

Legal Environment for Real Estate – tales from the hotline Auctioneers Association

Vernon L. Jarboe

© copyright 2023

Tranquility base here

- Ways to make
your life this
tranquil



On the colored paper

- Write number of years you have been an auctioneer
- Write one or two things you hope to get from class
- Other than SLEEP
 - CE CREDIT
- HAND THEM TO GROUP LEADER AND GROUP LEADER GET THEM TO ME

Legal Environment for Real Estate – tales from the hotline Auctioneers Association

- Vernon L. Jarboe
- © copyright 2023

Vernon L. Jarboe Attorney at Law

Cell: 785.640.0970

Office: 785.357.6311

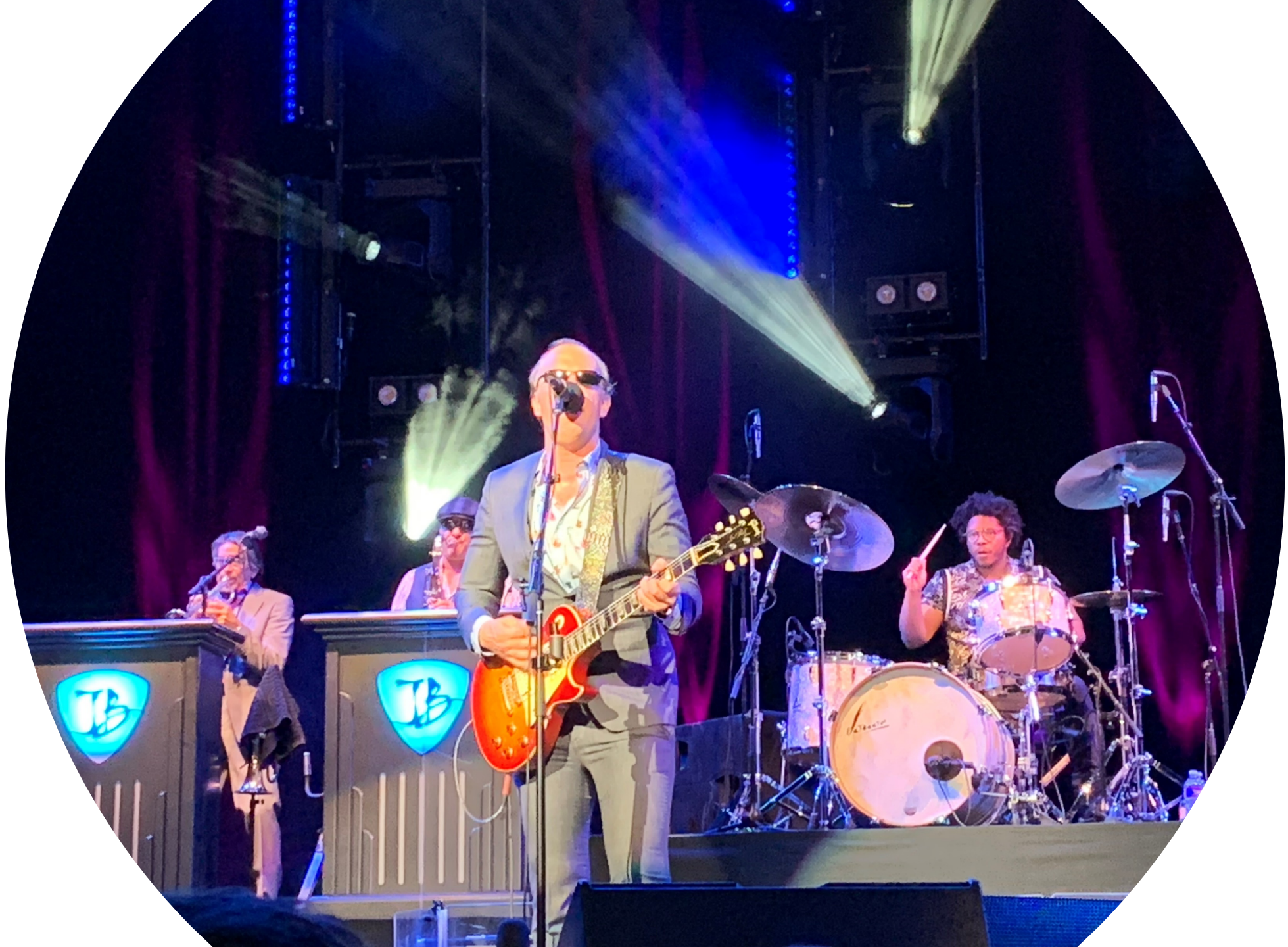
office locations:

