

November 2018

COMMISSION CHECK IN



This information was prepared by the Kansas Real Estate Commission and emailed to Kansas real estate licensees to provide an overview of common violations. This is an example only, as different facts in a case may result in a different outcome.

Question: Who is in violation of Kansas real estate license law?

On January 1, 2018, a buyer and seller digitally signed a purchase contract. That same day, the designated seller's agent (DSA), electronically submits a copy of a purchase contract to the supervising broker for review. DSA's supervising broker, Broker A, reviewed the purchase contract and noticed Broker A was listed as the escrow agent for the \$1,000 earnest money deposit. Broker A does not maintain a trust account and there was no earnest money submitted with the purchase contract. Broker A has policies and procedures in place regarding using 3rd party escrow and timely delivery of earnest money.

On January 2, 2018, Broker A notified DSA that the earnest money receipt was not in the file and the purchase contract needed to be amended to reflect a title company as the escrow agent. After the initial review, Broker A did not follow up until the transaction was due to close five weeks later. Broker A found out the purchase contract had not been changed and the earnest money had not been deposited. By this time, the buyer wanted out of the purchase contract and each party had hired attorneys.

Who was cited for a violation in this transaction?

Answer: DSA and Broker A were cited for violations

DSA knew the earnest money had not been secured and did not include an amendment to the contract regarding the escrow agent. DSA did not work in the best interest of the seller as required by K.S.A. 58-30,106.

Broker A was named as the escrow agent, and as the listing broker has a responsibility to make sure the earnest money is deposited timely. Even though the broker has policies and procedures regarding using 3rd party escrow and timely delivery of earnest money, the broker was named as the escrow agent. The broker did not ensure the correction was made and the earnest money deposited. Broker A violated K.S.A. 58-3061 and K.A.R. 86-3-31.