

**KREC “HOTLINE”
FAQs**

ADVERTISING REQUIREMENTS

- 1. Must licensees include their mailing addresses and phone numbers in their print advertisements for listed properties?**

ANSWERS: No. Print advertisements for listed properties must include either the name of the real estate company where the licensee’s license is held or the name of the real estate company’s principal broker and the principal broker’s designation as such, pursuant to KRS 324.117 and 201 KAR 11:105.

- 2. If agents advertise their listed properties on Facebook, are they required to satisfy the advertising requirements in KRS 324.117 and 201 KAR 11:420?**

ANSWER: Yes.

- 3. Is it legal for a licensee to run a “coming soon” advertisement for unlisted property?**

ANSWER: No. To advertise or promote property by any means, including the use of “coming soon” signs/advertisements, a licensee must have a signed listing agreement that satisfies the requirements of 201 KAR 11:250.

- 4. If a buyer’s agent is using a sign to advertise or promote his or her participation in a sale, must the sign clearly state the licensee’s role as a buyer’s agent in the sale; or, does that requirement not apply to signs because they are governed by 201 KAR 11:250, Section 2, which does not include that requirement?**

ANSWER: Pursuant to 201 KAR 11:105, Section 1, a licensee’s role as a buyer’s agent must be clearly stated in all advertisements, including signage, if the licensee is advertising or promoting his participation as a buyer’s agent in a sale. Reminder: Pursuant to Section 2 of the regulation, a licensee must have the written consent of a property’s current owner in order to place a sign on the owner’s property.

AGENCY DISCLOSURE REQUIREMENTS

- 1. What may licensees do to satisfy agency disclosure requirements when they are dealing with customers or clients who are landlords or tenants?**

ANSWER: In response to an increase in the demand for licensees to represent prospective landlords and/or tenants, the KREC has created alternate Agency Disclosure Statements and Consumer Guide model policies. The alternate forms are dated December 2011 and can be accessed from the KREC's website at www.krec.ky.gov

- 2. When is it necessary to disclose that you are related to a buyer or seller?**

ANSWER: In a dual agency transaction, a dual agent's personal, family, or business relationship with either the buyer or the seller must be disclosed. Reminder: Dual agency can involve two agents in the same brokerage or only one real estate agent.

BUSINESS BROKERAGE

- 1. Is a Commission-issued license required to sell a business in KY?**

ANSWER: No, if the transaction does not involve the sale or lease of any real property.

CHANGE OF BROKERAGE FIRMS

- 1. "I'm in the process of changing brokerages. What can I tell my clients that I have now about my change?"**

ANSWER: In the absence of a contract stating otherwise, listings belong to principal brokers—not to their affiliated licensees. Therefore, if an agent changes principal brokers, the original principal broker will have to agree to release the listings or they will be retained by that broker. Legally, the agent may only inform the principal broker's clients that he or she is leaving. There should not be any discussions about how to cancel or withdraw the listings, as that could constitute contract interference.

CONTRACTS

1. Is a “One-Time Showing” agreement a listing agreement?

ANSWER: No, it is a commission agreement. (See: Attachment 15d, which contains a copy of a KREC-approved “Residential One-Time Showing Agreement” (Form L105) and a KREC-approved “Commercial One-Time Showing Agreement” (Form L106)).

2. “When I read 201 KAR 11:250, it says to me that no matter what type of change you have on a listing agreement, that change must be signed by the seller. To me this would include price reductions, extensions and all changes that may be made to the original contract since the original contract was signed. Can you tell me if I am interpreting this correctly? I am being told that e-mail messages can be accepted for these types of changes.”

ANSWER: Pursuant to 201 KAR 11:250, Section 1(8), all changes on a listing contract must be properly initialed, dated and timed.

3. Note: A private attorney should be contacted for legal advice about:

- a. *Breach of contract issues;*
- b. *Kentucky’s nonresident alien escheat statute (KRS 381.300);*
- c. *Kentucky’s broker lien law (KRS 376.075);*
- d. *Fixtures vs. personalty (i.e., personal property) issues; and*
- e. *“Time is of the essence” issues.*

DISCLOSURE REQUIREMENTS

1. “We had a discussion here at work about the disclosure of a death when selling a house/home, or property in Kentucky. I was under the impression that it was a state law that required disclosing information about the death upon selling.” What does the law require?

ANSWER: Since June 24, 2003, KRS 324.162 has governed an agent’s duty to disclose. As a result of that law, real estate agents are not required to disclose, upfront, any stigmas associated with a property, such as a murder, a suicide, or a violent crime that has occurred at the property. However, licensees are still required to answer any and all direct questions in an honest manner, including questions regarding stigmas.

2. **“If the basement of a vacant bank-owned property is full of mold due to a faulty sump pump, should that information be disclosed on a Seller’s Disclosure of Property Conditions Form?”**

ANSWER: Yes. Moreover, if the mold has been remediated, that information should also be disclosed, with supporting documentation.

3. **“Do property condition reports pertain to single family homes, or does it also apply to multi-family?”**

ANSWER: Pursuant to KRS 324.360(1), the seller’s disclosure of conditions requirements apply to sales and purchases involving single-family residential real estate dwellings only.

E-SIGNATURES

1. **Can e-signatures be used in Kentucky?**

ANSWER: Yes, pursuant to Kentucky’s Uniform Electronic Transactions Act (KRS 369.101 to 369.120).