➤ 534 S Kansas, Topeka, KS
66603

➤ 831 Massachusetts, Lawrence,
KS 66044

vjarboe@sloanlawfirm.com





FICTITIOUS BUYER SCAM

- BUYER HAS NO MONEY
- BUYER IS FOREIGN PERSON PROMISING A DEPOSIT THAT NEVER APPEARS
- BUYER NEVER SIGNS OR NEVER CLOSES

FALSE WIRING INSTRUCTIONS

- BAIN VS PLATINUM REALTY
- KC CASE APPROX 2018
- SOURCE OF FALSE WIRING INSTRUCTIONS WAS THE QUESTION
- REALTOR[®] TRIED TO COVER UP
- BUYER 15 % AT FAULT AND REALTOR[®] 85%
- \$167,129.27.

Vacant land/lot scam

- Person pretends to be the real owner of land and they are not
- Vacant land/lot scam begins with an email to the unsuspecting licensee (I am compressing the scam below for you. The scam is much more smooth and sophisticated):

"I am a distant seller of vacant land located at _____ . Please list my land and sell my land for me. Email the listing agreement for me to sign. Closing lawyer/escrow - Wire the proceeds to me."

Thanks in advance for any help.

Protection

- Alert the closing attorneys/escrow that you have NOT met the seller before and all the transaction's communications have been performed across distance (e.g., email, internet).

LEGAL DISCLAIMER

The content of this class includes questions about the law and applies the law to fact patterns. Neither the printed material nor discussion should be mistaken for THE LAW nor legal advice which often turns on very narrow points and slim factual distinctions. Actual problems and remedies require the expertise of a Real Estate Attorney. It is important to know the difference between your problem and a client or customer's problem. Customer and client legal problems must be referred to competent counsel. You should not provide answers to their problems. Hotline members should call the hotline and non-members should consider joining.

COURSE OUTLINE

- Contract issues
- Land Use Regulations
- Introduction to Fair Housing
- Antitrust

CLASS RULES



- ▶ Return from breaks on time
- ▶ Turn off audible pagers and cell phones
- ▶ You have to be in the classroom for all teaching minutes
- ▶ You will be invited to talk -- but not to each other--unless we are in group problem solving mode
- ▶ Ask lots of questions

Auction with reserve – by the courts

- The seller in a **with reserve auction** reserves the right not to sell
- An auctioneer bringing a piece of property up for bid is an invitation to make a contract and is not an offer to contract
- Asking for bids is therefore asking for offers.

Auction without reserve – by the courts

- **auction without reserve** the contract forming roles of the parties are inverted from those in an auction with reserve
- The seller and the seller's agent, auctioneer, becomes an offeror and each successfully higher bid creates a contingent acceptance with the highest bid creating an enforceable contract.
- The term absolute auction is synonymous with auction without reserve

absolute auction – By the courts

- with a minimum
- Becomes an absolute auction after the minimum bid has been reached

- SO YOU THINK
YOU ARE ALL
ALONE



WHO IS WATCHING YOU

- How many auditors does KREC have watching you –
 - answer = more than the population of 70 of the 105 counties in Kansas.
-

