior to acceptance. It is not a contract until all parties have agreed.

Acceptance: Since an offer is a promise, it can only be accepted by meeting the conditions written in the contract. Example: Mr. and Mrs. Buyer made an offer of $100,000 on the home of Mr. and Mrs. Seller. Mr. and Mrs. Seller countered with an offer of $112,500. In essence what Mr. and Mrs. Seller did was to reject Mr. and Mrs. Buyer's offer and make an offer to Mr. and Mrs. Buyer. The offer made by Mr. and Mrs. Buyer no longer exists. It can not now be accepted by Mr. and Mrs. Seller.

Consideration: *C*onsideration is probably the most misunderstood of the five elements of a contract. Consideration means that something of value must be given in exchange for each and every promise present in the agreement. Consideration can consist of money, property, personal services, or a promise to deliver money, property, or personal services. A typical real estate contract consists of two promises. One is the seller's promise to transfer ownership and the buyer's promise to pay the sales price. The consideration does not have to have equal value. The house may be worth more or less than the buyer is paying for it. That's acceptable, so long as there is consideration.

Also, remember that offer and acceptance can be one element called **meeting of the minds** or **mutual assent**. For this reason some people only consider that there are four basic elements that have to be present to have a contract.

A real estate contract is a **bilateral** contract because it contains two promises. An option is an example of a **unilateral contract** since it only contains one promise. With an option a prospective buyer pays a seller an agreed upon sum to hold a property at an agreed upon price and terms for a specified period of time. The seller is obligated to sell if the buyer acts on their option. The buyer is not obligated to buy. However, the money paid for the option will not be recovered.
Often parties to a contract decide to change part of their agreement, or to substitute a new contract in place of an original one. If you substitute one contract for another it is called a **novation**. If you make a change or addition to a contract you would attach an **addendum**.

A real estate contract not yet fully performed (closed and title transferred) is an **executory** contract. A contract that has been completed or fully performed is an **executed** contract.

A valid contract is one that is enforceable. A void contract is not enforceable. A **voidable** contract is one in which one or both of the parties have the option to void the contract.

A party to a contract can transfer all of the party's rights under the contract. This is called an **assignment.** This is very common in option contracts. If a contract is written for a buyer and the buyer wants the right to assign the contract, it should be so stated in the contract.

Statue of Frauds

The Kansas **Statute of Frauds** law requires that any contract to purchase or lease real estate for a period of one year or longer must be in writing. Oral listings may be enforceable under Kansas' statue of frauds because they are for less than one year. Under the Kansas Real Estate License Law (BRRETA) all agency contracts (agreements) have to be in writing. You can act as a transaction broker with oral agreement, since you are not an agent for either party. Reminder on oral listings: Kansas Real Estate License Law states that you will **not** put a sign in a yard without the written authorization of the owner.

How to Handle Counter Offers and Multiple Offers

Assume you are the listing agent on a prime property. At 9:00am you get an offer from a buyer. You do a net-to-seller and call and make an appointment for today at 7pm. At 1:30pm you received another offer on the same property. Again you will do a net-to-seller and notify the seller that you now have two offers.

When you are preparing to leave to go to the seller's home you get a call from another agent who is on their way to your office with yet another offer on the same property. At this point you should call the seller and give notice that you have another offer on its way to your office. You will then ask the seller if they want you to wait for the offer and bring all three or go ahead and keep the 7pm appointment with the two offers you already have. The seller will probably want you to wait. It makes no difference which contract came in first. They should all be presented at the same time to the seller and the seller is the one to make the decision.

If there is definitely one the seller likes better then the others work only with it. Counter it or accept it. Remember if the seller rejects the others and the one they decide to work with doesn't go through, you're back to square one. You have nothing.

There are many different ways to counter one or more offers. You can advise the seller to cross out, change, and initial the changes on one or more offers. Then write in all of the contracts that the buyer is

aware that the seller is countering multiple offers. That the first one to accept the seller's counter will have a contract and the others would be withdrawn.

Don't have the seller sign any contract. Only initial the changes or use a counter offer form. Be sure you get your broker's guidance on how they want you to handle offers and counter offers.

Earnest Money and Earnest Money Contracts

Whether you call it a sales contract, earnest money contract, or purchase agreement, they all have the same basic meaning. They are all a contract by which the buyer and seller agree to sell and buy a piece of real estate.
Usually earnest money accompanies a buyer's offer to purchase. Earnest money is not required to have a valid contract. Earnest money is exactly what it says. Money to show the buyer is earnest or sincere! If you are a buyer's agent, the notion that a buyer should give as little as possible for earnest money could be completely off base. If you put a small earnest money deposit down and there are multiple contracts, the one with a larger amount of earnest money will most likely get the most consideration. The seller perceives that buyer as more "earnest."

If your buyer wants a particular property and can only secure a contract with a sizable deposit, you can ask for the earnest money to be deposited in an interest bearing account and the interest paid to the buyer. This would have to be a part of the contract and agreed on between the seller and the buyer.

Earnest money may be in the form of a personal check, cashier's check, money order, promissory note, or some other type of personal property. The form of the earnest money must be stated in the contract and agreed on by the seller. Make sure the seller knows the form of the earnest money.

The license law requires that earnest money be deposited within five business days, unless otherwise agreed in writing between the parties. If you have additional earnest money stipulated in the contract, to be paid at a later date, it must be deposited on the date in the contract, not five days later. The listing broker is generally the one who handles the earnest money, which is being held on behalf of the seller. In the event either party wants the earnest money you need to inform them that the Kansas Real Estate License Law permits the disbursement of earnest money under one of three specific circumstances:

1. when the transaction closes according to the contract,
2. all parties to the contract have given written consent,
3. or under a court order.

It is not the broker's decision who will get the earnest money. It has to be handled by one of the above three reasons. The only other way money can be disbursed if the deal "falls apart" is if the "h" language is in the contract.

This language is found in Kansas License Law 58-3061(h): "Notwithstanding any other terms of this contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and seller agree that failure by either to respond in writing to a certified letter from broker within seven days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit with 30 days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto."

Contingency Clauses

When you think of a contingency you immediately think of the sale of the buyer's present home. This is not the only contingency. There are several more. The contract is usually contingent upon financing, mechanical inspections, pest inspections, repairs both required by the appraiser and/or the mechanical inspector, water well and septic tank inspections on rural property, and seller's disclosure to the buyer's satisfaction and possibly environmental inspections.

Since we are now aware of all the contingencies, we are also aware of the fact that we need to read and understand the contract fully. Why? Because when you present the contract(s) to the seller, you must advise them where to sign and initial. You must discuss the entire contract with them. It is a legal binding instrument. It is serious! And this is not just with earnest money contracts. This is true with all types of contracts. Anything that you expect the seller or buyer to sign you should be prepared to explain fully and give them copies of everything they sign.

In the event you are explaining the contract or any other document, and the party you are explaining to, has questions, you should always advise them that you are not an attorney and they should consult with an attorney of their choice. Many states make it mandatory that the buyer and seller both have a place in the contracts to write in who their attorneys are.

If you are asked to write a second contract for a property, do it only if the first is no longer valid. Licensees have an obligation to treat all parties fairly. This includes the lender. If you write one contract and have agreement from all parties and then you write a second contract so that a borrower can borrow more money, you are breaking the law. It is not only the buyer or seller that may ask you to do this. Even lenders will ask you. This is especially true if they are mortgage brokers selling the loans to someone else.

If you purchase a property, you must always be very careful to disclose that you are a licensed real estate agent. Follow your broker's direction as to how they want you to proceed. Many brokers would want their licensees to terminate any listing they had on the property and advise the seller to have an attorney or another real estate broker to represent them.
The following pages give you step-by-step instructions on how to write an **Earnest Money Contract**. Read through these instructions and then write a contract for Bill and Alisa Williams. They were the conventional case study you did. The seller's names are Jeffrey and Barbara McBride. The legal description is Lot 1, Block 6, Section 1 of Clear Creek Village, Anytown, Kansas. Closing shall be the last Friday of next month. You can take the data you will need from the closing statements you did previously.

Contract for Purchase and Sale of Real Estate

Important Points to Remember: Legal Description: If legal is not on the property sheet obtained from the listing office, you can obtain it from the tax office. If long legal, reference the attachment and attach courthouse information.

Purchase Price:

a. Write the price (as in a check) on the first line.
b. Then the number amount on $_____ line.
c. If either Seller or Buyer changes this value:
    1. Be sure to line through the written and number values.

2. Change both lines.
3. Have all parties named in transaction affix initial, date, and time changes.

Earnest Money:
Amount varies and is usually determined by purchase price. (Common practice is no less than $500 or 2% of purchase price.) See paragraph 5 of the contract.

New Mortgage Proceeds:

a. A loan amount to be borrowed by buyer excluding mortgage insurance (PMI or MIP).
b. If purchase price changes, this amount must also be lined through, changed, initialed, and dated.
c. If not a New Mortgage, insert N/A.

Mortgage assumed:
Never leave empty **blanks** on a contract. Always, insert the applicable information or N/A in each blank, if no other information goes there.

Every buyer and seller is entitled to a neat, clean, readable, and professionally written contract.

Paragraph Number and Explanation of information to insert into blanks:

Buyer: Obtain Buyer(s) legal name(s) and how they would like to hold title. All parties involved in a purchase should be named with marital status indicated: e.g., John Doe, a single person (or married person), John Doe and Mary Doe, husband and wife.

Seller: Ask Seller(s) or listing agent how title is held or use the names on county tax information from the courthouse. It is advised not to use as signed below. If unable to obtain information, leave a blank and be sure to ask the listing agent to fill it in.

Property address: Use the common address including the city, state, and zip code. If it is unknown, look in telephone book or county tax information for complete information. Buyer needs information for change of address, including zip code.

a. If the existing mortgage on subject property is assumable and assumption information is available, **complete** all blanks.
b. Current loan balance goes in the $_____blank.
c. If not an assumption, insert N/A.

Other: (See paragraph 30 of the contract):

a. If seller is going to carry in lieu of/or in addition to a new mortgage, or if Buyer is obtaining special financing, a dollar amount goes in $_____.
b. Further explanation should be described in paragraph 30 such as "see attached escrow addendum" or state terms and conditions of special financing, etc.
c. If not using this line, insert N/A.

Approximate Balance Due from Buyer at Closing:

a. Indicates only the down payment amount minus earnest money deposit:
    1. (Sale Price) – (Earnest Money) – (Mortgage Amount) = $_____.
    2. This figure should <u>not</u> include loan costs or prepaid values.

b. Seller agrees to pay loan costs prohibited to be paid by Buyer on government loans up to $_____ _____:

1. This value varies with lenders. Prohibited costs may include: tax service, underwriting, a document prep fee, express mail fees, and, on VA loans termite inspection and closing fee. This value can run from $75 to $500. Check with the Buyer's lender.
2. If not a government loan or Seller elects not to pay any of these fees, insert N/A.

c. Buyer agrees to pay loan costs in approximate amount of:

This value indicates all loan costs incurred by obtain a new mortgage including origination and closing fees.

d. Buyer agrees to pay prepaid items in approximate amount of $_____

1. This value should include all prepaid or escrow amounts, i.e., taxes, ins., and PMI, including the 1st year's premium.
2. If Buyer asks Seller to pay these expenses, line through the word "Buyer" and write in "Seller" and have this initialed by all parties*.
3. If not a cash sale, insert N/A.

e. Insert buyer or seller agrees to pay discount points not to exceed $_____(insert a dollar amount).

f. If there are no discount points insert, N/A in both blanks.

g. Insert buyer or seller agrees to pay for Home Warranty Plan in approximate amount of

$_____ Usually $360, if AHS, it will be more if over 3500 square feet!

1. Insert a dollar amount of the premium. Make sure you attach a copy of warranty and give the Buyers a copy.
2. Insert N/A in both blanks, if Buyer and Seller elect not to have a Home Warranty Plan

h. Title evidence to be ordered from:

Insert title company name that the Buyer selects from a list of choices or use same title company where earnest money is to be deposited. Note: Sometimes Seller has preference because of previous title work already completed, if so, this should be noted in remarks on property sheet.

***Note:** There are regulations that limit the amount a Seller can pay in the way of closing costs, points, etc. While these are subject to change, some examples follow:
97%LTV-Seller can pay up to 3% of the purchase price in closing costs, but **no prepaids**.
95%LTV-Seller can pay up to 3% of the purchase price in closing costs, but **no prepaids**.
90%LTV-Seller can pay up to 5% of the purchase price in closing costs, but **no prepaids**.
80%LTV-Seller can pay up to 6% of the purchase price in closing costs, but **no prepaids**.
FHA and VA are subject to different requirements/guidelines (ask lenders)

Earnest Money (Pursuant to paragraph 27):

a. Earnest money can only be released by one of the following methods [Statute 58-3061-(g)]: When a transaction is closed according to the agreement of the parties.
   1. Pursuant to written authorization of Buyer and Seller.
   2. Pursuant to a court order.
   3. When a transaction is closed according to the agreement of the parties.

b. …hereby deposits with where earnest money is to be escrowed. Check with listing office as to who holds their trust account and Buyers check should be made out accordingly.

c. …..form of business, personal, cashier's check .

d. …..amount of $ insert dollar amount of earnest money.

New Financing:

a. 1st blank (Insert type of mortgage; i.e., Conv. VA, FHA, Bond, Etc.)
b. 2nd blank (Insert current interest rate quoted Buyer or you can insert "at prevailing rate.")
c. 3rd blank (Insert how many years for which the mortgage will be financed, i.e., 10, 15, 20, 25, or 30 years.)
d. 4th blank (Insert date that the Seller can expect to receive written confirmation of loan approval of the Buyer. It should be no less than 3 weeks after contract date, but, no later than 3 to 5 days prior to closing so the Seller knows that there is a firm contract and final moving arrangements can be made.)

Closing and Possession:

a. …….on or before_____(Insert closing date which should be no less that 4 to 6 weeks after a contract date for new loan financing, or allow a reasonable time to order title work and schedule inspection and closing time, if cash or private financing. Check with your title company to see length of time to complete title work. Recommend no less than 10 days from date of contract. Contract reads "on or before," it's easier to close early vs. obtaining agreement to extend).
b. Seller agrees to give possession as follows:_____Insert "upon closing & Funding", if Seller requires more time insert "closing +_____ days, (1 to 3 days) and time of possession, or, "closing +_____u hours, (24 to 72 hours"). If Seller needs additional time, it is recommended to use a "Possession after Closing Addendum.")

Agency Disclosure:

Listing Broker/Licensee…..

( ) Agent of Seller – If co/op out and listing agent is a seller's agent.

( ) Designated Sellers agent – check if another agent in your company or the listing agent from another company is a designated agent.

( ) Transaction Broker – check if:

a. You are the Listing Agent and you have a signed "Buyer Agency Agreement" with Buyer. (Transaction Addendum in the listing file.)
b. Listing agent advises you that he/she is a Transaction Broker.
c. In special circumstances (ask your broker). If Selling as FSBO and you are a Buyer's Agent, strike out this section and insert "Seller represents self."

Check the appropriate box – Do not leave a blank if you're writing the contract and if the contract comes to you blank make sure you check the appropriate box.

Selling Broker Licensee…..

( ) Agent of Seller – Should be checked if your company is an agent of the seller without designated agency and you do not have a buyer agency agreement with the buyer.
( ) Designated Seller's Agent – Should be checked if your company has a designated seller's agency (and you are the designated agent) and you do not have a Buyer Agency Agreement with the buyer.
( ) Agent of the Buyer – Should be checked if you have a buyer agency agreement with the buyer and it's another company's listing.
( ) Designated Buyer's Agent – Check if you have a "Buyer Agency Agreement" signed with Buyer regardless of in house or co/op out.
( ) Transaction Broker – Check if:

a. You do not have a "Buyer Agency Agreement" signed with Buyer (In house or co/op out, no Addendum is necessary) or,

b. You are the "Listing Agent" and have a "Buyer agency agreement" signed with Buyer (Transaction Broker addendum signed by both parties and in both listing files.)

Remember, you are presumed to be a Transaction Broker unless you have a signed Agency Agreement with Seller or Buyer. If you have a signed Agency Agreement you are the agent as listed.

Inspection: (One of the following boxes must be checked):

a. 1st box marked if the Property Condition Report is available for Buyer, initialed, and signed by Buyer acknowledging receipt and attached to contract.

b. 2nd box marked if the Property Condition Report is not available at the time the contract is written, but, will be provided within ____days. (Number of days is usually 3 to 5).

c. 3rd box marked if Seller is not currently or has never occupied property and has no true knowledge to answer questions on property condition report or if the home is being built (new).

d. These inspections will be obtained within _____ number of business days, often 10 is adequate for the inspections to be performed.

e. In the event any inspection results in a report of a defect, within three business days of receiving report, **Buyer must** request in writing (Your office may have a proposed Contract Amendment form) that the Seller repair or replace the defect. If Buyer does not make such a written request in such time, then Buyer waives any claim in regard to defect. If the differences are not resolved within _ (3 to 5, generally) business days…..

If the Property Was Built Prior to 1978:

Unless the Buyer waives the opportunity to conduct a **Lead Test** inspection on the Seller Disclosure of Information form, attach "Lead Test Contingency Addendum", and have the buyer sign acknowledging Buyer has 10 days in which to obtain a lead paint test and that they have received an EPA Pamphlet explaining about lead-based paint. If Buyer elects **not** to have this test, then this contract is in full force and effect.

f. Make sure the Buyers understand that they have a right to an inspection of subject property and if they elect not to secure an inspection by a licensed/certified inspection company, they waive any claims for property defects, if any, at a future date. It is best always to give them the right in the contract to have any and all inspections done.

Miscellaneous:

This space is left available for additional information, contingencies, personal property to remain, etc.

1. All items per the MLS printout #XXXXX (or property sheet if not a member of an MLS) attached and hereby made a part of this contract.
2. Any personal items, e.g., stove, refrigerator, etc. should be put on a "Bill of Sale."

Additional Terms and Conditions Verbiage:

The following paragraph insertions cover situations which occur most frequently and should serve as a check list to consider when drafting a contract with a Buyer or a Seller. Generally, be aware of the need for one or more of these paragraph provisions in the contract at the time it is written and initially negotiated. Each insertion should be filled in or adapted as necessary. If changes are added after Buyer signs initial contract, any such changes must be initialed and dated by all parties.

