

Approved: April 25, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 7, 1996 in Room 313-S of the Capitol.

All members were present except:

Representative David Adkins - Excused
Representative David Haley - Absent
Representative Vince Snowbarger - Excused
Representative Dee Yoh - Excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Steve Martens, Martens Companies
Marlin Penner, John Arnold & Associates
John Green, President of Kansas Association of Realtors
Wess Galyon, President of Wichita Builders Association
Jean Duncan, Director, Real Estate Commission
Representative Gary Merritt
Representative Gwen Welshimer
John Omli, Kansas Auctioneer Association
Tom Byler, President, Sumner County Board of Realtors
Larry Rickard, Contential Real Estate
Jon Todd, John Todd & Associates
Frank Stucky, Stucky & Associates
Vern Jarboe, Sloan, Listrom & Eisenbarth Attorneys at Law
John Fort, ARC Real Estate
B.J. Melvin, Hazlett Auction & Realty
David Antrim, Antrim, Piper & Wenger
Vi Fogerson, Realty Group One
Winn Etzenhouser, ReMax Association
Jim Bishop, Coldwell Banker
Cal Lantis, Ottawa Real Estate

Others attending: See attached list

Hearings on **SB 710** - exempt certain commercial or investment transactions from brokerage relationships in real estate transactions act, were opened.

Staff provided the committee with a summary of **SB 110** that was passed last session along with a copy of the statute. (Attachment 1)

Steve Martens, Martens Companies, appeared before the committee in support of the bill. He stated that the proposed bill should be passed because commercial transactions are structured differently from residential. (Attachment 2)

Marlin Penner, John Arnold & Associates, appeared before the committee in support of the bill. He commented that commercial transactions have long term client relationships and because of this are different from residential transactions. (Attachment 3)

John Green, President of Kansas Association of Realtors, appeared before the committee as a proponent of the bill. He stated that the Association would accept a one year moratorium on commercial transactions but opposed a repeal or complete moratorium. (Attachment 4)

Wess Galyon, President of Wichita Builders Association, appeared before the committee and asked that the one year moratorium on commercial be enacted and have an established group within the industry to work together and make recommendations to the legislature in 1997. (Attachment 5)

Jean Duncan, Director, Real Estate Commission, appeared before the committee as an opponent of the bill. She commented that she doesn't believe that it is in the best public interest to enact a moratorium. The Commission has appointed a task force to come up with solutions to the concerns of the proponents of the bill. (Attachment 6)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313 S Statehouse, at 3:30 p.m. on March 7, 1996.

Representatives Gary Merritt & Gwen Welshimer did not appear before the committee but requested that their testimony be included in the minutes. (Attachments 7 & 8)

John Omli, Kansas Auctioneer Association, appeared before the committee in favor of repealing BRRETA. He stated that the DAAR form confuses and intimidates the public. (Attachment 9)

Tom Byler, President, Sumner County Board of Realtors, appeared before the committee in favor of repealing BRRETA. He believes that BRRETA has a negative affect on the economic and industrial development in Kansas and that it attempts to legitimize "dual agency" which is a conflict of interest. (Attachment 10)

Larry Rickard, Realty School of Kansas, appeared before the committee in favor of repealing BRRETA. (Attachment 11)

John Todd, John Todd & Associates, appeared before the committee in favor of repealing BRRETA. He believes that the act discriminates against smaller companies. (Attachment 12)

Frank Stucky, Stucky & Associates, appeared before the committee in favor of repealing BRRETA. He requested that the Board of Realtors conduct a study to look at how the act was working nationwide. The major change was that all transactions had to be in writing and having the DAAR form signed is not something that customers like to sign. (Attachment 13)

Vern Jarboe, Sloan, Listrom & Eisenbarth Attorneys at Law, appeared before the committee in favor of keeping BRRETA. He teaches courses to real estate agents on the act. (Attachment 14)

Jon Fort, ARC Real Estate, appeared before the committee in favor of keeping BRRETA. He commented that the new law benefits the public by informing them of the options they have. It works the best for small towns where everyone knows everyone. (Attachment 15)

B.J. Melvin, Hazlett Auction & Realty, appeared before the committee in favor of keeping BRRETA. He stated that he didn't understand what the "big deal" was with signing the DAAR form. It's something that realtors should have been doing all along. (Attachment 16)

David Antrim, Antrim, Piper & Wenger, appeared before the committee in favor of keeping BRRETA. He believes that the new act is a very radical law but realtors are becoming more comfortable with it. The DAAR form makes the transaction fair for all parties involved. (Attachment 17)

Vi Fogerson, Realty Group One, appeared before the committee in favor of keeping BRRETA. She stated that the DAAR form simply informs clients of what is available to them. (Attachment 18)

Winn Etzenhouser, ReMax Association, appeared before the committee in favor of keeping BRRETA. She told the committee that consumers today demand quality services and they also want to be informed of what choices they have. (Attachment 19)

Jim Bishop, Coldwell Banker, appeared before the committee in favor of keeping BRRETA. He stated that his agency has been using a form like the DAAR form since 1993 and have found very few customers refusing to sign it. It allows both the buyer and saler to understand their options. (Attachment 20)

Cal Lantis, Ottawa Real Estate, appeared before the committee in favor of keeping BRRETA. He told the committee that real estate agents have known that the act was coming a year before it was enacted and that the suggestion that the act was "sprung on us without notice" is not true. (Attachment 21)

The committee meeting adjourned at 6:00 p.m. The next meeting is scheduled for March 11, 1996.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: March 7, 1996

NAME	REPRESENTING
John R. Todd	John Todd & Assoc
LARRY RICKARD	Continental R.E. & REALTY School of KS.
TOM BYLER	SUMNER CO. BOARD OF REALTORS
Gwen Welkman	Rep -
STEVEN J. MARTONS	THE MARTONS COMPANIES
Abigail L. Seber	C-AT SIMMONS REALTY
Bob Wilson	Ks. Auctioneer Assoc.
Jacqueline Oberst	Ks. Auctioneer Assoc.
John Onli	Ks. Auctioneer Assoc.
Wesley Galyen	Wichita Area Builders Assoc.
Jean Duncan	Real Estate Commission
Sharon R. Webb	" " "
Vi Loggins	Kansas Assoc of Realtors
MERRILL SUTER	HEARTSIDE REALTY, INC
Jon Fort	AREA KANSAS ASSOC. OF REALTORS
Cal Lantis	Ottawa Real Estate
Tom Mosses	TOPICKA BOARD OF REALTORS
Beverly Reith	The Reith Company
Lina Brown	Peterson Public Affairs Group.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: March 7, 1996

NAME	REPRESENTING
Veronica A. Wynn	KS Seat. Comm.
Robert D. Bloom	Topeka Board of Realtors
Gary M. Nault	Topeka Board of Realtors
Winn Etzohar	RE/MAX, Associate of Topeka
J. J. Mezin	K.A.R. Colby, KS.
Marilyn Kersenbrack	K.A.R. Colby KS.
David Antrim	Antrim-Piper Wenger Realtors ^{Salina}
Wendy A. Kauland	ACLU

JUDICIARY

Civil Matters

Income Withholding Penalties; Garnishment Changes

~~S.B. 35 increases the penalty against a payor, such as an employer, who intentionally fails to pay over, on a timely basis, support money withheld from an employee's paycheck. A payor who fails to pay over these moneys shall be ordered to pay three times the amount owed and reasonable attorney fees.~~

~~S.B. 35 requires all orders of garnishment to include the defendant's address and tax identification number, if known. Additionally, the bill provides that if the order of garnishment attaches funds in an account owned in joint tenancy with one or more individuals who are not the subject of the garnishment, the garnishee (financial institution) shall withhold the entire amount sought by the garnishment. An answer to an order of garnishment also must include information that the account is owned in joint tenancy with one or more persons who are not subject to garnishment if applicable. The garnishee is not to be liable to the joint owners if the ownership of the funds is later proven not to be the defendants. These amendments also are extended to the Code of Civil Procedure for Limited Actions.~~

Brokerage Relationships in Real Estate Transaction Law

S.B. 110 enacts the Brokerage Relationships in Real Estate Transactions Act. The bill establishes statutory relationships between real estate brokers, salespersons, and clients and establishes rules governing liability in these relationships.

Definitions. Various terms are in the bill including: "Broker," "Agency agreement," "Confidential information," "Customer," "Disclosed dual agent," and "Statutory agent." Various other terms are defined.

Brokers, Salespersons, and Agency Agreements. A broker shall act only as a statutory agent, *i.e.*, an agent for a seller, buyer, landlord, or tenant, or as a disclosed dual agent. A broker may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent if the broker complies with this act in establishing the relationships for each transaction.

Before an agency agreement is signed, the broker or an affiliated licensee shall advise the prospective buyer or seller of alternative agency relationships.

An agency agreement with a seller or landlord shall be signed prior to the licensee's engaging in any of the activities enumerated in subsection (e) of K.S.A. 58-3035 and amendments thereto as an employee of, or on behalf of, the seller or landlord.

An agency agreement with a buyer or tenant must be signed at or prior to the first showing of a property if the licensee is acting in the capacity of a buyer's agent.

An agency agreement shall set forth the terms and conditions of the relationship, including a fixed date of expiration, and shall specify the duties and obligations including, but not limited to, any duty of confidentiality and the terms of compensation. The agreement shall be signed by the party to be represented and by the broker or a licensee affiliated with the broker. A copy of the agreement shall be furnished to the client at the time the client signs the agreement.

An agency agreement shall not contain an authorization for the broker to sign or initial any document on behalf of the broker's client in a real estate transaction or authorization for the broker to act as attorney-in-fact for the client. An agency agreement with a seller shall not provide that the broker's commission be based on the difference between the gross sales price and the net proceeds to the owner. Further, the broker shall not assign, sell, or otherwise transfer a written agency agreement to another broker without the express written consent of all parties to the original agreement.

A licensee which includes both a broker and salesperson shall not solicit an agency agreement from a seller or landlord if the licensee knows that the seller or landlord has an agency agreement granting an exclusive right to sell or exclusive agency to another broker. A licensee shall not solicit an agency agreement from a buyer or tenant if the licensee knows that the buyer or tenant has a written agency agreement granting exclusive representation to another broker.

A licensee shall not induce any party to break any agency agreement. A licensee shall not negotiate a sale, exchange, or lease of real estate directly with a buyer or tenant or seller or landlord if the licensee knows that the buyer or tenant has an agency agreement granting exclusive representation to another broker.

Duties and Obligations of Agents. A seller, buyer's landlord, or a tenant's agent shall be a statutory agent with the following duties and obligations to perform the terms of the written agreement made with the client; exercise reasonable skill and care for the client; promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

- seeking a price and terms which are acceptable to the client, except that an agency agreement may provide that the licensee shall not be obligated to continue to market the property after an offer has been accepted by the seller to seek other properties after the client enters into a purchase contract;
- presenting, in a timely manner, all written offers, counter offer, and back-up offers to and from the client;
- disclosing to the client all adverse material facts actually known about the tenant or buyer (if agent represents the seller) by the licensee;
- advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
- account in a timely manner for all money and property received;
- comply with all requirements of this act and rules and regulations adopted hereunder; and
- comply with any applicable federal, state, and local laws, rules and regulations, and ordinances, including fair housing and civil rights statutes or rules and regulations.

If the licensee advised the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters.

A seller's or landlord's agent owes no duty or obligation to a customer, except that a licensee must disclose to any customer all adverse material facts actually known by the licensee, including but not limited to:

1. any environmental hazards affecting the property which are required by law to be disclosed;
2. the physical condition of the property;
3. any material defects in the property;
4. any material defects in the title to the property; or
5. any material limitation on the client's ability to perform under the terms of the contract.

An agent of the grantor or grantee may complete the real estate sales validation questionnaire on behalf of their client.

Compensation. In any transaction, the broker's compensation may be paid by the seller, the landlord, the buyer, or the tenant. A broker may be compensated by more than one party for services in a transaction if the parties consent in writing to the multiple payments at or before the time of entering into a contract to buy, sell, or lease.

A broker may:

1. pay a commission or compensation to any licensee affiliated with the broker for performing services;
2. with the written agreement of the seller or landlord, share a commission with another broker who acted as subagent of the seller or landlord;
3. with the written agreement of the seller or landlord, share a commission with a buyer's broker or a tenant's broker; and
4. pay a referral fee to a person who is licensed as a broker under the real estate brokers' and salespersons' license act or under the law of another jurisdiction, provided that written disclosure is made to the client of any financial interest that the broker has in the brokerage firm receiving the referral fee.

Rules of Liability. A client shall not be liable for a misrepresentation of the client's statutory agent arising out of the agency agreement unless the client knew of the misrepresentation.

A statutory agent shall not be liable for a misrepresentation of the agent's client arising of the agency agreement unless the licensee knew of the misrepresentation.

A statutory agent shall not be liable for an innocent misrepresentation in information provided to the seller or landlord or to the buyer or tenant if the licensee does not have personal knowledge of the error, inaccuracy, or omission that is the basis for the misrepresentation.

A seller's, landlord's, buyer's, or tenant's agent shall not be liable for punitive or exemplary damages for the licensee's failure to perform any of the duties set forth in this section, unless the failure is shown by clear and convincing evidence that the licensee acted toward the plaintiff with willful conduct, wanton conduct, fraud, or malice.

Private Property Protection Act

H.B. 2015 enacts the Private Property Protection Act, which requires by January 1, 1996, the following:

1. Before a taking of private property by a state agency can occur, the state agency must prepare a written report, in addition to any economic impact statement required in developing rules and regulations, that follows guidelines established by the Attorney General. The written report must contain:
 - a. a clear identification of any public health, safety, or welfare risk created by the use of the property and a description of the way in which the proposed action will substantially advance the public health, safety, or welfare;
 - b. statements that set out the underlying facts to justify the need for any restrictions or limitations;
 - c. an analysis of the likelihood the governmental action will result in a taking;
 - d. an identification of any alternatives to the action;
 - e. an assurance that any conditions imposed on issuing a permit will relate directly to the public health, safety, or welfare for which the permit is to be issued.

Before any action requiring a written report can be implemented, the written report must be submitted to the Attorney General and the Governor.

2. The Attorney General will have guidelines in place to assist state agencies in evaluating proposed governmental actions in determining whether such actions amount to a taking.
3. In an emergency, the written report will be prepared when the emergency action is complete.

liable in damages to the person for whom the demand was made in the sum of \$500, together with a reasonable attorney's fee for preparing and prosecuting the action. The plaintiff in such action may recover any additional damages that the evidence in the case warrants. Civil actions may be brought under this act before any court of competent jurisdiction, and attachments may be had as in other cases.

(e) The mortgagee or assignee of a mortgagee entering satisfaction or causing to be entered satisfaction of a mortgage under the provisions of subsection (a) shall furnish to the office of the register of deeds the full name and last known post office address of the mortgagor or the mortgagor's assignee. The register of deeds shall forward such information to the county clerk who shall make any necessary changes in address records for mailing tax statements.

History: L. 1971, ch. 189, § 1; L. 1980, ch. 163, § 1; L. 1989, ch. 165, § 1; L. 1994, ch. 250, § 1; L. 1995, ch. 171, § 2; July 1.

Attorney General's Opinions:

Entry of satisfaction of real estate mortgage; fee. 94-143.

CASE ANNOTATIONS

2. Whether absent specific contractual provision authorizing prepayment debtor has a right to prepay note and mortgage examined. Metropolitan Life Ins. Co. v. Strnad, 255 K. 657, 660, 667, 876 P.2d 1362 (1994).

58-2312.

Law Review and Bar Journal References:

"New Legislation Affects the Collection of Unpaid Debts," Wayne T. Stratton, 95 Kan. Med. No. 3, 182 (1994).

CASE ANNOTATIONS

12. Whether 1994 amendment to section was remedial requiring application even though lease executed prior to amendment's effective date examined. Benedictine College, Inc. v. Century Office Products, 868 F.Supp. 1239, 1241 (1994).

58-2321.

CASE ANNOTATIONS

11. The effect failure to record assignment of mortgage had on rights of the assignee in relation to junior mortgages discussed. Bank Western v. Henderson, 255 K. 343, 348, 874 P.2d 632 (1994).

58-2323.

CASE ANNOTATIONS

1. Whether mortgagee was required to take legal action to secure rents from mortgaged property before filing bankruptcy examined. In re Kansas Office Associates, Ltd., 173 B.R. 745, 750 (1994).

58-2343.

CASE ANNOTATIONS

3. Whether mortgagee was required to take legal action to secure rents from mortgaged property before filing bankruptcy examined. In re Kansas Office Associates, Ltd., 173 B.R. 745, 749 (1994).

Article 25.—LANDLORDS AND TENANTS

RESIDENTIAL LANDLORD AND TENANT ACT

Law Review and Bar Journal References:

"Kansas Artisan's and Mechanic's Liens: An Unnecessary Tangle," Judge John K. Pearson, 63 J.K.B.A. No. 7, 28, 35 (1994).

Article 30.—REAL ESTATE BROKERS AND SALESPERSONS

LICENSING

58-3034. Title of act. This act shall be known and may be cited as the real estate brokers' and salespersons' license act.

History: L. 1980, ch. 164, § 1; L. 1986, ch. 209, § 19; L. 1995, ch. 252, § 13; Jan. 1, 1996.

Law Review and Bar Journal References:

"Tort Law: Real Estate Broker Beware: Remain Ignorant of Property Flaws and the Innocent Buyer Wins [Mahler v. Keenan Real Estate, Inc., 876 P.2d 609 (Kan. 1994)]," Lisa M. Agrimonti, 34 W.L.J. 345, 350 (1995).

CASE ANNOTATIONS

5. Whether state recognizes tort of negligent misrepresentation by real estate agent who induces sale examined. Mahler v. Keenan Real Estate, Inc., 255 K. 593, 599, 606, 876 P.2d 609 (1994).

58-3035. Definitions. [See Revisor's Note] As used in this act, unless the context otherwise requires:

(a) "Advance listing fee" means any fee charged for services related to promoting the sale or lease of real estate and paid in advance of the rendering of such services, including any fees charged for listing, advertising or offering for sale or lease any real estate, but excluding any fees paid solely for advertisement or for listing in a publication issued for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the listing.

(b) "Agency agreement" means a written agreement between the principal and the licensee setting forth the terms and conditions of the relationship.

(c) "Associate broker" means an individual who has a broker's license and who is employed by another broker or is associated with another broker as an independent contractor and participates in any activity described in subsection (f).

(d) "Branch broker" means an individual who has a broker's license and who has been designated to supervise a branch office and the activities of salespersons and associate brokers assigned to the branch office.

(e) "Branch office" means a place of business other than the principal place of business of a broker.

(f) "Broker" means an individual, other than a salesperson, who advertises or represents that such individual engages in the business of buying, selling, exchanging or leasing real estate or who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owner, purchaser, lessor or lessee of real estate:

(1) Sells, exchanges, purchases or leases real estate.

(2) Offers to sell, exchange, purchase or lease real estate.

(3) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase or leasing of real estate.

(4) Lists or offers, attempts or agrees to list real estate for sale, lease or exchange.

(5) Auctions or offers, attempts or agrees to auction real estate or assists an auctioneer by procuring bids at a real estate auction.

(6) Buys, sells, offers to buy or sell or otherwise deals in options on real estate.

(7) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate.

(8) Assists in or directs the negotiation of any transaction calculated or intended to result in the sale, exchange or lease of real estate.

(9) Engages in the business of charging an advance listing fee.

(10) Provides lists of real estate as being available for sale or lease, other than lists provided for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the list.

(g) "Commercial or investment real estate property" means any real estate for which the present use is other than: (1) One to four residential units; or (2) for agricultural purposes.

(h) "Commission" means the Kansas real estate commission.

(i) "Lease" means rent or lease for nonresidential use.

(j) "Licensee" means any person licensed under this act as a broker or salesperson.

(k) "Office" means a broker's place of business, where records may be maintained and licenses displayed, whether or not it is the broker's principal place of business.

(l) "Person" means any individual or any foreign or domestic corporation, partnership or association.

(m) "Real estate" means any interest or estate in land, including any leasehold or condominium, whether corporeal, incorporeal, freehold or non-freehold and whether the real estate is situated in this state or elsewhere, but does not include oil and gas leases, royalties and other mineral interests, and rights of way and easements acquired for the purpose of constructing roadways, pipelines, conduits, wires and facilities related to these types of improvement projects for private and public utilities, municipalities, federal and state governments, or any political subdivision. For purpose of this act, any rights of redemption are considered to be an interest in real estate.

(n) "Salesperson" means an individual, other than an associate broker, who is employed by a broker or is associated with a broker as an independent contractor and participates in any activity described in subsection (f).

(o) "Supervising broker" means an individual, other than a branch broker, who has a broker's license and who has been designated as the broker who is responsible for the supervision of the primary office of a broker and the activities of salespersons and associate brokers who are assigned to such office and all of whom are licensed pursuant to subsection (b) of K.S.A. 58-3042 and amendments thereto. "Supervising broker" also means a broker who operates a sole proprietorship and with whom associate brokers or salespersons are affiliated as employees or independent contractors.

History: L. 1980, ch. 164, § 2; L. 1986, ch. 209, § 1; L. 1988, ch. 197, § 1; L. 1989, ch. 167, § 1; L. 1993, ch. 241, § 1; L. 1995, ch. 149, § 1; July 1.

Revisor's Note:
Section was amended twice in 1995 session, see also 58-3035a.

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58-3035a. Definitions. [See Revisor's Note] As used in this act, unless the context otherwise requires:

(a) "Advance listing fee" means any fee charged for services related to promoting the sale or lease of real estate and paid in advance of the rendering of such services, including any fees charged for listing, advertising or offering for sale or lease any real estate, but excluding any fees paid solely for advertisement or for listing in a publication issued for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the listing.

(b) "Associate broker" means an individual who has a broker's license and who is employed by another broker or is associated with another broker as an independent contractor and participates in any activity described in subsection (e).

(c) "Branch broker" means an individual who has a broker's license and who has been designated to supervise a branch office and the activities of salespersons and associate brokers assigned to the branch office.

(d) "Branch office" means a place of business other than the principal place of business of a broker.

(e) "Broker" means an individual, other than a salesperson, who advertises or represents that such individual engages in the business of buying, selling, exchanging or leasing real estate or who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owner, purchaser, lessor or lessee of real estate:

(1) Sells, exchanges, purchases or leases real estate.

(2) Offers to sell, exchange, purchase or lease real estate.

(3) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase or leasing of real estate.