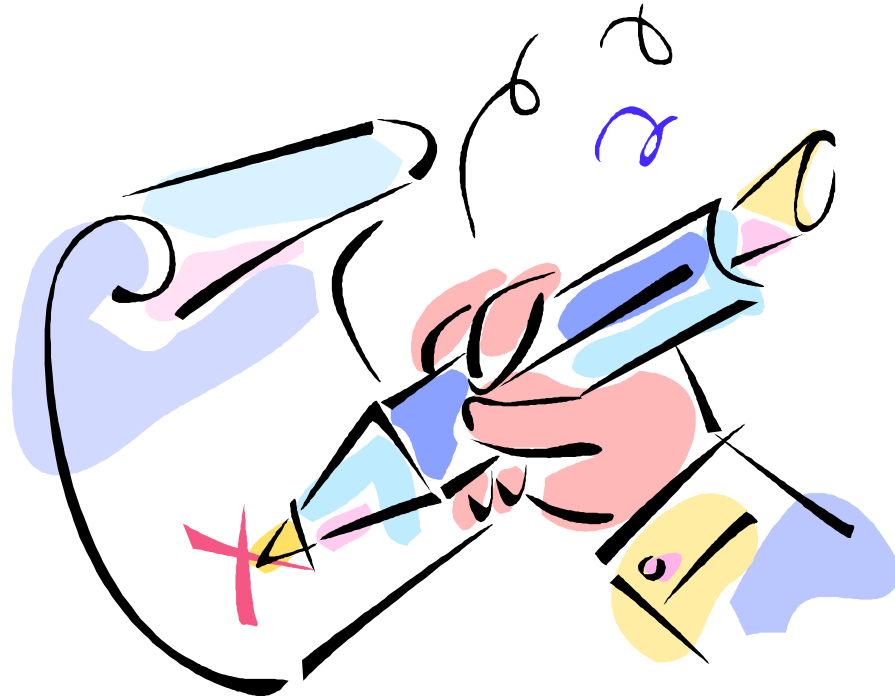
Contract issues REACHING AGREEMENT

- Parties
 - Husband And Wife
 - Corporate Representatives
 - Power Of Attorney
 - Trusts



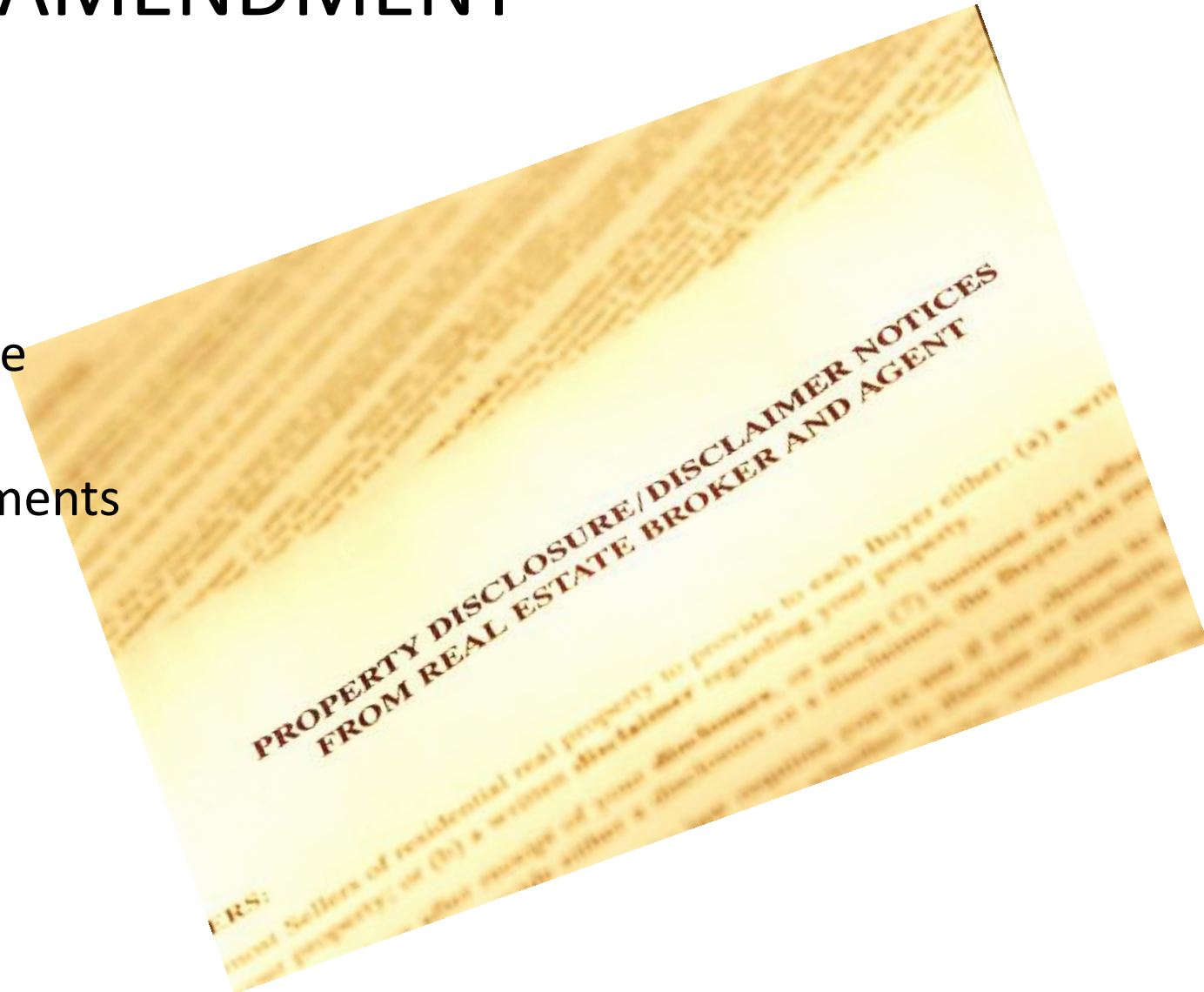
Contract Components

- Offer
- Acceptance
- Consideration
- Written format



CONTRACTS AMENDMENT

- Addenda
 - Agency disclosure
 - Lead paint
 - Disclosure statements
 - Sex Predator
 - Radon warning
 - “AS IS”





