

Kansas Real Estate Commission Has Determined that Short Sales are Adverse Material Defects That Must Be Disclosed to All Parties in Real Estate Transactions

The Kansas Real Estate Commission has determined that a real estate licensee must make a disclosure to all parties in the transaction when they have actual knowledge that a transaction will result in a short sale. If a real estate licensee has actual knowledge that a short sale situation exists and does not disclose that information to the other parties in the transaction, then that licensee could be disciplined by the Commission for failure to disclose an adverse material defect.

What is a Short Sale?

A “short sale” is a real estate transaction where the net proceeds of the sale, after payment of all the applicable closing costs and other charges owed by seller, will be insufficient to pay the outstanding mortgage and other related debts at closing. In these situations, the closing of the real estate transaction is contingent upon the written agreement of each lender and creditor to accept less than the amount actually owed to them and to provide a full release of each lien on or before closing date.

A Short Sale is an Adverse Material Defect Under BRRETA

Under the Kansas Brokerage Relationships in Real Estate Act (BRRETA), real estate licensees must disclose any material limitation on the customer’s or client’s ability to perform under the terms of the sales contract to all customers, clients or other parties to the transaction. In short sale situations, it is typically a very time-consuming, difficult and many times unsuccessful process in getting a lender or creditor to accept a short sale offer.

In these situations, there is a very high risk that the short sale offer may not be accepted by the lender and that all funds expended by the buyer on the transaction (i.e. inspections, loan applications, etc.) will be lost in the event the transaction fails to close. As a result, the Commission has determined that a short sale situation is a material limitation on the listing party’s ability to perform under the terms of the sales contract.

If you are the selling agent or transaction broker and you have actual knowledge that the sale of the listed property will result in a short sale, then you must disclose this information to all interested parties. Failure to disclose this information could result in discipline from the Commission.

For Your Protection, We Advise That You Use a Short Sale Addendum

For your protection, we would strongly recommend that real estate licensees utilize a Short Sale Addendum to advise all parties of the particular risks and difficulties encountered in short sales situations. You can access our approved Short Sale Addendum on the Contracts and Forms section of the KAR website at <http://www.kansasrealtor.com/contractsforms.html>.

For more information on this and other issues, please go to <http://www.kansasrealtor.com/>. You may also contact Luke Bell, KAR Director of Governmental Relations at lbell@kansasrealtor.com or 785-267-3610 Ext. 2133.