(4) Lists or offers, attempts or agrees to list real estate for sale, lease or exchange.

(5) Auctions or offers, attempts or agrees to auction real estate or assists an auctioneer by procuring bids at a real estate auction.

(6) Buys, sells, offers to buy or sell or otherwise deals in options on real estate.

(7) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate.

(8) Assists in or directs the negotiation of any transaction calculated or intended to result in the sale, exchange or lease of real estate.

(9) Engages in the business of charging an advance listing fee.

(10) Provides lists of real estate as being available for sale or lease, other than lists provided for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the list.

(f) "Commission" means the Kansas real estate commission.

(g) "Lease" means rent or lease for nonresidential use.

(h) "Licensee" means any person licensed under this act as a broker or salesperson.

(i) "Office" means a broker's place of business, where records may be maintained and licenses displayed, whether or not it is the broker's principal place of business.

(j) "Person" means any individual or any foreign or domestic corporation, partnership or association.

(k) "Real estate" means any interest or estate in land, including any leasehold or condominium, whether corporeal, incorporeal, freehold or non-freehold and whether the real estate is situated in this state or elsewhere, but does not include oil and gas leases, royalties and other mineral interests.

(l) "Salesperson" means an individual, other than an associate broker, who is employed by a broker or is associated with a broker as an independent contractor and participates in any activity described in subsection (e).

(m) "Supervising broker" means an individual, other than a branch broker, who has a broker's license and who has been designated as the broker who is responsible for the supervision of the primary office of a broker and the activities of salespersons and associate brokers who are assigned to such office and all of whom are licensed pursuant to subsection (b) of K.S.A. 58-3042 and amendments thereto. "Supervising broker" also means a broker who operates a sole proprietorship and with whom associate brokers or salespersons are affiliated as employees or independent contractors.

History: L. 1980, ch. 164, § 2; L. 1986, ch. 209, § 1; L. 1988, ch. 197, § 1; L. 1989, ch. 167, § 1; L. 1993, ch. 241, § 1; L. 1995, ch. 252, § 14; Jan. 1, 1996.

Revisor's Note:

Section was amended twice in 1995 session, see also 58-3035.

58-3036. Licensure required. Unless exempt from this act under K.S.A. 58-3037 and amendments thereto, no person shall:

(a) Directly or indirectly engage in or conduct or represent that such person engages in or conducts the business of a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(b) Directly or indirectly act or represent that such person acts as a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(c) Perform or offer, attempt or agree to perform any act described in subsection (e) of K.S.A. 58-3035 and amendments thereto, whether as a part of a transaction or as an entire transaction, unless such person is licensed pursuant to this act.

History: L. 1980, ch. 164, § 3; L. 1986, ch. 209, § 15; L. 1989, ch. 167, § 2; L. 1995, ch. 252, § 15; Jan. 1, 1996.

CASE ANNOTATIONS

1. Whether developer's leasing activity was severable from and did not bar recovery under development contract examined. *Woodmont Corp. v. Rockwood Center Partnership*, 858 F.Supp. 158, 159 (1994).

58-3037. Exemptions. The provisions of this act shall not apply to:

(a) Any person, other than a person licensed under this act, who directly performs any of the acts within the scope of this act with reference to such person's own property.

(b) Any person who directly performs any of the acts within the scope of this act with reference to property that such person is authorized to transfer in any way by a power of attorney from the owner, provided that such person receives no commission or other compensation, direct or indirect, for performing any such act.

(c) Services rendered by an attorney licensed to practice in this state in performing such attorney's professional duties as an attorney.

(d) Any person acting as receiver, trustee in bankruptcy, administrator, executor or guardian, or while acting under a court order or under the authority of a will or a trust instrument or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency.

(e) Any officer or employee of the federal or state government, or any political subdivision or agency thereof, when performing the official duties of the officer or employee.

(f) Any multiple listing service wholly owned by a nonprofit organization or association of brokers.

(g) Any nonprofit referral system or organization of brokers formed for the purpose of referral of prospects for the sale or listing of real estate.

(h) Railroads or other public utilities regulated by the state of Kansas, or their subsidiaries, affiliated corporations, officers or regular employees, unless performance of any of the acts described in subsection (e) of K.S.A. 58-3035 and amendments thereto is in connection with the sale, purchase, lease or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

(i) The sale or lease of real estate by an employee of a corporation which owns or leases such real estate, if such employee owns not less than 5% of the stock of such corporation.

(j) The sale or lease of new homes by a person, partnership, association or domestic corporation who constructed such homes, but the provisions of this act shall apply to the sale or lease of any such homes by any employee of such person, partnership or association or by any employee of such corporation who owns less than 5% of the stock of such corporation.

(k) The lease of real estate for agricultural purposes.

History: L. 1980, ch. 164, § 4; L. 1986, ch. 209, § 16; L. 1989, ch. 167, § 3; L. 1991, ch. 163, § 1; L. 1995, ch. 252, § 16; Jan. 1, 1996.

58-3039. Licensure; application; qualifications; examination. [See Revisor's Note]

(a) Any person desiring to act as a broker or salesperson must file a written application for a license with the commission or, if required by the commission, with the testing service designated by the commission. The application shall be in such form and detail as the commission shall prescribe and shall be accompanied by the appropriate application and license fees.

(b) A license to engage in business as a broker or salesperson shall be granted only to a person

who is 18 or more years of age and who has a high school diploma or its equivalent.

(c) In addition to the requirements of subsection (b), each applicant for an original license as a broker shall have been:

(1) Licensed as a salesperson in this state or as a salesperson or broker in another state, and shall have been actively engaged in any of the activities described in subsection (f) of K.S.A. 58-3035 and amendments thereto for a period of at least two years during the five years immediately preceding the date of the application for a license; or

(2) if an applicant resides in a county that according to the 1994 estimates of the U.S. bureau of the census has a population of 20,000 or less, the commission may, upon a finding that such county suffers from a shortage of brokers and upon compelling evidence of need, waive or alter the requirements of this subsection. The commission shall adopt rules and regulations to establish alternative licensing criteria for such applicants.

The commission may accept proof of experience in the real estate or a related business or a combination of such experience and education which the commission believes qualifies the applicant to act as a broker.

(d) Except as provided in K.S.A. 58-3040 and amendments thereto, each applicant for an original license shall be required to pass a written examination covering generally the matters confronting brokers or salespersons, and no license shall be issued on the basis of such an examination either or both sections of which were administered more than four months prior to the date that the applicant's application is filed with the commission. The examination may be given by the commission or any person designated by the commission. Each person taking the examination shall pay the examination fee prescribed pursuant to K.S.A. 58-3063 and amendments thereto, which fee the commission may require to be paid to it or directly to the testing service designated by the commission. The examination for a broker's license shall be different from or in addition to that for a salesperson's license.

(e) The commission, prior to granting an original license, shall require proof that the applicant has a good reputation for honesty, trustworthiness, integrity and competence to transact the business of broker or salesperson in such manner as to safeguard the public interest.

(f) An application for an original license as a salesperson shall be accompanied by the recommendation of the broker with whom the salesperson is to be associated, or by whom the salesperson is to be employed, certifying that the applicant is honest, trustworthy and of good reputation.

History: L. 1980, ch. 164, § 6; L. 1985, ch. 188, § 1; L. 1986, ch. 209, § 3; L. 1988, ch. 197, § 2; L. 1989, ch. 167, § 4; L. 1995, ch. 149, § 2; July 1.

Revisor's Note:

Section was amended twice in 1995 session, see also 58-3039a.

58-3039a. Licensure; application; qualifications; examination. [See Revisor's Note]

(a) Any person desiring to act as a broker or salesperson must file a written application for a license with the commission or, if required by the commission, with the testing service designated by the commission. The application shall be in such form and detail as the commission shall prescribe and shall be accompanied by the appropriate application and license fees.

(b) A license to engage in business as a broker or salesperson shall be granted only to a person who is 18 or more years of age and who has a high school diploma or its equivalent.

(c) In addition to the requirements of subsection (b), each applicant for an original license as a broker shall have been licensed as a salesperson in this or another state and shall have been actively engaged in any of the activities described in subsection (e) of K.S.A. 58-3035 [58-3035a] and amendments thereto for a period of at least two years during the five years immediately preceding the date of the application for a license. The commission may accept proof of experience in the real estate or a related business or a combination of such experience and education which the commission believes qualifies the applicant to act as a broker.

(d) Except as provided in K.S.A. 58-3040 and amendments thereto, each applicant for an original license shall be required to pass a written examination covering generally the matters confronting brokers or salespersons, and no license shall be issued on the basis of such an examination either or both sections of which were administered more than four months prior to the date that the applicant's application is filed with the commission. The examination may be given by the commission or any person designated by the com-

mission. Each person taking the examination shall pay the examination fee prescribed pursuant to K.S.A. 58-3063 and amendments thereto, which fee the commission may require to be paid to it or directly to the testing service designated by the commission. The examination for a broker's license shall be different from or in addition to that for a salesperson's license.

(e) The commission, prior to granting an original license, shall require proof that the applicant has a good reputation for honesty, trustworthiness, integrity and competence to transact the business of broker or salesperson in such manner as to safeguard the public interest.

(f) An application for an original license as a salesperson shall be accompanied by the recommendation of the broker with whom the salesperson is to be associated, or by whom the salesperson is to be employed, certifying that the applicant is honest, trustworthy and of good reputation.

History: L. 1980, ch. 164, § 6; L. 1985, ch. 188, § 1; L. 1986, ch. 209, § 3; L. 1988, ch. 197, § 2; L. 1989, ch. 167, § 4; L. 1995, ch. 252, § 17; Jan. 1, 1996.

Revisor's Note:

Section was amended twice in 1995 session, see also 58-3039.

58-3041. Restricted license. (a) The commission may at any time issue a restricted license to a person:

(1) Who is or has been licensed but who has been found by the commission after a hearing, held in accordance with the provisions of the Kansas administrative procedure act, to have violated any provision of this act or rules and regulations adopted hereunder;

(2) who is applying for an original license under this act and has met the examination and experience requirements but has been found by the commission after a hearing, held in accordance with the provisions of the Kansas administrative procedure act, to have failed to make a satisfactory showing that such person meets all other applicable requirements; or

(3) who is applying for an original license as a broker under this act but whose activities or experience and education, pursuant to subsection (c) of K.S.A. 58-3039 and amendments thereto, have been found by the commission after a hearing, held in accordance with the provisions of the Kansas administrative procedure act, to have been limited to a specialized activity or particular type

of transaction, thereby justifying restriction of the license to the specialized activity or type of transaction.

(b) A restricted license issued pursuant to this section may be restricted, as the commission determines advisable in the public interest, as follows:

(1) By term;

(2) to employment by or association with a particular broker as an independent contractor;

(3) to a particular type of transaction; or

(4) by other conditions deemed advisable by the commission, including the filing of a surety bond in such amount as may be required by the commission for the protection of persons with whom the licensee may deal.

(c) The holder of a restricted license shall not be entitled to automatic renewal of such license, such renewal being in the discretion of the commission.

History: L. 1980, ch. 164, § 8; L. 1984, ch. 313, § 84; L. 1995, ch. 149, § 3; July 1.

58-3042. License nontransferable; only individuals licensed. (a) No real estate license shall give authority to any person other than the person to whom the license is issued.

(b) No license shall be granted to a corporation, partnership, association or limited liability company. Each person who is an officer of a corporation or a member of a partnership, association or limited liability company and who performs any act described in subsection (e) of K.S.A. 58-3035 [58-3035a] and amendments thereto shall be a licensed broker, and each person who is employed by or associated with a corporation, partnership, association or limited liability company and who performs any act described in subsection (e) of K.S.A. 58-3035 [58-3035a] and amendments thereto shall be a licensed broker or licensed salesperson.

History: L. 1980, ch. 164, § 9; L. 1986, ch. 209, § 17; L. 1989, ch. 167, § 5; L. 1993, ch. 241, § 3; L. 1995, ch. 252, § 18; Jan. 1, 1996.

58-3046a. Educational requirements.

(a) Except as provided in K.S.A. 58-3040 and amendments thereto, any person who applies for an original license in this state as a salesperson shall submit evidence, satisfactory to the commission, of attendance of a principles of real estate course, of not less than 30 hours of instruction, approved by the commission and received within the 12 months immediately preceding the filing

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(4) any agency of the state of Kansas; or
 (5) a similar institution, approved by the commission, in another state.

(h) The commission shall adopt rules and regulations to: (1) Prescribe minimum curricula and standards for all courses offered to fulfill education requirements of this act, (2) designate a course of study to fulfill any specific requirement, which may include requiring that licensees pass a test as prescribed by the commission for any course designated by the commission in rules and regulations as a mandatory core requirement, (3) prescribe minimum qualifications for instructors of approved courses and (4) establish standards and procedures for approval of courses and instructors, monitoring courses, advertising, registration and maintenance of records of courses, and withdrawal of approval of courses and instructors.

(i) The commission may approve nontraditional courses consisting solely or primarily of home study, videotaped or computer-assisted instruction. For the purpose of this section, attendance of one hour of instruction shall mean 50 minutes of classroom instruction or the equivalent thereof in nontraditional study as determined by the commission.

(j) Courses of instruction required by this section shall be courses approved by the commission either before or after their completion. The commission may give credit toward the 12 hours of additional instruction required by subsection (e) to any licensee who submits an application for course review obtained from the commission and pays the fee prescribed by K.S.A. 58-3063 and amendments thereto if, in the judgment of the commission, the course meets the objectives of continuing education.

(k) The commission shall publish annually a list of educational institutions and entities and the courses offered by them in this state which are approved by the commission.

(l) No license shall be issued or renewed unless the applicable requirements set forth in this section are met within the time prescribed.

History: L. 1982, ch. 231, § 1; L. 1985, ch. 188, § 3; L. 1986, ch. 209, § 8; L. 1991, ch. 163, § 2; L. 1993, ch. 241, § 4; L. 1995, ch. 149, § 4; July 1.

58-3050. Revocation, suspension or restriction of license; censure of licensee; civil fines; procedures. (a) The license of any licensee

may be revoked, suspended or restricted or a licensee may be censured, if:

(1) The commission finds that the license has been obtained by false or fraudulent representation or that the licensee has committed a violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, whether the licensee acted as an agent or a principal in the real estate transaction;

(2) the licensee has entered a plea of guilty or *nolo contendere* to, or has been convicted of: (A) Forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any other similar offense; (B) a crime involving moral turpitude; or (C) any felony charge; or

(3) the licensee has been finally adjudicated and found to be guilty of violation of the federal fair housing act (42 U.S.C. 3601 et seq.) or K.S.A. 44-1015 through 44-1029, and amendments thereto.

(b) In addition to or in lieu of any other administrative, civil or criminal remedy provided by law, the commission, in accordance with the Kansas administrative procedure act and upon a finding that a licensee has violated a provision of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, may impose on such licensee a civil fine not exceeding \$500 for each violation.

(c) If a broker or salesperson has been declared disabled by a court of competent jurisdiction, the commission shall suspend the broker's or salesperson's license for the period of disability.

(d) No complaint alleging violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, shall be commenced more than three years from the date of the occurrence which is the subject of the complaint.

(e) All administrative proceedings pursuant to this section shall be conducted in accordance with the Kansas administrative procedure act.

(f) Notwithstanding any provision of this act or the brokerage relationships in real estate transactions act to the contrary, the commission may use emergency adjudicative proceedings, as provided by K.S.A. 77-536 and amendments thereto, to summarily suspend the license of any licensee

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if the commission has reasonable cause to believe that the licensee's trust account is in unsound condition or that the licensee is misappropriating funds belonging to other persons.

(g) If a licensee has entered a plea of guilty or *nolo contendere* to, or has been convicted of, any felony charge, the commission may use emergency adjudicative proceedings, as provided by K.S.A. 77-536 and amendments thereto to suspend, revoke or restrict the licensee's license.

(h) When the real estate license of an individual is revoked and that individual's name is included in the trade or business name of a real estate brokerage business, the commission may deny continued use of the trade or business name if, in the opinion of the commission, it would be confusing or misleading to the public.

If the revocation of the individual's license is appealed to district court and a stay of the commission's order is granted by the court, the commission may not deny continued use of the trade or business name until such time as the district court upholds the order of the commission.

History: L. 1980, ch. 164, § 17; L. 1984, ch. 313, § 88; L. 1986, ch. 209, § 10; L. 1988, ch. 197, § 3; L. 1991, ch. 163, § 3; L. 1995, ch. 252, § 19; Jan. 1, 1996.

58-3062. Prohibited acts. (a) No licensee, whether acting as an agent or a principal, shall:

(1) Intentionally use advertising that is misleading or inaccurate in any material particular or that in any way misrepresents any property, terms, values, policies or services of the business conducted, or uses the trade name, collective membership mark, service mark or logo of any organization owning such name, mark or logo without being authorized to do so.

(2) Fail to account for and remit any money which comes into the licensee's possession and which belongs to others.

(3) Misappropriate moneys required to be deposited in a trust account pursuant to K.S.A. 58-3061 and amendments thereto, convert such moneys to the licensee's personal use or commingle the money or other property of the licensee's principals with the licensee's own money or property, except that nothing herein shall prohibit a broker from having funds in an amount not to exceed \$100 in the broker's trust account to pay expenses for the use and maintenance of such account.

(4) Accept, give or charge any rebate or undisclosed commission.

(5) Pay a referral fee to a person who is properly licensed as a broker or salesperson in another jurisdiction or who holds a corporate real estate license in another jurisdiction if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the out-of-state licensee.

(6) Represent or attempt to represent a broker without the broker's express knowledge and consent.

(7) Guarantee or authorize any person to guarantee future profits that may result from the resale of real property.

(8) Place a sign on any property offering it for sale or lease without the written consent of the owner or the owner's authorized agent.

(9) Offer real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.

(10) Induce any party to break any agency agreement or contract of sale or lease.

(11) Offer or give prizes, gifts or gratuities which are contingent upon an agency agreement or the sale, purchase or lease of real estate.

(12) Fail to see that financial obligations and commitments between the parties to an agreement to sell, exchange or lease real estate are in writing, expressing the exact agreement of the parties or to provide, within a reasonable time, copies thereof to all parties involved.

(13) Procure a signature to a purchase contract which has no definite purchase price, method of payment, description of property or method of determining the closing date.

(14) Commit forgery or, unless authorized to do so by a duly executed power of attorney, sign or initial any contractual agreement on behalf of another person in a real estate transaction.

(15) Engage in fraud or make any substantial misrepresentation.

(16) Represent to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

(17) Fail to make known to any purchaser or lessee any interest the licensee has in the real estate the licensee is selling or leasing or to make

known to any seller or lessor any interest the licensee will have in the real estate the licensee is purchasing or leasing.

(18) Fail to inform both the buyer, at the time an offer is made, and the seller, at the time an offer is presented, that certain closing costs must be paid and the approximate amount of such costs.

(19) Fail without just cause to surrender any document or instrument to the rightful owner.

(20) Accept anything other than cash as earnest money unless that fact is communicated to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the purchase agreement.

(21) Fail to deposit any check or cash received as an earnest money deposit or as a deposit on the purchase of a lot within five business days after the purchase agreement or lot reservation agreement is signed by all parties, unless otherwise specifically provided by written agreement of all parties to the purchase agreement or lot reservation agreement, in which case the licensee shall deposit the check or cash received on the date provided by such written agreement.

(22) Fail in response to a request by the commission or the director to produce any document, book or record in the licensee's possession or under the licensee's control that concerns, directly or indirectly, any real estate transaction or the licensee's real estate business.

(23) Refuse to appear or testify under oath at any hearing held by the commission.

(24) Demonstrate incompetency to act as a broker, associate broker or salesperson.

(25) Knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement, involving the issuance of a title insurance policy or contract concerning which the licensee is directly or indirectly connected, from a title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof.

(26) Engage in the purchase of one-, two-, three- or four-family dwellings, including condominiums and cooperatives, or the acquisition of any right, title or interest therein, including any equity or redemption interests, if:

(A) (i) At the time of such purchase, the dwellings are subject to a right of redemption pursuant to foreclosure of a mortgage on such dwellings; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the

mortgage holder or judgment creditor who held such mortgage; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the judgment lien arising from the foreclosure of such mortgage, as payments become due under the loan, regardless of whether the licensee is obligated to do so;

(B) (i) the dwellings are subject to a loan which is secured by a mortgage and which is in default at the time of such purchase or in default within one year after such purchase; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the mortgage as the payments come due, regardless of whether the licensee is obligated on the loan; or

(C) the licensee fails to notify, at the time of rental, any person renting any such dwelling of the extent and nature of the licensee's interest in such dwelling and the probable time until possession will be taken by the mortgage holder or judgment creditor.

(b) No salesperson or associate broker shall:

(1) Accept a commission or other valuable consideration from anyone other than the salesperson's or associate broker's employing broker or the broker with whom the salesperson or associate broker is associated.

(2) Fail to place, as soon after receipt as practicable, any deposit money or other funds entrusted to the salesperson or associate broker in the custody of the broker whom the salesperson or associate broker represents.

(c) No broker shall:

(1) Pay a commission or compensation to any person for performing the services of an associate broker or salesperson unless such person is licensed under this act and employed by or associated with the broker.

(2) Fail to deliver to the seller in every real estate transaction, at the time the transaction is closed, a complete, detailed closing statement showing all of the receipts and disbursements handled by the broker for the seller, or fail to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, or fail to retain true copies of such statements in the broker's files, except that the furnishing of such statements to the seller and buyer

by an escrow responsibility to

(3) Fail to an associated ate broker.

(4) Lend or permit a sa

(5) Fail to report every itemizing disbursement advance listing

(d) If a pu earnest mon than a real est ically provide to the purchas

(1) Fail t and earnest r named in the business days signed by all p

(2) fail to file a receipt f of delivery of money deposi

(e) Nothi to grant any damages or to suant to other

History:

209, § 14; L. 1992, § 5; L. 1992, L. 1995, ch. 2.

Law Review and

"Tort Law: Real Property Flaws: Keenan Real Estate Agrimonti, 34 W.

5. Whether station by real estate v. Keenan Real Estate (1994).

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Whenever any practice that c rules and reg brokerage rela act or rules an the commissio trict court of t sides or in the such act or pr

by an escrow agent shall relieve the broker's responsibility to the seller and the buyer.

(3) Fail to properly supervise the activities of an associated or employed salesperson or associate broker.

(4) Lend the broker's license to a salesperson, or permit a salesperson to operate as a broker.