- YOU CAN SEE FOREVER IN KANSAS

ON THE COLORED PAPER

- WRITE A QUESTION YOU WANT ANSWERED FROM THIS COURSE SO FAR
- TURN THEM IN TO TABLE HEAD
- TABLE HEADS PLEASE BRING THEM UP

Special Contracts

- Multiple offers – seller right to choose
- Anonymous buyer
- Selling property in “as is” condition



Special Contracts

- Options
- First Right of Refusal
- Seller Financed Transaction

Earnest Monies

- Not Required
- Prove Bona Fides
- Promissory Note or Non-Cash
- Seller Held or Deposit
- Withdrawal



absolute auction – By the courts

- Sale bill that sets up bidder requirements is binding on seller
- Case resulted in auctioneer admitting that sale would have occurred at minimum opening bid but for ineligible buyer
- Buyer who had not
 - Registered
 - Provided 10% deposit
 - Or bank guarantee
 - Was ineligible

absolute auction – By the courts

- Auctioneer bidding for self
- Using imaginary bidders
- Using shill bidders
- Is a fraud on the perceived fairness of the auction

LAND USE

Flood Plain

Technological innovations have lead to major advancements in mapping capabilities. Check with your local authorities for information and access to new flood plain maps, as well other property data.

Example: <http://gis.snco.us/gisviewer>



ZONING

- Refers to Public rules regulating the use of land
 - State
 - Local
 - City
 - County

Zoning

- Amendments
- Variances
- Conditional Use Permits
- Grandfathered Uses
- Declarations of Restrictions, Covenants and Deed Restrictions

Final question from me

- Write number of years you have been licensed
- Write one or two things you DIDN'T GET THAT YOU hoped to get from class
- HAND THEM TO GROUP LEADER AND GROUP LEADER GET THEM TO ME



EASY ONES – I HOPE

TRUE OR FALSE

- 1 - Familial status refers to a household with children under the age of 18
- 2 - Occupancy standards by a landlord should indicate the number of children allowed
- 3 - Leasing agent discriminates on the basis of race and is the only one liable
- 4 - There is no time limit for filing fair housing complaints
- 5- A prospective tenant should determine their own needs and wants when choosing a home



r Housing Historical Timeline

- 1789 -- All men are created equal
- 1856 -- Dred Scott: man = mule
- 1866 -- Constitutional amendment applies federal rights to states
- 1866 -- Civil Rights Act – blacks get private property rights
- 1879 -- Plessy vs. Ferguson – separate but equal
- 1968 -- Illegal to discriminate on basis of race, color and religion
- 1974 -- Illegal to discriminate on basis of sex
- 1988 -- Illegal to discriminate on basis of handicap or familial status

Penalties for Violating Fair Housing



- Actual Damages
- Civil Penalty
- Punitive Damages
- Injunctive Relief
- Licensee Discipline
- State Fair Housing Law



**DISCRIMINATION IS RARELY THIS OBVIOUS,
BUT IT'S JUST AS REAL. AND JUST AS ILLEGAL.**



Sherman Act

- Prohibits Two or More Competing Brokers from



- Price Fixing
- Allocating Customers or Territory between Brokers
- Boycotting or Refusing to Deal with other Brokers

Violations of Sherman Act

- Penalties
 - Treble damages
 - Loss of License
 - Jail Time



ANTITRUST

Dangerous words and phrases

- I'd love to lower the commission but the board has a rule
- This is the rate everyone charges
- Before listing with discount broker you need to know others will not show their listings
- The MLS will not accept a listing for less than XX days

PASTOR MARTIN NIEMOLLER

- First they came for the socialists, and I did not speak out—because I was not a socialist.
- Then they came for the trade unionists, and I did not speak out—because I was not a trade unionist.
- Then they came for the Jews, and I did not speak out—because I was not a Jew.
- Then they came for me—and there was no one left to speak for me.

