

The St. Louis Association of Realtors 2006, COMMERCIAL DIVISION

Counsel for the St. Louis Association of Realtors has approved this form for the exclusive use by its members.

This is a legally binding contract, it is recommended that you seek legal advice to make certain you fully understand your rights and obligations.

EXHIBIT A

Effective January 1, 2006

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DEFINITIONS As Adapted From Section 339.710 RSMo. For purposes of Sections 339.710 to 339.860 RSMo

1. "Adverse material fact", a fact related to the physical condition of the property not reasonably ascertainable or known to a party which negatively affects the value of the property. Adverse material facts may include matters pertaining to:
 - (a) Environmental hazards affecting the property.
 - (b) Physical condition of the property which adversely affects the value of the property;
 - (c) Material defects in the property;
 - (d) Material defects in the title to the property;
 - (e) Material limitation of the party's ability to perform under the terms of the contract;
2. "Affiliated licensee", any broker or salesperson who works under the supervision of a designated broker;
3. "Agent", a person or entity acting pursuant to the provisions of this chapter.
4. "Broker disclosure form", the current form prescribed by the commission for presentation to a seller, landlord, buyer or tenant who has not entered into a written agreement for brokerage services;
5. "Brokerage relationship", the relationship created between a designated broker, the broker's affiliated licensees, and a client relating to the performance of services of a broker as defined in section 339.010, and sections 339.710 to 339.860. If a designated broker makes an appointment of an affiliated licensee or affiliated licensees pursuant to section 339.820, such brokerage relationships are created between the appointed licensee or licensees and the client. Nothing in this subdivision shall:
 - (a) Alleviate the designated broker from duties of supervision of the appointed licensee or licensees; or
 - (b) Alter the designated broker's underlying contractual agreement with the client;
6. "Client", a seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee pursuant to sections 339.710 to 339.860;
7. "Commission", the Missouri real estate commission;
8. "Confidential information", information obtained by the licensee from the client and designated as confidential by the client, information made confidential by sections 339.710 to 339.860 or any other statute or regulation, or written instructions from 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 by a source other than the licensee;
9. "Customer", an actual or potential seller, landlord, buyer, or tenant in a real estate transaction in which a licensee is involved but who has not entered into a brokerage relationship with a licensee;
10. "Designated agent", a licensee named by a designated broker as the limited agent of a client as provided for in section 339.820;
11. "Designated broker", any individual licensed as a broker who is operating pursuant to the definition of "real estate broker" as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. Every real estate partnership, association, or limited liability corporation or corporation shall appoint a designated broker;

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DEFINITIONS As Adapted From Section 339.710 RSMo. For purposes of Sections 339.710 to 339.860 RSMo (Continued)

12. "Designated transaction broker", a licensee named by a designated broker or deemed appointed by a designated broker as the transaction broker for a client pursuant to section 339.820;
13. "Dual agency", a form of agency which may result when an agent licensee or someone affiliated with the agent licensee represents another party to the same transaction;
14. "Dual agent", a limited agent who, with the written consent of all parties to a contemplated real estate transaction, has entered into an agency brokerage relationship, and not a transaction brokerage relationship, with and therefore represents both the seller and buyer or both the landlord and tenant;
15. "Licensee", a real estate broker or salesperson as defined in section 339.010;
16. "Limited agent", a licensee whose duties and obligations to a client are those set forth in sections 339.730 to 339.750;
17. "Ministerial acts", those acts that a licensee may perform for a person or entity that are informative in nature and do not rise to the level which requires the creation of a brokerage relationship. Examples of these acts include, but are not limited to:
 - (a) Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;
 - (b) Responding to telephone inquiries from a person concerning the price or location of property;
 - (c) Attending an open house and responding to questions about the property from a consumer;
 - (d) Setting an appointment to view property;
 - (e) Responding to questions of consumers walking into a licensee's office concerning brokerage services offered on particular properties;
 - (f) Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;
 - (g) Describing a property or the property's condition in response to a person's inquiry;
 - (h) Showing a customer through a property being sold by an owner on his or her own behalf; or
 - (i) Referral to another broker or service provider;
18. "Single agent", a licensee who has entered into a brokerage relationship with and therefore represents only one party in a real estate transaction. A single agent may be one of the following:
 - (a) "Buyer's agent", which shall mean a licensee who represents the buyer in a real estate transaction;
 - (b) "Seller's agent", which shall mean a licensee who represents the seller in a real estate transaction;
 - (c) "Landlord's agent", which shall mean a licensee who represents a landlord in a leasing transaction;
 - (d) "Tenant's agent", which shall mean a licensee who represents the tenant in a leasing transaction;
19. "Subagent", a designated broker, together with the broker's affiliated licensees, engaged by another designated broker, together with the broker's affiliated or appointed affiliated licensees, to act as a limited agent for a client, or a designated broker's unappointed affiliated licensees engaged by the designated broker, together with the broker's appointed affiliated licensees, to act as a limited agent for a client. A subagent owes the same obligations and responsibilities to the client pursuant to sections 339.730 to 339.740 as does the client's designated broker;
20. "Transaction broker", any licensee acting pursuant to sections 339.710 to 339.860, who:
 - (a) Assists the parties to a transaction without an agency or fiduciary relationship to either party and is, therefore, neutral, serving neither as an advocate or advisor for either party to the transaction;
 - (b) Assists one or more parties to a transaction and who has not entered into a specific written agency agreement to represent one or more of the parties, or
 - (c) Assists another party to the same transaction either solely or through licensee affiliates. Such licensee shall be deemed to be a transaction broker and not a dual agent, provided that, notice of assumption of transaction broker status is provided to the buyer and seller immediately upon such default to transaction broker status, to be confirmed in writing prior to execution of the contract.