(5) Fail to provide to the principal a written report every 30 days, along with a final report, itemizing disbursements made by the broker from advance listing fees.

(d) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker, unless otherwise specifically provided by written agreement of all parties to the purchase agreement, no listing broker shall:

(1) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties; or

(2) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit.

(e) Nothing in this section shall be construed to grant any person a private right of action for damages or to eliminate any right of action pursuant to other statutes or common law.

History: L. 1980, ch. 164, § 29; L. 1986, ch. 209, § 14; L. 1989, ch. 167, § 7; L. 1991, ch. 163, § 5; L. 1992, ch. 120, § 1; L. 1993, ch. 241, § 6; L. 1995, ch. 252, § 20; Jan. 1, 1996.

Law Review and Bar Journal References:

"Tort Law: Real Estate Broker Beware: Remain Ignorant of Property Flaws and the Innocent Buyer Wins [Mahler v. Keenan Real Estate, Inc., 876 P.2d 609 (Kan. 1994)]," Lisa M. Agrimonti, 34 W.L.J. 345, 350 (1995).

CASE ANNOTATIONS

5. Whether state recognizes tort of negligent misrepresentation by real estate agent who induces sale examined. Mahler v. Keenan Real Estate, Inc., 255 K. 593, 599, 876 P.2d 609 (1994).

58-3064. Injunction to enforce law. Whenever any person has engaged in any act or practice that constitutes a violation of this act or rules and regulations adopted hereunder or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, the commission may institute an action in the district court of the county in which the person resides or in the district court in the county in which such act or practice occurred for an injunction to

enforce compliance with the act or rules and regulations. The commission shall not be required to give any bond or pay any filing fee for initiating such action. Upon a showing that the person has engaged in any act or practice in violation of the act or rules and regulations, the court may enjoin all such acts or practices and may make any orders necessary to conserve, protect and disburse any funds involved.

History: L. 1980, ch. 164, § 31; L. 1995, ch. 252, § 21; Jan. 1, 1996.

58-3065. Penalties for violations; reporting of minor violations for prosecution not required.

(a) Willful violation of any provision of this act or the brokerage relationships in real estate transactions act is a misdemeanor punishable by imprisonment for not more than 12 months or a fine of not less than \$100 or more than \$1,000, or both, for the first offense and imprisonment for not more than 12 months or a fine of not less than \$1,000 or more than \$10,000, or both, for a second or subsequent offense.

(b) Nothing in this act or the brokerage relationships in real estate transactions act shall be construed as requiring the commission or the director to report minor violations of the acts for criminal prosecution whenever the commission or the director believes that the public interest will be adequately served by other administrative action.

History: L. 1980, ch. 164, § 32; L. 1995, ch. 252, § 22; Jan. 1, 1996.

58-3068. Recovery revolving fund; use of moneys, limitations.

(a) Moneys in the real estate recovery revolving fund shall be used in the manner provided by this act to reimburse persons who suffer monetary damages by reason of any of the following acts committed in connection with any transaction involving the sale of real estate in this state by any broker or salesperson who was licensed under the laws of this state at the time the act was committed or by any unlicensed employee of such broker or salesperson:

(1) Violation of any of the following provisions of this act:

(A) K.S.A. 58-3061 and amendments thereto; or

(B) subsection (a)(2), (3), (15), (20) or (21) or subsection (b)(2) of K.S.A. 58-3062 and amendments thereto;

(2) violation of any provision of the brokerage relationships in real estate transactions act; or

(3) obtaining money or property by any act which would constitute any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3706, 21-3707, 21-3710, 21-3711 or 21-3712, and amendments thereto.

(b) Any person may seek recovery from the real estate recovery revolving fund under the following conditions:

(1) Such person has received final judgment in a court of competent jurisdiction of this state in any action wherein the cause of action was based on any of the acts described in subsection (a);

(2) the claim is made within two years after the date that final judgment is entered;

(3) such person has caused to be issued a writ of execution upon such judgment, and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(4) such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, subject to being sold or applied in satisfaction of the judgment, and by such search such person has discovered no such property or assets, or that such person has discovered such property and assets and that such person has taken all necessary action and proceedings for the application thereof to the judgment and that the amount thereby realized was insufficient to satisfy the judgment;

(5) any amounts recovered by such person from the judgment debtor, or from any other source, has been applied to the damages awarded by the court; and

(6) such person is not a person who is precluded by subsection (c) from making a claim for recovery;

(c) A person shall not be qualified to make a claim for recovery from the real estate recovery revolving fund, if:

(1) The person is the spouse of the judgment debtor or a personal representative of such spouse;

(2) the person acted as principal or agent in the real estate transaction which is the subject of the claim and is a licensed broker or salesperson or is a partnership, association, limited liability

company or corporation whose partners, members, officers and employees are licensed as provided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or

(3) such person's claim is based upon a real estate transaction in which the licensed broker or salesperson was acting on the broker's or salesperson's own behalf with respect to property owned or controlled by such broker or salesperson.

History: L. 1980, ch. 164, § 35; L. 1981, ch. 304, § 4; L. 1986, ch. 210, § 3; L. 1986, ch. 209, § 18; L. 1989, ch. 167, § 8; L. 1992, ch. 120, § 2; L. 1995, ch. 252, § 23; Jan. 1, 1996.

Law Review and Bar Journal References:

"Tort Law: Real Estate Broker Beware: Remain Ignorant of Property Flaws and the Innocent Buyer Wins [Mahler v. Keenan Real Estate, Inc., 876 P.2d 609 (Kan. 1994)]." Lisa M. Agrimonti, 34 W.L.J. 345, 350 (1995).

58-3076 to 58-30,100. Reserved.

BROKERAGE RELATIONSHIPS

58-30,101. Title of act. K.S.A. 1995 Supp. 58-30,101 through 58-30,112 shall be known and may be cited as the brokerage relationships in real estate transactions act.

History: L. 1995, ch. 252, § 1; Jan. 1, 1996.

58-30,102. Definitions. As used in the brokerage relationships in real estate transactions act, unless the context otherwise requires:

(a) "Affiliated licensee" means any individual licensed as a salesperson or broker under the Kansas real estate brokers' and salespersons' license act who is employed by a broker or affiliated with a broker as an independent contractor.

(b) "Agency" means every relationship in which a broker acts for or represents another, by the latter's express written authority, in a real estate transaction. "Agency" also means the relationship in which a broker, by verbal authorization pursuant to subsection (d)(2) of K.S.A. 1995 Supp. 58-30,103, acts for or represents any agency of the federal government in the sale of property owned by the federal agency.

(c) "Agency agreement" means a written agreement setting forth the terms and conditions of the relationship between a broker and the broker's client.

(d) "Broker" means: (1) An individual who is licensed as a broker under the Kansas real estate brokers' and salespersons' license act and who has an agency with a seller, buyer, landlord or tenant;

or (2) a corporation, partnership, association or limited liability company, of which the officers and members, or persons employed by or associated with the corporation, partnership, association or limited liability company, are licensed pursuant to K.S.A. 58-3042 and amendments thereto and which has an agency with a seller, buyer, landlord or tenant. The term "broker" includes the broker's affiliated licensees except where the context would otherwise indicate. If an individual broker is indicated by the context, the term "broker" means the supervising broker as defined by K.S.A. 58-3035 and amendments thereto.

(e) "Brokerage firm" means the business entity of a broker, whether a proprietorship, partnership, corporation, association or limited liability company.

(f) "Buyer's agent" means a broker who has an agency with a buyer. The term includes the broker's affiliated licensees.

(g) "Client" means a seller, landlord, buyer or tenant who has an agency with a broker.

(h) "Commission" means the Kansas real estate commission.

(i) "Confidential information" means information made confidential by statute, rule, regulation or instructions from the client unless the information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee.

(j) "Customer" means a seller, landlord, buyer or tenant in a real estate transaction in which a broker is involved but who has not entered into an agency with the broker.

(k) "Designated agent" means a licensee affiliated with a broker who has been designated by the broker, or the broker's duly authorized representative, to act as the agent of a broker's buyer client to the exclusion of all other affiliated licensees.

(l) "Disclosed dual agent" means a broker who, with the written informed consent of all parties to a contemplated real estate transaction, has entered into an agency with and therefore represents both the seller and buyer or both the landlord and tenant. The term includes the broker's affiliated licensees.

(m) "Landlord's agent" means a broker who has entered into an agency with a landlord. The term includes the broker's affiliated licensees.

(n) "Licensee" means any person licensed under the Kansas real estate brokers' and salespersons' license act as a broker or salesperson.

(o) "Seller's agent" means a broker who has an agency with a seller. The term includes the broker's affiliated licensees and subagents of the broker.

(p) "Statutory agent" means a broker who is a seller's agent, a buyer's agent, a landlord's agent, a tenant's agent or a disclosed dual agent in a real estate transaction.

(q) "Tenant's agent" means a broker who has an agency with a prospective tenant. The term includes the broker's affiliated licensees.

History: L. 1995, ch. 252, § 2; Jan. 1, 1996.

58-30,103. Written agency agreements.

(a) A broker shall act only as a statutory agent in any real estate transaction. A licensee may act as a disclosed dual agent but shall not act as an undisclosed dual agent or in a dual capacity of agent and undisclosed principal in any transaction.

(b) A broker may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent if the broker complies with this act in establishing the relationships for each transaction.

(c) Before an agency agreement is signed, the broker or an affiliated licensee shall advise the prospective buyer or seller of alternative agency relationships pursuant to K.S.A. 1995 Supp. 58-30,110.

(d) (1) Except as provided in subsection (d)(2), an agency agreement with a seller or landlord shall be signed prior to the licensee's engaging in any of the activities enumerated in subsection (e) of K.S.A. 58-3035 [58-3035a] and amendments thereto as an employee of, or on behalf of, the seller or landlord.

(2) If the real estate which is to be offered for sale is owned by any agency of the federal government, a broker may, on behalf of the owner, engage in activities enumerated in subsection (e) of K.S.A. 58-3035 [58-3035a] and amendments thereto after obtaining verbal authorization from the federal agency for which services are to be performed.

(e) An agency agreement with a buyer or tenant shall be signed at or prior to the first showing of a property if the licensee is acting in the capacity of a buyer's agent. If the first showing is an

open house and the buyer seeks representation from the licensee holding the open house:

(1) The licensee may obtain a written agency agreement with the buyer and act as a disclosed dual agent pursuant to K.S.A. 1995 Supp. 58-30,108; or

(2) if the property was not listed by the licensee holding the open house, the licensee may obtain a written agency agreement with the buyer and act as a designated agent pursuant to K.S.A. 1995 Supp. 58-30,109.

(f) An agency agreement shall set forth the terms and conditions of the relationship, including a fixed date of expiration, and shall specify the duties and obligations pursuant to K.S.A. 1995 Supp. 58-30,106 or 58-30,107, including, but not limited to, any duty of confidentiality and the terms of compensation. The agreement shall be signed by the party to be represented and by the broker or a licensee affiliated with the broker. A copy of the agreement shall be furnished to the client at the time the client signs the agreement. If, at the time the client signs the agreement, the agreement is not signed by the broker or a licensee affiliated with the broker, the broker or a licensee affiliated with the broker shall furnish a copy of the agreement to the client within a reasonable time after the agreement is signed by the broker or a licensee affiliated with the broker.

(g) An agency agreement with a seller or landlord shall include any potential for the seller's agent or landlord's agent to act as a disclosed dual agent.

(h) An agency agreement with a buyer or tenant shall include any potential for the buyer's agent or tenant's agent to act as a disclosed dual agent or for an affiliated licensee to act as a designated agent.

(i) An agency agreement shall not contain an authorization for the broker to sign or initial any document on behalf of the broker's client in a real estate transaction or authorization for the broker to act as attorney-in-fact for the client.

(j) An agency agreement with a seller shall not provide that the broker's commission be based on the difference between the gross sales price and the net proceeds to the owner.

(k) The broker shall not assign, sell or otherwise transfer a written agency agreement to another broker without the express written consent of all parties to the original agreement.

(l) A licensee shall not solicit an agency agreement from a seller or landlord if the licensee

knows that the seller or landlord has, with regard to the property, an agency agreement granting an exclusive right to sell or exclusive agency to another broker.

(m) A licensee shall not solicit an agency agreement from a buyer or tenant if the licensee knows that the buyer or tenant has a written agency agreement granting exclusive representation to another broker.

(n) A licensee shall not induce any party to break any agency agreement.

(o) A licensee shall not negotiate a sale, exchange or lease of real estate directly with a buyer or tenant if the licensee knows that the buyer or tenant has an agency agreement granting exclusive representation to another broker.

(p) A licensee shall not negotiate a sale, exchange or lease of real estate directly with a seller or landlord if the licensee knows that the seller or landlord has an agency agreement granting an exclusive right to sell or exclusive agency to another broker.

History: L. 1995, ch. 252, § 3; Jan. 1, 1996.

58-30,104. Termination of relationships. (a) The relationships set forth in K.S.A. 1995 Supp. 58-30,103 shall commence at the time that the client engages the broker, and shall continue until:

(1) A transaction is closed according to the agreement of the parties; or

(2) if a transaction is not closed according to the agreement of the parties, the earlier of:

(A) Any date of expiration agreed upon by the parties in the agency agreement or in any amendments thereto; or

(B) any authorized termination of the relationship.

(b) Except as otherwise agreed in writing, a broker owes no further duties to the client after termination, expiration, or the closing of a transaction according to the agreement of the parties, except:

(1) To account for all moneys and property relating to the engagement; and

(2) to keep confidential all information received during the course of the engagement which was made confidential by request or instructions from the client, unless:

(A) The client permits the disclosure by subsequent word or conduct;

(B) such disclosure is required by law; or

(C) the information becomes public from a source other than the broker.

History: L. 1995, ch. 252, § 4; Jan. 1, 1996.

58-30,105. Compensation. (a) Compensation is presumed to come from the transaction and shall be determined by agency agreements entered into pursuant to K.S.A. 1995 Supp. 58-30,103.

(b) Payment of compensation by itself shall not establish an agency between the party who paid the compensation and the broker or any affiliated licensee.

(c) In any transaction, the broker's compensation may be paid by the seller, the landlord, the buyer or the tenant. A broker may be compensated by more than one party for services in a transaction if the parties consent in writing to the multiple payments at or before the time of entering into a contract to buy, sell or lease.

(d) A broker may:

(1) Pay a commission or compensation to any licensee affiliated with the broker for performing services under this act;

(2) with the written agreement of the seller or landlord, share a commission with another broker who acted as subagent of the seller or landlord;

(3) with the written agreement of the seller or landlord, share a commission with a buyer's broker or a tenant's broker; and

(4) pay a referral fee to a person who is licensed as a broker under the real estate brokers' and salespersons' license act or under the law of another jurisdiction, provided that written disclosure is made to the client of any financial interest that the broker has in the brokerage firm receiving the referral fee.

History: L. 1995, ch. 252, § 5; Jan. 1, 1996.

58-30,106. Minimum requirements of seller's or landlord's agent. (a) A seller's agent or a landlord's agent shall be a statutory agent with the duty and obligation to:

(1) Perform the terms of the written agreement made with the client;

(2) exercise reasonable skill and care for the client;

(3) promote the interests of the client with the utmost good faith, loyalty and fidelity, including:

(A) Seeking a price and terms which are acceptable to the client, except that an agency agreement with a seller may provide that the broker

shall not be obligated to continue to market the property after an offer has been accepted by the seller;

(B) presenting, in a timely manner, all written offers, counteroffers and back-up offers to and from the client when such offer is received prior to the closing of the sale unless the seller instructs the broker in the agency agreement not to submit offers after an offer has been accepted by the seller;

(C) disclosing to the client all adverse material facts actually known by the licensee about the buyer or tenant; and

(D) advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) account in a timely manner for all money and property received;

(5) comply with all requirements of this act and rules and regulations adopted hereunder; and

(6) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes and rules and regulations.

(b) If pursuant to subsection (a)(3)(D), the licensee advised the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters.

(c) A seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute or rule and regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.

(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, including but not limited to:

(A) Any environmental hazards affecting the property which are required by law to be disclosed;

(B) the physical condition of the property;

(C) any material defects in the property;

(D) any material defects in the title to the property; or

(E) any material limitation on the client's ability to perform under the terms of the contract.

(2) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any qualified third party.

(3) Except as provided in subsection (d)(4), a seller's or landlord's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the client or customer.

(4) A licensee shall disclose to the client or customer any facts known by the licensee that contradict any information included in a written report described in subsection (d)(3).

(5) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a licensee shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson.

For purpose of this subsection, "qualified third party" means a federal, state or local governmental agency or any person whom the broker, affiliated licensee or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare the written report.

(e) A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.

(f) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer subagency and pay compensation to other brokers.

(g) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer to cooperate with a buyer's or tenant's agent or to cooperate with and pay compensation to a buyer's or tenant's agent.

(h) If the seller or landlord has authorized the broker to offer cooperation with other licensees pursuant to subsection (f) or (g), the broker shall not refuse permission to another licensee to show,

or to present an offer to purchase, a listed property unless specifically instructed by the seller in writing. The broker shall provide a copy of the written instructions to another licensee upon request.

(i) A seller's or landlord's agent shall not be liable for punitive or exemplary damages for the licensee's failure to perform any of the duties set forth in this section, unless such failure is shown by clear and convincing evidence that the licensee acted toward the plaintiff with willful conduct, wanton conduct, fraud or malice.

History: L. 1995, ch. 252, § 6; Jan. 1, 1996.

58-30,107. Minimum requirements of buyer's or tenant's agent. (a) A buyer's or a tenant's agent shall be a statutory agent with the following duty and obligation to:

(1) Perform the terms of the written agreement made with the client;

(2) exercise reasonable skill and care for the client;

(3) promote the interests of the client with the utmost good faith, loyalty and fidelity, including:

(A) Seeking a price and terms which are acceptable to the client, except that an agency agreement may provide that the licensee shall not be obligated to seek other properties after the client enters into a purchase contract;

(B) presenting, in a timely manner, all written offers, counteroffers and back-up offers to and from the client when such offer is received prior to the closing of the sale unless the buyer instructs the broker in the agency agreement not to submit offers after the client enters into a purchase contract;

(C) disclosing to the client all adverse material facts actually known by the licensee; and

(D) advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) account in a timely manner for all money and property received;

(5) comply with all requirements of this act and rules and regulations adopted hereunder; and

(6) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes or rules and regulations.

(b) If pursuant to subsection (a)(3)(D), the licensee advised the client to obtain expert advice

as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters.

(c) A buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute or rule and regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

(d) (1) A buyer's or tenant's agent owes no duty or obligation to a customer, except that the licensee shall disclose to any customer all adverse material facts actually known by the licensee, including but not limited to material facts concerning the client's financial ability to perform the terms of the transaction.

(2) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any qualified third party.

(3) Except as provided in subsection (d)(4), a buyer's or tenant's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the client or customer.

(4) A licensee shall disclose to the client or customer any facts known by the licensee that contradict any information included in a written report described in subsection (d)(3).

(5) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a licensee shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson.

For purpose of this subsection, "qualified third party" means a federal, state or local governmental agency or any person whom the broker, the affiliated licensee or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that

has been conducted by the third party in order to prepare the written report.

(e) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This subsection is intended to allow a buyer's or tenant's agent to show competing buyers or tenants the same property and to assist competing buyers or tenants in attempting to purchase or lease a particular property.

(f) Except as provided in subsection (e) of K.S.A. 1995 Supp. 58-30,103, a licensee may not act as a buyer's agent on any property shown to the buyer while the licensee was acting as an agent or subagent of the seller without the written agreement of the seller. If the licensee has knowledge that another licensee affiliated with the broker showed the property to the buyer while acting as an agent or subagent of the seller, the licensee shall obtain the written agreement of the seller before acting as the buyer's agent.

(g) A buyer or tenant may agree in writing with a buyer's or tenant's agent that the agent may receive compensation from a seller's or landlord's agent.

(h) A buyer's or tenant's agent shall not be liable for punitive or exemplary damages for the licensee's failure to perform any of the duties set forth in this section, unless such failure is shown by clear and convincing evidence that the licensee acted toward the plaintiff with willful conduct, wanton conduct, fraud or malice.

History: L. 1995, ch. 252, § 7; Jan. 1, 1996.

58-30,108. Minimum requirements of dual agent. (a) (1) A licensee may act as a dual agent only with the informed consent of all parties to the transaction. The informed consent shall be evidenced by a dual agency consent agreement which shall include, at a minimum, the duties and obligations included in this section.

(2) If, pursuant to subsections (g) and (h) of K.S.A. 1995 Supp. 58-30,103, the agency agreements include a potential for the seller's or landlord's agent and the buyer's or tenant's agent to act as a disclosed dual agent, the dual agency consent agreement shall be signed by the buyer or the tenant no later than the first showing of the property and by the seller or the landlord no later than the presentation of the offer to purchase or lease. If the agency agreements did not include a potential for the seller's or landlord's agent and the buyer's

or tenant's agent to act as a disclosed dual agent, the dual agency consent agreement shall be signed by the buyer and seller or the tenant and landlord prior to the first showing of the property.

(b) A disclosed dual agent shall be a statutory agent for both the seller and buyer or the landlord and tenant.

(c) A disclosed dual agent shall not represent the interest of either the buyer or the seller or the tenant or the landlord to the detriment of the other. The buyer and seller or the tenant and landlord shall have the responsibility of determining the price they will pay or accept, and they may rely on information provided by the disclosed dual agent. The broker shall cease to serve as either seller's or buyer's or landlord's or tenant's sole and exclusive agent.

(d) The following information shall not be disclosed by a disclosed dual agent without the informed consent of the client to whom the information pertains:

(A) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(B) that a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(C) what the motivating factors are for any client's buying, selling or leasing the property; or

(D) that a client will agree to financing terms other than those offered.

(e) A disclosed dual agent shall not disclose to one client any confidential information or personal confidences about the other client which might place one party at an advantage over the other party unless the disclosure is required by statute or rule and regulation or failure to disclose the information would constitute fraudulent misrepresentation.

(f) No cause of action for any person shall arise against a disclosed dual agent for making any required or permitted disclosure.

(g) By making any required or permitted disclosure, a disclosed dual agent does not terminate the dual agency relationship.

(h) In a dual agency relationship, there shall be no imputation of knowledge or information between any client and the disclosed dual agent or among licensees within the brokerage firm engaged as a dual agent.

