

February 2019

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

On January 1, 2019, Salesperson A with XYZ Realty listed a property at 123 Main Street as a designated seller's agent. Salesperson B with Brokerage Real Estate submitted an offer for a buyer. The buyer and seller came to an agreement and the purchase contract was signed by all parties on January 3, 2019.

A week later, the buyer had a whole house inspection completed on the property and the inspector recommended a foundation inspection. A foundation inspection revealed three issues and repairs were estimated at \$15,000. Salesperson B discussed the three issues discovered by the foundation inspector with Salesperson A and relayed the buyer's request for the seller to pay for the repairs. The seller refused to pay for the repairs and the purchase contract was cancelled.

The seller had a second foundation inspection on the home because the seller did not agree with the findings of the buyer's inspector. The second inspection company found only two issues that were included in the first foundation inspection. The second foundation inspection estimated repairs at \$2,100. The foundation company made the two repairs and the seller paid the invoice.

On February 1, 2019, the seller entered into a purchase contract with a new buyer. Under the seller's direction, Salesperson A provided the buyer with the whole house inspection, the second foundation inspection and the paid invoice for foundation repairs. The buyer accepted the condition of the property and the transaction closed.

Did Salesperson A violate the Brokerage Relationships in Real Estate Transactions Act (BRRETA)?

Answer

Yes. Under BRRETA, licensees are required to disclose material defects the licensee is aware of AND any facts known by the licensee that were omitted from or contradict any information included in a written report. These disclosures are required whether acting as a seller's agent, buyer's agent, designated agent, or transaction broker.

Salesperson A knew of the additional issue in the first foundation inspection and knew it was not included in the second foundation inspection report provided to the buyer. Salesperson A failed to inform the buyer of the additional issue found in the first foundation inspection. *Continued on Page 2...*

The reason Salesperson A did not provide the buyer with the first foundation report because it was protected for the use of the purchaser of the report only. The requirement to disclose known information does not require a licensee to release a copy of a report. Kansas law does require disclosure of the material facts.

As a designated seller's agent, Salesperson A specifically violated K.S.A. 58-30,106(d)(1) & (4).

K.S.A. 58-30,106(d)(1) 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 by the licensee...

K.S.A. 58-30,106(d)(4) A seller's or landlord's agent shall disclose to the client or customer any facts actually known by the licensee that were omitted from or contradict any information included in a written report described in subsection (d)(3).

For more information regarding requirements of seller's agents, buyer's agents, and transaction brokers, see K.S.A. 58-30,106, 58-30,107, and 58-30,113.