After a contract that has been signed, if one or both of the parties suddenly call for a mutually adjusted item or one of the following provisions, it is advisable to prepare a separate contract addendum and provide signed copies for all principals, loan company, and make sure you have a copy in the office file.

a. Contingency kick out – This contract is contingent upon sale of Buyers home at (see an attached contingency addendum). Per paragraph 6 and 20, Buyer to cause for and order appraisal and property inspections within ____days after release of contingency.

b. If a second contract is presented to Seller, be sure to insert "This contract subject to release of first contract by _date and time that 1st contract will be voided."

c. Contingent upon successful closing of Buyer's property at __address of present home currently under contract to a pre-qualified Buyer. Lender's documentation attached.

d. Contingent upon Buyers corporate relocation company approval of this contract within ____days of acceptance of this contract.

e. Buyers request Seller pay Buyers Real Estate Brokerage Fee to __Your company name the amount of _____ % of sales price upon successful closing. (Use only if listing company is not offering compensation to Buyer Agents or on a "For Sale by Owner.")

f. The terms and conditions herein stated constitute a valid offer to the (Seller or Buyer ____ until _____am/pm on _____date. After said time and date this contract (or counter offer) will become null and void.

g. Irrigation well only – Contract contingent upon County Health Department inspection of any irrigation wells (and septic, if any) at Seller's expense. If well is not in compliance with regulations and is required to be plugged or brought to city/county code, Seller shall comply and connect sprinkler system (if any) to city water at Seller's expense. (If septic needs repair, cleaning or replacement Seller shall have work completed by licensed contractor at Seller's expense.)

h. Drinking water well – This Contract contingent upon County Health Department inspection of water well (and septic, if any) at Seller's expense. If well and/or septic (lagoon) is not in compliance with regulations, Seller, at Seller's expense, shall bring such to compliance by a licensed contractor.

i. Buyer understands that at accepted sale price Seller will not make any repairs or replacements, but Seller authorizes Buyer to have any and all inspections, as per paragraph 20, within__days of acceptance of this contract. Buyer understands Seller will continue to market subject property until inspections are completed and acceptable to Buyer within agreed upon time period.

j. Seller has never been a resident in this property, (or has not lived in property for days__.) As a result, Seller has no personal information pertaining to this property and urges prospective Buyer to obtain inspection and condition reports on the residence from qualified experts of Buyer's choice.

k. This contact contingent upon Buyer's approval of inspection report. If said report is not satisfactory to Buyer, this contract becomes null and void and Buyer's earnest money refunded. Determination to be made as per paragraph 20.

l. New Construction – On completed or near completion you must note any items Buyer wants added to property, selection of colors, appliances, fixtures, etc. subject to Buyer's approval of Builder's allowance and make sure a set of plans and specifications are made part of the contract, if available. Correct verbiage: Attached plans and specifications are (made part of this contract) or (subject to Buyer's approval of plans and specifications) or (subject to house to be built and completed in like condition of builder's model (or specifications) at____Address of model or specifications__including any upgrades with the following exceptions:_____. It is agreed that the Seller/Builder will complete the above described property in a quality, professional manner with a "turnkey" condition upon completion with a final walk-through prior to closing. Also, always add. "Seller agrees to warrant the house with respect to deterioration in material and workmanship, at his expense, for one year from the date of closing of this transaction."

m. Contingencies – Where there are certain "subject to" and/or "contingencies" always insert a termination date. Do not leave items, conditions, contingencies, etc. in contracts that are "subject

to" that do not terminate prior to the closing date. In addition, you should **remove contingencies, in writing, prior to their "due" date**. For example, if the sale is contingent on the Buyer obtaining financing, when the Buyer receives a commitment, obtain a letter from Buyer's lender and Buyer indicating that they are removing the financing contingency. Contingent upon sale of Buyer's house and Buyer has a valid purchase contract, then Buyer should immediately show proof of sale to Seller along with pre-qualify or pre-approval letter from the Buyer's lender.

n. Back-Up Contract – This language should be used if Buyer and Seller want the contract to stand should the primary contract terminate – "It is understood between all parties that this is a Back-Up Contract and will go into effect only if the primary contract becomes nun and void." Check to see if your office has a "Back-Up Contract Addendum." Buyer's earnest money shall not be deposited unless this contact becomes primary. When it becomes the primary Contract the Buyer shall cause appraisal and inspections to be ordered.

Reminder – Buyer and Seller hereby acknowledge receipt of itemized estimated cost to Buy or Sell prior to signing of contract.

Reminder – THIS IS A LEGALLY BINDING CONTRACT, IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE. (The contract can always be subject to Buyer's or Seller's counsel approval. Determination to be made not later than _ days after acceptance of contract.)

Buyer(s) and Seller(s) and all parties to "Contract for Purchase and Sale of Real Estate" need to sign and print their legal name(s), social security #(s), date and time.

For Office Use Only – selling agent prints or signs their name, firm name and phone #. Listing agent information also needs to be completed.

General Comments – A sure sign of professionalism in our business is the Contract for Purchase. Its completeness and clarity is of vital importance. Urgency is not an excuse for a poorly prepared contract. Such a contract can cause trouble and uncertainty during the period prior to closing and can lead to disagreements at closing. No deal or amount of money is worth dissatisfaction especially when the dissatisfaction is caused by a poorly written contract. We should all strive to have repeated business from our clients and customers and this won't be achieved if we don't write good contracts.

It would take another book to cover all of the variables that come up when writing and negotiating contracts. Most of these variables are simply a matter of putting them in simple, clear, and complete sentences in the contract or on an addendum covering what the parties agree to. **Never rely on verbal understandings or agreements.** Put everything in writing.

Preparation and presentation:
When working with buyers or sellers in preparing and submitting contracts and counter offers, YOU **must** go over very paragraph and explain it thoroughly to the buyer or seller. Remember, you're not an attorney, if the party you're working with doesn't understand, tell them to seek competent legal advice.

CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE

In consideration of the mutual agreements herein, it is mutually agreed that Seller will sell to Buyer and Buyer will buy from Seller, the following property on the following terms and conditions:

1. BUYER: _____

2. SELLER: _____

3. PROPERTY ADDRESS: _____
(CITY, STATE, ZIP CODE) _____
LEGAL DESCRIPTION _____

4. PURCHASE PRICE: Buyer shall purchase and pay to Seller as consideration for the above described real property the amount of: _____ Dollars $_____
In a manner as follows:

EARNEST MONEY: ….. . . . . $_____
(See paragraph 5)
NEW MORTGAGE PROCEEDS: ….. . . . . $_____
(See paragraph 6) (Does not include mortgage insurance)
MORTGAGE ASSUMED: (See paragraph 11) . . . . . $_____
Type loan_____ Lender_____ Present interest rate____%
Approximate present payment $_____ per month including _____
Assumption rate_____ Assumption fees shall be paid by_____
OTHER: (See paragraph 30) . . . . . $_____

APPROXIMATE BALANCE DUE from Buyer at closing . . . . . $_____
subject to adjustments and prorations (not including closing costs or pre-paid items)

Seller agrees to pay loan costs prohibited to be paid by Buyer on government loans up to $_____
Buyer agrees to pay loan costs in approximate amount of: _____
Buyer agrees to pay prepaid items in approximate amount of: _____
_____agrees to pay discount points not to exceed: _____
_____agrees to pay for Home Warranty Plan (copy attached) in approximate amount of: _____
Title Evidence to be ordered from: (See paragraph 17) _____

5. EARNEST MONEY: Pursuant to paragraph 27, the Buyer does hereby deposit with _____ (Company Name), earnest money in the form of _____ and in the amount of $_____, as a security that the terms and conditions of this Contract shall be fulfilled by the Buyer. Earnest money shall be deposited within five business days after all parties accept Contract. Said earnest money shall be applied to the purchase price at closing.

6. NEW FINANCING: Applicable when the purchase of this property is contingent upon the Buyer obtaining a ____ first mortgage loan at an initial interest rate not to exceed _____% plus required Mortgage Insurance or VA Funding Fee, and for a term of _____ years. Buyer shall apply for said loan within seven (7) working days after the Contract is signed by all parties and use every reasonable effort to obtain the above-noted loan. This offer is subject to and contingent upon the Buyer qualifying for and obtaining a mortgage commitment on or before _____ _____. Buyer shall pay for and cause to be ordered an appraisal and credit report at loan application. If property does not appraise for at least the purchase price, this Contract may be renegotiated or Contract will become null and void; or in the event Buyer is unable to obtain such financing, the Buyer shall promptly furnish written evidence from the lender to Seller or Seller's agent. In either such event, the earnest money, less accrued expenses, shall be refunded to the Buyer, pursuant to paragraph 27, and this transaction will be null and void. Loan costs, prepaid expenses including any mortgage insurance and discount points, if any, shall be paid as specified in paragraph 4. Buyer will have the necessary funds available to close this transaction, payable by cashier's check or certified funds.

7. APPRAISER/LENDER REQUIREMENTS: Should lender or appraiser require improvements or repairs, Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract. If Seller elects NOT to make said repairs/improvements; Buyer may make said repairs at Buyer's own expense. Buyer shall pay for first inspection of required repairs/improvements. Seller shall pay for any subsequent re-inspections that may be necessary.

8. CLOSING AND POSSESSION: The parties agree that time is of the essence and Buyer agrees to make final settlement on or before _____. Seller agrees to give possession as follows: _____
_____

9. AGENCY DISCLOSURE:
Listing Broker/Licensee is functioning as an: ( ) Agent of the Seller ( ) Designated Seller's Agent ( ) Transaction Broker
Selling Broker/Licensee is functioning as: ( ) Agent of the Seller ( ) Agent of the Buyer ( ) Designated Buyer's Agent ( ) Transaction Broker

Seller and Buyer acknowledge receipt of the Real Estate Brokerage Relationships brochure.

10. SURVEY: Broker recommends that Buyer acquire a survey on the property being purchased, regardless of lender's survey requirements.

11. EXISTING MORTGAGE FOR ASSUMPTION OR OWNER CARRY: The Seller shall punctually pay and comply with the terms of the existing mortgage, related note, or escrow Contract (Contract for Deed) hereinafter referred to as Instrument, until the date of closing and/or delivery of Deed. If said Instrument is being assumed by the Buyer, the Buyer shall, on and after the date of closing, punctually pay, defend, indemnify and hold Seller free and harmless from all of the terms, conditions and provisions of said Instrument. If Seller is carrying some or all of the purchase price, or if a non-qualifying Instrument is being assumed, acceptance of this Contract is subject to Seller's approval of Buyer upon Buyer providing a current credit report, job verification(s), financial statement and verification of funds within seven (7) working days of Contract acceptance, unless Seller has waived, in writing, said requirements. In such an event, the Seller shall furnish the Buyer, at closing, a copy of any Instrument to be assumed and an assumption statement with respect to the Instrument showing the principal balance, method of payment, interest rate, and sufficient information to show that said Instrument is not in default. If the Instrument requires acceptance of the Buyer by the Instrument holder, and the Instrument holder denies acceptance of the transfer; or, if this Contract (in paragraph 4) is subject to Buyer's assumption of an Instrument at the original interest rate and with the original terms of said Instrument, and said original rate/terms are denied by Instrument holder, then the Buyer shall, prior to closing, have the option of either rescinding this Contract and obtaining a return of the earnest money (less expenses as herein above stated) or accepting the assumption of a modified Instrument and proceeding with the purchase. Interest accruing on above-stated Instrument shall be prorated as of the date of closing. On loan assumptions any reserve or escrow account held by any mortgagee for taxes, special assessments, mortgage insurance and other insurance shall be purchased by Buyer at closing. Assumption of the mortgage loan by buyer does not release seller from liability unless they request and obtain a release of liability from the mortgagee and insurers of the loan, if any. Without such a release, sellers may be liable for any deficiency resulting from a subsequent foreclosure of the mortgage assumed.

12. TERMITE INSPECTION: The improvements shall be inspected by a licensed termite treatment company selected by the Buyer and at the cost of the Buyer, unless payment by Buyer is prohibited by lender/guarantor/ insurer, in which case the Buyer shall select and Seller shall pay for said inspection. If the dwelling garages (attached or unattached) or other improvements are found to have active or inactive termite infestation that was untreated or partially treated, treatment shall be made at Seller's expense by a licensed exterminator of Seller's choice. Buyer has been advised that the termite inspection will be a report of the visual evidence of termite infestation based on inspection of accessible areas only on the date of the inspection. Normally, no inspection will be made in areas that are obstructed or inaccessible. The report will not guarantee that infestation or damage does or does not exist or will not occur.
Buyer may at Buyer's option secure an inspection for visible damage including structural damage as a result of present or past termite activity. A licensed building contractor at Buyer's expense shall make said inspection. If said inspection reveals visible damages, Buyer may request in writing the repair of said damage. Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract and return earnest money. If Seller elects NOT to make said repairs/improvements, Buyer may make said repairs at Buyer's own expense. However, if Seller is unwilling to repair Buyer-requested termite damage, Buyer reserves the right to cancel or renegotiate this Contract. These inspections shall take place as soon as possible.
In the event Buyer does not have the premises inspected, then Buyer shall be obligated to purchase property regardless of any termite infestation or termite damage and the Seller and broker are relieved and released of any obligations relating thereto. Seller agrees that Buyer or Buyer's representative may inspect any repairs before the closing date.

13. PROPERTY: The real estate described herein, together with improvements attached thereto, shall include, if any, gas heaters, attic fan and/or ceiling fans, central air-conditioning, all window air-conditioning unit(s), lighting, heating and plumbing equipment and fixtures, bathroom mirrors and attached mirrors, window and porch shades, shutters, storm windows and doors, screens, all window and door coverings now in place, attached curtain and drapery rods, awnings, television antenna and antenna equipment, keys, water softener (if owned), attached outside cooking units, gas lights, automatic garage door equipment including remote transmitters, attached and unattached wall-to-wall carpeting, built-in kitchen appliances, attached shelves, fire, smoke and burglary detection systems (if

owned), mail boxes, installed water well pumps, propane/butane tanks(s) (if owned by Seller), storage buildings, swimming pool and all pool equipment, all flowers, trees and shrubs, and anything else buried, nailed, bolted, screwed, glued or otherwise permanently affixed to the premises, or any improvements thereon, with any exceptions or additions as noted in Miscellaneous paragraph 30.

14. PRORATION OF TAXES AND RESERVES: Seller represents and warrants that all taxes and special assessments shall be paid from the proceeds of the sale as herein provided. All ad valorem taxes, the current annual installment of special assessments, rentals, homeowner's association dues, and interest, if any, shall be adjusted and prorated as of closing date, unless otherwise agreed. General taxes shall be prorated for the calendar year on the basis of taxes for the previous year unless the previous year's assessed valuation was based on a lesser-improved property, in which case said taxes shall be determined from the assessed valuation and the officially-established mill levy prevailing at closing. Special assessments shall be prorated on the basis of the amount (for the calendar year) ascertainable at the time of closing by the closing agent.
The Buyer understands that the Buyer is responsible for payment of all ad valorem taxes and special assessments becoming due after the closing date and that Buyer is assuming all unmatured installments of special assessments. Periodic reappraisal, required by law, may result in a change in taxes.

15. INSURANCE: Seller shall maintain current insurance in force until closing date. The Buyer at closing shall furnish insurance policies necessary for the protection of the Instrument holder(s), containing loss clauses in favor of the Instrument holder(s) as their interests may appear. If required and so specified, the insurance policies shall be held by the Instrument holder(s) or escrow agent until said lien is paid in full. Buyer agrees to purchase flood insurance policy if and when required by the lending agency pursuant to federal law. Should possession take place prior to closing, Buyer shall secure hazard insurance for personal property effective on or before possession date.

16. CASUALTY LOSS: In the event of property damage to the premises by fire or other casualty prior to closing, the Seller shall restore same. In the event repairs cannot be completed prior to closing, Buyer and Seller may renegotiate this contract or declare it null and void. If the estimated cost of repair exceeds 10% of the purchase price, either Buyer or Seller may cancel this Contract and all earnest money shall be returned to Buyer, less expenses.

17. TITLE EVIDENCE: The Seller shall cause to be furnished to Buyer a title insurance company's title binder to issue, after closing, a title insurance policy in an amount equal to the full purchase price naming Buyer as the insured. Except for assumptions under paragraph 4, the title binder shall show marketable title vested in Seller, subject to: Easements, encroachments which would be disclosed by survey, rights-of-way of record, trees, plantings and fences thereon; restrictions and protective covenants of record, provided no forfeiture provisions are contained therein; unmatured special assessments, zoning laws, ordinances and regulations; rights of tenants in possession; the liens, if any, described therein; and those exceptions which are standard to American Land Title Association's Form B or as specified herein and, in an assumption, the mortgage securing the loan, which the Buyer is assuming. A copy of the title binder will be furnished to lender, listing broker, and selling broker as promptly as possible. The Seller and Buyer shall each pay one-half the cost of the title policy. In the event the Contract is for new construction the builder/Seller may receive builder discount if any. Buyer shall pay for any lender's/mortgagee' s/Instrument-holder, title insurance coverage. Seller shall have reasonable time, not to exceed 30 days from scheduled closing date, to furnish marketable title. The Seller shall be responsible to use due diligence to resolve any title defects at Seller's expense subject to the foregoing exceptions. Should the Seller be unable to furnish marketable title subject to the foregoing exceptions, and should this Contract be terminated due to same, then the earnest money shall be refunded promptly to the Buyer and the Seller shall reimburse to the Buyer the cost of Buyer's accrued loan costs, attorneys' fees for examining title, and title insurance cancellation fees, and all parties shall be released from any further liability hereunder.

18. DEED AND DOCUMENTS FOR CLOSING: In the event a title or abstract company prepares a Deed and Affidavit of No Liens and other necessary documents to complete this transaction, the charge for same, in addition to the cost of closing the transaction, shall be shared equally between the Buyer and Seller, but if Lender prohibits Buyer from doing so, Seller shall pay such costs.