(i) In any transaction, a broker may without liability withdraw from representing a client if either client does not consent to a disclosed dual

agency. Such withdrawal shall not prejudice the ability of the broker to continue to represent the other client in the transaction, nor limit the broker from representing the client in other transactions not involving a dual agency. Such withdrawal shall not limit the ability of the broker to receive a referral fee for referring a client to a broker of a different brokerage firm.

History: L. 1995, ch. 252, § 8; Jan. 1, 1996.

58-30,109. Separate representation within one brokerage firm.

(a) A broker may personally, or through the broker's duly authorized licensed representative, specifically designate, in a written buyer agency agreement obtained pursuant to K.S.A. 1995 Supp. 58-30,103, an affiliated licensee who will be acting as legal agent of the buyer client to the exclusion of all other affiliated licensees. After verbal notice has been given to the buyer client, another affiliated licensee may be temporarily appointed as a designated agent.

(b) With the exception of a property listed by the designated agent, a designated agent shall not act as an agent of any owner of property listed with the broker when representing a specific buyer client.

(c) If a designated agent also acts as agent of the seller of property listed by the designated agent, the agent and the broker shall be disclosed dual agents pursuant to K.S.A. 1995 Supp. 58-30,108.

(d) If the broker performs any duty or obligation set forth in subsection (a)(3) of K.S.A. 1995 Supp. 58-30,106, the broker and the designated agent or agents shall be disclosed dual agents pursuant to K.S.A. 1995 Supp. 58-30,108.

(e) The broker shall not be considered to be acting for more than one party in the transaction provided that the broker is not a disclosed dual agent pursuant to subsection (c) or (d).

(f) Unless acting as a disclosed dual agent pursuant to subsection (c) or (d), a designated agent shall not be considered a dual agent nor shall the licensee be liable for acting as an undisclosed dual agent merely by performing licensed services in accordance with the provisions of this section.

History: L. 1995, ch. 252, § 9; Jan. 1, 1996.

58-30,110. Disclosure of agency relationship.

(a) (1) The commission shall adopt a rule and regulation prescribing the language which shall be included in a form entitled "Disclosure of alternative agency relationships".

(2) At the discretion of the broker, the disclosure of alternative agency relationships form may be either a separate document or may be contained in the agency agreement with the client.

(3) Except as provided in subsection (a)(4), a licensee shall furnish a prospective buyer or seller with a copy of the disclosure of alternative agency relationships form at the first occurrence of either of the following events regarding real estate transactions:

(A) A face-to-face meeting with the prospective buyer or seller; or

(B) a written communication from the licensee.

The licensee shall obtain the signature of the prospective buyer or seller, and the date of the signature, on the disclosure of alternative agency relationships form. If the buyer or seller refuses to sign the form, the licensee shall note that fact on a copy of the form and shall sign and date the form. The signed or noted copy of the form shall be retained by the broker for three years.

(4) A licensee is not required to provide a copy of the form to a prospective buyer or seller in the following instances:

(A) The licensee is acting solely as a principal and not as an agent for another;

(B) the written communication from the licensee is a solicitation of business;

(C) the face-to-face meeting occurs at an open house and there is no substantive discussion regarding a transaction; or

(D) the face-to-face meeting is a mere solicitation of business and there is no substantive discussion regarding a transaction.

(b) (1) Except for instances when a licensee is providing information through an advertisement or other form of public notice of the licensee's representation of a client, a licensee representing a client in a proposed real estate transaction shall disclose the representation at the time of every contact with another licensee representing the other party. The disclosure may be made orally or in writing.

(2) Each time a licensee is contacted by another licensee who requests permission to show property to a prospective buyer, the licensee shall inquire whether or not the licensee represents the buyer.

(c) The disclosure of the agency relationship between all licensees involved and the seller and

buyer shall be included in any contract for sale or lease and in any lot reservation agreement.

History: L. 1995, ch. 252, § 10; Jan. 1, 1996.

58-30,111. Imputed knowledge. (a) A client shall not be liable for a misrepresentation of the client's statutory agent arising out of the agency agreement unless the client knew of the misrepresentation.

(b) A statutory agent shall not be liable for a misrepresentation of the agent's client arising out of the agency agreement unless the licensee knew of the misrepresentation.

(c) A statutory agent shall not be liable for an innocent misrepresentation in information provided to the seller or landlord or to the buyer or tenant if the licensee does not have personal knowledge of the error, inaccuracy or omission that is the basis for the misrepresentation.

History: L. 1995, ch. 252, § 11; Jan. 1, 1996.

58-30,112. Forms; rules and regulations. The commission shall provide suggested forms of agency agreements and, by rules and regulations, provide such other prohibitions, limitations and conditions relating thereto as the commission may prescribe.

History: L. 1995, ch. 252, § 12; Jan. 1, 1996.

Article 32.—LAND AND WATER RECREATIONAL AREAS

~~**58-3203. Limited liability of property owners; owner's duty of care.** Except as specifically recognized by or provided in K.S.A. 58-3206 and amendments thereto, an owner of land who makes all or any part of the land available to the public for recreational purposes owes no duty of care to keep the premises, or that part of the premises so made available, safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for such purposes. An owner of land who does take actions to keep the premises safe or to warn persons of a dangerous condition, use, structure or activity on the premises shall not be deprived of the protection which this law would provide had the owner not taken such actions or given such warning.~~

~~**History:** L. 1965, ch. 559, § 3; L. 1995, ch. 167, § 1; Apr. 27.~~

the advanced registered nurse practitioner student scholarship program. The terms, conditions and obligations shall be consistent with the provisions of law relating to the advanced registered nurse practitioner student scholarship program. The terms, conditions and obligations so established shall include, but not be limited to, the terms of eligibility for financial assistance under the advanced registered nurse practitioner student scholarship program, the amount of financial assistance to be offered, the length of practice in a rural area or medically underserved area required as a condition to the receipt of such financial assistance to be offered, the amount of money required to be repaid because of failure to satisfy the obligations under an agreement and the method of repayment and such other additional provisions as may be necessary to carry out the provisions of the advanced registered nurse practitioner student scholarship program. The state board of regents, after consultation with the committee, shall adopt rules and regulations establishing criteria for evaluating the financial need of applicants for scholarships and may adopt such other rules and regulations as may be necessary to administer the advanced registered nurse practitioner student scholarship program.

History: L. 1993, ch. 48, § 7; July 1.

74-32,138. Same; advanced registered nurse practitioner student scholarship program fund; administration. There is hereby created in the state treasury the advanced registered nurse practitioner student scholarship program fund. The executive officer shall remit all moneys received under this act to the state treasurer at least monthly. Upon receipt of each such remittance the state treasurer shall deposit the entire amount thereof in the state treasury, and such amount shall be credited to the advanced registered nurse practitioner student scholarship program fund. All expenditures from the advanced registered nurse practitioner student scholarship program fund shall be for scholarships awarded under this act and shall be made in accordance with appropriation acts of the director of accounts and reports issued pursuant to vouchers approved by the executive officer or by a person designated by the executive officer.

History: L. 1993, ch. 48, § 8; July 1.

Article 42.—KANSAS REAL ESTATE COMMISSION

74-4202. Kansas real estate commission; organization; powers and duties; com-

ensation and expenses; meetings; office; seal. (a) Within 30 days after the appointment of the members to be regularly appointed within any year, the commission shall meet in the city of Topeka for the purpose of organizing by selecting from its membership a chairperson and such other officers as the commission may deem necessary and appropriate. A majority of the members of the commission shall constitute a quorum for the exercise of the powers or authority conferred upon it.

(b) The commission shall receive applications for, and issue licenses to, brokers and salespersons, as provided in this act and shall administer the provisions of this act and the brokerage relationships in real estate transactions act. The commission may do all things necessary and convenient for carrying into effect the provisions of the acts and may adopt rules and regulations not inconsistent with the acts. For the purpose of the acts, the commission shall make all necessary investigations, and every licensee shall furnish to the commission such evidence as the licensee may have as to any violation [of] the acts or any rules and regulations adopted under the acts. The commission may enforce any order by an action in the district court of the county where the alleged violator resides or where the violation allegedly occurred.

(c) Each member of the commission shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(d) The commission shall hold meetings and hearings in the city of Topeka or at such places as it shall determine at such times as it may designate and on request of two (2) or more of its members.

(e) The commission shall maintain an office in the city of Topeka, and all files, records and property of the commission shall at all times be and remain therein.

(f) The commission shall adopt a seal by which it shall attest its proceedings. Copies of all records and papers required by law or the commission to be filed in the office of the commission, when duly certified by the director, assistant director or chairperson of the commission and attested by the seal of the commission, shall be received in evidence in all courts of the state of Kansas equally and with like effect as the originals.

History: L. 1947, ch. 411, § 7; L. 1970, ch. 223, § 2; L. 1974, ch. 348, § 69; L. 1980, ch. 164, § 42; L. 1995, ch. 252, § 24; Jan. 1, 1996.

Article

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insurance when. (a) may purchase the agency and contracts only

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be retained for a period of five years at which time they shall be destroyed. The register of deeds shall in conjunction with the county clerk use the information derived from such questionnaires in cooperating with and assisting the director of property valuation in developing the information as provided for in K.S.A. 1995 Supp. 79-1487, and amendments thereto.

History: L. 1991, ch. 162, § 3; L. 1992, ch. 159, § 1; L. 1992, ch. 282, § 18; L. 1995, ch. 252, § 25; Jan. 1, 1996.

Law Review and Bar Journal References:

"Survey of Kansas Law: Taxation," Sandra Craig McKenzie, 41 K.L.R. 727, 734 (1993).

Attorney General's Opinions:

Real estate appraisers and assessment of property; real estate sales questionnaire; what constitutes an agent. 91-105.

Open public records; real estate sales validation questionnaires; certified or licensed appraisers. 92-38.

Authority of register of deeds to reference exemption on face of deed. 92-122.

79-1437d. Same; devised by director of property valuation; approval by legislature; information to be contained therein. The real estate sales questionnaire shall be devised by the director of property valuation, and the director shall furnish copies thereof to the register of deeds. Upon proposing modifications or changes to the real estate sales validation questionnaire devised and used prior to 1992 or any validation questionnaire approved by the legislature in 1992 or thereafter, the director of property valuation shall submit such proposal to the legislature. Upon the failure of the legislature to enact legislation modifying the director's proposal within 60 days of submission thereof, such proposal shall be deemed to be approved, and the director's modified questionnaire may be utilized at anytime thereafter. The questionnaire shall be devised to obtain information regarding the identification and location of the property, name and address of the purchaser, sales price, date of sale, the classification and subclassification to which such property belongs, nature and circumstances peculiar to the sale, whether any personal property was included in the sales price, whether the purchaser assumed any mortgages or liens, loans, leases or taxes, the method of financing, whether any special assessments are levied against the property and such other information as the director of property valuation shall require. No information shall be requested in such questionnaire which would require the disclosure of the interest

rate paid by the purchaser or the specific term of any mortgage.

History: L. 1991, ch. 162, § 4; July 1.

Attorney General's Opinions:

Real estate appraisers and assessment of property; real estate sales questionnaire; what constitutes an agent. 91-105.

79-1437e. Same; inapplicability to certain transfers of title. (a) The real estate sales validation questionnaire required by this act shall not apply to transfers of title:

- (1) Recorded prior to the effective date of this act;
- (2) made solely for the purpose of securing or releasing security for a debt or other obligation;
- (3) made for the purpose of confirming, correcting, modifying or supplementing a deed previously recorded, and without additional consideration;
- (4) by way of gift, donation or contribution stated in the deed or other instrument;
- (5) to cemetery lots;
- (6) by leases and transfers of severed mineral interests;
- (7) to a trust, and without consideration;
- (8) resulting from a divorce settlement where one party transfers interest in property to the other;
- (9) made solely for the purpose of creating a joint tenancy or tenancy in common;
- (10) by way of a sheriff's deed;
- (11) by way of a deed which has been in escrow for longer than five years;
- (12) by way of a quit claim deed filed for the purpose of clearing title encumbrances;
- (13) when title is transferred to convey right-of-way or pursuant to eminent domain;
- (14) made by a guardian, executor, administrator, conservator or trustee of an estate pursuant to judicial order; or
- (15) when title is transferred due to repossession.

(b) When a real estate sales validation questionnaire is not required due to one or more of the exemptions provided in subsection (a), the exemption shall be clearly stated on the document being filed.

History: L. 1991, ch. 162, § 5; L. 1992, ch. 159, § 2; L. 1994, ch. 275, § 12; July 1.

Attorney General's Opinions:

Authority of register of deeds to reference exemption on face of deed. 92-122.

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Law Review and Bar Journal References:

"Survey of Kansas Law: Taxation," Sandra Craig McKenzie and Eric B. Milstead, 37 K.L.R. 961, 982 (1989).

Attorney General's Opinions:

Merchants' and manufacturers' inventory; recertifying valuations of public utility property; time for collection. 90/8.
Contracts for assistance in collecting property taxes. 94-8.

CASE ANNOTATIONS

2. Cited in holding county appraisers permitted to hire outside agencies to assist in assessment of properties. Dillon Stores v. Lovelady, 253 K. 274, 280, 855 P.2d 487 (1993).

3. Whether waiving penalties for certain classes of private property owners violates uniform and equal taxation provision examined. State ex rel. Stephan v. Parrish, 257 K. 294, 298, 305, 891 P.2d 445 (1995).

79-1427b. Waiver of penalties on certain escaped personal property. The board of county commissioners of any county may waive any penalty imposed pursuant to the provisions of K.S.A. 79-1422 and 79-1427a, and amendments thereto, with respect to the discovery in 1993 or 1994 of tangible personal property which has been omitted from the tax rolls or the value of which has been underreported, and any interest that may have accrued thereon, in all cases where the appropriate total amount of tax due on such property as a result of such omission or underreporting is paid in 1994.

History: L. 1994, ch. 219, § 2; April 21.

79-1427c. Escaped personal property discovered between January 1, 1994, and March 14, 1995; duties of appraisers; penalty waived, when. If, from and after January 1, 1994, and on or before March 14, 1995, the county or district appraiser discovers any taxable tangible personal property which would be subject to a penalty pursuant to the provisions of K.S.A. 79-1427a, and amendments thereto, such property shall be listed and appraised and taxes collected thereon as provided in K.S.A. 79-1427a, and amendments thereto; however, such property shall not be liable for any taxes that would have been levied against such property for any year prior to the 1992 tax year and no penalty shall be added. Notwithstanding the foregoing, the penalties prescribed by K.S.A. 79-1427a, and amendments thereto, shall be added whenever any person, association, company or corporation that has fraudulently failed to list or has fraudulently underreported tangible property required to be listed for taxation as provided in K.S.A. 79-306, and amendments thereto. Such fraud shall be proven by clear and convincing evidence.

History: L. 1994, ch. 275, § 14; July 1.

Attorney General's Opinions:

Property tax obligation release; escaped personal property; constitutionality. 94-79.

CASE ANNOTATIONS

1. Whether waiving penalties for certain classes of private property owners violates uniform and equal taxation provision examined. State ex rel. Stephan v. Parrish, 257 K. 294, 295, 891 P.2d 445 (1995).

79-1435.

History: L. 1949, ch. 224, § 1; L. 1965, ch. 516, § 1; L. 1967, ch. 489, § 1; L. 1972, ch. 362, § 1; Repealed, L. 1992, ch. 131, § 10; July 1.

79-1436.

History: L. 1949, ch. 224, § 2; L. 1965, ch. 516, § 2; L. 1967, ch. 489, § 2; L. 1972, ch. 362, § 2; L. 1974, ch. 428, § 1; L. 1982, ch. 397, § 1; L. 1989, ch. 2, § 7 (Special Session); L. 1991, ch. 162, § 8; Repealed, L. 1992, ch. 131, § 10; July 1.

79-1436a.

History: L. 1967, ch. 489, § 3; L. 1969, ch. 435, § 1; L. 1972, ch. 362, § 3; L. 1985, ch. 311, § 5; Repealed, L. 1992, ch. 131, § 10; July 1.

79-1436b.

History: L. 1969, ch. 435, § 2; L. 1972, ch. 363, § 1; L. 1974, ch. 428, § 2; L. 1976, ch. 423, § 1; L. 1978, ch. 396, § 2; Repealed, L. 1992, ch. 131, § 10; July 1.

79-1437.

History: L. 1949, ch. 224, § 3; L. 1965, ch. 516, § 3; L. 1967, ch. 489, § 4; L. 1972, ch. 362, § 4; L. 1974, ch. 428, § 3; L. 1982, ch. 397, § 2; L. 1985, ch. 311, § 6; L. 1986, ch. 374, § 1; L. 1989, ch. 2, § 8 (Special Session); Repealed, L. 1992, ch. 131, § 10; July 1.

79-1437a.

History: L. 1967, ch. 489, § 5; Repealed, L. 1992, ch. 131, § 10; July 1.

79-1437c. Real estate sales validation questionnaires; required to accompany transfers of title; retention time; use of information. No deed or instrument providing for the transfer of title to real estate or affidavit of equitable interest in real estate shall be recorded in the office of the register of deeds unless such deed, instrument or affidavit shall be accompanied by a real estate sales validation questionnaire completed by the grantor or grantee or the agent of such grantor or grantee concerning the property transferred. Such questionnaire shall not be filed of record by the register of deeds but shall

March 7, 1996

Members of the House Judiciary Committee:

I am writing to urge your support and approval of Senate Bill 710. The purpose of the bill is to provide a one year moratorium of the agency law that went into effect January 1, 1996, as it relates to commercial real estate transactions.

As president of our family real estate business in Wichita, and a past president of the Kansas Association of Realtors, the Wichita Area Association of Realtors, the Wichita Chapter of the Institute of Real Estate Management, the Wichita Chapter of the Building Owners and Managers Association, and with over 20 years of commercial real estate experience, the law as currently written is counter productive. Commercial transactions should be exempt from the current agency law. Delay in exempting commercial transactions serves no purpose and protects neither the practitioner or the public.

The commercial real estate transaction is a specialization within the real estate industry. Of the thousands of individuals who are licensed as either Kansas real estate brokers or salesagents, a very small group of licensees .0specialize in commercial real estate. These are people who work with informed buyers and sellers, landlords and tenants. Even in other regulated industries, such as banking and lending, there are more regulations and protection type laws for consumers and residential borrowers than for business borrowers. The rules governing a financial transaction are based on the type of transaction. We believe the same should hold true for real estate transactions.

While it may appear that support of Senate Bill 710 by a commercial real estate licensee is self serving, I would ask that you take a close look at the differences between a commercial and residential transaction. The entire infrastructure for a commercial transaction is different than a residential transaction. The typical residential



House Judiciary Committee
March 7, 1996
Page Two

transaction involves a multiple listing service which is controlled by licensees, requires the use of an exclusive right to sell agreement, and typically uses local REALTOR Board approved contract forms. None of these requirements exist in the typical commercial real estate transaction.

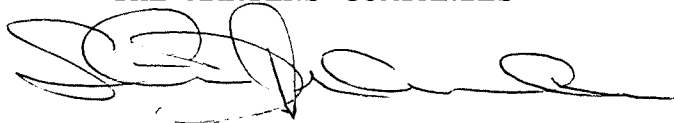
This is a very personalized business. The commercial real estate agent is not an adversary to certain parties in a transaction, but rather called upon to provide information and expertise.

The law, as written, is cumbersome for the commercial real estate practitioner, and is aimed at a protecting a public that is atypical to commercial real estate transactions. The typical consumer in a commercial transaction is a knowledgeable business buyer, who is active in the market place. The DAAR form and certain language defining dual agency and designated agents is counter to many of the services that commercial agents are called upon to perform.

I appreciate your attention to this matter. Since the hearing on February 21st at the Senate Judiciary Committee, we have met with the Kansas Association of Realtors and the director of the Kansas Real Estate Commission to discuss differences. On Friday, March 1st, KAR notified its membership that it would support the moratorium on commercial transactions. We are pleased with their actions and hope this will help in our cause to remove commercial transactions from the agency law.

On behalf of the commercial real estate associates with our firm, who are all members in good standing with the Kansas Association of Realtors, I urge you to support Senate Bill 710.

Sincerely,
THE MARTENS COMPANIES



Steven J. Martens, CPM
President

SJM/bs

**Support Testimony
for
SENATE BILL No. 710**

March 7, 1996

The purpose of this testimony is not to debate the attributes of Senate Bill No. 110 which has now become law in the State of Kansas. We do come before you as real estate brokers who specialize in the brokerage of commercial property as defined in the proposed bill.

It is our position that Senate Bill 110 was crafted primarily with the issues concerning the brokerage of residential real estate in mind. Frequent references in the law to "open houses" and "lot reservation agreements" illustrate that fact.

It is our position that the brokerage of commercial real estate is unique and significantly different from residential brokerage, thereby making compliance with the law difficult and an economic disadvantage.

Following are the specific areas identified as generally unique to commercial brokerage:

1. The long term nature of client relationships.

It is not uncommon for a commercial Broker to develop a relationship with an investor over many years, sometimes representing him as a seller, sometimes as a buyer. Due to the nature of our business, we are constantly exposed to the potential of being forced to become dual agents. Having a buyers-agency agreement with a client who wants to negotiate for a property which one has listed from another client, automatically forces one to become a dual agent. As dual agents we then are not allowed to suggest negotiating strategy to either party, or to reveal the motivation of either client. This essentially renders us ineffective in using the skills and training which makes our contribution to the transaction valuable. This is especially difficult in the area of exchanging properties. To avoid becoming a dual agent in an exchange transaction, we are legally compelled to bring in another broker who is not familiar with the deal or even wanted by the parties to the exchange.

2. Commercial brokerage does not thrive when buyers and sellers are considered adversarial.

An early draft of the "Disclosure of Alternative Agency Relationships", (DAAR form- KREC Agency Disclosure Form No. 1 (01-96)), actually states, "Because the buyer's and seller's interests are adverse to one another....." In the complexities of commercial brokerage, treating parties as adversaries is the worst possible action. We are negotiators and facilitators striving to structure agreements between people which meet their needs and desires to the greatest extent possible.

3. Sophistication of buyers and sellers.

Typically represented by attorneys and CPAs these clients do not require the explanation of the license law as required by the DAAR form. Buyers and sellers are normally well equipped to make business decisions and are already represented by legal, accounting, and other specialists.

4. Inconsistency in the application of the law: use of the DAAR form.

New Section 10 (3) states that "a licensee shall furnish a buyer or seller with a copy of the disclosure of alternative relationships form...." There is no requirement to present the DAAR form to lessors or lessees. If a DAAR form is not important to a commercial lease transaction, which may be far more complex than a commercial sale, why is it required in a commercial sale transaction?