2. **Does the “date and time of signing” requirement in 201 KAR 11:250 apply in transactions using electronic signature products such as DotLoop, DocuSign, and Authentisign?**

ANSWER: Yes.

ESCROWED LICENSEES

1. **If an agent puts his or her license in escrow and has a transaction that is pending, can the agent still receive the commission when it closes?**

ANSWER: Yes. If a commission or fee was earned when the licensee’s license was active, then it may be paid to the licensee even though the licensee’s license is in escrow.

2. **May an escrowed licensee manage property for others for a fee and/or refer clients to an active agent and be paid for that activity?**

ANSWER: No. These are real estate brokerage activities, as defined in KRS 324.010(1). Consequently, to engage in them requires an active license.

LIMITED FUNCTION REFERRAL OFFICE (“LFRO”)

1. **“What are the KREC requirements for becoming a License Referral Service? I would like to offer this service to agents wanting an alternative to escrow.”**

ANSWERS: From a license law perspective, a LFRO, which is a creation of the National Association of Realtors®, is simply another type of real estate brokerage firm or company that must be registered with the KREC. In other words, the KREC does not distinguish between types of real estate brokerage firms. Therefore, a LFRO must have an escrow account, a name, and a principal broker. Again, it must be registered with the KREC. In addition, the affiliated licensees of a LFRO must have an active license and E & O insurance coverage. They must also satisfy the annual continuing education requirement to the same extent as other active licensees.

OFFERS

1. **If a licensee submits his or her client’s written offer at 5:00 p.m. on a Friday, may the listing broker refuse to present the offer to his or her seller-client until Monday morning at 9:00 a.m.?**

ANSWER: The KREC decides issues like this on a case-by-case basis after it has reviewed and considered all relevant facts. So, a complaint should be filed, if it is believed that a licensee has violated 201 KAR 11:045, Section 2, by failing to present, without delay, all written offers to his or her seller-client.

PROPERTY MANAGEMENT

1. **May a principal broker’s affiliated licensee provide property management services for others for a fee, compensation, or other valuable consideration, if the affiliated licensee has an ownership interest in the property management company, but his or her principal broker does not offer property management services?**

ANSWER: No. Property management is a real estate brokerage service that some, but not all, real estate brokerage companies offer. To provide this service, a property management company must have a principal broker, who may have affiliated licensees. However, the licensees who are affiliated with the property management company may not be simultaneously affiliated with another real estate company or another principal broker.

2. **“Do I need a license to provide property management services for others for a fee in Kentucky?”**

ANSWER: Yes.

3. **May an affiliated agent work as a licensee for a property management company while affiliated with the agent’s principal broker, who is affiliated with a different real estate company.**

ANSWER: No.

RELEASING EARNEST MONEY DEPOSITS

1. **When parties to a contract are disputing over earnest money that is being held in a principal broker’s escrow account, must the principal broker who is holding the funds initiate the release process in KRS 324.111(6)?**

ANSWER: No. The principal broker may, but is not required to, initiate the release process in KRS 324.111(6).

2. **Does a purchase contract provision stating that “the earnest money will be returned if the buyer cannot obtain financing” authorize a principal broker’s release of the funds from his or her escrow account?**

ANSWER: No. KRS 324.111(4) and (6) govern. KRS 324.111(4) states: “None of the contract deposits shall be withdrawn until the contract has been terminated by performance, by agreement in writing between all parties, or by order of a court of competent jurisdiction, except as permitted in subsection (6) of this section.” (Emphasis added.)

Notably, on June 25, 2009, KRS 324.111(6) was amended to state, in relevant part, as follows: “Upon being notified that one (1) or more parties to a contract intends not to perform, the broker may initiate the release process.”

Before the statute was amended on June 25, 2009, the provision (above) included additional language, which was deleted because it created confusion. The additional language that was deleted is underlined in the following: “Upon being notified that one (1) or more parties to a contract intends not to perform, the broker may release the contract deposit as provided in the contract or if no provision is made in the contract the broker may initiate the release process.” (Emphasis added.)

TERMINATING AFFILIATION
& OTHER AFFILIATION-RELATED ISSUES

- 1. What happens to the purchase contracts, when an affiliated licensee terminates his or her affiliation to become a principal broker of his own real estate company?**

ANSWER: Listing and pending contracts are “owned” by the real estate company’s principal broker, in the absence of a written agreement stating otherwise. Moreover, 201 KAR 11:145 provides:

Section 1. Unless there is a written contract stipulating otherwise, a real estate salesman shall, upon termination of his affiliation with a real estate broker, immediately turn over to the broker any and all listing information obtained during his affiliation whether the information was originally given to him by his broker or copied from the records of the broker or acquired by the salesman during his affiliation.

- 2. An affiliated agent asked the principal broker to release the agent’s license. The principal broker’s response to the agent was, “I’ll think about it.” Can the principal broker do that instead of releasing the license?**

ANSWER: No. KRS 324.310 and 324.312, which govern, do not allow the principal broker to merely “think about it.” He or she must act immediately.

- 3. “Does a Principal Broker have to be an owner of the company/ have an ownership stake in the company to be licensed? Or can a Principal Broker just be an employee of the company?”**

ANSWER: No. A principal broker may, but is not required to, be an owner of the real estate company with which he or she is affiliated. Nor is the principal broker required to have an ownership stake in the company. As KRS 324.010(4) states: “‘Principal broker’ means a person licensed as a broker under KRS 324.046 who, in addition to performing acts of real estate brokerage or transactions comprehended by that definition, is the single broker responsible for the operation of the company with which he or she is associated.”