19. REPRESENTATIONS AND RECOMMENDATIONS: It is hereby agreed and acknowledged by the parties hereto that unless otherwise stated in paragraph 30 (Miscellaneous), neither the listing nor selling brokers, or their agents, employees, or associates have made, on their own behalf, any representations or warranties, expressed or implied, with respect to any element of the subject property. Any information furnished to either party through the Multiple Listing Service or in any property condition that party should independently verify report before that party relies on such information. Any representations made herein have been made by the listing/selling brokers based on information supplied by sources believed to be reliable, and brokers and their associates have not assumed any responsibility, directly or indirectly, with respect to any representation or warranties which have been made, if any. Since the selling/listing brokers are acting as brokers only, they shall, under no circumstances, be held liable to

either the Seller or Buyer for performance or lack of performance of any other terms or conditions of this Contract, or for damages arising out of or relating to the contents of this Contract over the performance or non-performance of either of the parties to this Contract. **Again, it is emphasized that if the parties hereto feel representations have been made, they must be set forth specifically and in writing in paragraph 30 (Miscellaneous) if said understood or implied representations are to be effective or enforceable.**

20. INSPECTION: The Buyer has carefully examined the premises and the improvements located thereon, and in making the decision to buy the property, the Buyer is relying wholly and completely upon Buyer's own judgment and the judgment of any contractors or inspectors Buyer may have selected.

_____ A Seller's property condition report is attached and made part of this contract.
_____ This offer is subject to acceptance by the Buyer of a Seller's property condition report within ___ days.
_____ A Seller's property condition report is not available.

Buyer agrees that the purchase price was negotiated after consideration of all defects in the real estate of which Buyer was aware or reasonably should have been aware. Buyer hereby agrees to hold listing/selling brokers harmless if Seller has failed to disclose any known defect or material fact regarding the property. **Buyer waives any claim for property defects unless Buyer secures, at Buyer's expense, an inspection of the property by one or more qualified inspectors, including but not limited to the roof, structure, all electrical, mechanical, and plumbing equipment, and appliances.**

IN THE EVENT BUYER FOR ANY REASON DOES NOT OBTAIN SAID INSPECTIONS, AS ALLOWED OR STATED ABOVE, BUYER SHALL BE DEEMED TO HAVE ACCEPTED THE CONDITION OF THE PROPERTY AS SATISFACTORY AND SELLER AND SELLER'S BROKER ARE RELIEVED FROM ANY AND ALL LIABILITIES HERETO, except for Seller's obligation as noted in paragraph 22.

These inspections shall be obtained within __ business days of Contract acceptance. These inspections are not intended to identify either cosmetic imperfections or other features of the property that Buyer has already considered in determining the purchase price. Seller shall cooperate in allowing Buyer's inspectors access to the property. If Buyer notifies Seller that it will be necessary to activate any utility in order to perform an inspection, Seller will request activation of that utility.

In the event any inspection results in a report of a defect, then within three business days of receiving the report, Buyer must request in writing as a proposed amendment to the contract that Seller repair or replace the defect. If Buyer does not make such a written request in such time, then Buyer waives any claim in regard to such defect. If Buyer does make such a written request in such time, the Seller must respond in writing within three business days after Seller receives the request. If the parties do not agree in regard to the existence or nature of the defect or the appropriate repair or replacement, then both Buyer and Seller agree to negotiate with one another in good faith to resolve any differences. If the differences are not resolved within _____ business days after buyer receives Seller's response to Buyer's request, then this Contract shall terminate, and the earnest money, less accrued expenses, shall be refunded to the Buyer, pursuant to paragraph 27, and this transaction will be null and void.

Seller agrees to give Buyer reasonable access to the property before the closing date so that Buyer and Buyer's representatives may, at Buyer's expense, re-inspect the property for confirmation of condition or to inspect any repairs made pursuant to this paragraph.

The parties agree and the Buyer represents that once the Contract has in fact been closed that Buyer in all respects again has acknowledged that Buyer has accepted the premises without condition or qualification. Broker(s) shall not be responsible for the conduct of third parties providing specialized services required or permitted by this Contract, including but not limited to lender, title insurance company, escrow agent, closing agent, wood infestation, mechanical, structural or other inspectors or repair personnel, whether those services were arranged by Buyer or Seller or broker on behalf of either. Buyer and Seller are aware of the availability of a home warranty program for which the broker(s) may receive an administrative fee if said program is purchased and both have separately accepted/rejected purchase of the program. Although one program may have been specifically offered to Buyer and/or Seller, the broker(s) involved have made no representations about the quality of the programs offered, and all parties to this Contract understand that they may seek alternate home warranty coverage.

21. ENVIRONMENTAL: Buyer and Seller agree that broker and broker's agents do not have any expertise in evaluating the environmental condition of the property described in paragraph 3, and that broker and broker's agents have made no representation concerning environmental condition except as may be noted in paragraph 30 (Miscellaneous). Buyer or Seller may retain an environmental inspection firm to inspect the property.
If the property is a residential dwelling built prior to 1978, see the attached addendum for a disclosure of information and acknowledgment of lead-based paint and/or lead-based paint hazards as required by regulation.

22. INTERIM MAINTENANCE: Seller agrees to maintain heating (sufficient to avoid frozen water lines), sewer, plumbing and electrical systems, and any appliances and equipment being conveyed, in proper working order, and to maintain the lawn, shrubbery, trees and pool, if any, until possession if possession occurs at or after closing. If possession is given to buyer prior to closing, refer to attached addendum. Buyer will be solely responsible for

obtaining insurance to cover any casualty loss occurring after closing, even if possession is retained by Seller after closing.

23. LIENS: Seller represents and warrants that there are no unpaid (whether recorded or not) chattel mortgages, conditional sales contracts, financing statements, or security agreements affecting any fixture, portion of the premises or item of personal property covered by this Contract. Any existing liens upon the premises that the Seller is required to remove under this Contract may be paid and discharged from the sale proceeds at the closing of the sale.

24. BROKERAGE FEES: The party handling the closing of this transaction is hereby authorized and directed to collect and disburse the brokerage fees at closing.

25. ALTERATIONS: Any alterations of the terms and conditions of this Contract must be agreed to in writing by both Buyer and Seller.

26. SURVIVAL: The provisions of paragraphs 5, 8, 9, 11, 12, 13, 14, 17, 19, 20, 21, 22, 23, 24, 27, and 30 shall survive closing.

DISPOSITION OF EARNEST MONEY: In the event this contract fails to close, the earnest money shall be disbursed according to an agreement signed by both parties. Pursuant to Kansas Statute 58-3061 (g), the broker can only disburse earnest money 1) pursuant to written authorization of buyer and seller; 2) pursuant to a court order; or 3) when a transaction is closed according to the agreement of the parties. Notwithstanding any other terms of this Contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and Seller agree that failure by either to respond in writing to a certified letter from Broker within seven (7) days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within thirty (30) days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto. If a dispute arises over disposition of funds or documents deposited with the escrow agent or the listing broker, Seller and Buyer agree that any attorney's fees, court costs and/or other legal expenses incurred by the escrow agent and any broker in connection with such dispute shall be reimbursed from the earnest money or other funds deposited with the escrow agent or listing broker. In addition to forfeiture of earnest money to Seller or return of earnest money to Buyer, Buyer and Seller shall both have the option of enforcing specific performance of this Contract or any other remedy allowed by law or equity.

28. HEIRS AND ASSIGNS: This Contract shall be fully binding upon the parties, their heirs, executors, administrators, successors and assigns (subject to paragraph 31). No assignment shall serve to release or relieve the party assigning from any responsibilities or obligations hereunder.

29. KANSAS LAW APPLIED: This Contract and its validity, construction and performance shall be governed by the laws of Kansas.

30. MISCELLANEOUS: _____

31. AGREEMENT APPROVAL: This Contract constitutes the entire agreement between the parties and supersedes any previously executed contracts, representations, verbal or written, to buy and/or sell the property. Neither this Contract, nor any interest herein, shall be transferred or assigned by Buyer without the prior written consent of Seller.

Buyer and Seller hereby acknowledge receipt of separate expense itemizations estimating approximate costs to be incurred in acquiring or disposing of this property. Buyer and Seller also acknowledge that they have read the entire Contract and that by signing page four (4) of this four (4) page Contract that they agree to all terms contained therein.
IN WITNESS WHEREOF, said parties hereunto subscribe their names.

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.

Buyer _____ Seller _____

Print Name _____ Print Name _____

Social Security # _____ Social Security # _____

Date _____ Time _____ Date _____ Time _____

Buyer _____ Seller _____

Print Name _____ Print Name _____

Social Security # _____ Social Security # _____

Date _____ Time _____ Date _____ Time _____

_____ For Office Use Only _____

Agent _____ Agent _____

Firm _____ Phone _____ Firm _____ Phone _____

Chapter 7

NEW CONSTRUCTION LAND AND IMPROVEMENTS

Most People have no idea what is involved in building a home. There are a million decisions to make. I've heard many homebuilders and new home sales people say they would advise people to evaluate their marriage prior to starting a home. Why, because of the stress and having so many things to agree on. Some people believe they can pick a lot, pick a plan, and they're almost finished. They have no idea what is involved. That's where the professional real estate agent may come in. We need to be able to give them some insight into what they will have to do. The amount of time it's going to take, the cost factors, and many other things.

The sale of residential housing is the most common form of real estate activity. We aren't going to be ready to "jump" right in and build a home after the completion of this chapter. What we are going to understand is what actually goes into a home, some of the common terms used, different types or styles of homes, and some marketing aspects. If you are going to sell homes, new or resale, you should have a general knowledge of how they are built, and what is involved in going from a bare tract of ground to a new home. How to write a contract and what is involved from start to finish in the building process.

We will assume that the home being built is in a platted subdivision. This means that a developer has **platted** the land, i.e., divided the subdivision into lots. Not all lots are suitable for all types of homes. If your buyer picks a 2-story home it will not require as much "building space" as a sprawling ranch style home would require. The subdivision plat will show lot dimensions, easements for utilities, set back lines, etc. There should be a set of rules called **deed restrictions, conditions,** and/or **covenants**. These are limitations on the use of the land/lot.

These are conditions agreed to by all owners of homes/lots in the subdivision. They are promises or warranties to do or not to do something. They can include building set back line, minimum house size (square footage of living area), minimum garage size, the keeping of animals, parking of vehicles, fence type, exterior construction requirements, and other construction quality (like shingles, brick, siding, etc.). These are in place to maintain the standard of the homes and other improvements in the subdivision. A Home Owners Association (HOA) usually enforces them. The grantor (developer) or other owners in the subdivision can also enforce them. Often the developer will be on the HOA Board of Directors until a certain percentage of the lots are sold or built on. This is to protect his investment by making sure all plans are pre-approved and meet the minimum restrictions before building commences.

Some developers pay for all the improvements needed to develop the land. This includes putting in all utilities, streets, sewers, sidewalks, playground, park areas, etc., and including the costs in the lots they sell. Some developers use a system called **special assessments**. This is a tax used to pay for the improvements or development costs**. Special assessments** can also be added later. Some areas of the country use a method of developing where they establish a MUD **(municipal utility districts).** This basically serves the same purpose.

With both methods, the developer sells a bond that the homeowner pays off over a period of time. They are generally a lower interest rate than a person would pay on a home mortgage. This actually saves the home owner money. Another thing to consider here is if a new home buyer does not want the **specials** or **MUD** taxes they will probably not get a subdivision with playgrounds, swimming pool, possibly a club house, or other amenities. If they do have these amenities they will have homeowner's dues to pay in addition. The specials or **MUD** taxes can be financed in the original price, and pay the higher interest rate,

or pay it over a period of time at the bond rate (generally much lower than mortgage loan rates). Many times the bond **life** or term will be 15-25 years. The mortgage may likely be 30 years. This means the payment will drop by the amount of the **specials** or **MUD** when they are repaid.

The interest rate on the bond is generally lower then a home loan interest rate. If you are working a particular subdivision you should have this information available (monthly cost, bond rate, and number of payments remaining) for prospective buyers. If you're working with a buyer to locate a suitable lot, the buyer will want to compare subdivision with subdivision to see the cost of the lots with and without specials to see what is best for them.

Once a lot has been selected, a house plan must be selected. This generally means going to an architect and picking a house plan for this particular lot. Again, if you're working a particular subdivision there may be a group of plans in the builder's office from which to choose. Once the plan is selected the architect will do a **plot plan** for you. This means they will "put" or "draw" the house on the lot in a plot plan showing exactly where it will sit, with the driveways, sidewalks, etc. It will have the house sitting on the lot, the legal description, plan number that may reflect the square footage in the home, and (most likely) the architect's name. The house plan itself will be several pages. The plot plan is generally on the front and may not be as large as the other pages.

One of the pages is called the **elevation**. This means it is a drawing of the front of the house with landscaping and sidewalks shown. This page may also have a partial first floor plan or even a partial second floor plan.

One page of the plan will have the complete first floor plan. This will show the location of all doors and windows, electrical outlets, heating and air conditioning ducts, flooring type, e.g., carpet, tile, vinyl, wood, etc., light fixtures, fireplace, tubs, showers, sinks, appliances, ceiling heights, and much more. This page will show the dimensions (size) of each room and the overall dimensions of the building as well as the house and garage if it is attached to the house.

If the home has a second floor there will be a page showing the second floor plan. It will have the same information as the first floor plan. There should be a page showing the interior elevations. This means, the cabinets in the kitchen, bathrooms, den, and other rooms where cabinets are to be constructed or installed. If they have mirrors above them they will show the mirror and give the size.

It will, most likely, show the **floor joist** framing plan and the **ceiling joist** framing plan. A **joist** is a heavy piece of horizontal lumber to which the boards of a floor or ceiling frame are attached. Joists are laid edgewise for strength. Often the joists are replaced by a **truss joist**, which is much stronger than the standard joists. Also, trusses can span a longer space allowing larger open rooms as well as more space for utility equipment, such as heating and cooling duct work.

If the house were to be built on a slab you would not have a **floor joist** plan for the first floor. You would build directly on the concrete slab poured over roughed-in plumbing and utilities.

On one page of the "plans" you will have a **right side elevation, rear elevation**, and **left side elevation**. This means a drawing of each of these parts of the structure, as they will look when completed showing windows, doors, fireplace, etc.

You might have a **rafter framing plan** on this page as well. Rafters are a series of sloping beams or boards that extend from the exterior wall to a center **ridge board** and provide the main support for the roof. Often, the roof will be constructed of a series of **truss** structures, which provide a much stronger roof capable of spanning a much larger open space, thus, providing much larger open rooms. Together

with truss joists (floor and ceiling) the house will be considerably stronger and resistant to natural forces, such wind loads.

Some architects may supply other pages showing other details about the framing including how they expect the rafters to be braced. **Bracing** is framing lumber nailed at an angle in order to provide rigidity between rafters and studs. If the house has a basement, there will be a page showing the construction. This will include the placement of steel and other support, sump pump, any short support walls where extra support for extra heavy load bearing walls are above it.

Before construction can actually begin, the builder or general contractor must get a building **permit.** A building permit is a written governmental permission for the construction of a new building or other improvement. Next, the property has to be surveyed and staked. The surveyor will check and make sure you are on the right piece of property and that everything fits according to the house plan.

The Construction Process

This is not a complete list, only a summary:

1. Select plan and lot
2. Obtain an architectural house drawing
3. Building Permit
4. Basement footings and foundation
5. Framing
6. Roof
7. Exterior sheathing
8. Install windows and exterior doors
9. Exterior covering (Brick or siding)
10. Flat work (sidewalks and driveway)
11. Fireplace
12. Plumbing, electrical, heating and a/c rough in (means the work you can't see)
13. Insulating
14. Dry wall
15. Cabinets and woodwork
16. Paint, wallpaper and floor coverings
17. Electrical, heating and a/c final. Set fixtures, etc.
18. Occupancy permit
19. Final walk through and touch up.

Constructing a Residential Basement

1. **Plot Plan**: The plot plan also indicates the elevation of the wall. Typically the top of wall (TOW) is 2' to 3' above the top of curb to insure a gently sloping driveway.
2. **Staking the Basement:**
   a. The survey crew stakes the basement as shown on the Plot Plan. They will flag or stake every corner.
   b. The survey crew will also place 10ft offset stakes on the front and rear building lines. The offset stakes will also have the elevation marked on them so the excavator knows how deep to dig the hole. The offset stakes should remain in place until the foundation is complete.

3. **Digging the Hole:**
   a. The excavator will dig the hole to depth 4 inches below the bottom of wall.

b. The hole should be dug with 3ft of clearance outside the perimeter of the foundation. This gives the foundation crew room to work on the outside of the basement walls.

4. Forming and pouring the footing:

a. A typical footing is 16 inches wide and 8 inches deep.
b. The contractor measures from the offset stakes to locate proper location for the footing.
c. The footing is designed to be dug into undisturbed soil a depth of 4 inches. This gives the footing horizontal stability. Realistically, the hole will not be completely level so the footing will not be dug into the ground consistently to the 4 inches depth. The footing will be designed with 2 horizontal bars of reinforcing steel and a vertical bar 2ft on center (o.c.). Typically these are #4 bars (1/2 inch).
d. After the footing is poured and the concrete is still wet, the workers will groove the center of the footing about an inch deep. When the wall is poured on top of the footing, this **key way,** as the groove is called, gives the wall added horizontal support and helps restrict water seepage.

5. Forming and pouring the wall:

a. A typical wall is 8 inches wide and either 8ft or 9ft in height.
b. The foundation crew will tie the required horizontal reinforcing steel to the verticals that were installed in the footing, prior to setting the forms.
c. Most basements are poured using aluminum panels that are tied together with metal straps and wedges. The metal straps stay embedded in the concrete after the walls are poured.
d. After the walls are formed, the contractor will install the beam pockets and window inserts inside the forms. The workers will also **block down** at the garage door to allow the garage floor to be poured over the wall.
e. Most cities require at least one egress window well in the basement and all cities require an egress window to be located in all bedrooms. Egress means a way to exit from the property or building.
f. The pier pads should be located and poured at the same time as the wall.
g. After the wall is poured, the anchor bolts are placed 3ft o.c. in the top of the wall.
h. Normally the wall panels are stripped of the forming the next day.

6. Damp proofing the basement:

a. The damp-proofing contractor will break the ties and patch the wall, then spray the part of the wall that will be buried (by back fill – sand and soil) with a damp-proofing membrane.
b. Then the perimeter drain tile is installed and embedded in clean gravel.
c. Normally the same contractor will install the sump pit and tie the perimeter drain tile into the sump pit.