5. Impact on economic development.

Sophisticated commercial buyers are generally attracted to states where the paperwork is less burdensome and where the brokers are able to do what they are paid to do. We have concern about the economic impact that SB110 will have on attracting investment dollars into our great state.

6. Designated Agency.

While we realize that offering designated agency is optional, it presents serious difficulty in commercial transactions. Most commercial brokerage firms are smaller in size and actively work together to solve client's

problems and meet their needs. The concept of having two brokers in the same commercial firm who do not understand the motivations of a particular client is remote. Therefore, we are not aware of a single commercial firm offering designated agency as a brokerage practice.

7. This regulation is unnecessary for commercial transactions.

We are not aware of a single instance of litigation in a commercial transaction where agency was the issue that initiated the litigation.

8. Uncertainty about the interpretation of the law.

Newly added Section 12, page 1261, states, "The commission shall provide suggested forms of agency agreements and, by rules and regulations, provide such other prohibitions, limitations, and conditions relating thereto as the commission may prescribe. This is clearly an invitation for the commission to interpret the law in ways that may or may not be consistent with the original intent of the legislation.

For the reasons stated herein, we strongly support the passage of Senate Bill 710 and ask for your support as well.

Thank you for allowing us to address our concerns before you.

Marlin Penner



Kansas Association of REALTORS®

75 years

3644 S.W. BURLINGAME ROAD • TOPEKA, KANSAS 66611-2098
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FAX 913/267-1867



TO: MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

FROM: JOHN GREEN, 1996 PRESIDENT

DATE: MARCH 7, 1996

RE: SB 710

Thank you for the opportunity to testify today. I come today to provide information for you regarding SB 710. Our Executive Committee held a conference call last Friday regarding what position we would take on the bill as passed by the Senate. Our position is that, in lieu of a complete repeal or a complete moratorium on the entire law, we will accept a one year moratorium on commercial transactions.

We are opposed to either repealing the entire law or extending the moratorium to apply to the entire new law. I would like to take a few minutes to review the Association's position on repeal or a complete moratorium. We have several of our members from across the state who would like to talk to you about their experience with the new law.

1. The new law provides tools for real estate practitioners to use to explain the various agency relationships that exist in a real estate transaction. Properly presented, it lets buyers and sellers make informed choices about those relationships. While it is a change in the way licensees operate, it is a change for the better in terms of the image of real estate professionals.
2. While we know that some provisions of the law may need to be fine tuned in order to make things clearer or easier to carry out, KAR believes that the legislation needs to continue operating so that we can find where those changes need to be made.
3. We will work with licensees and the Kansas Real Estate Commission to put those changes into a coherent legislative package for the 1997 Legislative Session or to develop any changes which could be done by rule and regulation.

Thank you again for the opportunity to speak to this issue. If we can provide any additional information for you, please feel free to contact me.

House Judiciary
3-7-96
Attachment 4

To: Chairman Michael O'Neal and Members of the House Judiciary Committee

Re: Senate Bill #710

From: Wess Galyon, President/CEO, Wichita Area Builders Association

The Brokerage Relationships in Real Estate Transactions Act took effect January 1 of this year. Since the act took effect, I have been engaged in numerous discussions with persons in the real estate brokerage and building industry and am convinced that the status quo is not in anyone's best interest. The BRRET Act was intended to provide additional protection to the consumer but instead has created substantial confusion and misunderstanding which the passage of time will not cure.

The following are concerns which I feel should be made known to you on behalf of a growing number of builders and real estate practitioners not only in our area but throughout the state:

Concern #1. Designated Agent.

Section 9 of the BRRET Act authorizes a seller's broker to designate an affiliated licensee to act as the legal agent of the buyer. According to our legal counsel, the presumption is that a "Chinese Wall" is to be erected around the designated agent to prevent critical information pertaining to the transaction from passing to or from the designated agent from or to the seller's agent. In a small single office operation, it is virtually impossible to imagine that such an arrangement would be workable. Typically, in these operations there is substantial camaraderie and communications among the staff. Therefore, the practical effect of authorizing designated agents is that they will be limited to large multi-office operations. We have been advised that due to the recognized limitations of the Chinese Wall as protection it is likely to create litigation. Based on what we have learned since the BRRET Act took effect, it appears this problem can only be resolved by legislation eliminating the designated agency concept.

Concern #2. Required Furnishing of the DAAR Form.

Section 10 of the Act requires that the DAAR form be furnished to a prospective buyer or seller at the first occurrence of either (1) a face-to-face meeting with the prospective buyer or seller, or (2) a written communication from the licensee. It excuses the licensee from providing the DAAR Form if the face-to-face meeting occurs at an open house and there is no "substantive discussion" regarding the transaction.

The key problem is that the term "substantive discussion" is not defined in the Act. The Kansas Real Estate Commission has been receptive to our concerns in this regard, but it is crucial that there be a "bright line" because the commencement of "substantive discussion" is the trigger for requiring that the realtor provide the DAAR form.

This problem is particularly acute in the context of open houses and model homes. As I am sure you are all aware, large numbers of people visit open houses and model homes to acquaint themselves with housing products available in the marketplace. During their visits, these groups typically inquire about price, payments, square footage, special assessments, schools, etc. These

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House Judiciary
3-7-96
Attachment 5

are certainly important concerns, but if the realtor attempts to address these concerns, is the realtor engaging in "substantive discussion"? If so, then the Act requires that the realtor insist that each visitor receive and sign a DAAR form.

Consumers who attend open houses and model homes are not typically eager to be confronted with a legal form which they must sign. If they decline to do so, the realtor is faced with an impossible choice: the realtor can attempt to answer their generic questions about the property and run the risk that he or she is engaging in "substantive discussion" without a signed DAAR form, or (2) the realtor can offend the consumer by simply refusing to discuss the matter with the consumer. This situation is a disservice to the consumer as well as the realtor, since it essentially establishes a requirement that a consumer be "read his or her rights" similar to a Miranda warning required to be given to suspected felons.

Concern #3. Communications with buyers who are represented by an agent.

Another problem which has been encountered has to do with communications with buyers who are represented by an agent. Section 3(o) of the BRRET Act prohibits the licensee from negotiating a sale directly with a buyer if the licensee knows that the buyer has entered into an agency agreement with another broker. As you may be aware, especially in the home building industry, there are continued decisions that need to be made that involve the buyer and builder sitting down and having dialogue about what a buyer might want in a new home. While we have gained some consideration from the Kansas Real Estate Commission relative to what type of activities constitute negotiations, it is clear that any time negotiations might be considered to be taking place the agent for the seller cannot become involved with the buyer without the agent for the buyer being present. This limitation is simply not warranted and does nothing to serve the buyer's interest as a consumer. In fact, this limitation often frustrates the consumer who wishes to proceed but is prohibited from doing so because his agent is not available. It is our opinion that the BRRET Act could be significantly improved if the buyer, or buyer's agent, could execute a waiver which would permit the seller's agent to deal directly with the buyer.

Concern #4. Failure of buyer to disclose their agent until after negotiations have begun and progressed.

Another problem which is being encountered and which is growing in severity is the failure of a buyer to disclose his or her agent to the seller until the negotiations have progressed to the final contract stage or subsequent thereto. Section 10(c) provides that any contract or lot reservation agreement shall disclose the agency relationship between all licensees and the parties. However, this provision does not indicate the consequences if a buyer has failed to make such disclosure during the negotiations. There seems to be some inequity in the seller's agent becoming involved in lengthy negotiations, discussions, and preparation of the contract only to learn afterward that the buyer is now claiming an agent represents him, or a real estate agent calls the seller's agent and advises that the buyer entered into an agreement for representation at some prior time and on that basis claims that he or she is entitled to a commission from the transaction that they had little or nothing to do with putting together. The frequency of such occurrences is escalating and it is our view that the agent for the seller should not be placed in the position of policing the industry for the benefit of a buyer agent to the potential detriment of the fiduciary relationship that has been established with the seller of the property. If an agent for the buyer does not introduce the prospective purchaser to the property and agent for the seller so that all parties, and others who may be involved in a potential transaction, know "up front" who is working for whom they should

5-2

not be assured by provisions of this law that they will be invited into the transaction in an "after the fact fashion" and expect to be paid a fee. There are constant and tremendous abuses taking place in this regard by agents who convince a prospective purchaser to sign an agreement to let them work on their behalf as a buyer agent and do nothing, or very little, knowing they will be invited into any transaction the buyer may become involved with because the law does not allow the agent for the seller to have negotiations with anyone without making sure the buyer agent is advised and is present. No law should provide protection for agents who conduct their affairs in such a manner, and many are. We are requesting a specific change to the law that would allow an agent for the seller to work with a prospective purchaser even though he or she may have signed an agreement with a buyer agent provided it is the buyers desire to work with the sellers agent in his own behalf.

With specific regard to Senate Bill 710 which is being considered today, we would respectfully request that the moratorium that has been suggested and which would be applicable for commercial real estate transactions be applied to the BRRET Act as a whole and that a legislative mandate be established for groups within our industry to work together and come back to the legislature in the 1997 session with a definitive recommendation that addresses our concerns and that of others which have been expressed.

I particularly want to thank Jean Duncan, Director of the Kansas Real Estate Commission and the current Commissioners for their courteousness in working with us in an effort to try and gain some flexibility in terms of how we can do what the act requires us to do in a more workable fashion. But, try as we must, the law as it is currently written precludes us from going much farther than we already have. Marvin Webb in his closing remarks in a meeting here in Topeka just last week properly acknowledged that there were obviously some problems with the current law that needed to be worked out as soon as possible and that we ought to get about the work of doing just that. We agree, and I would again urge your consideration of a moratorium on the BRRET Act until the problems that have been identified can be resolved.

Thank you.

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BILL GRAVES, GOVERNOR

KANSAS REAL ESTATE COMMISSION

Three Townsite Plaza Ste 200
120 SE 6th Ave
Topeka, KS 66603-3511

(913) 296-3411



JEAN DUNCAN, DIRECTOR

TO: THE HOUSE JUDICIARY COMMITTEE
FROM: JEAN DUNCAN, DIRECTOR
DATE: MARCH 7, 1996
SUBJECT: SENATE BILL 710

Thank you for the opportunity to testify.

The commission believes that Senate Bill 710 is not in the public interest. During the moratorium period, sellers and buyers of any real estate for which the present use is other than one-to-four residential units would not be afforded the consumer protection provisions of the new law.

The point needs to be clearly made that all transactions covered by the moratorium do **not** involve knowledgeable, sophisticated buyers and sellers. The consumer protection provisions of the law are just as important to a young couple buying a flower shop or a widow selling a small commercial property as they are to a first time home buyer.

Consumers must be able to make an informed choice before working with a real estate agent. The purpose of the disclosure of alternative agency relationships form (copy attached) is to provide this information. We would be glad to work on the development of a form which would be more suitable to transactions that are not residential.

Under Senate Bill 710, if the real estate is not a one to four residential unit, agents would not have to tell buyers and sellers who they represent in the transaction. They could act as undisclosed dual agents or in a dual capacity of agent and undisclosed principal without violating the law. Buyers and sellers would not be given the protection of written agency agreements. A written agreement, which clearly defines the relationship, reduces the possibility of misunderstandings and provides a road map for broker behavior.

House Judiciary
3-7-96
Attachment 6

House Judiciary Committee
Senate Bill 710
page two

When Senate Bill 110 was passed last year, we knew that some fine tuning would need to occur and thought that it would take a year after the law was implemented to identify the problem areas. At a meeting this week, the commission passed a motion to appoint a task force to work on a proposal for submission to the 1997 Legislature. The task force will include representatives of various real estate disciplines within the industry.

The commission respectfully requests that no action be taken during this session. However, if you feel it is best to recommend Senate Bill 710 for passage, the commission yields to your decision.

Thank you for your consideration.

An overview of the current law is attached.

DISCLOSURE OF ALTERNATIVE AGENCY RELATIONSHIPS

This disclosure is to enable you--a prospective buyer or seller of real estate--to make an informed choice before working with a real estate agent. The sale of real estate may involve one or more real estate licensees. Since a licensee may be the agent of a buyer or a seller, or both, it is very important to understand whose interests are represented by each agent.

You should not assume that an agent is acting on your behalf unless you have signed a contract with that licensee to represent you. As a customer, you represent yourself. Any information which you, the customer, disclose to the agent representing another party will be disclosed to that other party. All licensees representing other parties are obligated to treat you honestly, give you accurate information, and disclose all known adverse material facts.

THE CHOICES AVAILABLE TO YOU IN KANSAS

SELLER'S AGENT. A Seller's Agent has the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting and a duty to represent the seller's interests in the sale of the property. This generally means a duty to market the property to find a buyer willing to pay the highest price on the most advantageous terms as quickly as possible. A Seller's Agent also has a duty to disclose to the seller all material information acquired from the buyer or from any other source.

SUB-AGENT. Sellers may authorize their agent to offer sub-agency to other firms. A sub-agent (agent of the agent) also represents the seller's interests. Sellers have the same liability for acts of a sub-agent as they do for the agent they hire.

BUYER'S AGENT. A Buyer's Agent has the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting and a duty to use his or her expertise to help the buyer find a suitable property and to acquire it at the most advantageous price and on terms suitable to the buyer. A Buyer's Agent also has a duty to disclose to the buyer any material information acquired from the seller or from any other source.

DISCLOSED DUAL AGENT. A real estate agent may represent more than one party **only** with the informed consent of all parties to the transaction. Disclosed dual agency is most likely to occur when a buyer represented by a Buyer's Agent wants to purchase a property listed by that agent's firm.

The buyer and seller must sign a dual agency consent agreement, which fully describes the duties and obligations of the disclosed dual agent. A disclosed dual agent may not disclose any confidential information that would place one party at an advantage over the other party and may not disclose any of the following information without the informed consent of the party to whom the information pertains: That a buyer is willing to pay more than the price offered; that a seller is willing to accept less than the asking price; motivating factors of either party for buying or selling; or that a party will agree to financing terms other than those offered.

DESIGNATED AGENT. An alternative to disclosed dual agency is a designated agent who represents the buyer. The designated agent may show properties listed by other agents in that agent's firm to the buyer. The other agents represent the seller. The designated agent performs all the duties of a Buyer's Agent, while the other agents perform the duties of a Seller's Agent. The designated agent **CANNOT** continue to represent the buyer exclusively IF: (1) the buyer wants to see a property which was listed personally by the designated agent; or (2) the designated agent's broker becomes directly involved in the transaction. Either situation would trigger a disclosed dual agency but **ONLY** with the written consent of both parties.

THE CHOICES AVAILABLE TO YOU WITH THIS FIRM

Brokerage firm: _____ Name of licensee: _____

This firm authorizes its agents to act as a:

Seller's Agent Buyer's Agent Designated Agent Sub-Agent Disclosed Dual Agent

Unless agreed differently in the listing agreement, the following is our firm's policy on offering cooperation and compensation to other agents:

Offer cooperation to Sub-Agents	<input type="checkbox"/> yes <input type="checkbox"/> no	Offer cooperation to Buyer's Agents	<input type="checkbox"/> yes <input type="checkbox"/> no
Offer compensation to Sub-Agents	<input type="checkbox"/> yes <input type="checkbox"/> no	Offer compensation to Buyer's Agents	<input type="checkbox"/> yes <input type="checkbox"/> no

ACKNOWLEDGMENT

Real estate licensees are required by law to provide this form to prospective buyers and sellers. The licensee presenting this form to you has explained alternative agency relationships and has indicated the type(s) of agency which his or her firm offers. Keep in mind that this form is **not a contract**--if you choose to have an agent represent you, a written agency agreement (contract) must be signed. Please acknowledge receipt of this form by circling "seller" or "buyer" and signing below.

Seller or buyer

Seller or buyer

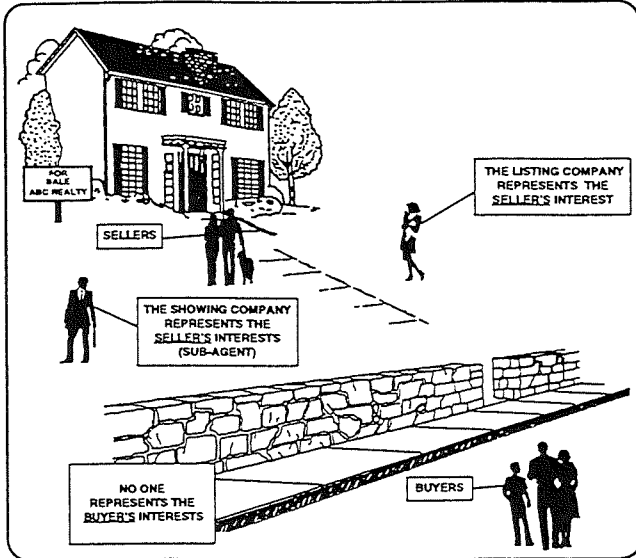
Date

Adopted on October 19, 1995 by the Kansas Real Estate Commission for mandatory use by real estate licensees on and after January 1, 1996.
DAAR Form No. 1

6-3

WHAT'S THE DIFFERENCE?

TRADITIONAL REAL ESTATE PRACTICE ALL AGENTS REPRESENT THE SELLER



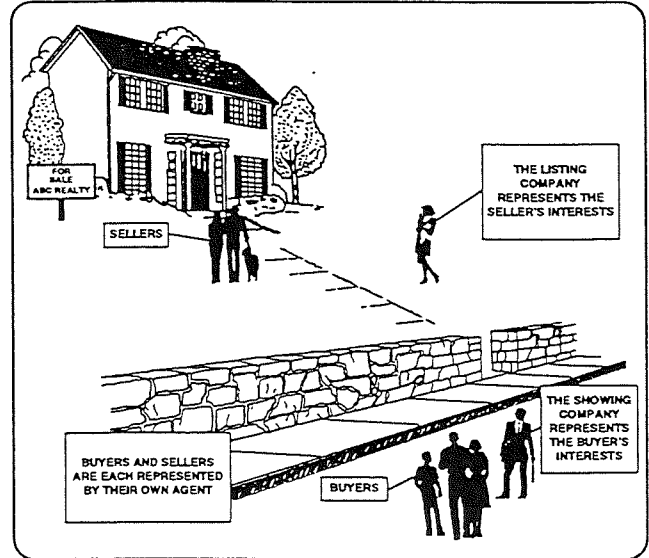
LEGAL DUTIES OF SELLER'S AGENT TO SELLER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep seller's information confidential
- Disclose if buyer is unable to complete contract

LEGAL DUTIES OF SELLER'S AGENT TO BUYER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep buyer's information confidential
- Disclose material defects of property
- Disclose if seller is unable to complete contract

BUYER REPRESENTATION SHOWING COMPANY REPRESENTS THE BUYER'S INTERESTS ONLY



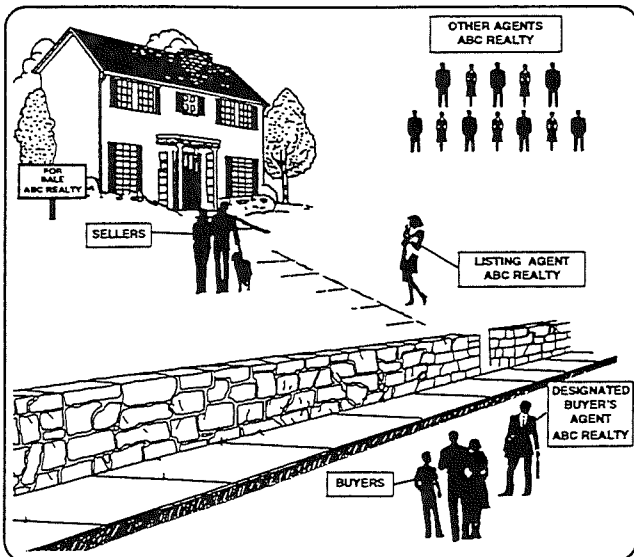
LEGAL DUTIES OF BUYER'S AGENT TO SELLER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep seller's information confidential
- Disclose if buyer is unable to complete contract

LEGAL DUTIES OF BUYER'S AGENT TO BUYER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep buyer's information confidential
- Disclose material defects of property
- Disclose if seller is unable to complete contract

DESIGNATED AGENT – BROKER AUTHORIZES AGENT TO REPRESENT BUYER WHEN SHOWING COMPANY LISTINGS



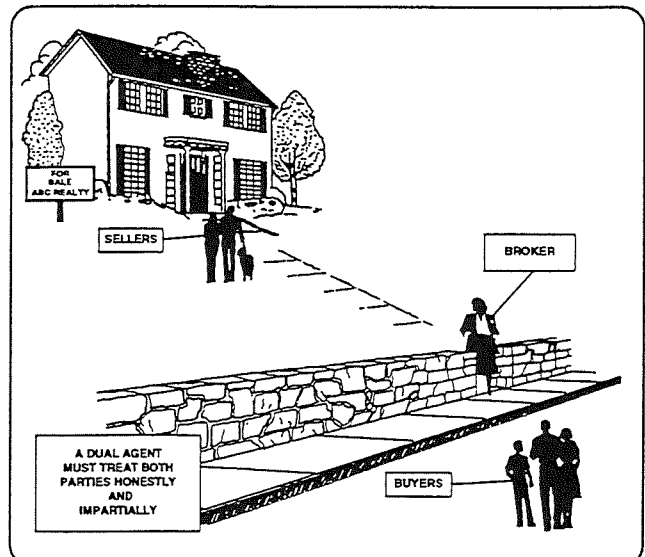
LEGAL DUTIES OF LISTING AGENT & OTHER AGENTS TO SELLER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep seller's information confidential
- Disclose if buyer is unable to complete contract

LEGAL DUTIES OF DESIGNATED AGENT TO BUYER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep buyer's information confidential
- Disclose material defects of property
- Disclose if seller is unable to complete contract

DISCLOSED DUAL AGENCY ONE COMPANY REPRESENTS BOTH BUYER AND SELLER INFORMED CONSENT TO LIMITED AGENCY



LEGAL DUTIES OF DISCLOSED DUAL AGENT TO SELLER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep seller's information confidential
- Disclose if buyer is unable to complete contract

LEGAL DUTIES OF DISCLOSED DUAL AGENT TO BUYER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep buyer's information confidential
- Disclose material defects of property
- Disclose if seller is unable to complete contract

6-4

OVERVIEW

Brokerage Relationships in Real Estate Transactions Act K.S.A. 1995 Supp. 58-30,101 thru 58-30,112

58-30,101. Title of act

58-30,102. Definitions

58-30,103. Written agency agreements

Sets forth requirements and prohibitions relating to agency agreements. Lays out:

When an agency agreement must be drawn

Minimum terms that the agreement must contain

Requirements for providing a copy to the principal

Disclosure of any potential for dual agency/designated agency in buyer agency agreements and for dual agency in seller agency agreements

Prohibitions against interfering with existing agreements

58-30,104. Termination of relationships

Lays out when an agency relationship ends. Delineates duties that continue after termination with specific guidelines concerning confidential information.

