REAL ESTATE TRANSACTIONS
Fall Semester 2017
Assignment #1
Real Estate Brokerage

Reading Assignment:

- Nelson, Whitman, Burkhart & Freyermuth (NWBF) pages 3-24
- Missouri Association of Realtors Standard Home Purchase/Sale Contract Form
- Missouri Real Estate Commission Broker Disclosure Form
- Sample Buyers’ Brokerage Agreement (Oklahoma Real Estate Commission)

Here are discussion questions for this reading assignment. Class discussion on Tuesday, August 22 will focus on some (but not necessarily all) of these questions.

[Note: For students in the Skills Training section, we will not have a separate reading assignment for the class session on Thursday, August 24. I will separately provide each of you with a set of discussion problems for that day’s class.]

1. Suppose Bailey retains Betty Broker to sell his home. Bailey signs a brokerage agreement identical to the listing agreement that appears at NWBF pp. 3-8. Betty Broker locates a potential purchaser, Lidsky, who signs a contract with Bailey to purchase the home for $400,000, but later refuses to close. Betty Broker demands that Bailey pay her the $24,000 commission (6%) provided for in her brokerage agreement. Should Betty Broker be entitled to a commission if:

   (a) Lidsky refused to close because she decided to become Dean at another school and no longer needed the home?

   (b) Lidsky refused to close because she did not qualify for mortgage financing?

   (c) Lidsky refused to close because she discovered that Bailey’s home was subject to a neighborhood restrictive covenant prohibiting chain link fencing?

2. Missouri continues to adhere to the common law “ready, willing, and able” standard governing the broker’s entitlement to a commission. Should Missouri courts reject this rule in favor of the Dobbs approach discussed in Drake v. Hosley? Why or why not?

3. In Drake, suppose Buyers had in fact told Drake on April 5 that they would not have the money to close until May 1 and thus could not close until that date. Would Drake’s subsequent sale of the land on April 11 have breached Drake’s contract with the Buyers? Why or why not?

4. In Drake v. Hosley, if Hosley (the broker) did in fact tell Drake (the seller) that the Buyers would not be able to perform until May 1 — after the scheduled closing date — why doesn’t that excuse Drake from the obligation to tender performance? Would it matter if the Buyers honestly believed that Hosley (the broker) represented them?
5. Cartwright is about to move to Columbia. Cartwright is considering whether to hire a “buyer’s agent” to assist him in locating a house, or whether to instead simply allow a listing agent to show him what homes are available. Why might Cartwright choose to use a buyer’s agent? Why might Cartwright choose not to use a buyer’s agent? Will choosing to use a buyer’s agent increase Cartwright’s transaction costs? Why or why not?

6. Review the Missouri Association of Realtors (MAR) form purchase and sale contract. Real estate brokers that are members of MAR typically would provide this form to a seller and a buyer to use for documenting a sale agreement.

Go back to Question 1, in which Bailey lists his home for sale with Betty Broker. In the process of making a written offer on Bailey’s home, Lidsky marks out everything in ¶ 7, other than the first sentence, and replaces it with the following: “In the event that the result of any inspection report is unsatisfactory to Buyer, Buyer may terminate this contract by giving written notice to Seller, in which case the Earnest Money shall be returned to Buyer.”

(a) Can Betty Broker refuse to submit the offer to Bailey unless Lidsky agrees to submit the offer using the standard terms of the form? Why or why not?

(b) Suppose that Betty Broker provides Lidsky’s written offer to Bailey. Bailey then asks Betty Broker: “What would this change mean? Is this something I should agree to or not?” How can Betty Broker respond?

7. The Missouri Real Estate Commission Broker Disclosure Form describes the types of brokerage relationships permitted under Missouri law. But the Missouri statutes also provide a “minimum services” law (as described in note 6, NWBF pp. 11-12). Given this statutory requirement, under what circumstances could a real estate broker function as a “Transaction Broker” as described in the Disclosure Form?