7. Back-filling the walls:

a. The basement walls should cure for at least seven days before back-filling to minimize the risk of the lateral pressure of the back-fill cracking the wall.
b. The back-fill in the over-dig area will settle. It is a good idea for the contractor to build that area up 6 to 8 inches to allow for natural compaction.

8. Pouring the floor:

a. After the ground rough plumbing is installed and inspected, the flatwork contractor will spread clean gravel 4 inches thick and level with the top of the footing.
b. The concrete floor is poured on top of the footing and 4 inches up against the wall.
c. Some designs call for a poly-vapor barrier between the gravel and concrete.
d. Most contractors spray a concrete cure on top of the basement floor.

If the home is to be built with no basement, there are other types of foundations to consider. There are areas of the country that are not suitable for basements. Of course, if you build on the waterfront, you would probably build on **stilts**. This would allow water to run freely under the house without damaging the contents or the home itself.

Many areas build strictly on a **slab**. All areas of the country have homes built on a slab foundation. If a basement were not wanted you would most likely build on a slab, called "on grade." One type is a **post tension slab**. This is an engineered slab plan. With this method cables are run from side to side through the concrete slab. These cables can then be tightened or adjusted if the slab/ground shifts.

The other type of slab foundation is a reinforced re/bar slab. With this type **footings** are dug, reinforced and concrete poured under all **bearing** (load bearing) walls. They have steel re/bar or rods in the footings and wire mesh. The rods are generally #8 or better and the wire mesh is usually a 6 by 6 inch (#6 or better) over all the slab area. It is leveled out with sand, covered with plastic and then poured with concrete. The re/bar and mesh reinforces the concrete to help keep it from cracking or breaking apart. These slabs are especially good for areas that have shifting soil. The steel helps to "hold" the concrete together. Of course it has to be engineered for the type soil and house being built on the slab.

The method of choice for many years was the **pier and beam** (P&B) foundation. The pier and beam foundation consists of concrete piers or concrete blocks or columns sunk into the ground in strategic locations. They have to be in the correct locations to bear the weight of the structure. Next wood beams are placed across the piers to support the house. Some of the older homes were built without any footings of any kind. The blocks, sand stone, concrete blocks, or bricks were laid on the ground and the structure was then built on top of them. If you build on a slab you wouldn't have floor joists. With all other foundations you would. In areas of the country where the ground shifts and causes the house to shift, there are advantages to building on P&B. It is easier to level the home.

Framing the House

Generally the framing is wood. Although steel and concrete are both options, they are not as cost effective or feasible. When we say the house is of "wood fame construction" we are talking about the framing and not the exterior of the house.

A brick house is generally of wood frame construction. It has a brick "covering" or exterior. It is actually **brick veneer**. Wood is used to construct the walls, rafters, and floors, the entire "frame" of the house. This is a very important part of building a good house. If the framing is not done correctly you won't have a strong structure.

The builder will be careful to follow closely the architectural or engineering plans as drawn. The **studs** are the vertical boards in the wall framing to which horizontal top plate and sill are attached. These studs are normally 2 x 4 inches, but can be 2 x 6 inches or 2 x 8 inches. You would need to refer to the house plan to see what the architect has drawn. They are placed 16 to 24 inches (city code sets the standard) apart and serve as the main support for the roof and/or the second floor. You will see them on the framing drawing as 16 inches o.c. or 24 inches o.c. This means that from the center of one stud to the center of the next stud is 16 or 24 inches.

While framing the walls there are shorter studs below and above windows also above doors. These are called **cripples**. At the top of the windows and doors is a horizontal board called a **header** that is designed to carry the weight above the door. The bottom of the walls is attached to the basement walls or

foundation with **anchor bolts**. These are used to anchor the **mudsills** (bottom boards of the house frame) to the foundation or basement wall. There may be a **metal shield** between the **foundation** and **mudsill** to protect the house from termites. A metal shield is installed at the top of the foundation or basement to protect the house from termites. Above the mudsill will be a thin layer plastic encased fiber glass material, which helps to seal any cracks between the basement wall and house frame.

Commercial buildings are usually built with 2 x 8 inch construction, since this is the national standard. One thing to note here is that cities have building restrictions. Some cities require that all homes be built on 16 inch centers. As the different components of the house are completed the city inspector will perform an inspection. They will check to see that everything is being done according to the plans, as submitted to obtain the building permit, and consistent with city code.

If the work fails to pass inspection he will **red tag** it. It has to be corrected and re-inspected before work can go on. This is for the protection of the home owner. Also, depending on the financing being obtained on the house, you will likely have mortgage company inspections. FHA and VA both have a schedule they follow on inspecting any home to be financed with one of their programs. If there is interim financing, the mortgagee will make inspections prior to issuing any **construction drawings.**

As the framing is being put in place the framing carpenters will put the necessary bracing in to make the walls stronger. Once the walls are stood up for the first floor you would put in the **floor joists** for the second floor. The second floor would be framed as was the first floor. The joists (or trusses) support the floors and ceilings. The wood running diagonally between joists to stabilize them is called **bridging**. During construction **fire stops**, blocking material, usually wood will be attached to the sills and/or rafters to slow down or prevent the spread of fire and smoke.

The roof consists of a **ridge board** running horizontal at the peak of the roof. The **rafters** are attached vertically to the ridge board and run to the top of the wall (**top plate)**. There are **purlins** installed to serve as bracing in the roof area. These are horizontal boards running along the side of the roof down 1/3-1/2 of the distance from ridge to attic floor. **Strong backs** and **collar braces** or **collar ties** are attached for more reinforcement. The strong backs go at an angle from the purlin to the joists and the collar braces or **ties** go from side-to-side.

Most houses built since the mid-to-late 1990s use truss floor and ceiling joists as well as a truss roof structure, which provides a dramatically stronger house and supplants solid wood joists and a rafter roof system. The trusses are, generally, built off-sight to dimensions specified by the engineer or architect. All joints of the truss are joined by metal cleats, which provide a very strong joint. The trusses are delivered to the sight, where framers install the trusses on the building. The roof trusses are large and heavy so that a crane will be needed to install the roof, as well in some cases a crane will be needed for the floor and ceiling trusses.

Trusses are built using a triangular geometric structure (sort of a “W” shape), which is the strongest geometric shape. In some cases a circular shape is stronger, but is not amiable to common construction techniques. A rectangular structure can be distorted by pushing at any of the four apexes more easily than a triangular shape can be distorted.

Once the roof framing is completed, the **decking** is installed on the roof. This is a solid base to attach the actual roofing material to. Some builders use **plywood** some use **particle** or **flake board.** Again, it would have to be determined if one type sheathing is required by the city building code or loan program being used for final financing once the home is completed.

Roofing

Once the decking or sheathing is put on the roof it's ready for the final covering. There are several choices. The most common material of choice is asphalt shingles. These come in several weights and warranties. Some **deed restrictions** or **covenants** require a certain weight shingle to be applied. FHA also requires a minimum weight shingle.

Other types of shingling material are wood, asbestos, slate, tile, and metal. The asphalt shingle is the least expensive. The slate, tile, and steel roofing generally will out last the asphalt or wood roofing. Some insurance companies will not insure a house with wood shingles since they are considered to be a fire hazard. Also, in damp climates, wooden shingles can be a profuse source of silverfish pests. In fact even in "dry" Kansas, there are many homes with wooden shake shingles that report a fairly severe problem with silverfish procreating within the roof system.

While the roof is being installed **flashing** will be installed. This is sheet metal used in roof and wall construction to protect a building from water seepage. One place it would be used is around the chimney to keep water from running down the sides of the chimney in to the house.

Exterior Sheathing

Before the sheathing is installed the house (presently in most cities and towns) will be wrapped using a plastic wrap designed to rugged enough withstand substantial wind forces and to help prevent the ingress of air into the house.

Exterior sheathing will be applied to the exterior frame of the house over the plastic wrap. Different types are available and some have a higher **R** rating then other types. R value is a measure of the resistance to heat transfer (loss of heat in the winter time and gain of heat in the summer time). Thus, the R stands for resistance to heat flow. A higher the R rating gives better insulating qualities. This is not something that will absolutely be determined on the floor plan. The home owner must decide if it is advantageous for them to pay extra to have better insulation. Over a period of time better insulation can save considerably on heating and cooling costs. Some builders will have the contractor tape all joints in the sheathing. This further eliminates airflow. Some of the sheathing used today has a foil type coating on one side.

Windows and Doors

Next a contractor will install the windows and exterior doors. The sizes and style will be shown on the spec sheets and floor plan. Again, there are several types of windows. You have double hung windows. These have been the most standard of all windows. The double hung style has become a classic that suits any house. Double hung windows consist of two glass panels; the top panel will slide down and the bottom panel will slide up. Newer double hung windows are designed so you can tilt the top or bottom section inward for easy cleaning.

Picture windows are not used as much as they were in years past. They are fixed in place. Angled Bay windows are popular, as are bow windows. They protrude out from the wall of the house.

Casement windows are a type of window that opens with a crank style handle. They are hinged on one side and come in various sizes and styles. These windows are becoming a standard window and are exceeding the double hung window in popularity. They are quite burglar-proof, providing a very resistant window to break-ins.

Fanlight windows are actually an addition to a double hung or casement window. They add character to the elevation of a home. Greenhouse windows are popular if there is a flower or plant lover in the home. Many times these will be a kitchen window over the sink.

Architects will pick the type of windows that go best with the style of home being built. There are choices in the material of which the window frame is made. Plastic (vinyl), metal, wood, or clad are the common choices. Is the glass to be clear or tinted? This is an energy issue. Are they single pane or double pane with an air barrier between the two panels? This is another energy issue. Presently, windows can be low-E and film covered to retard the entrance of UV light.

The exterior doors will usually be solid core (solid wood, not hollow) or steel clad. Again there are several styles. Traditional sidelight style will have the door with sidelights, windows on each side to match or go with the door. Victorian type doors have become very popular. They generally are constructed of a mellow wood like oak with an oval glass that is etched. A neoclassic door is a standard raised panel door with a triangle shaped cap and Greek column inspired side panels.

If there is not a large entry way the sidelight style might not fit and the neoclassic will fit fine and be just as attractive. The plan might call for a double door. This consists of two simple single doors with or without raised panels, designs in the panels, and a cap or other additions above or beside them. One of the most popular styles is the traditional door with top lights or transoms, small windows along the top of the door.

Are you thinking back to the beginning of the course now where I said there are a million choices to be made? It is relatively easy to change window or door styles as long as they are the same size. Some changes can be quite costly unless they are made early in the construction process.

Decisions, decisions, decisions can drive one to distraction!

Exterior Covering

There are more choices to be made here. If the house is to be brick, there is still trim, soffit material, fascia, door frame(s), window frame(s), and all the wood you see on a brick house. Also, the decision will have to be made on color and style of brick. There are different grades of brick as well as different sizes. The builder will most likely have brick samples in the showroom. It's hard for a typical buyer to imagine what that little group of bricks will look like on the whole exterior of their new home. It's a good idea to have them look at some homes that are already bricked before making their choice. Brick is something that once the house is bricked, it's very expensive and generally not feasible to change your mind.

For any wood surface on the exterior of the house the buyer may want to pay to have vinyl siding installed. If this is the case, make sure they are aware of the warranty. How long are they going to live in the house? Long enough to recover the additional cost of having vinyl siding installed?

Flat Work

Flat work includes the driveway and sidewalks. Have you ever noticed what a difference a little curve can make in a sidewalk going up to the front of a house? Would the buyer like extra parking space or room for a basketball goal by the garage? These are questions you need to ask and also ask the builder for a price per square foot for additional flat work.

Most builders will want "extras" paid for at the time of installation. These are not refundable once they are completed if the buyer does not close on the purchase. If a buyer picks things in particular they want in the home that are extras and don't close, the next people may not like their taste. One of the big problems is having buyers that want to put a different color or style of carpet in each bedroom. Few people will "fall in love" with the varied colors.

Fireplace

If the fireplace is job-built, it will be installed at the same time the bricklayers put the brick on the exterior of the house. It is more expensive as it takes more material and labor to install. It also adds value to the home. The flue is constructed of flue tile, which is a concrete tile that should last as long as the house lasts. A prefabricated fireplace is constructed of metal. I have never known of a problem with the "drawing" in a prefab fireplace. They are pre-designed and come with complete instructions as to how far the chimney should reach above the roof depending on roof pitch and distance from the ridge. When you have a job-built fireplace, you must depend on your builder to have a qualified contractor install the brick and fireplace. The architect will draw the fireplace and have dimensions. This means they are engineered for this home. If installed properly they will give years of service. Many new homes being built today have prefabricated fireplaces with a short flue that extends out the wall of the house**.**

Plumbing, Electrical, Heating, and Air Conditioning Rough-in

Once all sheathing, windows, doors, and roof has been installed the house has been **dried in**. Now we can begin work on the inside. The plumbing company will rough plumbing in. This means all the pipes that are inside the walls. The electrician and heating and a/c contractors will also install their rough-in work, i.e., all wiring, ductwork, etc. that will be covered with sheet rock or paneling. Some will be in the attic area and some will be in the walls. They will follow the architects drawing and specifications. This is the time for the buyer to determine if they want an extra ceiling fan or extra telephone jacks wired in or any other changes they might desire and be willing to pay for.

Insulation

As soon as all the rough-in utilities have been completed the insulation will be installed. Again there are different types of insulation. Most builders use **batts**. These hold their form better then a blown-in type of insulation. Blown-in insulation settles from the time it is installed seemingly forever. Batts are attached to the studs and joists. In areas of more extreme temperatures the builder may have blown-in insulation installed on top of the batts after the sheet rock or dry wall is installed. This increases the R factor, i.e., decreases the loss of heat in winter or increase of heat in the summer.

Dry Wall

Interior walls are generally drywall or as we know it sheet-rock. The other materials available are plasterboard, wood paneling, or laths covered with plaster. Laths covered with plaster is a relatively higher price covering. This is due to the cost labor. Sheet-rock is mass-produced in a factory. It comes in 4 x 8ft or 4 x 12ft sheets. A contractor hangs it, i.e., to cut it to place and nail it. They then tape, dope the joints and nail heads, and float it. Then depending on what the surface covering will be they sand it to a paint/texture surface or extra smooth for wallpaper. If it's to be covered with paneling it doesn't require the final sanding. Wallpaper shows every little imperfection so it requires more wall preparation before the wallpaper is installed.

Cabinets and Woodwork (TRIM)

In the past practically all cabinets were built on the job. This means they were custom built by **trim carpenters** or **cabinet builders** right in the house. The majority of homes built today use prefab or prefabricated cabinets. These are less expensive, since they are mass-produced, and many times have less solid core wood in them. Some are pre-stained or painted and some are raw wood. This is another cost factor. Labor for finishing the cabinets in the house can be much more expensive then having them delivered already finished. The paint contractor generally does any wood finishing.

Prefab cabinets today do not usually have the plastic parts, drawer guides, doors, or drawer fronts like they use to have. It is very important that you know what cabinets are going to be installed in the house. Ask what kind of warranty is included on the factory built or prefab cabinets. Generally, a builder warrants his work for one year. You want the buyer happy.

The other trim that has to be installed is the base boards, door and window frames, doors, fireplace mantel, stairs, and wood vent hoods above the range or cook-top. Anything wood! There is really no substitute for custom or job built cabinets in many peoples' opinion. The thing to remember is that in less expensive, smaller homes, custom cabinets may not be an option because of cost.

Paint, Wallpaper, and Floor Coverings

The next major thing to be done is painting and finishing the interior of the home. If the cabinets or other wood has to be stained, that will be the first thing to be done. Then the walls and ceilings will be painted. Many builders paint everything the same color. If the buyer wants custom colors, they should be prepared to pay extra. You will need to get a price from the builder for color changes or custom colors. Painters generally spray paint the walls and ceilings. This is less time consuming and therefore, is less costly. Custom colors may have to be rolled on. You may want to ask if the wood trim is painted with enamel or flat paint like is used on the walls. Enamel wears better and is more washable then flat paint. Once all the paint work is done the counter tops will be installed. Then the wallpaper will be hung.

Next we install the floor coverings. If the plan calls for carpet in the kitchen and **wet** areas, (areas around the tub, shower, and commodes that are likely to get wet) don't assume the builder will allow the buyer to have vinyl or tile without an extra charge. Some builders will not let a buyer have hard flooring without paying extra for underlayment and preparation as well as a cost difference for the tile or vinyl over the carpet cost. You need to ask. Most builders will have what they call **standard** grades of carpet, vinyl, etc. They will also have **upgrades** for which the buyer can pay extra. Find out what is standard and what it will cost them to upgrade. Let the buyer see what the standard grade of flooring looks like installed. Builders will generally have a cost per square foot for about everything that's going in to the home.

Electrical, Heating, A/C Final and Fixtures

The electrician will install all the light fixtures that the buyer has chosen. Oh, did I forget to tell you, the buyer must choose light fixtures, as well. The builder will give them an allowance and they can buy what they want. If they want several ceiling fans or expensive fixtures that exceed the allowance, they have to pay the difference the cost of the fixtures and the allowance. Some builders will have some **groups** of fixtures. This doesn't give the buyer as much choice but they won't have the problem of spending more than their allowance. Some builders will have an account set up with one or two different lighting companies where the buyers can go and choose from the showroom. You need to ask up front how much

the light fixture allowance is. What seemed to be the most reasonable builder up front may be the most expensive when you start adding in all the **extras.** Can you see where **you** are very much needed by the buyer to guide them through this maze?

The plumber will need to set the appliances and final trim in the sinks, tub, and showers. This means put in the faucets, water heater, dishwasher, and range (if it's gas). The electrician will install electric ranges.

The heating air conditioning contractor will do the final trim, i.e., install all the air vent and the return air covers. The outside air-conditioning unit will most likely be installed just before closing. This allows for final grading of the yard, sprigging, planting, or laying grass, and less possibility of someone stealing it. The heating unit is usually installed during the rough in a/c work.

Occupancy Permit

The city inspector has to do a final inspection to be sure the house is ready to be occupied. Utilities can not be turned on in the new home owner's name and the house can not be moved into until the final permit or occupancy permit has been obtained.