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Duties & Obligations of Limited Agency for Seller or Landlord As Adapted From Section 339.730 RSMo.

1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:
 - (1) To perform the terms of the written agreement made with the client;
 - (2) To exercise reasonable skill and care for the client;
 - (3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:
 - (a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;
 - (b) Presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;
 - (c) Disclosing to the client all adverse material facts actually known or that should have been known by the licensee; and
 - (d) Advising 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;
 - (4) To account in a timely manner for all money and property received;
 - (5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections; and
 - (6) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.
2. A licensee acting as a seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.
3. A licensee acting as a seller's or landlord's agent owes no duty or obligation to a customer, except that a licensee shall disclose to any customer all adverse material facts actually known or that should have been known by the licensee. A seller's or landlord's agent owes no duty to conduct an independent inspection or discover any adverse material facts 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 independent inspector.
4. A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.
5. A seller or landlord may agree in writing with a seller's or landlord's agent that other designated brokers may be retained and compensated as subagents. Any designated broker acting as a subagent on the seller's or landlord's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections 1 to 4 of this section.

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Duties & Obligations of Limited Agency for Buyer or Tenant As Adapted From Section 339.740 RSMo.

1. A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:
 1. To perform the terms of any written agreement made with the client;
 2. To exercise reasonable skill and care for the client;
 3. To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:
 - (a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;
 - (b) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;
 - (c) Disclosing to the client adverse material facts actually known or that should have been known by the licensee; and
 - (d) Advising 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;
 4. To account in a timely manner for all money and property received;
 5. To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections; and
 6. To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.
2. A licensee acting as a buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.
3. A licensee acting as a buyer's or tenant's agent owes no duty or obligation to a customer, except that the licensee shall disclose to any customer all adverse material facts actually known or that should have been known by the licensee. A buyer's or tenant'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 independent inspector.
4. A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section shall not be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.
5. A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents. Any designated broker acting on the buyer's or tenant's behalf as a subagent shall be a limited agent with the obligations and responsibilities set forth in subsections 1 to 4 of this section.

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Duties & Obligations of a Transaction Broker as Adapted From Section 339.755 RSMo

