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To: Senate Commerce Committee

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Subject: **SB 108** – Supporting the Request by the Kansas Real Estate Commission for a Reasonable Increase in the Statutory Maximum Real Estate Licensing Fees to Stabilize the Balance of the Real Estate Fee Fund and Ensure that the Commission Has the Necessary Resources to Properly Regulate the Real Estate Industry and Protect Consumers in Real Estate Transactions

Chairperson Lynn and members of the Senate Commerce Committee, thank you for the opportunity to provide testimony today on behalf of the Kansas Association of REALTORS® in strong support of **SB 108**, which would increase the statutory maximum real estate licensing fees for real estate licensees under the Kansas Real Estate Brokers' and Salespersons' License Act (KREBSLA). Through the comments provided in our testimony, we hope to provide some additional legal and public policy context on this issue.

KAR is the state's largest professional trade association, representing nearly 8,000 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 property owners for over 95 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

#### Summary of the Need for this Legislation

In order to protect consumers from harmful conduct in real estate transactions and uphold the highest ethical and professional standards of the real estate industry, Kansas REALTORS® strongly believe that the Kansas Real Estate Commission needs to have the necessary resources to maintain an active and robust oversight of the real estate industry. In many situations, the efforts of the Commission are needed to take action against unqualified and unethical individuals that harm consumers and degrade the professionalism of the industry.

Unfortunately, the actions of the Kansas Legislature over the last decade and the recent challenges facing the real estate industry have combined to force the Commission's real estate fee fund into a precarious position. Unless the Kansas Legislature takes immediate action to allow the Commission to increase real estate licensing fees, Kansas REALTORS® are concerned that the Commission will not have adequate resources to provide for the proper regulation of the real estate industry and protect consumers from harm.

As a starting point, it is important to point out that the Commission is entirely funded through real estate licensing fees levied against real estate industry professionals. The Commission has never and will never receive a dime of funding from the state general fund or general tax revenues.

As we discuss the current fiscal challenges facing the Commission and the proposed solutions contained within the provisions of **SB 108**, it is also important to note that it is exclusively members of the real estate industry who pay real estate licensing fees into the real estate fee fund maintained by the Commission. In this respect, real estate industry professionals exclusively pay for all the costs associated with the regulation of our profession.

As a result, we believe that the opinions of Kansas REALTORS® should carry great weight on this issue. Since our members pay these real estate licensing fees and our members are overwhelmingly in favor of increasing those fees in order to stabilize the budget of the Commission, we are simply urging the Kansas Legislature to allow the Commission to slightly increase the fees paid by the real estate licensees to stabilize the real estate fee fund.

## Fundamental Reasons Behind the Declining Fiscal Health of the Commission and Real Estate Fee Fund

Based on our analysis of the Commission's budget and fee fund balance over the last several fiscal years, we have concluded that there are three primary contributing factors to the Commission's fiscal challenges and the resulting declining balance of the real estate fee fund:

- (1) Unconstitutional Fee Fund Sweeps by the Kansas Legislature:** The Kansas Legislature passed a series of very large unconstitutional transfers of nearly \$800,000 in real estate fee fund balances to the state general fund between 2005 and 2009. Although litigation is still ongoing over these transfers, the money is gone and will most likely never be returned to the real estate fee fund.
- (2) Large Reduction in the Number of Real Estate Licensees:** There was a drastic reduction in the number of real estate licensees regulated by the Commission due to the housing market recession and economic environment that lasted from 2008 through 2012. As the housing market and economy have recovered, the number of real estate licensees is growing steadily, but not nearly enough to erase the reduction that occurred during the recession.
- (3) Increased Costs for the Investigation and Processing of Complaints:** There has been an increase in the costs associated with administrative hearings, investigations, legal matters and the processing of complaints against real estate licensees. The Commission has taken many steps to decrease the fiscal impact associated with this situation, but there has still been a sizeable increase in the cost of the important activities.

First, the Kansas Legislature transferred \$195,671 from the Commission's real estate fee fund to the state general fund during the 2009 Legislative Session. The association has filed a lawsuit against the State of Kansas over this transfer and contends that this was an impermissible and unconstitutional transfer of regulatory fees. However, this litigation is still pending in the Kansas Supreme Court and will not be resolved for at least two more years.