Final Walk Through and Touch-up

Now we have another question to ask the builder. What is their policy on paint touch up? Do we have to have it all done before we close? Do we get a 30-day touch up? Can the buyers have a small amount of the paint that was used to do their own touch up? Don't make the mistake of assuming that if you close without things being done they will be done. Check the builder's reputation. Talk to other home owners who have had a house built by the builder. I'm not saying that builders are bad. I'm saying that you need to protect your buyers and yourself from problems after closing. You have to take into consideration all events leading up to the closing. Has the buyer been pressuring the builder to get the home done faster then normal because of their time frame? Has the builder been slower then usual getting things done?

Architectural Style

Not every one has the same taste. If they did all houses would look alike. Bungalows, ranches, Tudors and Victorian homes have been around for many years. Bi-levels, tri- levels, and split-levels are more recent. Some styles have come, gone and came back again. People's taste will change. Contemporary and Spanish were very popular house styles in the late 60's and early 70's. Not any longer!

Following are several architectural styles available. You should familiarize yourself with them. Not every house you list will be a Ranch, Quad, or 2-story.

Notice the Tudor style (above left) has stucco with wood trim. The Tudor is a traditional style home. The Victorian (above right) has a lot of open porch and exterior wood trim.

The farm style (above left) in the picture has a gambrel or barn roof on the home with a large front porch. This home also is called a Dutch colonial home. The ranch (above right) is a sprawling single story

The French Provincial (above left) can be a one or two story usually with coined corners. The Spanish style homes (above right) usually have more arches over doors, windows and walkways, and sometimes wrought iron trim.

An A-framed home (above left) is shaped to reduce walls. Earth-sheltered homes are becoming more popular in colder areas of the country because of the efficiency of utilities. A-frames are built generally for lake or vacation homes. A country home (above right) is again very much of a traditional style. This home is also called a Saltbox, which often has straight up four walls. Some will have the front wall taller than the back wall as shown in photo above. Thus, the gable has a back span longer than the front span. This means the second story has fewer square feet of living area than the first story. They are also normally 100% wood siding.

Colonial homes (above left) are accented by the white column posts on the front. Modern or contemporary (above right) will have more angles, fixed glass and be more open than many of the other plans. It has become more common to have a different elevation or style exterior while the interior will still be very traditional.

Marketing the Home

Now, we have learned some of the basics of constructing the home, we need to touch on marketing. Licensees who have done both re-sale marketing and new home marketing generally feel the new home marketing is by far the most **fun**. One of the big plusses to new home marketing is that the product you are selling is right there. You don't have to search the entire area for just what the buyers are looking for. Not everyone wants a new home. But, if they do and you know your product, you can sell them!

One of the big faults many new home salespeople have is they never get out in the subdivision. They sit in the office and wait for the buyers to come to them. When I market new homes I go where the people are. Does it help? Yes! If they are remotely interested in buying and you approach them, you have a good chance of selling them. If you don't talk to them and help them, you won't sell them. It's as simple as that!

New homes can be a little more difficult to sell if you don't have model homes to show. People can't be expected to imagine everything. Also, it's hard for a novice to look at a set of plans and realize what it's going to look like when completed. This is where you come in.

Look at the plans and look where the bathrooms are. Do the buyers want a kitchen that is open to the living area or more secluded? As you begin to talk to buyers listen to their comments going through the model homes are plans. You'll be better able to put them in their dream home! Another problem we have to face when selling new homes to know who we work for. Are we seller's agents? If you actually list the builder's homes you either have to be a seller's agent or a transaction broker.

If you are not the listing agent and the listing agent is a designated agent you can be a buyer's agent or transaction broker with the seller's permission. Remember that you must address in the listing agreement in what capacity you are going to work. The best way to learn to sell new homes is to know the homes and then you can learn by experience. There is no substitute for it!

Once you have the buyer and they have picked their plan and lot you're ready to write the contract. Explain to the buyer that when they sign a lot reservation agreement they are buying that lot. It can of course be contingent on the sale of their present home. If it is, the builder may not want to start their new home until he is sure they'll be able to close when it's completed. This can be very stressful for buyers.

If their present home sells, the builder can't get the new home built by the time they need to move. Now we need to talk to the buyer about interim housing. If their job, finances permit it they can get a swing loan on the present home in order to purchase the new one. The Mortgage Company will have to qualify

them and make sure that in the event they have to make several payments on the new one and the old one they can manage that.

When you write the purchase agreement it should state the correct lot number; plan number; completion date; what penalty there will be in the event it isn't completed on time if any. There should be available a copy of the builders specs. This is a list of what he puts in the homes he builds. What grade of lumber, what sack concrete, what type shingles, what kind of cabinets, what is the carpet allowance, light fixture allowance, appliance allowance, what is the builder going to do to the yard. All of these items should be included in the contract.

You should get a new home purchase agreement that is used in your area. Also remember that our license law says we will advise everyone to do inspections. Even a new home can have problems. It is not unusual to have whole house inspections done prior to closing. If the buyer has concerns about environmental issues they should have environmental audits done as well. The Mortgage Company is most likely going to require a termite inspection. You don't want the buyer to have any big surprises when they move in their home.

Another important aspect of new home marketing is financing. Check and see what the best programs are available. Financing offered in one subdivision, if better than what is offered in another subdivision, can be the deciding factor. These people are going to make payments on this property for a long time, unless they pay cash. Find out what the taxes are going to be on improved value. Again, we don't want any big surprises. Builders generally pay taxes on unimproved value. What a drastic change when it begins to be taxed on improved value.

Don't be afraid to ask questions. You only get better by doing it!

Chapter 8

REAL ESTATE LAW MISREPRESENTATION AND OTHER ENVIRONMENTAL ISSUES

Kansas License Law Prohibited Acts (58-3062]

No Licensee, Whether Acting as an Agent or a Principal, Shall:

1. Intentionally use advertising that is misleading or inaccurate in any material particular or that in any way misrepresents any information about the property.
2. Fail to account for and remit any money which comes into the licensee's possession which belongs to others.
3. Misappropriate moneys required to be deposited in a trust account or commingle money.
4. Accept, give, or charge any rebate or undisclosed commission.
5. Pay a referral fee to a person who is properly licensed as a broker or salesperson in another jurisdiction or who holds a corporate real estate license in another jurisdiction if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the out-of-state licensee.
6. Represent or attempt to represent a broker without the broker's express knowledge and consent.
7. Guarantee or authorize any person to guarantee future profits that may result from the resale of real property.
8. Place a sign on any property offering it for sale or lease without the written consent of the owner or the owner's authorized agent.
9. Offer real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner.
10. Induce any party to break any contract of sale or lease.
11. Offer or give prizes, gifts, or gratuities which are contingent upon an agency agreement or the sale, purchase or lease of real estate.
12. Fail to see that financial obligations and commitments between the parties to any agreement to sell exchange or lease real estate are in writing, expressing the exact agreement of the parties or to provide, within a reasonable time, copies thereof to all parties involved.
13. Procure a signature to a purchase contract that has no definite purchase price, method of payment, description of property or method of determining closing date.
14. Engage in fraud or make any substantial misrepresentation.
15. Represent to any lender, guaranteeing agency or any other interested party, verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.
16. Fail to make known to any purchaser or lessee any interest the licensee has in the real estate the licensee is selling or leasing or to make known to any seller or lessor any interest the licensee will have in the real estate the licensee is purchasing or leasing.

17. Fail to inform both the buyer, at the time an offer is made, and the seller, at the time an offer is presented, that certain closing costs must be paid and the approximate amount of such costs.
18. Fail without just cause to surrender any document or instrument to the rightful owner.
19. Accept anything other than cash as earnest money unless that fact is communicated to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the purchase agreement.
20. Fail to deposit any check or cash received as an earnest money deposit or as a deposit within five business days after the purchase agreement or lot reservation agreement is signed by all parties, unless otherwise specifically provided by written agreement of all parties to the purchase agreement or lot reservation agreement, in which case the licensee shall deposit the check or cash received on the date provided by such written agreement.
21. Fail in response to a request by the commission or the director to produce any document, book, or record in the licensee's possession or under the licensee's control that concerns, directly or indirectly any real estate, transaction or the licensee's real estate business.
22. Refuse to appear or testify under oath at any hearing held by the commission.
23. Demonstrate incompetency to act as a broker, associate broker, or salesperson.
24. Knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement, involving the issuance of a title insurance policy or contract concerning which the licensee is directly or indirectly connected, from a title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof.
25. Engage in the purchase of one, two, three or four family dwellings, including condominiums and cooperatives, or the acquisition of any right, title or interest therein, including any equity or redemption interest, if:

    a. The dwellings are subject to a right of redemption, the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder or judgment creditor who held such mortgage and the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the judgment lien arising from the foreclosure of such mortgage, as payments become due under the loan regardless of whether the licensee is obligated to do so.

    b. The dwelling(s) are subject to a loan which is secured by a mortgage and which is in default at the time of such purchase or in default within one year after such purchase, the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder and the licensees unless otherwise required by law or court order fails to apply any rent proceeds from the dwellings to the mortgage as the payments come due, regardless of whether the licensee is obligated on the loan, or the licensee fails to notify, at the time of rental any person renting any such dwelling of the extent and nature of the licensee's interest in such dwelling and the probable time until possession will be taken by the mortgage holder or judgment creditor.

26. Commit forgery or, unless authorized to do so by a duly executed power of attorney, sign or initial any contractual agreement on behalf of another person in a real estate transaction.

Following is a list of the most common violations

1. Representing the buyer or seller without obtaining a written agency agreement with the client.
2. Failing to include a fixed date of expiration in an agency agreement. (No automatic renewals or extensions.)
3. Failing to disclose brokerage relationships in the sales contract or lot reservation agreement (or the disclosure does not accurately reflect the relationships).
4. Commingling of funds.
5. Failing to properly maintain and reconcile trust account records.
6. Failing to deposit earnest money in the trust account within the required time period.
7. Failing to deliver the contract and earnest money check to the escrow agent within the required time period or failing to obtain a receipt from the escrow agent and keep the receipt in the transaction file. (Remember put your TIN on the receipts)
8. Retaining interest accrued on moneys held in the broker's trust account without written consent of all parties to the transaction.
9. Disbursing earnest money, on a transaction that did not close, without written authorization of both parties or a court order.
10. Failing to withdraw earned commission from the broker's trust account after a transaction had closed.
11. Failing to include a method of determining the closing date in the contract.
12. Failing to express the exact agreement of the parties, i.e., by not designating in the sales contract, the escrow agent by whom earnest money was held.
13. Failing to furnish the agreement between seller and buyer to lender.
14. Signing a document for a principal without a duly executed power of attorney.
15. Continuing to perform real estate activities after expiration of license or while on deactivated status and prior to renewal or reinstatement.
16. Failing to properly supervise activities of salespersons.
17. Receiving commission from someone other than supervising broker.
18. Remitting bad checks for payment of licensure fees.

In a recent edition of the KREC newsletter the following disciplinary actions were taken.

1. Following a hearing, a broker was found to have committed acts that include misrepresentation and incompetence. His license was revoked and a fine was assessed against him.
2. A broker was found to have acted in the capacity of real estate licensee in order to receive a commission in conjunction with two contracts which were executed and closed before he was licensed in Kansas and was found to have made a false or fraudulent misrepresentation on his Application of License as Kansas Real Estate Broker by Reciprocity. His license was revoked.
3. A broker, following a hearing, was found to have failed to promote the interest of his buyer client with the utmost good faith, loyalty and fidelity. His license was suspended.
4. Following a hearing, it was found that a salesperson did not act in a competent manner when he/she, with the assistance of another licensee, drafted an amendment to a contract and then failed to have her supervising broker review the contract addendum before it was sent to her client. A fine was assessed against her.

5. Salesperson failed to put earnest money in the custody of broker, failed to promptly present offers/counter offers. License was suspended for 30 days. Salesperson was also assessed a fine and required to attend the 24 hour broker pre-license course.
6. Salesperson independently participated in activities requiring a license and conducted those activities without the knowledge of his supervising broker. License was suspended for 30 days and a $500 fine was assessed against the salesperson. The following all had fines assessed:
7. Broker disbursed earnest money on a transaction which did not close without written authorization of both parties and a court order.
8. Broker wrote their client's initials on a contractual agreement without being authorized to do so by a duly executed power of attorney.
9. Broker did not retain copies of records.
10. Salesperson offered to pay for a home warranty plan if property was listed and sold through them.
11. Broker failed to disclose first termite report to buyer.
12. Broker, operated two branch offices without branch brokers.
13. Broker, failed to properly supervise activities of an associate broker.
14. Associate broker demonstrated incompetence in preparation of contingency clause 'in contract signed by her client.
15. Salesperson violated KS.A- 58-3062(a) (1) in advertising involving the Wichita Area Builders Association 1998 Spring Parade of Homes, in which they were not an authorized participant. It reads: No licensee, whether acting as an agent or a principal shall: intentionally use advertising that is misleading or inaccurate in any material particular or that in any way misrepresents any property, terms, values, policies or services of the business conducted, or use the trade name, collective membership mark, service mark or logo of any organization owning such **name,** mark, or logo without being authorized to do so.
16. Broker, had shortage in trust account caused by disbursement of funds in excess of amount collected on two transactions and failure to properly reconcile records.

In addition to the above, there were fifty people listed who received fines pertaining to failure to obtain written agency agreements. It reads as follows: The statute requires a written agency agreement between the party to be represented (whether buyer or seller) and the broker (which in this context is the brokerage firm). There is only one exception: An agency with a seller may be established orally if the seller is a federal agency.

Basic Real Estate Laws

The Civil rights act of 1866 banned racial discrimination. There are no exceptions. The fair housing act of 1968 and 1988 with amendments banned discrimination based on:

1. Race
2. Color
3. Religion
4. Nation origin
5. Sex

6. Handicap
7. Familial status

Misrepresentation

1. Definition of misrepresentation: Transmitting an untruth from one person to another by **words or conduct**. Presenting something not in accordance with the facts.
2. Types of misrepresentation:
    a. Intentional misrepresentation is fraud. Fraud exists when the misstatement of fact is deliberate and made with the intent that the other party rely on it as truth.
    b. Negligent misrepresentation is a mistake of fact, which occurs when one or both parties assume something to be a fact that is incorrect and this error in turn is included in their contract.
    c. Innocent misrepresentation is an innocent misstatement of fact without intent to deceive.
3. Concept of Justifiable Reliance: Buyers and sellers are legally entitled to rely on the representation made to them by real estate agents. Real estate agents have been responsible under the law for things they know or should have known about relating to real estate transactions.
4. Ways to avoid misrepresentation:
    a. Check Completeness and accuracy of all information.
        1. Errors of omission occur when real estate agents fail to disclose facts they know. For example: customers or clients are purchasing a home in a section of town where they are making major improvements to the sewer lines and/or streets. Special assessments will be levied as soon as this happens. The real estate agent should know of such pending assessments.
        2. Errors of omission are direct misrepresentations by a real estate agent. For example: representing a property to contain 12 acres of land when in fact it has only 9. Also, saying something is smaller than it really is. This means additional expense in utilities, upkeep, etc.
    b. Avoid “oversell” of property. You should avoid exaggerating the amenities, neighborhood, construction, schools, resale potential and other features of properties.
    c. Make a thorough visual inspection of the property. Whether listing or showing a property, a thorough visual inspection will help uncover defects that should be disclosed to the parties concerned.
    d. Avoid reliance on disclaimers. A typical example of a disclaimer is in a contract where it clearly states that the real estate agent is acting as agent only and is not to be held liable by either party for misrepresentation. This won't hold water.
    e. Follow up on red flags: these could be statements made by buyers and or sellers to agents that raise “red flags” or warning signs of existing or potential problems.
    f. Clearly identify opinions as opinions. When as agent expresses an opinion to a buyer or sellers either orally or in writing, it must be clearly identified as an opinion and not as a statement of fact.
    g. Exercise caution when making statements of fact. You should always choose your words very carefully. People tend to have “selective hearing”. Hear only what they want to hear. When making a statement of fact be certain beyond any doubt that it is in fact correct.

h. Avoid puffing a property. While "puffing the goods" in advertising may be acceptable within reasonable limits, "puffing" a property to buyers or even sellers is a dangerous practice. Again, stick with the facts.
i. Never interpret the rights and duties of parties to contracts for others. Kansas Real Estate License Law requires that licensees advise customer and clients to seek competent advice concerning contracts and the title to the property. You must always avoid the illegal practice of law.
j. Establish procedures to minimize the possibilities of misrepresentation. Document all contracts with customers and clients. Practice risk reduction at all times.

5. Procedure upon discovery of misrepresentation.
   a. Disclose problems at once. As soon as a misrepresentation is discovered, immediately disclose it to the parties concerned. Intentional delay or vacillation in disclosing a misrepresentation compounds the problem and will raise suspicion on the part of the injured party. Make sure you make your broker is aware of any problem immediately if you are not the broker of the office.
   b. Confirm the disclosure in writing. Timely written disclosure provides evidence of good faith, which is very important, should litigation occur.
   c. Indicate the nature of the misrepresentation in the disclosure. Be as factual and specific as possible, take care not to minimize or exaggerate the circumstances. Leave the emotions out of it.
   d. Caution the party not to rely on the misrepresentation. Timely written disclosure prevents or minimizes damages to the party relying on the misrepresented fact.
6. Remedies for misrepresentation.
   a. Civil damages
      1. Actual
      2. Punitive
      3. The court may assess both actual and punitive damages.
   b. Criminal
      1. Jail time
      2. Fines
   c. Quasi criminal: Can mean loss or suspension of your real estate license as provided for in the Kansas Real Estate License Law.

Environmental Problems

Real Estate agents cannot and are not required to understand complicated environmental legislation. This is a field for specialized attorneys and environmental experts. Our primary responsibility in this area is (1) to recognize potential environmental hazards in all residential, industrial and commercial properties, or in some limited cases agricultural property. The federal Comprehensive Environmental Response Compensation and liability Act (CERCLA) of 1980 (Superfund) provides for strict liability of owner, operator and lessee for cleanup of hazardous substances generated, transported or disposed of. A defense of innocence is possible for an owner as to a preexisting problem if appropriate inquiry was made prior to acquiring the site. Hazardous substances can include:

- Asbestos
- Lead
- Radon gas

- Electro-magnetic fields (EMF)
- Underground storage tanks
- PCBs (polychlorinated Biphenyl's)
- Urea formaldehyde foam
- Chemical discharge

The one we hear the most about is lead-based paint. Other common ones in the area are asbestos and radon gas. Real estate licensees should advise their customers and clients to obtain environmental audits before purchasing property in order to:

- discover the extent of any environmental contamination
- be able to utilize the "innocent landowner" defense under CERCLA if contamination is subsequently discovered

Sellers and licensees should avoid making any representations or offering any advice, not only about the environmental condition of the property, but also about the status of the law or the meaning of any environmental provision contained in a contract.

