

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

RELATES TO: KRS 324.010(1), 324.046(1), 324.111(1), (2), (3), (4), (6), 324.117(1), (5), 324.160(4)(j), (m), (r), 324.410(1), 324.420(1), (2), (3), (4), (5)

STATUTORY AUTHORITY: KRS 324.117(5), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 require[requires] the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324.

Section 1. Definitions. (1) "Academic credit hour" means:

(a) One (1) college semester hour; or

(b) Sixteen (16), fifty (50) minute hours of actual classroom attendance.

(2) "Advertising" or "advertisement" means any manner, method, or activity by which a licensee of the commission makes known a specific property for sale or lease or any services for which a real estate license is required. Advertising shall not include:

(a) Private communications between a licensee and a client or prospective client; or

(b) Directional or pointer signs whose sole purpose is to provide directions to a listed property and includes no identifying licensee or brokerage information.

(3) "Agency" means the specific consensual relationship between the principal broker and the client for a contemplated transaction, by oral or written agreement.

(4) "Agency consent agreement" means the form prescribed by the commission and used by a principal broker and a client to establish the agency relationship in writing.

(5) "Branch office" means a physical place of business for a real estate brokerage company in addition to the main office location.

(6) "Broker-affiliated training program" means one (1) or more post-license education course offered for post-license educational credit provided or sponsored by a principal broker.

(7) "Business relationship" means any arrangement, other than the current real estate transaction, whereby a licensee and a party have or had a mutual, ongoing financial interest in any company, corporation, or other income-producing venture, including any prior representation by the licensee for the party's purchase or sale of real estate.

(8) "Client" means a person or persons, or entity or entities, for whom a licensee provides real estate brokerage services and:

(a) Who has entered into a written agreement with a principal broker for provision of real estate brokerage services;

(b) With whom or for whom a licensee completes an offer to purchase or lease for real estate; or

(c) For whom a licensee otherwise by oral agreement performs acts of real estate brokerage;

(d) For the purposes of selling or leasing real estate, the client shall be the person or persons, or entity or entities, authorized to sell or lease the subject real estate.

(9) "Commercial transaction" means a transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, or single-family residen-

tial lot.

(10) "Company" means an office or firm, headed by a principal broker, formed to offer real estate brokerage services, which is organized as:

- (a) A registered business entity;
- (b) Sole proprietorship; or
- (c) Another business arrangement.

(11) "Confidential information" means information received or sent, verbally or in writing including transaction paperwork and files, by a licensee, that could materially compromise the negotiating position of a client or prospective client. Confidential information shall include information that is not required to be disclosed by law and:

- (a) Is provided to a licensee by a client or prospective client to a real estate transaction;
- (b) Describes or affects the client or prospective client's bargaining position or motivation; or
- (c) Is designated in writing as confidential by the client or prospective client.

(12) "Consumer" means a person or entity with whom a licensee exchanges information that is public in nature, but otherwise does not perform acts of real estate brokerage and with whom no written or oral agency agreement or fiduciary relationship exists.

(13) "Continuing education course" means a course approved pursuant to the requirements set forth in KRS 324.085(1) and the administrative regulations promulgated thereunder.

(14) "Contract deposit" means earnest money delivered to a licensee in conjunction with real estate sales contract [licensed agent as part of an offer to enter a contract for the sale of real property] after:

- (a) The offer or counteroffer is accepted; and
- (b) An executory contract exists.

(15) "Delivery" means transmission of an item to a party by:

- (a) Mail;
- (b) Facsimile transmission;
- (c) Electronic mail; or
- (d) Hand.

(16) "Designated agency" means a type of agency prescribed by KRS 324.121(2).

(17) "Designated agent" means one (1), or more, licensee(s) designated by the principal broker in accordance with KRS 324.121(1) to provide real estate brokerage services to a client.

(18) "Distance education course" means a continuing or post-license education course or a pre-license course that:

- (a) Is taught in a setting in which the teacher and the student are in separate locations; and
- (b) Uses instructional methods that include internet-based training, computer-based training (CBT), satellite transmission, or teleconferencing.

(19) "Dual agency" means a type of agency in which:

(a) The principal broker and all affiliated licensees simultaneously represent, in the same transaction, buyer and seller, or lessor and lessee, as clients of the principal broker in a limited fiduciary capacity, or

(b) In companies that practice designated agency, only the principal broker or a designated manager shall be a dual agent for that transaction pursuant to KRS 324.121(2).

(20) "Education cycle" means the time period commencing on January 1 of each year and ending at 11:59 p.m. on December 31 of each year.

(21) "Family relationship" means any known familial relationship between a licensee and party regardless of distance of the relationship.

(22)[(4)] ["False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS 324.117(1) because the advertisement:

- ~~—(a) Is contrary to fact;~~
- ~~—(b) Leads a person to a mistaken belief or conclusion; or~~
- ~~—(c) Knowingly made a representation that is contrary to fact.]~~

"Fraud" or "fraudulent dealing" means a material misrepresentation that:

- (a) Is:
 - 1. Known to be false; or
 - 2. Made recklessly;
- (b) Is made to induce an act;
- (c) Induces an act in reliance on the misrepresentation; and
- (d) Causes injury.

(23) "Guaranteed sales plan" means an offer or solicitation to guarantee the:

- (a) Sale of an owner's real estate; or
- (b) Purchase of the owner's real estate if the owner's real estate is not sold by the licensee.

(24) "Initial sales associate license" means an original Kentucky sales associate license issued by the commission for the first time or a Kentucky sales associate license re-issued to a person who formerly held a license issued by the commission.

