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 324.117(5) requires the commission to promulgate an administrative regulation to define false, misleading, or deceptive advertising. 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.

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 does not include:

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

(b) Directional or pointer signs that only provide directions to a listed property and include no identifying licensee or brokerage information.

(3) "Affiliated licensee" means a sales associate or a broker who is affiliated with a principal broker.

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

(5) "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.

(6) "Branch office" means a physical place of business for a real estate brokerage company in addition to the main office location that the commission may enter to inspect required documents or allegations of violations of KRS Chapter 324.

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

(8) "Business relationship" means any arrangement, other than the current real estate transaction, if 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, lease, or sale of real estate.

(9) "Client" means:

(a) A person or persons, or entity or entities, for whom a licensee provides real estate brokerage services:

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

2. With whom or for whom a licensee completes an offer to purchase or lease for real estate; or

3. For whom a licensee otherwise by oral agreement performs acts of real estate brokerage; and

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

(10) "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 residential lot.

(11) "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.

(12) "Condominium" means:

(a) The absolute ownership of a unit in a multi-unit building based on a legal description of the airspace the unit actually occupies; or

(b) A separate dwelling unit in a multi-unit development, plus an undivided interest in the ownership of the common elements in the building or development, which are owned jointly with the other condominium unit owners.

(13) "Confidential information" means:

(a) Information received or sent, verbally or in writing including transaction paperwork and files, by a licensee, that may materially compromise the negotiating position of a client or prospective client.

(b) Confidential information includes information that is not required to be disclosed by law; and

1. Is provided to a licensee by a client or prospective client to a real estate transaction;

2. Describes or affects the client or prospective client's bargaining position or motivation; or

3. Is designated in writing as confidential by the client or prospective client.

(14) "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.

(15) "Continuing education course" means a course approved pursuant to the requirements set forth in KRS 324.085(1) and 201 KAR Chapter 11.

(16) "Contract deposit" means earnest money delivered to a licensee in conjunction with a real estate sales contract after:

(a) The offer or counteroffer is accepted; and

(b) An executory contract exists.

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

(a) Mail;

(b) Facsimile transmission;

(c) Electronic mail;

(d) Hand; or

(e) Other legal means.

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

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

(20) "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.

(21) "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 is a dual agent for that transaction pursuant to KRS 324.121(2).

(22) "Duplex" means two (2) residential units sharing a single roof.

(23) "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.

(24) "Family relationship" means any known familial relationship between a licensee and party.

(25) "Fourplex" means four (4) residential units sharing a single roof.

(26) "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.

(27) "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.

(28) "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.

(29) "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 201 KAR Chapter 11.

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

(31) "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).

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

(33) "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.

(34) "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.

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

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

(37) "Single agency" is the type of agency if 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.

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

(a) Stand-alone 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 parcel of real estate containing more than two (2) detached residential units.

(39) "Team" or "teams" is a group of licensees 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.

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

(41) "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, if a freehold estate or an estate for years is conveyed;

(b) A vacation lease, if 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, if a buyer acquires the right to occupy an undesignated unit at certain real property or properties during a specific time each year for a specific number of years; or

(d) Variations of paragraphs (a) through (c) of this subsection 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.

(42) "Townhouse" means a type of residential dwelling with two (2) floors that is connected to one (1) or more dwellings by a common wall or walls. Title to the unit and lot vest in the owner who shares a fractional interest with other owners in any common areas.

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

(44) "Triplex" means three (3) residential units sharing a single roof.

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

(46) "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.

(47) "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.

(17 Ky.R. 2294; 2690; eff. 3-8-1991; 24 Ky.R. 1539; 2108; eff. 4-13-1998; 2410; 25 Ky.R. 293; eff. 8-17-1998; 27 Ky.R. 1503; eff. 4-9-2001; 31 Ky.R. 1325; 1645; eff. 4-22-2005; 40 Ky.R. 2810; 41 Ky.R. 740; eff. 10-31-2014 46 Ky.R. 83; 1180; 1806; eff. 12-16-2019.)