The seller should be encouraged to disclose any environmental issues he has knowledge of and there should be a provision in the purchase agreement making the sale conditional upon a satisfactory environmental audit.

Real Estate brokers and their agents should always recommend to all sellers and buyers that they have 3rd party experts do inspections and tests as appropriate. Never choose the inspector. Give them a list of several and let them choose and make the call.

To protect families from exposure to lead from paint, dust and soil Congress passed the Residential Lead Paint Hazard Reduction Act also known as Title X. The EPA and HUD have jointly issued the regulation that requires disclosure information on lead based paint and lead-based paint hazards.

What Disclosures are Required of Sellers?

Effective December 6, 1996, for residential dwellings built before 1978, before ratification of a contract for sale, sellers must:

1. Disclose the presence of lead based paint hazards.
2. Provide buyers with copies of any prior records or reports pertaining to the presence of lead based paint or lead based paint hazards.
3. Give buyers the pamphlet title "Protect Your Family from Lead in Your Home."
4. Provide buyers with a period of up to 10 days, prior to becoming obligated under any purchase contract to conduct a lead based paint inspection or risk assessment at their own expense, if desired. The number of days can be changed by mutual consent, or even waived by the buyer.
5. Sales contract should include the "Addendum to Contract for Purchase" and "We of Real Estate (Lead Test Contingency)."

6. A listing agent has the responsibility to advise the seller of these obligations and ensure that the **seller signs** the disclosure statement. Any other agent involved in the transaction is also responsible to ensure that the seller satisfies these obligations.

What is not Required

1. Testing or Abatement.
2. Disclosure to all prospective buyers is not required, only to the actual buyer.

Penalties

Fai1ure to comply with the requirements cannot be used to void a contact after ratification and cannot void the transfer of real estate. Civil penalties can range up to $10,000 for each violation. Criminal penalties of $10,000 for each violation and imprisonment for up to one year may be imposed in habitual cases of non-compliance. The seller or agent may also be liable for treble damages for any injuries sustained by the buyer. On the following pages are the necessary forms. To complete this class you will be required to fill them out correctly. Remember, the seller's signatures and date should be at time of listing. The buyer's signatures and date should be on the same form and at or before date of contract.

On the final pages is a **DISCLOSURE OF INFORMATION AND ACKNOWLEDGEMENT LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS** form that can be used for the Seller to disclose the requisite information to the Buyer. There are some other lead-based paint forms available. Use the one your broker tells you to use. This one requires initials by the seller at a and b and by the buyer at c, d, and e. Signatures of the Seller(s), Buyer(s), and Agent(s) are also required. A copy of this completed form should be given to Seller and Buyer as well a copy should be kept by the Agent(s) and placed in the files of the Brokerage Firm(s).

DISCLOSURE OF INFORMATION AND ACKNOWLEDGEMENT ON LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS AS REQUIRED BY FEDERAL LAW

Concerning the property located at:_____
(Street address, city, state, zip)

A. **LEAD WARNING STATEMENT**: "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment for possible lead-based paint hazards is recommended prior to purchase."

B. **SELLER'S DISCLOSURE**:

1. PRESENCE OF LEAD-BASED PAINT AND/OR LEAD-BASED PAINT hazards (check one box only):

☐ a. Known lead-based paint and/or lead-based hazards are present in the Property (explain):_____

_____

☐ b. Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the Property.

2. RECORDS AND REPORTS AVAILABLE TO THE SELLER (check one box only)

☐ a. Seller has provided the buyer with all available records and reports pertaining to lead-based paint and/or lead-based hazards in the property (list document):_____

_____

☐ b. Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the Property.

C. **BUYER'S RIGHTS**: (check one box only):

☐ 1. Buyer waives the opportunity to conduct a risk assessment or inspection of the Property for the presence of lead-based paint or lead-based paint hazards.

☐ 2. Within ten days after the effective date of this contract, Buyer may have the Property inspected for the presence of lead-based paint and/or lead-based paint hazards. If lead-based paint or lead-based paint hazards are present, Buyer may terminate this contract by giving Seller written notice within 14 days after the effective date of this contract.

D. **BUYER'S ACKNOWLEDGEMENT** (check applicable boxes):

☐ 1. Buyer has received copies of all information listed above.

☐ 2. Buyer has received the pamphlet *Protect Your Family from Lead Paint in Your Home.*

E. **BROKER'S ACKNOWLEDGEMENT**: Brokers have informed the Seller of the Seller's obligation under 42 U.S.C. 4852d to; (a) provide Buyer with the federally approved pamphlet on lead poisoning prevention; (b) complete this addendum; (c) disclose any known lead-based paint and/or lead-based paint hazards in the Property; (d) deliver all records and records to Buyer pertaining to lead-based paint and/or lead-based paint hazards in the Property; (e) provide Buyer a period of up to 10 days to have the Property inspected; and (f) retain a completed copy of this addendum for at least 3 years following the sale. Brokers are aware of their responsibility to ensure compliance.

F. **CERTIFATION OF ACCURACY**: The following persons have reviewed the information above and certify, to best of their knowledge, that the information they have provided is true and accurate.

Seller	Date	Buyer	Date
Seller	Date	Buyer	Date
Listing Broker	Date	Other Broker	Date

Addendum to Contract for Purchase and Sale of Real Estate (Lead Test Contingency)

This addendum modifies the terms of the Contract for Purchase and Sale of Real Estate entered into between the undersigned and dated _____.

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards* at the Buyer's expense until 9:00 pm on the tenth calendar day after the contract is signed by all parties_____*(insert date 10 days, after contract ratification or a date mutually agreed upon).*

This contingency will be removed after the above deadline unless the Buyer (or selling agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller must respond in writing within three business days after Seller receives the request if the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the closing. If the Seller does not elect to make the repairs, or if the Seller makes a counter-offer, the Buyer shall have ____days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition as to lead-based paint and/or lead-based paint hazards or this contract shall become void. The Buyer may remove this contingency at any time without cause.

_____ _____

Buyer Date Seller Date

_____ _____

Buyer Date Seller Date

*** Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet *Protect Your Family from Lead in Your Home* for more information.**

Lead-Based Paint Compliance Checklist for Sales Transactions

If the property was built before 1978, did I…..

Inform the Seller of his obligation to disclose his actual knowledge of the presence of any lead-based paint or lead based paint hazards on the property?

If copies of test results were available, did I…..

Secure copies of the test results from the Seller and provide copies to the Buyer?

Before the Seller accepted the offer, did I…..

Confirm that the offer included a disclosure statement with the specified lead-based paint warning language?

Obtain a signed acknowledgment from the Buyer that he had or reserved the right, for a period of up to 10 days, to have the property tested for lead-based paint, or expressly waived that right?

Obtain a signed acknowledgment from the Buyer that he had received a copy of the federal pamphlet, *"Protect Your Family From Lead In Your Home*"?

Obtain a signed acknowledgment from the Buyer that he had received disclosures concerning the presence of lead-based paint or lead-based paint hazards on the property and, if available, copies of any lead-based paint test results?

If the purchase signed the acknowledgment, did I…..

Ensure that the Buyer's acknowledgment was also signed by the Seller and the other agent(s)?

Lead-Based Paint Compliance Check list for Lease Transactions

If the property was built prior to 1978, did I…..

Inform the lessor of his obligation to disclose his actual knowledge of the presence of any lead-based paint and/or lead based paint hazards on the property?

If copies of test results were available, did I…..

Secure copies of the test results, including other units and common areas in multi-family properties even if the unit in question was never tested, and provide copies to the lessee?

Before executing the lease, did I…..

Provide the lessee with a copy of the federal pamphlet, "*Protect Your Family From Lead In Your Home*"?

Disclose to the Lessee the presence of lead-based paint and/or lead-based paint hazards on the property and, if available, give copies of any lead-based paint test results to the Lessee?

Ensure that the lead-based paint warning language and lead-based paint disclosure acknowledgment form was read and signed by the Lessor, and Lessee and any other agent involved in the transaction?

Chapter 9

ADVERTISING, MARKETING, FAIR HOUSING, AND STIGMATIZED PROPERTY

Marketing Advertising Regulations

1) A licensee, whether acting as an agent or a principal, **shall not intentionally use advertising that is misleading or inaccurate** in any material particular or that in any way misrepresents any property, terms, values, policies, or services of the business conducted, or uses the trade name, collective membership mark, service mark, or logo of any organization owning such name, mark, or logo without being authorized to do so.

2) All advertising, except on property which is not listed with a broker and which is personally owned by a licensee or in which a licensee may have an interest, shall include the name of the broker by using the broker's trade or business name and such other information as the broker considers necessary. The use of only a post office box number, telephone number, or street address shall be deemed a violation of K.S.A. 58-3062(a)(1).

3) Unless property personally owned by a licensee or property in which a licensee may have an interest is listed with a broker, all advertising caused by the licensee on such property shall be done in such a manner as to inform clearly the public that a real estate broker, associate broker, or salesperson is the owner of or has an interest in the property advertised.

4) A real estate broker who enters into an agreement which authorizes the broker to utilize the name or trade name of any other person in the conduct of the broker's real estate business shall file a copy of such agreement in the public records of the commission. The term "trade name" shall include, but not be limited to, trademark, service mark, or trade identification. Failure to comply with this section shall be deemed a violation of K.S.A. 58-3062(a) (1).

5) A broker shall not advertise or promote the broker's business in a manner that would confuse, hinder, or mislead the public as to the identity of the broker responsible for the debts and liabilities of the business or entity.

Regulation Z – Truth In Lending – Consumer Credit Protection Act

1) Regulation Z is a Federal disclosure law administered by the FTC (Federal Trade Commission) which requires lenders to inform borrowers of the true cost of obtaining credit In order that the borrower can make an informed decision by comparing the costs of various lenders.

2) When credit is extended to individuals for personal, family, or household uses and the amount of credit is $25,000 or less, Regulation Z applies and in all circumstances, regardless of the amount financed when a residence secures a credit transaction.

3) Regulation Z does not apply to:

- Zero interest loans
- Loans with four or fewer installments to payoff.
- Non-real estate loans over $25,000.
- Business or investment loans.
- Loans to corporations.
- Assumptions where there are no changes to terms.
- Seller financing.

3) Regulation Z requires that consumers be fully informed of all finance charges: Loan fees, finder's fees, service charges, and discount points as well as interest rate. The lender does not have to include as part of the finance charge actual costs such as title fees, legal fees, appraisal fees, credit reports, survey fees, and expenses.

4) When making a mortgage loan to finance the purchase of a dwelling the lender must compute and disclose the annual percentage rate (APR) but does not have to indicate the total interest payable during the term of the loan.

The APR is: The total charge for obtaining credit stated as a percentage of the loan amount and calculated on an annual basis, including the base interest rate, primary mortgage insurance, loan origination fee, and loan discount points.

Advertising restrictions: If any of the following "triggering terms" are used in real estate advertising the FTC requires that a full disclosure of all terms be included in the advertisement. The basis is that specifics trigger and generalities do not trigger.

- The amount of the down payment.
- The amount of any payment.
- The number of payments or period of repayment.
- The amount of any finance charge.

An example: Assuming a low interest VA loan does not trigger. Assuming a 6% VA loan triggers full disclosure.

When a real estate advertisement includes of the above triggering terms the law requires that all of the following be disclosed in the advertisement:

- The amount or percentage of down payment.
- Terms of repayment – including the length of the loan, the number of payments, the amount of each payment and the APR.
- In the case of adjustable rate mortgages where the APR offered may be increased after the closing, the advertisement must state that fact.

An example: A broker desires to advertise a property which may be financed as follows: Subject to a 30-year 6.5% ARM with a 10% down payment. The rate may change plus or minus 1% every year with a lifetime cap of 11.5% and a minimum of 1%. The APR has been computed as 7.88%.

Following are three acceptable ways to advertise the interest rate in the above adjustable rate example:

- 7.88% APR subject to increase after settlement.
- 7.88% APR subject to increase every year.
- 6.5% interest (7.88% APR) subject to increase after closing.

The simple interest rate may be included with the APR but it must **not** be displayed more conspicuously than the APR.

Fair Housing Advertising

Section 804(c) the Fair Housing Act makes it unlawful to make, print, or publish, or cause to made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination because **of race, color, religion, sex, handicap, familial status,** or **national origin,** or intention to make such preference, limitation, or discrimination. Potential defendants in a complaint based on this provision include housing providers, advertising agencies, newspapers, and other advertising media.

A home owner or landlord whose dwelling is exempt from coverage under the Fair Housing Acts is not free to employ discriminatory advertising. The **United States v. Hunter** decision was significant because it established judicial guidelines with respect to understanding the meaning of the Fair housing Acts prohibited practices concerning discriminatory advertising. It made three important points:

- That it applies to newspapers and other media.
- That the provision does not violate the First Amendments guarantee of freedom of the press.
- That whether or not an advertisement violates the Act will be determined by how an ordinary reader would interpret the ad.

The anti-discriminatory mandate of this provision has a significant impact on the housing industry because it outlaws virtually every discriminatory notice, statement, and advertisement that relates to a housing transaction. Thus, statements made by housing providers which attempt to either encourage or discourage home seekers from buying or renting in a particular building or neighborhood because of membership in a protected class would violate the law. For example, statements indicating that blacks are not welcome or would not be compatible with existing tenants, would be prohibited as would advertisements stating that children are not welcome. The practice of steering prospective home seekers to certain areas, as well as any discriminatory language contained in restrictive covenants in deeds would violate the Fair Housing Act.

HUD Advertising Guidelines

The HUD advertising guidelines categorize discriminatory advertising in to three groups:

- Advertising that contains words, phrases, symbols, or visual aids that indicate a discriminatory preference or limitation;
- Advertising that selectively uses media, human models, logos, and locations to indicate an illegal preference or limitation;
- Various types of discriminatory advertising practices condemned by the Fair Housing Act.

The regulations prohibit the use of words, phrases, symbols, photographs, and illustrations that convey that the dwelling are available or not available to a particular group of people because of **race, color, religion, sex, handicap, familial status,** or **national origin.** The following words, phrases, and symbols typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations:

- Words description of dwelling, landlord, and tenants. White private home, colored home, Jewish home, Hispanic residence, adults building.
- Words indicative of **race, color, religion, sex, handicap, familial status,** or **national origin.**

a. **Race** – Negro, Black, Caucasian, Oriental, American Indian.
b. **Color** – White, Black, Colored.
c. **Religion** – Protestant, Christian, Catholic, Jew.
d. **National Origin** – Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.
e. **Sex** – The exclusive use of words in advertisements, including those involving the rental of separate units in a single or multifamily dwelling, stating, or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. This section does not cover advertisements of dwellings used exclusively for dormitory facilities by education institutions.
f. **Handicap** – Crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. (AIDS and HIV are a handicap.) This section does not restrict the inclusion of information about the availability of accessible housing.
g. **Familial Status** – Adults, children, singles, mature persons. This section does not restrict advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "Housing for older persons".
h. **Catch Words** – Words and phrases used in a discriminatory context should be avoided, such as restricted, exclusive, private, integrated, traditional, board approval or membership approval.
i. **Symbols or logotypes** that imply or suggest race, color, religion, sex, handicap, familial status, or national origin.
j. **Colloquialisms** – words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.
k. **Directions to real estate for sale or rent** (Use of maps or written instructions.) Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing Black development, or an existing development known for its exclusion of minorities. References to a synagogue, congregation, or parish may also indicate a religious preference.
l. **Area Description --** Names of facilities that cater to a particular racial, national origin, or religious group, such as a country club or private school designations, or names of facilities that are used exclusively by one sex may indicate a preference.

The **second** general category of unlawful advertising identified in the HUD regulations involves the selective use of content or media based on race or other prohibited basis. For example, the selective use of human models in advertisements may have a discriminatory impact. Other examples of this type of discriminatory advertising include:

- **Selective Geographic Advertisements** – This may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers, or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

- **Selective use of Equal Opportunity Slogan or Logo** – This may involve placing the equal opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

- **Selective Use of Human Models** – This regulation covers not only selective advertising based on race, but on all of the Fair Housing Acts prohibited bases of discrimination, including sex, handicap, and familial status. The regulations require that when human models are used in display advertising, the models should be clearly definable as reasonable representing the majority and minority groups, both sexes, and when appropriate, families with children. In addition,

models should portray persons in an equal social setting and indicate to the general public that the housing is open to all persons, without regard to race, color, religion, sex, handicap, familial status, or national origin.

According to the HUD guidelines, all advertising of residential real estate to sale or rent should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home seeking public that the property is available to all persons, regardless of **race, color, religion, sex, handicap, familial status,** or **national origin.** The choice of logotype, statement, or slogan will depend on the type of media used and in space advertising, on the size of the advertisement.

All offices should have the equal housing opportunity poster prominently displayed.

Creating protected class sensitive advertising: Today, most complaints involving fair housing advertising are based on blatant violations of the Fair Housing Act. Examples are ads seeking "no children" or "Adults only." However, with the increased scrutiny of real estate advertising from fair housing organizations, testers, and individual home seekers, many real estate practitioners are concerned about being charged with housing bias based on the wording in their advertisements. Seemingly harmless words may trigger a complaint. The key to composing advertising that is in compliance with the Fair Housing Act is to describe the property, not the seller, landlord, neighbors, or "appropriate" buyers or renters.

Creating advertising that is sensitive to the protected classes under the Fair Housing Act is not as difficult as it may seem. Simply review the wording in the ad to see if anyone would feel excluded by what is being said. Keep in mind, that if a person wouldn't pick up the phone to respond to the ad because of the exclusionary wording, there could be a complaint. For example, "walking distance to" would imply that everyone is able to walk. Phrases like "quiet neighborhood" could be a code for excluding families with children. Describing a home as "perfect for the sports enthusiast" could discourage the disabled. Some real estate firms will no longer use the term "master bedroom" because of a potential connection to slavery.