1. A real estate licensee may provide real estate service to any party in a prospective transaction without an agency or fiduciary relationship to one or more parties to the transaction. Such licensee shall be called a transaction broker.
2. A transaction broker shall have the following duties and obligations:
 1. To perform the terms of any written or oral agreement made with any party to the transaction;
 2. To exercise reasonable skill, care and diligence as a transaction broker, including but not limited to:
 - (a) Presenting all written offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent unless otherwise provided in the agreement entered with the party;
 - (b) Informing 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 such broker;
 - (c) Accounting in a timely manner for all money and property received;
 - (d) To disclose to each party to the transaction any adverse material facts of which the licensee has actual notice or knowledge;
 - (e) Assisting the parties in complying with the terms and conditions of any contract;
 - (f) The parties to a transaction brokerage transaction shall not be liable for any acts of the transaction broker.
3. The following information shall not be disclosed by a transaction broker without the informed consent of the party or parties disclosing such information to the broker:
 1. That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;
 2. That a seller or landlord is willing to accept less than the asking price or lease rate for the property;
 3. What the motivating factors are for any party buying, selling or leasing the property;
 4. That a seller or buyer will agree to financing terms other than those offered;
 5. Any confidential information about the other party, unless disclosure of such information is required by law, statute, rules or regulations or failure to disclose such information would constitute fraud or dishonest dealing.
4. A transaction broker has no duty to conduct an independent inspection or investigation for adverse material facts for the parties.
5. A transaction broker has no duty to conduct an independent investigation of the buyer's financial condition.
6. 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;
 4. Serve as a single agent, subagent or designated agent or broker, limited agent, disclosed dual agent for the same or for different parties in other real estate transactions.
7. In a transaction broker relationship each party and the transaction broker, including all persons within an entity engaged as the transaction broker if the transaction broker is an entity, are considered to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law between any party and the transaction broker or between any party and any person within an entity engaged as the transaction broker if the transaction broker is an entity.
8. A transaction broker may cooperate with other brokers and such cooperation does not establish an agency or subagency relationship.

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Duties & Obligations of a Transaction Broker as Adapted From Section 339.755 RSMo (Continued)

9. Nothing in this section prohibits a transaction broker from acting as a single limited agent, dual agent or subagent whether on behalf of a buyer or seller, as long as the requirements governing disclosure of such fact are met.
10. Nothing in this section alters or eliminates the responsibility of a broker as set forth in this section for the conduct and actions of a licensee operating under the broker's license.
11. A transaction broker shall:
 1. Comply with all applicable requirements of sections 339.710 to 339.860, subsection 2 of section 339.010 and all rules and regulations promulgated pursuant to such sections; and
 2. Comply with any applicable federal, state and local laws, rules, regulations and ordinances, including fair housing and civil rights statutes and regulations.
12. If any licensee who represents another party to the same transaction either solely or through affiliate licensees refuses transaction broker status and wants to continue an agency relationship with both parties to the transaction, such licensee shall have the right to become a designated agent or a dual agent as provided for in sections 339.730 to 339.860.
13. In any transaction a licensee may without liability withdraw from representing a client who has not consented to a conversion to transaction brokerage. Such withdrawal shall not prejudice the ability of the licensee or affiliated licensee to continue to represent the other client in the transaction or limit the licensee from representing the client who refused the transaction brokerage representation in another transaction not involving transaction brokerage.

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Duties & Obligations of a Dual Agent as Adapted From Section 339.750

(NOTE: If a designated agent is appointed in accordance with this agreement, dual agency does not occur unless one of the two exceptions described in the "Designated Agent" paragraph of the Missouri real estate commission broker disclosure form occurs.)

1. A licensee may act as dual agent only with the consent of all parties to the transaction. Consent shall be presumed by a written agreement pursuant to section 339.780.
2. A dual agent shall be a limited agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required by sections 339.730 and 339.740 unless otherwise provided for in this section.
3. Except as provided in subsections 4 and 5 of this section, a dual agent may disclose any information to one client that the licensee gains from the other client if the information is material to the transaction unless it is confidential information as defined in section 339.710.
4. The following information shall not be disclosed by a dual agent without the consent of the client to whom the information pertains:
 1. That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;
 2. That a seller or landlord is willing to accept less than the asking price or lease rate for the property;
 3. What the motivating factors are for any client buying, selling, or leasing the property;
 4. That a client will agree to financing terms other than those offered; and
 5. The terms of any prior offers or counter offers made by any party.
5. A dual agent shall not disclose to one client any confidential information about the other client unless the disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action for any person shall arise against a dual agent for making any required or permitted disclosure. A dual agent does not terminate the dual agency relationship by making any required or permitted disclosure.
6. In a dual agency relationship there shall be no imputation of knowledge or information between the client and the dual agent or among persons within an entity engaged as a dual agent.

END OF FORM