58-30,105. Compensation

Clarifies that the compensation is not the determining factor in creating agency relationships; that compensation is presumed to come from the transaction and is to be determined by agency agreements. Lists those with whom a broker may share a commission

58-30,106. Minimum requirements of seller's or landlord's agent

Prior to the act, licensees had no clear definition of their legal duties and obligations. The intent of this (and the next) section was to codify common law so that duties of licensees would be well defined. The duties and obligations set forth in these sections must be contained in the agency agreement with the seller or buyer.

Lays out specific statutory duties to the client. A seller's or landlord's agent, in representing a client must:

Perform the terms of the written agreement made with the client;

Exercise reasonable skill and care for the client;

Promote the interests of the client with the utmost good faith, loyalty and fidelity. The section goes on to list ways in which this duty is carried out.

The agent must disclose to a customer any adverse material facts actually known by the agent; an "including but not limited to" list is spelled out.

If a qualified inspector is hired to inspect the property and provides a written report to the client or customer, the agent is not required to disclose to the client or customer information regarding the physical condition of the property. However, if the licensee has knowledge of any fact that would contradict the information in the report, that fact must be disclosed to the client or customer.

Provides that agents, in performing inspections and making disclosures, must exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson. This recognizes that real estate agents are not plumbers, electricians or engineers and are not held to that standard.

Provides that the agent cannot be liable for punitive or exemplary damage for failure to perform any of the duties set forth in the section, unless such failure is shown by clear and convincing evidence that the licensee acted toward the plaintiff with willful conduct, wanton conduct, fraud or malice.

58-30,107. Minimum requirements of a buyer's or tenant's agent
The concept of buyer's agency has been a very large change in the marketplace. In the past, most agents represented sellers, and buyers were treated as customers who were not represented. A growing number of buyers are demanding representation at the same level as sellers.

Mirrors the previous section by providing the duties and obligations of a buyer's or tenant's agent to the client.

Provides that the agent must disclose to any customer all adverse material facts actually known by the licensee, including material facts concerning the client's financial ability to perform the terms of the transaction.

Contains the same language regarding inspection reports and punitive damages as contained in the previous section on seller's and landlord's agents.

58-30,108. Minimum requirements of a dual agent
The advent of buyer's agency increased the utilization of dual agency. Dual agency occurs when a buyer client of a firm wants to see a property listed by the same firm. This section sets forth the duties and obligations of a dual agent. It requires that each client sign a dual agency consent agreement, which includes those duties and obligations. Either client has the right to reject the dual agency. This section places the dual agency question as a matter of free choice in the marketplace.

58-30,109. Separate representation within one brokerage firm
Permits appointment of designated agents as an alternative to
disclosed dual agency for in-house transactions. A broker may
appoint an affiliated licensee as a designated agent to
represent a buyer client to the exclusion of all other
affiliated licensees. This allows the designated agent to
sell another agent's (in-house) listing to the buyer client
without becoming a dual agent. A disclosed dual agency is
triggered if the buyer client wants to see one of the
designated agent's own listings.

A disclosed dual agency is also triggered if the designated
agent's broker becomes directly involved in the transaction by
performing any of the duties set forth in 58-30,106(a)(3).
The broker may quote the law, advise agents as to the
application of the law, and explain office policy to agents.
Advice must be general, not specific to a transaction.

It should be emphasized that designated agency is an option
for the broker. Additional responsibilities are taken on if
the broker chooses to offer it.

58-30,110. Disclosure of agency relationship

This section is the key to consumers being able to make an
informed choice before working with a real estate agent. It
sets forth the time frame for licensees to furnish the
disclosure of alternative agency relationships (DAAR form) to
a prospective seller or buyer.

This section will undoubtedly be worked over by the task
force. It is also likely that the form will be modified and
that a different form will be developed for transactions other
than residential.

58-30,111. Imputed knowledge

Provides protection for sellers and buyers by stating that
clients are not liable for the misrepresentation of their
agent unless the client actually knows of the
misrepresentation. Likewise, the licensee is not liable for
a misrepresentation of their buyer or seller unless the agent
knew of the misrepresentation.

58-30,112. Forms, rules and regulations

Requires the Real Estate Commission to provide suggested forms
of agency agreements and authorizes the adoption of
regulations pertaining to agency agreements.

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TOPEKA

COMMITTEE ASSIGNMENTS
BUSINESS, COMMERCE AND LABOR
FINANCIAL INSTITUTIONS AND INSURANCE
HEALTH AND HUMAN SERVICES
JOINT COMMITTEE ON PENSIONS
INVESTMENTS AND BENEFITS

ANALYSIS OF THE BROKERAGE RELATIONSHIPS IN REAL ESTATE TRANSACTION ACT

From: Representative Gary A. Merritt
To: Jean Duncan, Director and Commission Members

In 1995, the Brokerage Relationships In Real Estate Transactions Act (BRRETA) was passed by the Kansas Legislature to take effect January 1, 1996. The legislature was told by lobbyist that this is what the real estate industry wanted. I do not believe that is a fair characterization of what the real estate industry wants or wanted. An extremely small cross-section of the industry had input and it has become evident from the large number of letters and phone calls that the "real estate community", with the exception of the small segment who benefits from this act, are up in arms.

Since the new law was the basis for the mandatory core class required for all real estate licensees to take, the information was conveyed much more quickly than most new laws. The approved instructors started discovering numerous inconsistencies and issues began arising for which the law did not provide an answer. The benefit of this is that we do not have to wait one or two years and allow the public to be harmed before corrections can be made. BRRETA will benefit some Realtors but damage the buying public and small to mid-sized independent brokers. I recommend that BRRETA be repealed IMMEDIATELY for the following 10 reasons:

1. BRRETA appears to abrogate common law and thereby removes the primary protections that all citizens currently expect in real estate transactions. If it does not abrogate common law, it is inconsistent with common law leaving licensees very confused as to which law might prevail in a court of law.
2. Buyers are left unprotected from misrepresentation by sellers and real estate agents. BRRETA shifts the liability to unlicensed home inspectors.
3. BRRETA removes the "due diligence" requirements from listing agents because the law removes language requiring agents to disclose facts that they "know or should have known." The burden for discovery returns to the buyer who may or may not be skilled in such matters and who will rely on the expertise of the licensed agent or unlicensed home inspector. We may wish we could remove the *should have known* portion of the language but in doing so we may have removed the protection from *misrepresentation of known defects!*

House Judiciary
3-7-96
Attachment 7

2.

4. The "designated agency" portion of the law discourages broker supervision of licensed salespersons in order for brokers to avoid the problems of dual agency. The public is then represented by a salesperson with little or no supervision and, in some cases, a minimum of training and experience. In large companies with the "bull pen" type of office structure, the needed confidentiality cannot possibly be maintained.

5. Large real estate companies advertise that prospective buyers and sellers will receive the benefit of an entire company working on their transaction, when in fact, under the new law, some agents may only be permitted to represent buyers, others only sellers. The public is being misled and in some cases may be receiving the services of only one salesperson or not be represented at all. It is also quite unclear who the salespersons of the broker, who are not the listing or selling agents, are representing. The definitions seem to say that all affiliated licensees represent the seller if the broker represents the seller. However, apparently the salespersons can later be appointed to represent a buyer without the seller approval. The ambiguity in the law must be remedied.

6. Since liability for misrepresentation is unclear (see #2 above) and due diligence requirements have been shifted to the buyer, the Kansas Real Estate Commission is attempting to remedy the ambiguity in the law with a statewide mandatory errors and omissions policy where each licensee pays the same premium, regardless of numbers of transactions or dollar volume or risk.

7. BRRETA provides some benefits to large brokerage firms but severely limits smaller individual brokers or small companies. "Designated agency" was designed as an alternative to dual agency (which of course is quite risky to brokers) but is only practical when the broker is not personally involved in brokerage activities. If the broker lists and sells personally, the broker cannot really use designated agency and is forced into risky dual agency that is not required of large brokers. The law is creating special classes of brokers and special privileges for some and putting others at a competitive disadvantage.

8. Having state approved contract forms insulates licensees from legal challenges over the sufficiency of the contracts. However, these state approved forms issued by the Kansas Real Estate Commission are written from a "licensee protection" perspective and not from a "public protection" perspective. Although this could be changed in the future, the first set of forms were written by an attorney for a Board of Realtors who is, of course, representing the Realtors and protecting them. The Real Estate Commission does not have the expertise to handle these sensitive issues. There is no reason for the Real Estate Commission to issue forms except to insulate licensees from legal liability at the expense of the public.

9. The DAAR form, mandated by law to be disclosed to buyers and sellers, is insufficient to educate the public so that they can truly make "informed" choices on agency. This one page form cannot explain anything as complex as dual agency or designated agency. "Seller agency" and "buyer agency" are clear to the public. "dual" and "designated" are not clear (perhaps because they do not make sense to anyone). However, use of this form will once again insulate licensees from legal liability as to the sufficiency of the disclosure at the expense of the public. Also it is inconceivable that any industry would be perceived as needing this type of device, when it is not known to other industries.

10. Commercial, industrial, new home and residential agents are all required to use forms and behave in a manner that does not fit in with what the public has become accustomed. Rather than just exempting the commercial and industrial and land sellers from having to comply with this agency law, separate licensing is a must with different standards used depending on the needs of the public in each particular category. Also keep in mind that for the most part in the Commercial arena we are dealing with a sophisticated buyer who probably doesn't need a cartoon strip.

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INVESTMENTS AND BENEFITS

POSITION PAPER

Brokerage Relationships in Real Estate Transactions Act

Although the act contains some good features, BRRETA is flawed due to the fact that it is: (1.) based on faulty assumptions, and (2.) fixes the wrong problems. This appears to be a law written by "committee" of Realtors so that it makes some sense when each portion is looked at separately but has significant problems when the act is considered in the whole. Whether it can be fixed with significant revisions or should be totally repealed is still something that I am contemplating. However, I firmly believe that some action must be taken IMMEDIATELY. To do otherwise will confuse the real estate community when the needed changes are made. Currently the law is new enough and most companies are so confused that few licensees have had it "ingrained" in their minds and developed behavior that has become the norm. If BRRETA becomes the standard for licensee behavior (which I believe will take at least one year), the ambiguities in the law will create such confusion at that point that the licensees and the public will be harmed significantly.

POINT ONE : Does this law abrogate common law or not? Language was struck from the original bill that would have made it clear that this bill overrode common law. However, after passage, many of the backers of the bill (including some Realtor attorneys) asserted that this act did abrogate common law. The reason is clear: this law significantly differs from the common law of agency. Unfortunately, since it is not clear whether common law is still applicable, the licensee doesn't know how to act. Is the solution to abrogate the common law? Of course not. That would be nonsense. This act is very narrow in scope and to say that the entire common law of agency is abrogated by this law leaves phenomenal holes in the law. Perhaps a very narrow definition that " when this law differs from the common law, this will override" could be workable. I doubt that this will in any way clarify the way licensees should behave and would leave us with years and years of litigation.

Most of the other points stem from this one. That is, if the common law is still viable, how does it relate to this act? When there is a vague area, which one takes precedence? Until this issue is decided, the licensees will continue to conduct transactions in confusion.

POINT TWO: Reduction of both principal and licensee liability leaves the buyer in a precarious position due to the fact that home inspectors are not licensed: Section 6 (a) (3) (d) leaves the licensee not liable for material defects if the licensee recommended that a "qualified third party" inspected the property. Section 5 defines "qualified third party" as a " federal, state, or local governmental agency or any person whom the broker, affiliated licensee or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection that has been conducted by the third party in order to prepare the written report." Obviously, this is meant to transfer the liability to the inspector and away from the licensee.

Unfortunately, Kansas does not license home inspectors. What industry standards are we talking about? ASHI (American Society of Home Inspectors) has standards but most persons doing inspections are not ASHI members. Secondly, although the ASHI standards appear quite good, the standards are vague in many areas and quite regularly ignored in part or whole by ASHI members. The reason that the standards are vague, lies in the definitions used. At the ASHI convention, speakers regularly speak on how to comply with these standards. The ASHI members , when queried, readily admit that few actually comply to the degree recommended by the speakers. **KEY POINT:** Until inspectors are licensed by the State of Kansas and standards are adopted by the State of Kansas, to transfer such great liability away from licensed individuals to unlicensed individuals, few of whom have the financial backing to cover this liability, leaves the buying public unprotected.

POINT THREE: Taking the "know or should have known" language out of the act, when explaining what adverse material facts licensees must disclose to purchasers, and replacing it with Section 6 (d) (1) using the words "actually known by the licensee", takes the obligation of due diligence away from the licensee. However, it gives a list that licensees must disclose, and closes with the words "actually Known" , is an attempt to protect the licensee from negligent misrepresentation: i.e. since I didn't know of the problem (or you cannot prove that I knew of the problem) I am not liable for failing to disclose what I didn't know. This is diametrically opposite to current public policy which indicates that the buying public should be able to count on the person selling a product to have done some type of reasonable inspection of the product being sold , before putting it on the unsuspecting public. Some will say that the recommendation of an inspector solves this dilemma. Obviously I do not think so (see Point Two above). Section 6(d) (2) even says that a seller's agent owes no duty to inspect the property or to even verify the accuracy of any statement made by the client (seller). Section 6 (d) (4) requires a licensee to disclose any facts that the licensee knows that contradict information provided by an inspector. However, the licensee apparently is not required to disclose facts that contradict those provided by the seller (client). Section 11 (b) suggests that the licensee might be liable for misrepresentations made by the agent's client if the licensee knew of the misrepresentation. However, why should a seller "come clean" and tell material problems to a licensee when the licensee would then have to tell the buyer. It makes much more sense from a seller's perspective to "keep quiet" and hope that some inspector misses it.

Let's assume that happens. Who is liable? The seller? Probably not unless the buyer could prove intentional misrepresentation. The licensee? Probably not since the licensee did not know of it. The inspector? Probably not since most inspection reports contain so many disclaimers protecting the inspector. The buyer? Probably. The person who is least capable of detecting the problem is left with the liability or cost. This law is very close to a return to "caveat emptor" (buyer beware) in disguise. The licensee can benefit (in terms of commission) because a sale was made but the licensee has no liability unless the buyer can prove the licensee was aware of the misrepresentation. I guess that leads us back to the inspector which is certainly no answer due to the facts previously stated above. If we wish to return to "caveat emptor" let's be straight forward about it and not have this massive confusion.

Most cases regarding misrepresentation are difficult to prove in terms of intentional fraud. Most are in the area of "failing to disclose." If the client and agent are not required to use some type of due diligence and disclose items found, "keeping quiet" will become the future code of conduct. That certainly conflicts with current public policy which is intended to protect the public.

Section 11 uses the word "misrepresentation" without defining whether the misrepresentation is strictly "intentional" or also includes "negligent misrepresentation." It also speaks to "innocent misrepresentation."

POINT FOUR: What is the role of the broker now? KSA 58-3035 (m) indicates that the supervising broker must supervise activities of salespersons and associate brokers. Section 2 (b) of BRRETA, defines "agency" as the "broker representing another" and in (c) indicates that the agency "agreement is between the broker and the broker's client." Affiliated licensees (salespersons and associate brokers) are not directly a party to the agency contract. This puts the broker directly in the chain of agency. Many brokers have chosen, rather than to perform brokerage services themselves, to hire large numbers of salespersons as independent contractors to act on the broker's behalf to obtain listings and procure buyers. Since these salespersons were agents of the broker, their acts were attributed back to the broker. The broker received significant compensation for the services of the salespersons and was responsible for supervising them and taking liability for their actions in return for that compensation. The "designated agency" concept continues the broker's contractual agency relationship with the buyer and the right to obtain compensation for the acts of the salesperson but deletes the broker's obligation to supervise the acts of the salesperson. In fact it encourages the broker to NOT directly supervise the salesperson because, if the broker does get involved, it forces the broker into a dual agency which leads to significant liability for the broker. In reality, the salesperson is now functioning as a broker. This could conceivably happen the first day a salesperson is licensed. I cannot imagine that the legislature intended to allow a novice salesperson to work unsupervised.

Some companies have attempted to solve this dilemma by having the broker appoint someone else to supervise them; perhaps the broker of a different branch office or some associate broker. This certainly makes little sense as the so-called "designated manager" is still functioning on behalf of the broker.

The Kansas legislature needs to decide whether the broker is in the chain of agency or not. If not, each salesperson begins to function as a broker. In the case where each salesperson begins to function as a broker, the law needs to be changed to allow for single licensing (i.e. elimination of salespersons license thus allowing each licensee to be a broker or apprentice broker and responsible for their own behavior). This is the direction taken by the State of Colorado and being considered by numerous other states. "Designated Agency" makes little sense unless it is coupled with "individual responsibility" which would require individual licensing. **What is truly sad is that this option has been available to persons with broker's licenses even under the old law. The "designated agent" concept was totally unnecessary to fix the problem that the brokers thought existed;** i.e. that if one licensee represented the buyer and the other represented the seller that the broker/owner automatically became a dual agent with phenomenal liability. This could have all been solved by looking at associate brokers as individual brokers operating under a contract with the employing broker's company. Of course, novice salespersons would not be able to function as brokers as they truly need supervision. Any person with two year's experience in real estate could have easily obtained a broker's license and functioned on behalf of either buyer or seller as an individual broker.

POINT FIVE: Since Kansas only allows designated "buyer's" agents (not designated seller's agents) what role do the remainder of the salespersons of the broker play when one of the salespersons accepts a listing on behalf of the broker? New Section 2 (o) defines seller's agent to mean "a broker who has an agency with a seller. The term includes the broker's affiliated licensees and subagents of the broker." That would appear to mean that all salespersons (including the listing salesperson) also represent the seller when a listing is taken. If the listing is taken prior to a designated agent being appointed for the buyer of a particular property, doesn't that mean that all the salespersons already represent the seller? Would they then not need a release from the seller to become a buyer's agent? What about the rest of the salespersons, other than the one appointed as a buyer's designated agent? Whom do they represent? If they don't represent the seller, and the designated buyer's agent represents the buyer, and the broker cannot get involved in the transaction action to any degree without creating dual agency, it is misrepresentation for salespersons to obtain a listing by saying that the seller is getting the services of an entire company. In reality, the seller is receiving the services of the listing salesperson only. The seller is not listing with a company but rather with a listing salesperson. In that case , why is the broker even considered in the chain of agency? Kansas law is very unclear when it apparently allows the broker to take a "seller's agent" and later appoint them to represent a buyer without the consent of the seller. At the very least, the "potential" designated buyer's agents should be listed in the seller agency agreement, so the seller will be aware that these designated buyer agents are not representing the seller.

However, now the broker is switching salespersons back and forth from seller's agents to buyer's agents without the knowledge or permission of the seller. Some would say: who cares if the salesperson has not shown the property or obtained confidential information from the seller?" I would respond that the seller cares. Why did the seller list with a certain company? Most likely due to the representation that the company has so many salespersons acting on behalf of the seller.

Inherent in all of this, is the assumption that the broker will be supervising all of the activities of all of the salespersons and associate brokers and we know that this is not now possible. The real estate community should not be able to have it both ways: (1) use charts and graphs to show the numbers of salespersons and total amounts in sales their agents have accomplished and encourage the seller to hire them as their agent; then (2) immediately take these salespersons and appoint them as designated buyer's agents.

POINT SIX: Since this law makes it very unclear who is liable for misrepresentation, the **Kansas Real Estate Commission is now considering mandating errors and omissions insurance through the State for all licensees. Why? If this law is really enforceable, there should be significantly less liability on the licensees. Isn't that what the proponents of 1995, Senate Bill 110 told you.**

Apparently, unless the misrepresentation was blatantly intentional, the licensee is not liable anyway. If blatantly intentional, will the E & O Companies be likely to pay the claim? Those with claim experience, trying to collect from E & O carriers, due to an agent's misrepresentation, can speak to the fact that it is quite difficult to collect, especially when there is any dispute as to the facts.

POINT SEVEN: The law is very unfair inequitable..... in several ways. First, it allows large companies with non-listing and selling brokers and salespersons to appoint buyer agents and avoid the problems associated with dual agency. Small brokers whose livelihood is dependent on listing and selling cannot do this since by definition they are involved in the transaction, by the act of listing or selling. This forces them to be either single agents or dual agents. The first puts them at a competitive disadvantage in the marketplace, the second in terms of liability in court. **BRRETA was written for a handful of large brokers, to their advantage, and is very unfair to the much larger number of medium-sized to small brokerage arrangements which have chosen to take an active role in their brokerage affairs. Second, if the Kansas Real Estate Commission succeeds then by solving some of the vagueness of liability with mandatory E & O insurance, the premiums paid will be based, not on an individual's risk, but on the state as a whole. Why should someone who handles a small number of transactions pay the same premium as someone who transacts a large volume? Rather than encourage individual responsibility, mandatory errors and omissions insurance purchased through the State, will discourage it.**

POINT EIGHT: Having state approved forms is only another way for the licensees to avoid liability. If the Real Estate Commission has approved a form, the licensee can stand before a judge and use that as a strong argument.

Thus, even if the form is challenged under the Sherman Anti-Trust Law or other laws, the licensee can avoid much liability. The National Association of Realtors has for years recommended that their forms be used under a government umbrella of approval. However, just who writes these forms? The law says that only attorneys can prepare legal forms. The Real Estate Commission is composed largely of Brokers. These forms that have just been issued by the Kansas Real Estate Commission were written by attorneys for a Board of Realtors. Significant portions are subject to complaints from persons who represent the rights of the public.

Why should the Real Estate Commission be involved in approving forms for what is a private act of creating agency or purchase between two parties? Some say that it is to make sure that all brokers have access to suitable forms. **That seems strange in that any broker can have an attorney prepare legal forms for them. No, the real reason is to shield the licensees from liability for forms that are not in the best interest of the public. Since the organized real estate community controls the Kansas Real Estate Commission, that allows them to accomplish through government what they can not legally do as an organized body of licensees.** An example is the recent Federal Trade Commission consent agreement with Port Washington, N.Y. Real Estate Board. Although a number of issues were included in the agreement, one of the main issues was that the forms used by the Brokers who were members of the Board restricted a property owner from playing a role in determining what the commission split would be. The new forms recently issued by the Kansas Real Estate Commission do the same thing. Realtor groups have been under attack in recent years for including items in "standard forms that were not in the public's best interest. Now, the State of Kansas is doing the deed for them.