An individual who listed her religion as "non-Christian" filed a complaint against a newspaper in Salem, Oregon, for religious discrimination based on a housing ad under a logo of a bunny in a basket bearing the words "Happy Easter." The term "Christian Handyman" in an ad for rental housing violated Wisconsin law by expressing illegal preferences on the basis of both sex and religion.

The advertising provisions of the Federal Fair Housing Act also apply to multiple listing services (MLS). The Portland, Oregon MLS was charged by the Fair Housing Council of Oregon with a federal Fair Housing complaint concerning a condominium listing which included the phrase "Adults only over 40," which was published in the remarks section of the MLS data sheet. The result was a HUD investigation and a $30,000 out of court settlement. The MLS could have been fined $10,000 for each time the comment had been printed. As part of the out of court settlement the MLS agreed to conduct biweekly computerized searches for discriminatory words or phrases. Some of these words and phrases follow below.

PROBLEMATIC WORDS TO BE AVOIDED IN ADVERTISING

Able bodied	Adult community	Adult living	Adults only
African	Agile	Alcoholics, no	Asian
Bachelor	Blacks, no	Board approval required	Catholic
Children, no	Chinese	Colored	Couple
Crippled, no	Deaf, no	Drinkers, no	Employed, must be
Empty nesters	Ethnic reference	Handicapped	Healthy only
Hispanic	Impaired, no	Independent living	Indian
Integrated	Irish	Jewish	Latino
Landlord (Descript'n of)	Married	Mature Couple	Mature Individual
Mature Person(s)	Membership appro'l req	Mentally handc'ed, no	Mentally ill, no
Mexican American	Mormon Temple	Mosque	Singles only
Smoker(s), no	Soc Sec. INS, no	Tenant (description of)	Unemployed, no
White	White, only		

Stigmatized Property

The National Association of Realtors (NAR) defines Stigmatized Property as: **A property that has been psychologically impacted by an event that occurred, or was suspected to have occurred on the property, such event being one that has no physical impact of any kind.** Stigmatized Property, which includes property associated with homicide, suicide, criminal activity, or persons diagnosed with AIDS, is an issue of concern to real estate brokers. Kansas does not have a law concerning Stigmatized Property but common law requires disclosure. **According to Federal Law, AIDS and HIV are a handicap and under no circumstances may an agent disclose that the property has, or had an occupant at any time infected with HIV or AIDS.** One recommended response to a question about AIDS is to point out that AIDS is a

handicap according to Federal Law and that you could not comment even if you knew. You may suggest however, that a prospect that considers this information to be relevant to the decision to buy, or not to buy, make an investigation on their own prior to writing an offer. Is the information material?

- If the stigma would reduce the desirability of the property or affect its value, then the fact is probably material. If the answer to either of the following question is YES you are dealing with a material fact.

    a. Would a reasonable person be willing to buy the property knowing about the stigma?
    b. Would a reasonable person pay less for the property knowing about the stigma?

- Remember the basic rule of disclosure. – When in doubt disclose and obtain the written consent of the affected party to do so. If the seller refuses to give you his written permission to disclose don't take the listing. If the fact that the property is stigmatized is discovered after the listing is taken and the seller will not permit disclosure, seek legal advice about terminating the listing and other matters that may be pertinent.

- Tell the seller that you will only disclose the stigma to a prospective buyer prior to the contract proposal stage. A buyer's agent should disclose up front and deal with it in the best interest of the buyer client.

- It is best to present the subject as one more relevant piece of information you need to convey about the property and disclose in the sales contract.

One way you might disclose the stigma to a buyer would be, **The seller has instructed me to inform you that the property was the site of** (disclose stigma)**. If you consider information concerning this matter to be material to your decision to purchase or not purchase the property I will provide that information to you.**

Although the psychological aspect will greatly disturb some people, "can't sleep at night," etc. the greatest impact is more often the influence that the stigma may have on the market value of the property.

ANSWER KEYS TO CONVENTIONAL CASE STUDIES 1, 2, 3 AND TO BUYER ESTIMATED COST TO BUY AND SELLER'S CLOSING COST ESTIMATE:

Conventional Case Study # 1

You have been showing Mr. and Mrs. Bill Williams a property; they have located the home they wish to buy at 1750 Claiborne. You take them back to your office and obtain the following information. They wish to write an offer of $100,000 on the property. They will be paying for a 5% down payment, credit report $52, appraisal fee $295, one half of the title insurance (their portion $290), lender's coverage $75, recording fees $26, survey $200, underwriting fee $150, one half of the closing fee $100, termite inspection $30, tax service fee $30, property inspections $250, and flood certificate $25. They are getting a 7.5 % 30 year loan. The homeowners insurance will be approximately the sales price times 0.0050 annually and taxes are $150 per month. They will be closing on the 15th day of next month. Bill works for MCI and earns $35,000 a year. Susan works for an advertising firm and her annual salary is $36,500. They have a car payment of $295 and a truck payment of $460. They also have 2 credit cards with balances of $750 and $900. (Credit card payments are 5% of the balance, monthly.) They have savings of $12,500. They will put $1,500 earnest money down. Do the following: qualify the buyers and complete a buyer estimated cost to buy. Then calculate their estimated monthly payments.

CONVENTIONAL QUALIFICATION

1	Total monthly income	$ 5,958.00	
2	Times installment debt ratio	36%	#1 x #2 = #3
3	Total allowable monthly debt obligations	$ 2,144.88 837.50	
4	Minus actual mo. installment payments	$ 837.50	
5	Allowable monthly PITI payment	$ 1,307.38	#3 minus #4 = #5
6	Mortgage debt ratio limit	28%	
7	Maximum monthly PITI payment	$ 1,668.24	#1 x #6 = #7
8	Maximum monthly PITI payment	$ 1,307.38	smaller of #5 or #7
9	Monthly taxes & ins. @ .22 of payment	$ 287.62	Payment x 22%
10	Maximum monthly P & I payment	$ 1,019.76	#8 - #9
11	Divided by amortization factor	.00699	(see below)
12	Maximum mortgage loan amount	$ 145,888,00	#10 divided by #11
13	Divided by loan to value ratio	95%	#12 / ratio
14	Maximum affordable home price	$ 153,566.00	

The factor used in #9 of 0.22 is generally close for an estimate of taxes and insurance. When you do a closing statement and calculate payments on a particular property for a buyer, use the values available for the taxes and insurance. Don't forget special taxes if any! The amortization factors are: 7.5% 30-year loan is 6.99 per thousand (0.00699) 7% 15-year loan is 8.99 per thousand (0.00899). Once you complete the 7.5% loan calculate maximum affordable home price for a 15 year 7% loan.

Conventional Case Study # 2

Rick Waterman has been employed at the same job for 8 years. He is currently making $38,500 per year. His wife Sarah has been a housewife for several years, but 7.5 months ago she started a catering business from her home. It's doing quite well. She earns $1,500 per month on average. They have a payment on the new van they purchased for her catering business of $330 a month. Rick drives a 4.5-year-old truck that was financed for 60 months with payments of $235. They have a total credit card debt of $800. They live in a home they paid $35,000 for and they owe $12,500 on it. They have savings of $8,000. They want to buy the maximum amount of house they can qualify for. They don't want to pay PMI insurance. They plan to make a 20% down payment. Based on an interest rate of 7.5 % for 30-years, what can they afford? Using the same information based on a 7% loan for 15-years, what can they buy?

CONVENTIONAL QUALIFICATION

		30 year 7.5 %	15 year 7%
1	Total monthly income	$ 3,208.33	$ 3,208.33
2	Times installment debt ratio	36%	36%
3	Total allowable monthly debt obligations	$ 1,154.99	$ 1,154.99
4	Minus actual mo. installment payments	$ 370.00	$ 370.00
5	Allowable monthly PITI payment	$ 785.00	$ 785.00
6	Mortgage debt ratio limit	28%	28%
7	Maximum monthly PITI payment	$ 898.33	$ 898.33
8	Maximum monthly PITI payment	$ 785.00	$ 785.00
9	Monthly taxes & ins. @ 0.22 of payment	$ 172.70	$ 172.70
10	Maximum monthly P & I payment	$ 612.30	$ 612.30
11	Divided by amortization factor	.00699	.00899
12	Maximum mortgage loan amount	$ 87,597	$ 68,109
13	Divided by loan to value ratio	80%	80%
14	Maximum affordable home price	$ 109,496	$ 85,136

The factor used in #9 of 0.22 is generally close for an estimate of taxes and insurance. When you do a closing statement and calculate payments on a particular property for a buyer, use the data available for the taxes and insurance. Don't forget special taxes! The amortization factors are for a 7.5 % 30-year loan is 6.99 per thousand (0.00699) and for a 7% 15-year loan is 8.99 per thousand (0.00899). After you complete the 7.5% loan calculations; calculate for a 15 year 7% loan.

NOTE:
Remember you can not use the wife's income as she is self employed for less then 2 years.
You do not count the truck payment against them as they only owe 6 months on it.

Conventional Case Study # 3 – Net to Seller

You have made calculations for the buyer, change hats. Perform an **Estimated Net to Seller** worksheet. It is on the same property. The sellers' names are: James J. Hedgeworth and wife, Stephanie K. They are going to pay their share of the title insurance, the real estate brokerage fee of 6%, one half of the closing fee, the mortgage loan balance owing on the property of $53,200 with interest at 8%, prorated taxes, attorney fees $45, and recording the release $9.50. Always calculate interest for 3-5 days more than the actual day of closing. For these sellers' net we will assume that our closing date is June 26. Do your calculations accordingly.

Conventional Case Study # 1

You have been showing Mr. and Mrs. Bill Williams a property; they have located the home they wish to buy at 1750 Claiborne. You take them back to your office and obtain the following information. They wish to write an offer of $100,000 on the property. They will be paying for a 5% down payment, credit report $52, appraisal fee $295, one half of the title insurance (their portion $290), lender's coverage $75, recording fees $26, survey $200, underwriting fee $150, one half of the closing fee $100, termite inspection $30, tax service fee $30, property inspections $250, and flood certificate $25. They are getting a 7.5 % 30 year loan. The homeowners insurance will be approximately the sales price times 0.0050 annually and taxes are $150 per month. They will be closing on the 15th day of next month. Bill works for MCI and earns $35,000 a year. Susan works for an advertising firm and her annual salary is $36,500. They have a car payment of $295 and a truck payment of $460. They also have 2 credit cards with balances of $750 and $900. (Credit card payments are 5% of the balance, monthly.) They have savings of $12,500. They will put $1,500 earnest money down. Do the following: qualify the buyers and complete a buyer estimated cost to buy. Then calculate their estimated monthly payments.

BUYER ESTIMATED COST TO BUY

PROPERTY ADDRESS: 1750 Claiborne

SALES PRICE	$ 100,000.00	
LESS 1ST MORTGAGE	$ 95,000.00	
Less Other (if applicable)	$	
INITIAL INVESTMENT (down payment)		$ 5,000.00
ESTIMATED LOAN AND CLOSING COSTS:		
Loan Origination Fee/Discount points-_____% of loan	$	
Credit Report	$ 52.00	
Appraisal Fee	$ 295.00	
**Mortgage Registration tax (loan x .0026) KS only	$	
½ Title Insurance	$ 290.00	
Lender's Coverage title ins.	$ 75.00	
Closing Fee	$ 100.00	
Recording Fees	$ 26.00	
Survey	$ 200.00	
Underwriting and/or Document Prep fee	$ 150.00	
Attorney Fees	$	
½ closing fee	$	
Home Warranty Plan	$	
Termite Inspection	$ 30.00	
Tax Service Fee	$ 30.00	
Health Dept Insp. (well/septic)	$	
Independence Property Inspection	$ 250.00	
Other (flood)	$ 25.00	
TOTAL ESTIMATED COSTS		$ 1,523.00
ESTIMATED PREPAID COSTS, RESERVES, AND PRORATES:		
Mortgage Interest days 19.52 per diem x 15	$ 292.80	
Homeowners Insurance (14 months)	$ 584.00	
PMI insurance if applicable	$	
PMI Renewal (2 months)	$	
General & Special Tax Reserves	$ 450.00 3 months reserve	
Home owners association if applicable	$	
Other	$	
TOTAL ESTIMATED PREPAIDS		$ 1,326.80
Exclusive buyer agency fee if not paid from transaction	$	
ESTIMATED CASH INVESTMENT		$ 7,849.80
ESTIMATED MONTHLY INVESTMENT/PAYMENT:		
Type of mortgage Conv term 30 years. Rate of interest 7.5 % (Estimated)		
Principal & Interest	$ 664.05	
Homeowners Insurance	$ 41.71	
General & Special Taxes	$ 150.00	
PMI	$	
Homeowners association (if applicable)	$	
Other	$	
TOTAL ESTIMATED MONTHLY PAYMENT		$ 855.76

The associate preparing this "Buyer Estimated Cost to Buyer" believes these figures to be correct. However, these are estimates and are not guaranteed to be complete or accurate and are subject to possible changes. I/We acknowledge receiving a copy of this form. All figures are based on approximate closing date of _____

Buyer Date Buyer Date

Associate: _____

SELLER CLOSING COST ESTIMATE

PROPOSED SALES PRICE **$ 100,000.00**
PROPOSED CLOSING COSTS (BELOW) **$ 7,417.78**
PAY OFF OLD LOAN(S) APPROXIMATE **$ 53,200.00**
FINANCING CARRIED BY SELLER **$ _____**

n/a

CLOSING COSTS:

1.	½ OF Owner's title policy (rate from title company)	$ 290.00	
2.	Real Estate Brokerage Fee @_____%	$ 6,000.00	
3.	½ of closing fee	$ 100.00	
4.	Loan discount fee paid to lender @_____%	$	
5.	Termite Inspection	$	
6.	Mechanical inspection	$	
7.	Health Department Inspection (Septic/water well)	$	
8.	Structural Engineer Inspection	$	
9.	Estimated cost of contract/appraisal requirements	$	
10.	Compliance inspection fee	$	
11.	Home Warranty Plan	$	
12.	Loan Costs Paid by Seller per contract	$	
13.	Survey	$	
14.	Flood Determination Letter	$	
15.	Prepayment penalty	$	
16.	Attorney's fees	$ 45.00	
17.	Recording fees	$ 9.50	
18.	Messenger or delivery fees	$	
19.	Interest proration for present mortgage 11.66 per diem	$ 93.28	(4 days of June + 4)
20.	Prorated General Taxes from 1/1 to 6/26	$ 880.00	($150 per/mo thru closing)
21.	Prorated Special Taxes from _____ to _____	$	
22.	Taxes for prior years	$	
23.	Loan costs or buyer costs to be paid by seller (per contract)	$	
24.	Other_____	$	
25.	Other_____	$	

Total Estimated Costs $ 7,417.78

Estimated credits: $ _____

ESTIMATED **NET TO SELLER** **$ 39,382.22**

POSSIBLE OTHER FUNDS TO SELLER:

Impound or escrow balance (refunded 3-6 weeks after closing) $(from mortgagee)
(This may be included in the mortgage company pay off)
Other_____ $ _____

_____ _____
SELLER DATE SELLER DATE

_____
LICENSEE DATE

CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE

In consideration of the mutual agreements herein, it is mutually agreed that Seller will sell to Buyer and Buyer will buy from Seller, the following property on the following terms and conditions:

1. BUYER: Bill Williams and wife Alisa Williams

2. SELLER: Jeffrey McBride and wife Barbara McBride

3. PROPERTY ADDRESS: 1750 Claiborne
(CITY, STATE, ZIP CODE) Actual city, state and zip of property
LEGAL DESCRIPTION Lot one (1), Bock six (6) Section one (1) Clear Creek Village

4. PURCHASE PRICE: Buyer shall purchase and pay to Seller as consideration for the above described real property the amount of: One Hundred Thousand and no/l00---------- Dollars $ 100,000.
In a manner as follows:

EARNEST MONEY: ….. . . . . .$ 5,000
(See paragraph 5)
NEW MORTGAGE PROCEEDS: ….. . . . . $ 95,000
(See paragraph 6) (Does not include mortgage insurance)
MORTGAGE ASSUMED: (See paragraph 11) . . . . . .$ n/a
Type loan Lender Present interest rate %
Approximate present payment $ per month including
Assumption rate Assumption fees shall be paid by
OTHER: (See paragraph 30) . . . . . $ n/a

APPROXIMATE BALANCE DUE from Buyer at closing . . . . . $ -0-
subject to adjustments and prorations (not including closing costs or pre-paid items)

Seller agrees to pay loan costs prohibited to be paid by Buyer on government loans up to $ 7,450
Buyer agrees to pay loan costs in approximate amount of: $1,525.00
Buyer agrees to pay prepaid items in approximate amount of: $1,350.00
n/a agrees to pay discount points not to exceed:
n/a agrees to pay for Home Warranty Plan (copy attached) in approximate amount of:
Title Evidence to be ordered from: (See paragraph 17) (Local title company)

5. EARNEST MONEY: Pursuant to paragraph 27, the Buyer does hereby deposit with where money is to be held (Company Name), earnest money in the form of personal check and in the amount of $ 5,000. , as a security that the terms and conditions of this Contract shall be fulfilled by the Buyer. Earnest money shall be deposited within five business days after all parties accept Contract. Said earnest money shall be applied to the purchase price at closing.

6. NEW FINANCING: Applicable when the purchase of this property is contingent on the Buyer obtaining a conv. first mortgage loan at an initial interest rate not to exceed 7.5 % plus required Mortgage Insurance or VA Funding Fee, and for a term of 30 years. Buyer shall apply for said loan within seven (7) working days after the Contract is signed by all parties and use every reasonable effort to obtain the above-noted loan. This offer is subject to and contingent upon the Buyer qualifying for and obtaining a mortgage commitment on or before * Buyer shall pay for and cause to be ordered an appraisal and credit report at loan application. If property does not appraise for at least the purchase price, this Contract may be renegotiated or Contract will become null and void; or in the event Buyer is unable to obtain such financing, the Buyer shall promptly furnish written evidence from the lender to Seller or Seller's agent. In either such event, the earnest money, less accrued expenses, shall be refunded to the Buyer, pursuant to paragraph 27, and this transaction will be null and void. Loan costs, prepaid expenses including any mortgage insurance and discount points, if any, shall be paid as specified in paragraph 4. Buyer will have the necessary funds available to close this transaction, payable by cashier's check or certified funds.