However, the transfer of this large amount of funds from the real estate fee fund in 2009 only complicated a funding problem for the Commission that began with a previous fee fund sweep by the Kansas Legislature of over \$600,000 during the 2005 Legislative Session. In effect, these two fee fund sweeps took nearly \$800,000 of funds that were sitting in the real estate fee fund and that would have been used to cushion the impact of the housing market recession and the resulting reduction in the number of real estate licensees on the Commission.

Second, the total number of real estate licensees regulated by the Commission has declined significantly by over 4,000 real estate licensees since 2007. Unfortunately, the real estate fee fund balance rises and falls with the number of real estate licensees that are licensed and paying real estate licensing fees into the fund.

Since the number of real estate licensees peaked at nearly 17,600 in fiscal year 2007, the number of real estate licensees has dropped by nearly 4,000 licensees (for a total reduction of roughly 23%). Unfortunately, while the number of real estate licensees has most likely bottomed out and is starting to slowly recover, this growth has not been sufficient to replenish the funds that were transferred out of the real estate fee fund.

Finally, the Commission has stated that an increasing number of inquiries from members of the public and real estate licensees are being handled by Commission staff. This has resulted in an increased number of complaints that are filed against real estate licensees with the Commission and a corresponding increase in the number of administrative hearings, investigations and complaints that result in disciplinary action.

Compared to previous fiscal years, the Commission has concluded that an increasing portion of the annual budget is being allocated to the administrative, legal and other processing costs associated with responding to consumer inquiries, processing complaints, holding hearings and defending disciplinary sanctions in administrative and legal proceedings. Although the Commission has made significant budget cuts and has streamlined the investigation and processing of complaints, this trend does not appear to have ended.

In our opinion, the Commission has made significant progress in reforming the internal operations of the agency and have found many efficiencies within the agency's budget. In addition, the Commission has made great progress in changing the culture of the agency and improving the customer service orientation of the Commission staff. However, we believe that additional improvements will require more resources in the budget.

### Historical Progression of Real Estate Licensing Fees

Based on exhaustive research conducted into the fiscal history of the Commission, it appears that the Commission has not increased the statutory maximum real estate licensing fees for real estate brokers and salespersons since 1988. For the last 27 years, these licensing fees have remained at their current levels without any increase.

In 1997, the license fee was doubled from \$50 to \$100 for real estate salespersons and \$75 to \$150 for real estate brokers. However, the Commission also switched from a one year to a two year renewal period at that time. As a result, the Commission did not increase the annual fee for a real estate license at that time.

If the Commission were to increase real estate licensing fees in 2015, it would be the first increase in the statutory maximum real estate licensing fees in 27 years. Although the Commission would like to increase the statutory maximum real estate licensing fees by \$50 for both real estate salespersons and brokers in **SB 108**, the Commission has the authority to adopt rules and regulations to increase the fees by a lower amount than the maximum amount specified in the statute.

Under K.S.A. 58-3063, the Commission has the authority to adopt rules and regulations to establish the amount of fees required to apply for and renew a license as a real estate salesperson or broker (along with several other fees specified in the statute). At this time, the Commission has expressed absolutely no interest in increasing any other fees other than the basic real estate licensee fee for real estate salespersons and brokers.

If the Kansas Legislature passes **SB 108**, the Commission has publicly stated that it only intends to approve a regulation that increases the real estate licensing fees for both real estate salespersons and brokers by \$35. This means that the Commission would not be increasing the fees up to the maximum amount specified in the statute.

If the Commission were to increase the real estate licensing fees by regulation by \$35, the average annual cost of obtaining a real estate license would increase to \$67.50 for individuals licensed as real estate salespersons and \$92.50 for individuals licensed as real estate brokers. This would be an annual increase of \$17.50 for both real estate salespersons and brokers, which works out to an increase of \$1.46 per month.

### Conclusion

In closing, we would respectfully request that the members of the Senate Commerce Committee support **SB 108** to provide the Commission with the ability to stabilize the real estate fee fund and adequately protect consumers through an active and robust regulation of the real estate industry. Thank you for the opportunity to provide comments on this issue.