(25) "License recognition" means a licensing process that:

- (a) Replaces reciprocal agreements; and
- (b) May be used to obtain a Kentucky license by an individual who holds an active and unrestricted out-of-state sales associate's or broker's license, or the equivalent of either.

(26) "Licensee" means a person properly licensed as a broker or sales associate to perform acts of real estate brokerage in accordance with KRS Chapter 324 and the administrative regulations promulgated thereto.

(27) "Personal relationship" means a platonic or nonplatonic friendship between a licensee and a party.

(28) "Post-license education course" means a course approved by the commission that satisfies a portion of the forty-eight (48) hours of education required by KRS 324.085(2).

(29) "Pre-license course" means a course approved by the commission that satisfies an education requirement to obtain a real estate sales associate license.

(30) "Promotional activities" means every solicitation or attempt to bring about the sale, exchange, lease, assignment, license or award with regard to a timeshare interest in real estate.

(31) "Prospective client" means a person or entity who has not entered into a written or oral agreement with a principal broker to provide real estate brokerage services, but to whom a licensee offers real estate brokerage services or from whom a licensee receives confidential information related to a contemplated real estate transaction.

(32) "Renewal cycle" means the time period commencing on April 1 of each year and ending on March 31 two (2) calendar years thereafter.

(33) "Security deposit" is defined by KRS 383.545(13).

(34) "Single agency" is the type of agency where the principal broker and all affiliated licensees of the real estate brokerage company act as an agent for a buyer or seller, or a lessor or lessee, as the client on the same side of a transaction.

(35) "Single family residential real estate dwelling" means any:

- (a) Duplex, triplex, fourplex; condominium, townhouse, or residential unit;
- (b) Manufactured home permanently attached to land; or
- (c) Residential unit otherwise conveyed on a unit-by-unit basis, even if the unit is part of a larger building or parcel of real estate containing more than four (4) residential units.

(36) "Team" or "teams" is a group of more than one (1) licensee working together who are:

- (a) Affiliated with the same principal broker;
- (b) Led by a team leader; and

(c) Representing themselves to the public utilizing the same authorized alternate or assumed name to brand, advertise and broker real estate.

(37) "Team leader" means an individual who is designated by his or her principal broker to be the head of the team.

(38) "Timeshare" means an arrangement under which one may acquire, for a period of time, the right to use and occupy property, for a recurring block of time. A timeshare may be:

(a) A timeshare estate, wherein a freehold estate or an estate for years is conveyed;

(b) A vacation lease, wherein a buyer purchases the right to occupy a specific accommodation for a specified time period over a specified number of years;

(c) A vacation license or club membership, wherein a buyer acquires the right to occupy an undesignated unit at certain real property(ies) during a specific time each year for a specific number of years; or

(d) Variations of the above that result in the acquisition of the right to use real property for a limited period of time in recurring intervals for a number of years.

(39) "Transactional brokerage" means a form of brokerage service(s) provided to either or both parties to a transaction wherein the licensee owes to the parties only the duties owed to a consumer and wherein confidential information is not relayed between the parties by the licensee, unless so directed by the sending party.

(40) "Unrestricted license" means a license that is not under any order of limitation or discipline by another jurisdiction's regulatory body.

(41)[(5)] "Without delay" means as soon as reasonably possible based on the availability of the licensee and the client and subject to any written agreement between them as to how and when written offers will be submitted.

(42) "Without unreasonable delay" means:

(a) For contract deposits or money belonging to others, within three (3) business days of the receipt by the principal broker or an affiliated licensee of the principal broker; or

(b) For notice required by KRS 324.360(8), within seventy-two (72) hours of the listing agent's receipt of the prospective purchaser's written and signed offer to purchase[within three (3) business days of the creation of an executory contract for the sale or lease of real property].

LOIS ANN DISPONETT, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the definitions to be used in 201 KAR Chapter 11.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure consistent use of terminology by licensees and the commission when referencing 201 KAR Chapter 11.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 authorize the Kentucky Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting definitions, this administrative regulation ensures consistency in administration and enforcement by the commission.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments proposed by this administrative regulation will change the existing administrative regulation by locating all of the commonly defined terms applicable to KRS Chapter 324 and 201 KAR Chapter 11 in one administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Amendment to this administrative regulation is necessary to provide consistent and predictable definitions for the terms referenced in KRS Chapter 324 and 201 KAR Chapter 11.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 require the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324 and 201 KAR Chapter 11.

(d) How the amendment will assist in the effective administration of the statutes: Amendment to this administrative regulation is necessary to provide consistent and predictable definitions for the terms referenced in KRS Chapter 324 and 201 KAR Chapter 11.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. The Commission currently licenses approximately 23,000 real estate agents. Additionally, this administrative regulation will affect all of the Real Estate Commission's current prelicensing, post licensing, and continuing education providers. Lastly, this administrative regulation will affect the general public to the extent they interact with licensed real estate professionals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Prospective licensees and

members of the general public are not required to take any action to be in compliance with this administrative regulation. Current licensees may have to augment their business models to comply with new licensing terminology. Education providers will be required to amend their instruction materials to comply with the new terminology and content of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated for any of the regulated entities or the general public to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, all those effected will benefit from the consistent and predictable usage of language to minimize compliance pitfalls.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no initial costs associated with implementing this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increased fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, and it does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be impacted by this administrative regulation. Also, local real estate boards may be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.281(5), KRS 324.282, and KRS 324.117 require the Real Estate Commission to promulgate administrative regulations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost

associated with administering this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.