7. APPRAISER/LENDER REQUIREMENTS: Should lender or appraiser require improvements or repairs, Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract. If Seller elects NOT to make said repairs/improvements; Buyer may make said repairs at Buyer's own expense. Buyer shall pay for first inspection of required repairs/improvements. Seller shall pay for any subsequent re-inspections that may be necessary.

8. CLOSING AND POSSESSION: The parties agree that time is of the essence and Buyer agrees to make final settlement on or before 15th of (next month). Seller agrees to give possession as follows:
Closing and funding

9. AGENCY DISCLOSURE:
Listing Broker/Licensee is functioning as an: ( ) Agent of the Seller ( ) Designated Seller's Agent ( ) Transaction Broker ( ) Disclosed Dual agent (MO only)
Selling Broker/Licensee is functioning as: ( ) Agent of the Seller ( ) Agent of the Buyer ( ) Designated Buyer's Agent ( ) Transaction Broker ( ) Disclosed Dual agent (MO only)

Seller and Buyer acknowledge receipt of the Real Estate Brokerage Relationships brochure.

10. SURVEY: Broker recommends that Buyer acquire a survey on the property being purchased, regardless of lender's survey requirements.

11. EXISTING MORTGAGE FOR ASSUMPTION OR OWNER CARRY: The Seller shall punctually pay and comply with the terms of the existing mortgage, related note, or escrow Contract (Contract for Deed) hereinafter referred to as Instrument, until the date of closing and/or delivery of Deed. If said Instrument is being assumed by the Buyer, the Buyer shall, on and after the date of closing, punctually pay, defend, indemnify and hold Seller free and harmless from all of the terms, conditions and provisions of said Instrument. If Seller is carrying some or all of the purchase price, or if a non-qualifying Instrument is being assumed, acceptance of this Contract is subject to Seller's approval of Buyer upon Buyer providing a current credit report, job verification(s), financial statement and verification of funds within seven (7) working days of Contract acceptance, unless Seller has waived, in writing, said requirements. In such an event, the Seller shall furnish the Buyer, at closing, a copy of any Instrument to be assumed and an assumption statement with respect to the Instrument showing the principal balance, method of payment, interest rate, and sufficient information to show that said Instrument is not in default. If the Instrument requires acceptance of the Buyer by the Instrument holder, and the Instrument holder denies acceptance of the transfer; or, if this Contract (in paragraph 4) is subject to Buyer's assumption of an Instrument at the original interest rate and with the original terms of said Instrument, and said original rate/terms are denied by Instrument holder, then the Buyer shall, prior to closing, have the option of either rescinding this Contract and obtaining a return of the earnest money (less expenses as herein above stated) or accepting the assumption of a modified Instrument and proceeding with the purchase. Interest accruing on above-stated Instrument shall be prorated as of the date of closing. On loan assumptions any reserve or escrow account held by any mortgagee for taxes, special assessments, mortgage insurance and other insurance shall be purchased by Buyer at closing. Assumption of the mortgage loan by buyer does not release seller from liability unless they request and obtain a release of liability from the mortgagee and insurers of the loan, if any. Without such a release, sellers may be liable for any deficiency resulting from a subsequent foreclosure of the mortgage assumed.

12. TERMITE INSPECTION: The improvements shall be inspected by a licensed termite treatment company selected by the Buyer and at the cost of the Buyer, unless payment by Buyer is prohibited by lender/guarantor/ insurer, in which case the Buyer shall select and Seller shall pay for said inspection. If the dwelling garages (attached or unattached) or other improvements are found to have active or inactive termite infestation that was untreated or partially treated, treatment shall be made at Seller's expense by a licensed exterminator of Seller's choice. Buyer has been advised that the termite inspection will be a report of the visual evidence of termite infestation based on inspection of accessible areas only on the date of the inspection. Normally, no inspection will be made in areas that are obstructed or inaccessible. The report will not guarantee that infestation or damage does or does not exist or will not occur.
Buyer may at Buyer's option secure an inspection for visible damage including structural damage as a result of present or past termite activity. A licensed building contractor at Buyer's expense shall make said inspection. If said inspection reveals visible damages, Buyer may request in writing the repair of said damage. Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract and return earnest money. If Seller elects NOT to make said repairs/improvements, Buyer may make said repairs at Buyer's own expense. However, if Seller is unwilling to repair Buyer-requested termite damage, Buyer reserves the right to cancel or renegotiate this Contract. These inspections shall take place as soon as possible.
In the event Buyer does not have the premises inspected, then Buyer shall be obligated to purchase property regardless of any termite infestation or termite damage and the Seller and broker are relieved and released of any obligations relating thereto. Seller agrees that Buyer or Buyer's representative may inspect any repairs before the closing date.

13. PROPERTY: The real estate described herein, together with improvements attached thereto, shall include, if any, gas heaters, attic fan and/or ceiling fans, central air-conditioning, all window air-conditioning unit(s), lighting, heating and plumbing equipment and fixtures, bathroom mirrors and attached mirrors, window and porch shades, shutters, storm windows and doors, screens, all window and door coverings now in place, attached curtain and drapery rods, awnings, television antenna and antenna equipment, keys, water softener (if owned), attached outside cooking units, gas lights, automatic garage door equipment including remote transmitters, attached and unattached wall-to-wall carpeting, built-in kitchen appliances, attached shelves, fire, smoke and burglary detection systems (if

owned), mail boxes, installed water well pumps, propane/butane tanks(s) (if owned by Seller), storage buildings, swimming pool and all pool equipment, all flowers, trees and shrubs, and anything else buried, nailed, bolted, screwed, glued or otherwise permanently affixed to the premises, or any improvements thereon, with any exceptions or additions as noted in Miscellaneous paragraph 30.

14. PRORATION OF TAXES AND RESERVES: Seller represents and warrants that all taxes and special assessments shall be paid from the proceeds of the sale as herein provided. All ad valorem taxes, the current annual installment of special assessments, rentals, homeowner's association dues, and interest, if any, shall be adjusted and prorated as of closing date, unless otherwise agreed. General taxes shall be prorated for the calendar year on the basis of taxes for the previous year unless the previous year's assessed valuation was based on a lesser-improved property, in which case said taxes shall be determined from the assessed valuation and the officially-established mill levy prevailing at closing. Special assessments shall be prorated on the basis of the amount (for the calendar year) ascertainable at the time of closing by the closing agent.
The Buyer understands that the Buyer is responsible for payment of all ad valorem taxes and special assessments becoming due after the closing date and that Buyer is assuming all unmatured installments of special assessments. Periodic reappraisal, required by law, may result in a change in taxes.

15. INSURANCE: Seller shall maintain current insurance in force until closing date. The Buyer at closing shall furnish insurance policies necessary for the protection of the Instrument holder(s), containing loss clauses in favor of the Instrument holder(s) as their interests may appear. If required and so specified, the insurance policies shall be held by the Instrument holder(s) or escrow agent until said lien is paid in full. Buyer agrees to purchase flood insurance policy if and when required by the lending agency pursuant to federal law. Should possession take place prior to closing, Buyer shall secure hazard insurance for personal property effective on or before possession date.

16. CASUALTY LOSS: In the event of property damage to the premises by fire or other casualty prior to closing, the Seller shall restore same. In the event repairs cannot be completed prior to closing, Buyer and Seller may renegotiate this contract or declare it null and void. If the estimated cost of repair exceeds 10% of the purchase price, either Buyer or Seller may cancel this Contract and all earnest money shall be returned to Buyer, less expenses.

17. TITLE EVIDENCE: The Seller shall cause to be furnished to Buyer a title insurance company's title binder to issue, after closing, a title insurance policy in an amount equal to the full purchase price naming Buyer as the insured. Except for assumptions under paragraph 4, the title binder shall show marketable title vested in Seller, subject to: Easements, encroachments which would be disclosed by survey, rights-of-way of record, trees, plantings and fences thereon; restrictions and protective covenants of record, provided no forfeiture provisions are contained therein; unmatured special assessments, zoning laws, ordinances and regulations; rights of tenants in possession; the liens, if any, described therein; and those exceptions which are standard to American Land Title Association's Form B or as specified herein and, in an assumption, the mortgage securing the loan, which the Buyer is assuming. A copy of the title binder will be furnished to lender, listing broker, and selling broker as promptly as possible. The Seller and Buyer shall each pay one-half the cost of the title policy. In the event the Contract is for new construction the builder/Seller may receive builder discount if any. Buyer shall pay for any lender's/mortgagee's/Instrument-holder, title insurance coverage. Seller shall have reasonable time, not to exceed 30 days from scheduled closing date, to furnish marketable title. The Seller shall be responsible to use due diligence to resolve any title defects at Seller's expense subject to the foregoing exceptions. Should the Seller be unable to furnish marketable title subject to the foregoing exceptions, and should this Contract be terminated due to same, then the earnest money shall be refunded promptly to the Buyer and the Seller shall reimburse to the Buyer the cost of Buyer's accrued loan costs, attorneys' fees for examining title, and title insurance cancellation fees, and all parties shall be released from any further liability hereunder.

18. DEED AND DOCUMENTS FOR CLOSING: In the event a title or abstract company prepares a Deed and Affidavit of No Liens and other necessary documents to complete this transaction, the charge for same, in addition to the cost of closing the transaction, shall be shared equally between the Buyer and Seller, but if Lender prohibits Buyer from doing so, Seller shall pay such costs.

19. REPRESENTATIONS AND RECOMMENDATIONS: It is hereby agreed and acknowledged by the parties hereto that unless otherwise stated in paragraph 30 (Miscellaneous), neither the listing nor selling brokers, or their agents, employees, or associates have made, on their own behalf, any representations or warranties, expressed or implied, with respect to any element of the subject property. Any information furnished to either party through the Multiple Listing Service or in any property condition that party should independently verify report before that party relies on such information. Any representations made herein have been made by the listing/selling brokers based on information supplied by sources believed to be reliable, and brokers and their associates have not assumed any responsibility, directly or indirectly, with respect to any representation or warranties which have been made, if any. Since the selling/listing brokers are acting as brokers only, they shall, under no circumstances, be held liable to

either the Seller or Buyer for performance or lack of performance of any other terms or conditions of this Contract, or for damages arising out of or relating to the contents of this Contract over the performance or non-performance of either of the parties to this Contract. **Again, it is emphasized that if the parties hereto feel representations have been made, they must be set forth specifically and in writing in paragraph 30 (Miscellaneous) if said understood or implied representations are to be effective or enforceable.**

20. INSPECTION: The Buyer has carefully examined the premises and the improvements located thereon, and in making the decision to buy the property, the Buyer is relying wholly and completely upon Buyer's own judgment and the judgment of any contractors or inspectors Buyer may have selected.

perferred A Seller's property condition report is attached and made part of this contract.

_____ This offer is subject to acceptance by the Buyer of a Seller's property condition report within ___ days.

_____ A Seller's property condition report is not available.

Buyer agrees that the purchase price was negotiated after consideration of all defects in the real estate of which Buyer was aware or reasonably should have been aware. Buyer hereby agrees to hold listing/selling brokers harmless if Seller has failed to disclose any known defect or material fact regarding the property. **Buyer waives any claim for property defects unless Buyer secures, at Buyer's expense, an inspection of the property by one or more qualified inspectors, including but not limited to the roof, structure, all electrical, mechanical, and plumbing equipment, and appliances.**

IN THE EVENT BUYER FOR ANY REASON DOES NOT OBTAIN SAID INSPECTIONS, AS ALLOWED OR STATED ABOVE, BUYER SHALL BE DEEMED TO HAVE ACCEPTED THE CONDITION OF THE PROPERTY AS SATISFACTORY AND SELLER AND SELLER'S BROKER ARE RELIEVED FROM ANY AND ALL LIABILITIES HERETO, except for Seller's obligation as noted in paragraph 22.

These inspections shall be obtained within __ business days of Contract acceptance. These inspections are not intended to identify either cosmetic imperfections or other features of the property that Buyer has already considered in determining the purchase price. Seller shall cooperate in allowing Buyer's inspectors access to the property. If Buyer notifies Seller that it will be necessary to activate any utility in order to perform an inspection, Seller will request activation of that utility.

In the event any inspection results in a report of a defect, then within three business days of receiving the report, Buyer must request in writing as a proposed amendment to the contract that Seller repair or replace the defect. If Buyer does not make such a written request in such time, then Buyer waives any claim in regard to such defect. If Buyer does make such a written request in such time, the Seller must respond in writing within three business days after Seller receives the request. If the parties do not agree in regard to the existence or nature of the defect or the appropriate repair or replacement, then both Buyer and Seller agree to negotiate with one another in good faith to resolve any differences. If the differences are not resolved within _10_ business days after buyer receives Seller's response to Buyer's request, then this Contract shall terminate, and the earnest money, less accrued expenses, shall be refunded to the Buyer, pursuant to paragraph 27, and this transaction will be null and void.

Seller agrees to give Buyer reasonable access to the property before the closing date so that Buyer and Buyer's representatives may, at Buyer's expense, re-inspect the property for confirmation of condition or to inspect any repairs made pursuant to this paragraph.

The parties agree and the Buyer represents that once the Contract has in fact been closed that Buyer in all respects again has acknowledged that Buyer has accepted the premises without condition or qualification. Broker(s) shall not be responsible for the conduct of third parties providing specialized services required or permitted by this Contract, including but not limited to lender, title insurance company, escrow agent, closing agent, wood infestation, mechanical, structural or other inspectors or repair personnel, whether those services were arranged by Buyer or Seller or broker on behalf of either. Buyer and Seller are aware of the availability of a home warranty program for which the broker(s) may receive an administrative fee if said program is purchased and both have separately accepted/rejected purchase of the program. Although one program may have been specifically offered to Buyer and/or Seller, the broker(s) involved have made no representations about the quality of the programs offered, and all parties to this Contract understand that they may seek alternate home warranty coverage.

21. ENVIRONMENTAL: Buyer and Seller agree that broker and broker's agents do not have any expertise in evaluating the environmental condition of the property described in paragraph 3, and that broker and broker's agents have made no representation concerning environmental condition except as may be noted in paragraph 30 (Miscellaneous). Buyer or Seller may retain an environmental inspection firm to inspect the property.

If the property is a residential dwelling built prior to 1978, see the attached addendum for a disclosure of information and acknowledgment of lead-based paint and/or lead-based paint hazards as required by regulation.

22. INTERIM MAINTENANCE: Seller agrees to maintain heating (sufficient to avoid frozen water lines), sewer, plumbing and electrical systems, and any appliances and equipment being conveyed, in proper working order, and to maintain the lawn, shrubbery, trees and pool, if any, until possession if possession occurs at or after closing. If possession is given to buyer prior to closing, refer to attached addendum. Buyer will be solely responsible for

obtaining insurance to cover any casualty loss occurring after closing, even if possession is retained by Seller after closing.

23. LIENS: Seller represents and warrants that there are no unpaid (whether recorded or not) chattel mortgages, conditional sales contracts, financing statements, or security agreements affecting any fixture, portion of the premises or item of personal property covered by this Contract. Any existing liens upon the premises that the Seller is required to remove under this Contract may be paid and discharged from the sale proceeds at the closing of the sale.

24. BROKERAGE FEES: The party handling the closing of this transaction is hereby authorized and directed to collect and disburse the brokerage fees at closing.

25. ALTERATIONS: Any alterations of the terms and conditions of this Contract must be agreed to in writing by both Buyer and Seller.

26. SURVIVAL: The provisions of paragraphs 5, 8, 9, 11, 12, 13, 14, 17, 19, 20, 21, 22, 23, 24, 27, and 30 shall survive closing.

DISPOSITION OF EARNEST MONEY: In the event this contract fails to close, the earnest money shall be disbursed according to an agreement signed by both parties. Pursuant to Kansas Statute 58-3061 (g), the broker can only disburse earnest money 1) pursuant to written authorization of buyer and seller; 2) pursuant to a court order; or 3) when a transaction is closed according to the agreement of the parties. Notwithstanding any other terms of this Contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and Seller agree that failure by either to respond in writing to a certified letter from Broker within seven (7) days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within thirty (30) days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto. If a dispute arises over disposition of funds or documents deposited with the escrow agent or the listing broker, Seller and Buyer agree that any attorney's fees, court costs and/or other legal expenses incurred by the escrow agent and any broker in connection with such dispute shall be reimbursed from the earnest money or other funds deposited with the escrow agent or listing broker. In addition to forfeiture of earnest money to Seller or return of earnest money to Buyer, Buyer and Seller shall both have the option of enforcing specific performance of this Contract or any other remedy allowed by law or equity.

28. HEIRS AND ASSIGNS: This Contract shall be fully binding upon the parties, their heirs, executors, administrators, successors and assigns (subject to paragraph 31). No assignment shall serve to release or relieve the party assigning from any responsibilities or obligations hereunder.

29. KANSAS LAW APPLIED: This Contract and its validity, construction and performance shall be governed by the laws of Kansas.

30. MISCELLANEOUS: _____

_____

_____

_____

_____

_____

31. AGREEMENT APPROVAL: This Contract constitutes the entire agreement between the parties and supersedes any previously executed contracts, representations, verbal or written, to buy and/or sell the property. Neither this Contract, nor any interest herein, shall be transferred or assigned by Buyer without the prior written consent of Seller.

Buyer and Seller hereby acknowledge receipt of separate expense itemizations estimating approximate costs to be incurred in acquiring or disposing of this property. Buyer and Seller also acknowledge that they have read the entire Contract and that by signing page four (4) of this four (4) page Contract that they agree to all terms contained therein.
IN WITNESS WHEREOF, said parties hereunto subscribe their names.

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.

Buyer _____ Seller _____

Print Name Bill Williams Print Name Jeffrey McBride

Social Security # _____ Social Security # _____

Date _____ Time _____ Date _____ Time _____

Buyer _____ Seller _____

Print Name Alisa Williams Print Name Barbara McBride

Social Security # _____ Social Security # _____

Date _____ Time _____ Date _____ Time _____

_____ For Office Use Only _____

Agent _____ Agent _____

Firm _____ Phone _____ Firm _____ Phone _____

* this will be the first of next month as closing is the 15 of next month

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NOTE

This book was written to provide accurate information regarding the subject mater herein. It is not to be used as a substitute for competent legal advice. This course is provided for educational purposes only and intended to assist in an educational and mind broadening experience. Prior to taking any action consult with your broker, the expert, attorney, accountant or other professional of your choice. Always get your broker's approval before implementing or using any of the material or forms herein.

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