POINT NINE: The DAAR form (agency options) confuses the public more than it educates them. The purported purpose of this form was to educate the public on their options so they could make an informed choice on agency. The form has a lot of words on one side and (optional) pictures on the other. What other industry do we know that uses a comic strip to educate the clientele as to the deep dark dangers hidden in the potential relationships that could be created. We can never educate the public on the vague areas of agency with a one page form EXCEPT for those that the public already understands. The public understands the idea that one person represents one side and a different person represents another. We are trying to use this form to argue later that the public gave " informed consent " to agency relationships that do not make sense to them (such as dual agency and designated agency). The side of the form with the pictures was even "slanted" to make designated agency appear better for ALL parties than it really is. Can the public ever understand designated agency? Even those who wrote the law and teach it disagree as to what it really means. Can the public understand dual agency? Even the Bible tells us that no one can serve two masters. No, let the licensees go out and try to "sell" the public on each company's "brand" of agency. Later, let the court decide if their "oddball" agency approach is acceptable. **Do not let them use the power of government to hide behind, and then plead ignorance.** The DAAR form does NOT educate the public. It only allows for even more confusion since each licensee can "slant" the form to say whatever they want it to say.

For example, the dual agency portion was "softened" by deleting the words that the buyer and seller's interest are adverse to one another. That was a political decision by the Kansas Real Estate Commission, not a logical one. Economics 101 teaches you that.

POINT TEN: This law lumps residential, commercial, new home sales, and all others into one basket. There are significant differences. What is probably needed is a total look at the license law by an independent group separate from the Kansas Real Estate Commission and certainly separate from KAR, to see which parts of the law are applicable to which areas of real estate. Separate licensing is clearly needed, at least for residential and commercial sales.

That would take significant work but it is badly needed as soon as possible. Some would like to "temporarily" solve this problem by letting commercial and new home agents out from under this part of the law. That is only a Band-Aid approach and does not solve the essential problem that this legislation is fatally flawed.

SUMMARY: I could write for days on the problems of this law. Also, one should reflect back and determine if the public is actually being better served by the continuing ill-conceived adversarial relationships which are being fashioned by lawyers for the real estate industry. The current quest to define agency relationship and roles has become increasingly complicated and it is questionable what real advantages have accrued to anyone other than those attorneys. I think the real estate industry is being led down the primrose path.

I recall as I was growing up, that real estate brokers were among some of the most respected leaders in the community. Ask yourself if that is true today? Ask yourself if all of this fine tuning of the law has produced greater integrity or higher standards of conduct? I think what has really happened is that, only greater seeds of mistrust have been sown, and not to the benefit of the real estate industry or the public.

Let it suffice to say that this bill was hastily crafted and passed, without enough research and input from experienced industry people. **Few licensees across the state of Kansas were even aware of what was happening to them, until it was already passed. The Real Estate Commissioners were even confused and did not understand what they were supporting. a lobbyist PUSHED the Real Estate Commission to support it and then MISLED the legislature into thinking that this bill was supported by both the real estate industry and the Real Estate Commission.** At a recent KAR reception for legislators, KAR members were being told not to show any displeasure with the new law because it would create a loss of credibility with the legislature. They were also told that it was only older people in the industry who didn't like change, who were in opposition to BRRETA.

JOHN WELSHIMER
REPRESENTATIVE, EIGHTY-EIGHTH DISTRICT
SEDGWICK COUNTY
6103 CASTLE
WICHITA, KANSAS 67218
316-685-1930
DURING SESSION
LEGISLATIVE HOTLINE
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: TAXATION
LOCAL GOVERNMENT
ADMINISTRATIVE RULES & RESOLUTIONS

MARCH 7, 1996

John Welshimer

TO: REP. MIKE O'NEAL, CHAIRMAN, HOUSE JUDICIARY COMMITTEE.
AND COMMITTEE MEMBERS

SUBJECT: SB710

AFTER TALKING TO DOZENS OF BROKERS ACROSS THE STATE, IN FIRST, SECOND, AND THIRD-CLASS CITIES; AND AFTER HAVING A MEETING WITH THE COMMISSION AND OFFICERS OF KAR LAST THURSDAY WHERE ALL THE VARIOUS GROUPS OF REAL ESTATE PROFESSIONALS HAD THEIR DAY TO SPEAK OUT, I BELIEVE THE CONTROVERSY WE SEE AS LEGISLATORS IS NOW IN FOCUS.

THE MAJOR CONTROVERSY IS LARGE FIRMS OF RESIDENTIAL LICENSEES IN FIRST-CLASS CITIES *VERSUS* VIRTUALLY ALL OTHER LICENSEES. THE LARGE FIRMS, SOME OF THEM FRANCHISES, HAVE 100 TO 700 AGENTS EACH. THESE AGENTS ARE SUPERVISED BY EMPLOYING AND MANAGING BROKERS. THEIR AGENTS REALLY DON'T ACT ON THEIR OWN, BUT AS AN AGENT OF THE BROKER. THE AGENTS DON'T RECEIVE COMMISSION FOR THEIR WORK, EXCEPT THROUGH THEIR BROKER. THESE AGENCIES NEED POLICIES TO KEEP AGENTS STRAIGHT ON WHO'S CLIENT IS WHO'S AND WHO SHOWS WHAT PROPERTY. THESE AGENCIES HAVE BROKERS WHO SEEK POSITIONS ON THE COMMISSION AND WITHIN THE ASSOCIATION OF REALTORS. THEY MICRO-MANAGE THEIR AGENCIES THROUGH LEGISLATION AND RULES AND REGS. AND NOW THEY NOW HAVE THEIR OFFICE POLICY AND PROCEDURE SET IN THE STATUTES AND EVERYONE ELSE MUST DO BUSINESS THAT WAY IN PROTEST.

THE REMAINING AREAS OF THE REAL ESTATE PROFESSION AND SMALLER BROKER OPERATIONS CONSTITUTE APPROXIMATELY 3/4 OF THE TOTAL OF 13,000 LICENSEES IN THE STATE. THEY COME TO THE LEGISLATURE JUSTIFIED BY THEIR DIVERSITY, KNOWLEDGE AND IMPRESSIVE NUMBERS. THEY WANT TO BE RELEASED FROM A DISCRIMINATORY LAW. THEY HAVE WORKED WITH BUYERS AND SELLERS FOR YEARS. THEY KNOW WHAT TO SAY. THEY CAN'T BELIEVE WHAT THEY SEE IN THIS LAW. THEY CAN'T CONDUCT BUSINESS IN THIS MANNER. THESE ARE SOPHISTICATED, EDUCATED PEOPLE WHO HAVE DEEP CONCERN FOR THE PUBLIC INTEREST AND MOST IMPORTANT, THERE WAS NO REASON TO DO THIS TO THEM. THERE IS NO EVIDENCE THAT AGENCY IS A PROBLEM. THE LICENSEES WHO ARE SO UNFAIRLY TREATED IN THIS ACT HAVE CARED FOR THE PUBLIC INTEREST FOR YEARS. THEY HAVE THE EXPERIENCE TO KNOW WHAT IS IN THE PUBLIC INTEREST, POSSIBLY MORE SO THAN THE LARGER OFFICES.

THERE IS NOTHING TO STOP THE LARGE FIRMS FROM IMPLEMENTING THEIR OWN POLICIES, SUCH AS SET OUT IN THE TRANSACTIONS ACT. BUT WE MUST NOT FORCE ONE TYPE OF BUSINESS'S POLICY AND PROCEDURE INAPPROPRIATELY ON ANOTHER. IT IS DISCRIMINATORY TO DO THAT. THE LEGISLATURE HOLDS THE POWER TO CORRECT THIS SITUATION AND SATISFY ALL AS THEY CONDUCT BUSINESS IN KANSAS.

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March 7, 1996

TO: Kansas House Judiciary Committee

**FROM: John W. Omli, President Elect and Legislative Committeeman
Kansas Auctioneers Association, Inc. Salina, Kansas**

RE: SB 710

(1) Thanks for the opportunity to come here today on behalf of the Kansas Auctioneers Association and myself - many Auctioneers operate small real estate firms and market real estate by auction and private treaty.

(2) In February our association unanimously voted to support HB 2814 for the total repeal of SB 110 having to do with brokerage relationships in Real Estate. Why?

Although, I'm sure the authors of SB 110 meant well, what looked good on paper has had its problems in implementation.

The Real Estate industry in Kansas is diverse NOT all the same. What works for the large firm in Johnson County is burdensome for Saline or Ottawa County smaller firms. This one size fits all legislation is an effort at explaining the black and white issue of Agency but instead found all shades of gray.

I heard several legislators say just last week you tell us, get your industry together and tell us what we need. It seems our industry is divided between the legal safety nets of SB 110 granting more protection to the brokers, and the oppressive application through the DAAR form. Kansas Real Estate is more than Kansas Association of Realtors in its present voice - Let the voice of all Kansas real estate licensees be heard.

DAAR FORM:

What purpose does it serve?

**(1) It confuses and intimidates the public and confuses and oppresses the licensee?
As a Broker, you want your sales associates thinking who can I sell this property to, NOT what can I say that is OK with the Kansas Real Estate Commission.**

(2) Why would someone in a small firm want to encourage the client to go elsewhere and find a buyer's agent and come back and buy the property?

(3) Why would someone want to send their client away at all. All their advertising, quality reputation, other marketing tools are geared to getting that client in the door - DAAR PUSHES THEM OUT. UNLESS YOU ARE A LARGE FIRM.

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(4) DAAR encourages transgression. It makes more hoops to jump through for the honest licensee and more opportunities for the less than honest licensee.

(5) BUYERS AGENT PAY

In our schools we are told that the BUYERS Agent fee should come from the transaction. Why?

If the BUYERS AGENT is so good let them get paid directly from the BUYER! Why does the SELLER have to pay for someone who is helping the BUYER get the property at a lower price with less defects. That is like water and oil -- It just doesn't mix.

(6) FORMS:

Why is the Kansas Real Estate Commission in the form business?

**We now have DAAR
BUYERS AGENT
SELLERS AGENT
DESIGNATED AGENT
DUAL AGENT
CONSENT TO CHANGE AGENCY STATUS
WHERE DOES IT STOP???**

IN CLOSING:

Before SB 110 - Real Estate Brokers were responsible for facilitating accurate transactions between BUYERS & SELLERS. what's wrong with Kansas Real Estate licensees having the freedom to sell legislation rather than DAAR.

One size does not fit all in Kansas or anywhere for that matter. I recommend you take SB 710 and amend it to repeal all of SB 110 law we now have and RESTORE TRUST AND INTEGRITY TO THE KANSAS REAL ESTATE PROFESSION.

Thank you --

Any questions call me at 913-825-1316.



SUMNER COUNTY BOARD OF REALTORS

WELLINGTON, KANSAS

March 7, 1996

TO: Rep. Michael R. O'Neal, Chairman and
Members of the House Judiciary Committee

FROM: Tom Byler, President of the Sumner County Board of REALTORS

RE: Senate Bill 710 (amending BRRETA)

In the January 17, 1996, membership meeting of the Sumner County Board of REALTORS, I was directed to support the repeal of the Kansas Brokerage Relationships in Real Estate Transaction Act in the Kansas Legislature. Our board supports the passage of Senate Bill 710 even though it only gives us a chance to solve the many problems created by last year's highly controversial legislation - legislation which completely caught our industry off guard. Only very few knew of the dramatic effect that BRRETA would have on our businesses at the time of its passage. Our board membership consists of residential, commercial, and agricultural brokerages. Naturally, we believe that all real estate licensees should be exempt from BRRETA and support any amendment to include all real estate licensees in SB 710.

We believe the following of BRRETA:

1. This law will negatively affect the economic and industrial development of Kansas. What conclusions will be drawn by an out-of-state CEO prospect regarding the regulatory climate of Kansas if he, by law, is required to sign a Disclosure of Alternative Agency Relationships Form prior to his receipt of any information relative to facility or site acquisition from a real estate licensee?
2. This law is confusing to real estate licensees and the public.
3. This law attempts to legitimize "dual agency" which is a complete conflict of interest. (Baldassarre v. Butler, A49-50, decided March 11, 1993, Supreme Court, New Jersey) If BRRETA is repealed, those who wish to practice "dual agency" will still be able to under the provisions of our previous license

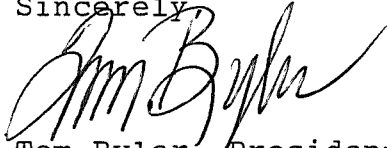
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law. They can also use the written disclosure form at their first meeting with a client or customer if they wish. Our agents resent having to present practices which we believe to be unprofessional, unethical, and potentially illegal to our clients and customers.

4. This law places the real estate licensee in legal jeopardy as BRRETA can conflict with common law and in the final version of the BRRETA Bill of 1995, the Senate Judiciary Committee removed the protective section where BRRETA would supersede common law. According to the Association of Real Estate License Law Officials, only five states have abrogated the common law of agency.

The Sumner County Board of REALTORS hopes that you will give our request every consideration for the passage of SB 710 and the amendment to include all real estate licensees. Our industry's work is challenging enough without having to deal with a set of laws that basically do not apply to ourselves, our clients, or our customers.

Sincerely,



Tom Byler, President

Sumner County Board of REALTORS



REAL ESTATE BROKER
 Ks/Ok/Mo/NM/Tx
 3241 East Douglas
 Wichita, Kansas 67218
 (316) 685-3652
SERVING KANSANS SINCE 1972

Re: "Repeal" (BRRET) Brokerage Relationships in Real Estate Transactions

WHAT the OPPOSITION IS NOT ABOUT:

1. It's NOT ABOUT DISCLOSURE or CONSUMER PROTECTION
2. It's NOT ABOUT RESISTANCE to CHANGE

WHAT the OPPOSITION IS ABOUT:

1. It's ABOUT CONSUMERS, BROKERS, DEVELOPERS, BUILDERS, and INVESTORS WANTING TO CONDUCT THEIR BUSINESS WITHOUT UNNECESSARY INTRUSIONS. WE ALREADY HAD AGENCY LAW!
2. IT'S about CREATING LAWS & REGULATIONS that forces the honest HARD WORKING folks TO ACT LIKE ATTORNEYS
3. It's ABOUT OPPOSITION TO GROWING LEGISLATION & RED TAPE
4. It's ABOUT ELIMINATING THE "PURE" BROKER concept that was and is the foundation that gave birth to the BROKER and THE NECESSITY for BROKERAGE in an open market
5. It's ABOUT PASSING A LAW THAT PERMITS or attempts to "legitimize" a concept of "DESIGNATED BUYER AGENT" which legally FAVORS LARGE REAL ESTATE COMPANIES over SMALL BROKERAGE and is a "conflict in and of itself"!
NOTE: Like Attorney from one Firm "attacking" BOEING & a second Attorney from same firm defending Boeing.
6. It's ABOUT HAVING "NO" REPRESENTATION! Many of the Realtors licensee's (50% industry) and the other approximately 50% (non-realtors) had no "voice"
7. It's ABOUT THE USE OF RPAC DOLLARS TO PASS & maintain undesired laws and regulations
8. It's ABOUT PASSING LAWS under THE "GUISE" of the INDUSTRY WANTED THEM, when many, if not most:
 - a. Public is not receptive & did not demand it
 - b. MAJORITY of licensee's don't favor it-PLUS
 - 1) 50% (approx.) of licensee's are Realtors
 - 2) 50% of licensee's (NON-Realtors) HAD NO VOICE
 - c. COMMERCIAL BROKER-Realtors Oppose it
 - d. Most BUILDERS are opposed to the new law
9. REPRESENTED that NEW LAW REDUCES BROKER LIABILITY?
NOTE: Sec 6&7 (a) 6 state "Comply with any..." LAWS, etc.???
10. It's ABOUT Staffers, Officers, Commissioners that relied on their representations, RELUCTANCE to CHANGE.
11. ALL COULD HAVE BEEN RESOLVED and CAN NOW BE RESOLVED BY:

STEP "ONE"

A. REPEAL the "ONEROUS" BRRET LAW BY AMENDING SENATE SENATE BILL 710 with Old HOUSE BILL 2814(Tl. Repeal)

STEP "TWO"

"Facilitator"
 GOOD for Small, -----
 Rural, Commercial,
 Developer, Builders

B. REAFFIRM USE OF THE PRIOR AGENCY DISCLOSURE, which already permitted Buyer, Seller, Dual Agency with disclosure, AND AUTHORIZE "THE FACILITATOR" CONCEPT with LIMITED LIABILITY which is closest to what "TRADITIONAL" BROKERS always did and what Brokerage was founded upon.

STEP "THREE"

C. FUTURE-increase the input from the public AND non-Realtor licensee's VS. strictly Realtor & NARELLO (non-practitioners) members

"OPTIONAL STEP"

D. 4th-IF our NAR, KAR entities want to "lead", we have the capacity to address regulation for all of the membership without unwanted legislation! NAR's desire to mandate Nation wide may not be what Kansans need or what NAR envisioned for that matter.

L. D. RICKARD
PRESIDENT-BROKER
SHARI RICKARD
BROKER

Realty School of Kansas (N.S.K.)



3241 EAST DOUGLAS
WICHITA, KANSAS 67218
(316) 685-3652

"Serving Kansans Since 1973"

SUMMARY & "ROUGH" COPY OF SURVEY QUESTIONS MAILED RANDOMLY AROUND THE STATE
PERTAINING TO NEW "BRRET" LAW AND OTHER REAL ESTATE CONSIDERATIONS

1. Do you feel the BRRET Law will better protect the public and better serve them? ----- YES 14% NO 86%
2. Were you aware of the law before it was enacted? ----- YES 19% NO 81%
3. Do you feel that having different licenses for real estate areas (commercial, residential, etc.) will enhance the service to the public? ----- YES 5% NO 95%
NOTE: Or should knowledge & expertise provide a natural demarcation and let the license be for protection of the public via. accounting for funds, copies of contracts, etc.
4. Do you feel the real estate industry should have Mandated Forms (Required) by the Gov't? ----- YES 0% NO 100%
Suggested Forms but not required?
+ Use Lic. Fees to support Real Estate Center at Univ.? ---- YES 14% NO 86%
5. Do you feel we should have mandatory Errors & Omissions insurance? ----- YES 10% NO 90%
6. Regarding legislation (new) & regulations, do you find you normally have adequate notice and opportunity to provide input on same? ----- YES 24% NO 76%
Has such legislation saved the consumer money? ----- YES 22% NO 78%
7. Do you feel that any organization or association that you belong to represents the membership at large? -- YES 26% NO 74%
Are the costs? ----- TOO HIGH 75% OK 25%
8. Do you belong to the Nat'l Assoc. of Realtors ----- YES 60% NO 40%
9. Do you feel that you have adequate representation with the Kansas Real Estate Commission for input on items to protect the public? ----- YES 30% NO 70%
10. The Kansas Real Estate Commission has 5 Commissioners appointed by The Gov. of the State. Do you feel that they provide the majority of their support to:
a. REALTORS ORGANIZATION? 79%
b. ALL LICENSEE'S & THE PUBLIC....? 21%
11. For the protection of the public's interest, including the cost of business born by the consumer, should we do the following:
Reg. 1. MORE 0% 2. LESS 62% Regulation 3. ABOUT 38% the same
Ed. 1. MORE 19% 2. LESS 24% Educational 3. ABOUT 57% the same hours
12. Do you find the regulations, associations of the industry more conducive to: SMALL 0% LARGE 80% MEDIUM 0 SAME for all 20%
(which size company)

JOHN TODD & ASSOCIATES

REAL ESTATE

805 SOUTH MAIN, SUITE 103

WICHITA, KANSAS 67213

(316) 262-3681

March 7, 1996

Members
House Judiciary Committee
House of Representatives
State Capitol
Topeka, Kansas 66612

Subject: March 7, 1996 hearing regarding Senate Bill 710

Dear Judiciary Committee Member:

My name is John Todd. I am not an attorney. I have been licensed to sell real estate in the State of Kansas for nearly 20 years. I am a *salesman*, a one person company, and my major thrust in the marketplace is the sale and marketing of new homes. I operate as a small company for the simple reason that I prefer *selling* real estate rather than *managing* other salespeople like brokers in larger real estate companies do. Based on my many years of *sales* experience, I feel qualified from a *salesman's* prospective to advise you, that the BRRETA ACT passed by the 1995 Legislature is bad legislation and does not serve the *public's best interests*.

Therefore, I support passage of SB 710 provided that you AMMEND the bill to INCLUDE the provisions of HB 2814 which would REPEAL the BRRETA ACT.

I am here today to speak for myself. I am a member of the Wichita Area Association of Realtors, the Kansas Association of Realtors, and the National Association of Realtors, and want to advise you that I *do not* speak for them. By the same token, I wan to advise you that they *do not speak for me*. In fact, based on the number of Realtors who ***signed the enclosed petitions***, it appears that the Realtor Associations *do not* speak for a large number of their members.

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The *onerous* effects this Act has on the real estate industry can best be understood if viewed from a *salesman's* prospective when meeting prospective buyers face-to-face in the marketplace.

Let's assume for the sake of our discussion here today that you (members of the Judiciary Committee) are wanting to *sell* your home, and you hire me to act as your agent in the sale of your property, and that you are even willing to pay me a *commission* for converting the *equity* in your property to cash. A prospective buyer calls and wants to view your property, and now I am face-to-face with a prospective buyer for the property you *need* to sell. Please take out a copy of the mandatory DAAR Form No. 1 in your packet and follow along with me as I visit with your prospective buyer. Before I, as your agent, can enter into *substantive discussion* with your prospective buyer, things like *price, terms* you are willing to accept, *financing* available to the buyer, *down payment* required, and an *estimated* monthly payment, I have to ask them if they are working with another real estate agent. Place yourself in your buyer's shoes and ask yourself, "just what business is it of this salesman who I am working with?". Isn't the question confrontational? The next *logical* question from your prospective buyer is "what is the price of this home?". Now as *your agent who is paying my commission*, I am required by Law to whip out the Disclosure of Alternative Agency Relationships form, the mandatory DAAR Form No. 1, and *advise* them of The Agency Choices Available to them under Kansas Law so that they can *make an informed choice* before they even consider purchasing your home. Please put yourself in your prospective buyer's shoes now. Isn't a 5 to 10 minute *seminar* from the real estate salesman the *last* thing you have on your mind at this point? You simply asked the price! Let's assume that your buyer's *bear* with me and listen to my presentation of the DAAR Form. I think you will be *pleased* to know that I will *advise* your prospective buyer that he has the *right* to hire a Buyer's Agent to represent him in any real estate transaction including the possible purchase of your property, that part of the real estate commission you are paying me will pay the Buyer

Agent's commission. Now that is really friendly. What happens at this point if your prospective buyer decided to employ the services of a Buyer's Agent. Haven't I just *violated my fiduciary relationship with you by running your buyer away?* Let's assume your prospective buyer *tolerates* my seminar a little longer, and I can explain to him that I as a broker, with your permission, can work as a Disclosed Dual Agent or if my firm were larger, as a Designated Agent. What do either of these Agency choices do for you as a seller? Isn't Dual or Designated Agency like going home to your spouse and telling your spouse that you are going to marry someone else, but it's not going to interfere with your relationship? I have been *selling* real estate for a long time, and I can tell you advisedly that there is *no* way to *finess* this form by your prospective buyer, ask for his signature on the form, and at the same time *really* represent your *best interest* as it relates to the sale of your property.

Isn't it the ultimate irony, that the industry which came about as a result of the consumer's need for help in marketing their REAL ESTATE ultimately finds itself encumbered with a new Agency Act which literally promotes the interests of everyone in the REAL ESTATE transaction except the consumer who owns REAL ESTATE!

The BRRETA ACT discriminates against smaller companies like my own. Karen France, a lobbyist for the Kansas Association of Realtors was quoted in an article in the Wichita Business Journal: "France admitted there may be a few drawbacks (to the new Act). Smaller companies, for instance, may find themselves cut out of some opportunities. Well, the designated-agent provision just won't work out in a small office, France explained. A husband-and-wife team, for instance, wouldn't be big enough to benefit from that."

As a final note, all real estate needs to be covered by the same Law. I see little difference in the sale of commercial, land, or residential real estate. The entire BRRETA ACT needs to be REPEALED!

Sincerely,


John R. Todd

Enclosures: many

12-3

DISCLOSURE OF ALTERNATIVE AGENCY RELATIONSHIPS

This disclosure is to enable you—a prospective buyer or seller of real estate—to make an informed choice before working with a real estate agent. The sale of real estate may involve one or more real estate licensees. Since a licensee may be the agent of a buyer or a seller, or both, it is very important to understand whose interests are represented by each agent.

You should not assume that an agent is acting on your behalf unless you have signed a contract with that licensee to represent you. As a customer, you represent yourself. Any information which you, the customer, disclose to the agent representing another party will be disclosed to that other party. All licensees representing other parties are obligated to treat you honestly, give you accurate information, and disclose all known adverse material facts.

THE CHOICES AVAILABLE TO YOU IN KANSAS

SELLER'S AGENT. A Seller's Agent has the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting and a duty to represent the seller's interests in the sale of the property. This generally means a duty to market the property to find a buyer willing to pay the highest price on the most advantageous terms as quickly as possible. A Seller's Agent also has a duty to disclose to the seller all material information acquired from the buyer or from any other source.

SUB-AGENT. Sellers may authorize their agent to offer sub-agency to other firms. A sub-agent (agent of the agent) also represents the seller's interests. Sellers have the same liability for acts of a sub-agent as they do for the agent they hire.

BUYER'S AGENT. A Buyer's Agent has the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting and a duty to use his or her expertise to help the buyer find a suitable property and to acquire it at the most advantageous price and on terms suitable to the buyer. A Buyer's Agent also has a duty to disclose to the buyer any material information acquired from the seller or from any other source.

DISCLOSED DUAL AGENT. A real estate agent may represent more than one party **only** with the informed consent of all parties to the transaction. Disclosed dual agency is most likely to occur when a buyer represented by a Buyer's Agent wants to purchase a property listed by that agent's firm.

The buyer and seller must sign a dual agency consent agreement, which fully describes the duties and obligations of the disclosed dual agent. A disclosed dual agent may not disclose any confidential information that would place one party at an advantage over the other party and may not disclose any of the following information without the informed consent of the party to whom the information pertains: That a buyer is willing to pay more than the price offered; that a seller is willing to accept less than the asking price; motivating factors of either party for buying or selling; or that a party will agree to financing terms other than those offered.

DESIGNATED AGENT. An alternative to disclosed dual agency is a designated agent who represents the buyer. The designated agent may show properties listed by other agents in that agent's firm to the buyer. The other agents represent the seller. The designated agent performs all the duties of a Buyer's Agent, while the other agents perform the duties of a Seller's Agent. The designated agent **CANNOT** continue to represent the buyer exclusively IF: (1) the buyer wants to see a property which was listed personally by the designated agent; or (2) the designated agent's broker becomes directly involved in the transaction. Either situation would trigger a disclosed dual agency but **ONLY** with the written consent of both parties.

THE CHOICES AVAILABLE TO YOU WITH THIS FIRM

Brokerage firm: _____ Name of licensee: _____

This firm authorizes its agents to act as a:

Seller's Agent Buyer's Agent Designated Agent Sub-Agent Disclosed Dual Agent

Unless agreed differently in the listing agreement, the following is our firm's policy on offering cooperation and compensation to other agents:

Offer cooperation to Sub-Agents	<input type="checkbox"/> yes <input type="checkbox"/> no	Offer cooperation to Buyer's Agents	<input type="checkbox"/> yes <input type="checkbox"/> no
Offer compensation to Sub-Agents	<input type="checkbox"/> yes <input type="checkbox"/> no	Offer compensation to Buyer's Agents	<input type="checkbox"/> yes <input type="checkbox"/> no

ACKNOWLEDGMENT

Real estate licensees are required by law to provide this form to prospective buyers and sellers. The licensee presenting this form to you has explained alternative agency relationships and has indicated the type(s) of agency which his or her firm offers. Keep in mind that this form is **not a contract**—if you choose to have an agent represent you, a written agency agreement (contract) must be signed. Please acknowledge receipt of this form by circling "seller" or "buyer" and signing below.

Seller or buyer

Seller or buyer

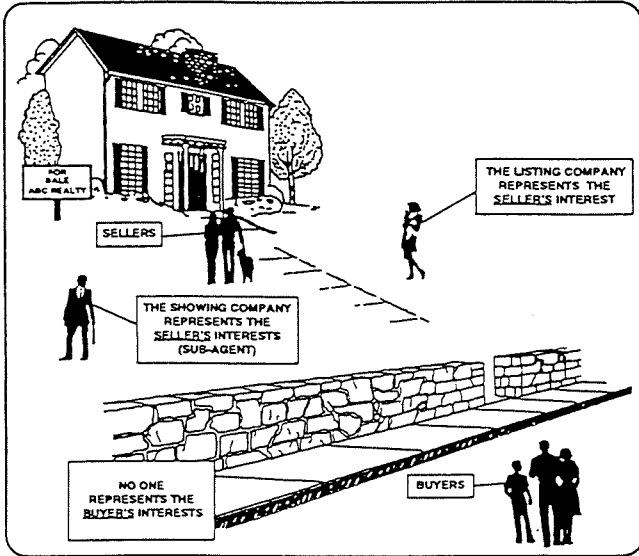
Date

Adopted on October 19, 1995 by the Kansas Real Estate Commission for mandatory use by real estate licensees on and after January 1, 1996.
DAAR Form No. 1

12-4

WHAT'S THE DIFFERENCE?

TRADITIONAL REAL ESTATE PRACTICE ALL AGENTS REPRESENT THE SELLER



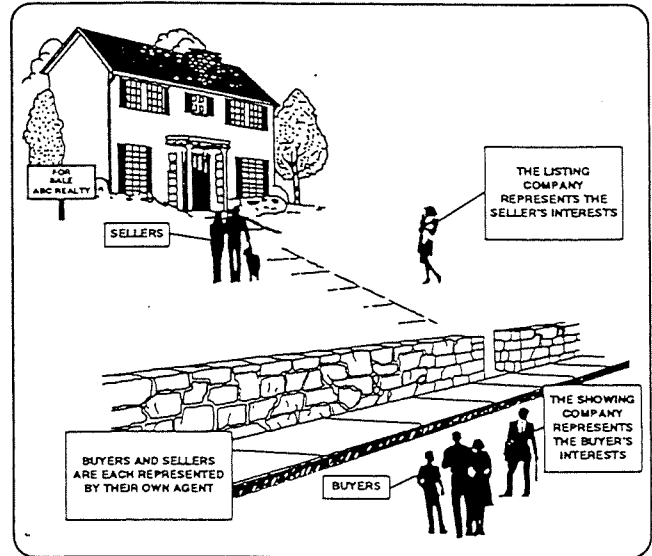
LEGAL DUTIES OF SELLER'S AGENT TO SELLER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep seller's information confidential
- Disclose if buyer is unable to complete contract

LEGAL DUTIES OF SELLER'S AGENT TO BUYER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep buyer's information confidential
- Disclose material defects of property
- Disclose if seller is unable to complete contract

BUYER REPRESENTATION SHOWING COMPANY REPRESENTS THE BUYER'S INTERESTS ONLY



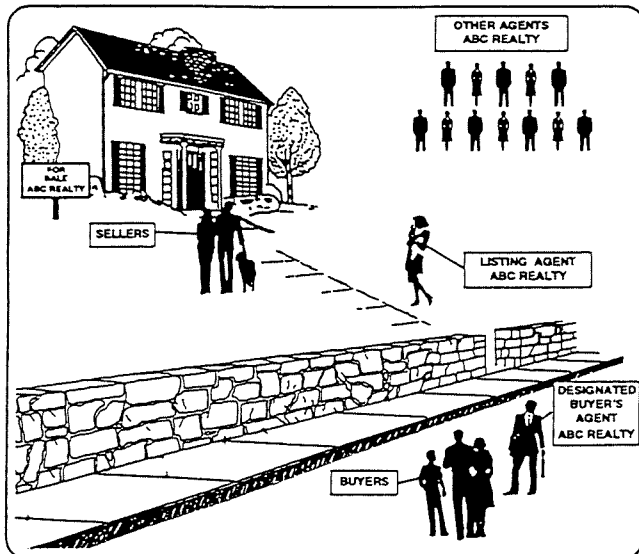
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DESIGNATED AGENT – BROKER AUTHORIZES AGENT TO REPRESENT BUYER WHEN SHOWING COMPANY LISTINGS



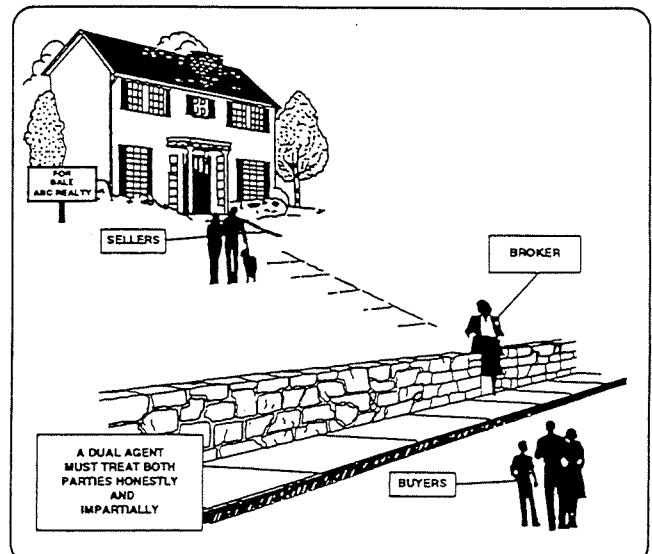
LEGAL DUTIES OF LISTING AGENT & OTHER AGENTS TO SELLER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep seller's information confidential
- Disclose if buyer is unable to complete contract

LEGAL DUTIES OF DESIGNATED AGENT TO BUYER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep buyer's information confidential
- Disclose material defects of property
- Disclose if seller is unable to complete contract

DISCLOSED DUAL AGENCY ONE COMPANY REPRESENTS BOTH BUYER AND SELLER INFORMED CONSENT TO LIMITED AGENCY



LEGAL DUTIES OF DISCLOSED DUAL AGENT TO SELLER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep seller's information confidential
- Disclose if buyer is unable to complete contract

LEGAL DUTIES OF DISCLOSED DUAL AGENT TO BUYER

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PETITION

To KANSAS LEGISLATORS and
GOVERNOR BILL GRAVES

Subject The REPEAL of the Brokerage Relationships in Real Estate Transactions Act (BRRETA) which was passed into Law by the 1995 Legislature (1995 SB110)

Message

The undersigned person(s) are **OPPOSED** to the **BRRETA ACT** which was passed into Law by the 1995 Legislature. I/we would ask that you **SUPPORT PASSAGE** of HB 2814 which would **REPEAL** the **BRRETA ACT**, by **AMENDING SB 710** to **INCLUDE** the provisions enumerated in HB 2814 which would **REPEAL** the **BRRETA ACT**

I/we have heard that the Kansas Association of Realtors and the Kansas Real Estate Commission *supported* the *passage* of the BRRETA Act *without our knowledge or input!*

I/we respectfully request that you SUPPORT the REPEAL of the BRRETA ACT, and allow the real estate industry to work within the restraints set by free market forces, which ultimately serves the public's best interests.

Name	Address	Occupation/Company
1. Jimmy Helling	120 N. 7th	Matt Eck Real Estate
2. Brenda Wells	2833 N. Tyler	Matt Eck Real Estate
3. Cliff Crow	1570 W. 215th W	Matt Eck Real Estate
4. Duff v Rieder	2805 Audby Court	RIDER REALTY
5. David Rieder	2805 Bentway Circle	RIDER REALTORS, Inc.
6. Susan Wolf	1999 W. Aradon	
7. GUY ORRHAULT	8405 W. Central #2308	Graham, Inc. Realtors
8. Barry J. Graham	9212 N. W. Dorruck	Charles J. Realtors
9. Richard O'Donovan	2044 Bullinger Ct	Gold Key Realtors
10. Jean F. ...	519 N OLIVE	McCurdy Auction - REALTY
11. Dwight Bright	11870 Rolling Hills Ct. 67212	McCurdy Auction & Realty
12. ...	666 Wilder Valley Rd	Stonebough
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I/we have heard that the Kansas Association of Realtors and the Kansas Real Estate Commission supported the passage of the BRETTA Act without our knowledge or input!

I/we respectfully request that you SUPPORT the REPEAL of the BRRETA ACT, and allow the real estate industry to work within the restraints set by free market forces, which ultimately serves the public's best interests.

Name	Address	Occupation/Company
Gale R. Blume	1168 Brancliff Cir Wichita	R. E. Broker Estates
Valene Petlay	11505 W. 115th Wichita	Sales Ass. RE/MAX
TOM ANDRUEWS	570 S Knight	LANDMARK
Elise Smith	478 W. 1st Ave. Haysville	BROKER MSSEC

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Name	Address	Occupation/Company
<i>Chas D. Holt</i>	<i>626 Hilda V. Way Rd</i>	<i>Realtor Stonebrook</i>
<i>Judith & John Smith</i>		<i>Preferred Properties</i>
<i>Chad R. Jenkins</i>		<i>Preferred Properties Inc/Ks</i>
<i>Devin Harrison</i>		<i>Preferred Properties</i>
<i>Rosaline Fein</i>	<i>20158 SW Meadowlake Rd Bree Hill, KS</i>	<i>Realty Center</i>
<i>Donald Reed</i>	<i>7400 E 32nd St Overland Park, KS</i>	<i>Realty Center</i>

P.O. Box 601
Topeka, KS 67007

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Name Address Occupation/Company

Wagie Drollide 9215 W. Douglas REALTOR STONEBOROUGH
Allan Capelista 1216 N. Geneva Broker Caldwell Banker Pinnings Beach
Nadine Brathmarke 4306 Peach Tree Realtor " "
Marie Klassen 1640 N. Stullford Caldwell Banker Dining Beach
Kym Flagg 11033 15th St Real Estate

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Name	Address	Occupation/Company
1. <i>[Signature]</i>	<i>9606 Roseville Dr. Wichita KS</i>	<i>REALTOR (STONEBOROUGH)</i>
2. <i>Frank Caldwell</i>	<i>2544 SW 125th St. Sedgewick KS</i>	<i>Broker</i>
3. <i>[Signature]</i>	<i>14904 Shawnee Ct. Stoneborough</i>	<i>REALTOR/Broker Stoneborough</i>
4.		
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9. <i>David W Entelken</i>	<i>624 Hidden Valley Rd. Stoneborough</i>	<i>Broker Stoneborough</i>
10. <i>Margie Fidalora</i>	<i>10622 FOXCHASE CT WICHITA KS</i>	<i>Broker/REALTOR (MORCO)</i>
11. <i>Bill Barkley</i>	<i>Caldwell Boulder east Denver</i>	
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Name Address Occupation/Company

Quill W. Rudrow 42187 Sweet Bay Realtor/Kendental Property Group
Frank Blume 1168 Briarcliff Dr. Leota Frank Blume Realty
Walter D. Dillards 9215 W. Douglas REALTOR/STONE BELLACHT

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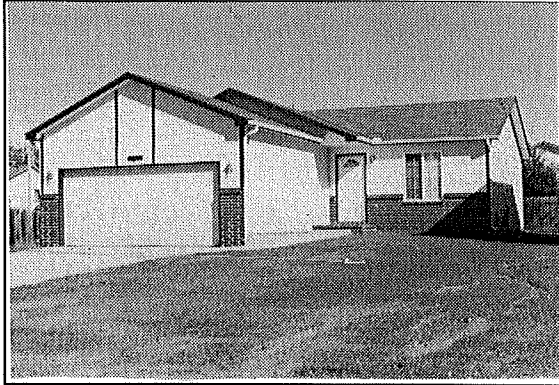
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Name	Address	Occupation/Company
Tom Bumpass	111706 CINDY LAKE WICHITA	REALTOR/MARK CHAPPELLE
Tanya Chapman	6527 E. MURDOCK WICHITA	FRANCHISE/ADVANTAGE MORTGAGE
Sharon J. Smith	509 S. Robin WICHITA	OFFICE MANAGER/MARK CHAPPELLE
Mark Chappelle	520 S. Holland STE #512	REAL ESTATE BROKER
Brian Kild	2426 YELLOWSTONE Ct. WICHITA	BUILDER/GENERAL CONTRACTOR
Paul Auer	1717 N KESLER WICHITA KS 67205	
David A. Neuman	301 GARNET GARDEN PLANKS	67205 CONTRACTOR

New Homes

Quality Built By Tim Hendricks Homes Lic. # 302

NO SPECIALS!

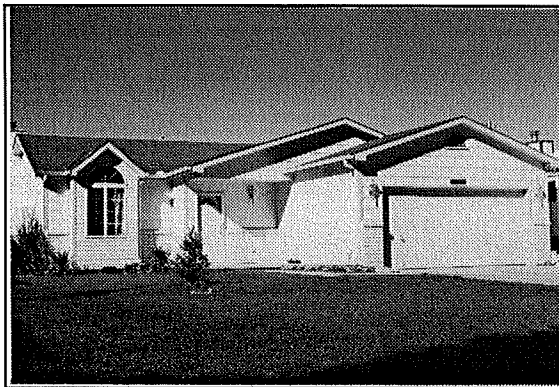


New Homes similar to the home pictured above.

TWO BEDROOM PLAN

\$64,900

BASE PRICE + OPTIONS
Park City location
Valley Center School District

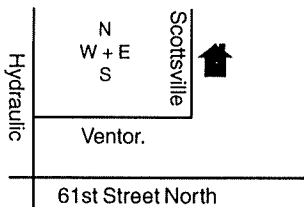


New Homes similar to the home pictured above.

THREE BEDROOM PLAN

\$72,900

BASE PRICE + OPTIONS
Park City location
Valley Center School District



PARK CITY

MODEL HOME LOCATED:

In the 6600 Block of Scottsville

Open 2 to 5 Sundays or by Appointment

Office (316) 262-3681 • Offered For Sale By: **JOHN TODD & ASSOCIATES** • Residence (316) 264-6295

CLEVE SMITH

428 WIRE

HAYSVILLE, KS 67060

House Judiciary Committee

Dear Committee,

I have been literally overwhelmed with how cumbersome the BARETA Act has made the Real Estate Business since it was enacted Jan 1, 96.

I fully support Buyer and Seller Disclosure, HOWEVER, the Act has caused too much confusion among not only Buyers and Sellers, It has even confused REALTOR Members and other NON REALTOR REALTOR Licensees.

Please, repeal this Act and I would ask you to support the passage of HB 2814.

Thank You for your attention and favorable support

Sincerely

Cleve Smith

TIM HENDRICKS HOMES

311 Cain Drive
Haysville, Kansas 67060

March 5, 1996

House Judiciary Committee Members
House of Representatives
State Capitol
Topeka, Kansas 66612

Re: The new Real Estate Act and SB 710

Dear Sir or Madam:

The best way for me to describe my feeling about your new real estate law is "cheated". I am "cheated" by the fact that the Realtor I pay the commission to for selling my homes is required to tell my prospective buyers that they can hire a Realtor to represent them, and that I will pay their commission.

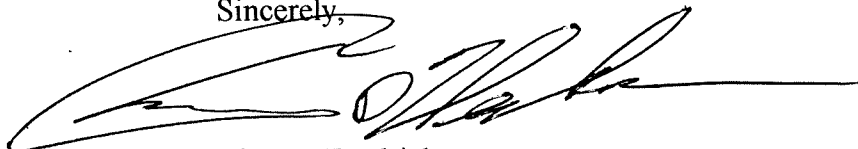
Since the new law went into effect, I know of four new home sales we have lost. Our buyers are not comfortable with what my Realtor has to tell them, and many of our buyers simply walk out in disgust.

I hope you can imagine what it is like for me to be sitting with around \$500,000 in new homes under construction, and not being represented by the Realtor I am paying to do the sales work for me. How would you like paying my interest bill on these new homes while the Realtor I pay to sell them runs away my customers with your new law?

I build in excess of 50 new homes a year, pay a lot of state income taxes, and think that I help the economy. I am thinking about building fewer homes, selling them myself without a Realtor, pay the state less income tax, and let the local economy take care of itself.

This is a bad law and you really should repeal it.

Sincerely,



Tim D. Hendricks
Owner/Builder

520 S. HOLLAND
SUITE 512
WICHITA KS
6 7 2 0 9



(316) 721-8282
Fax (316) 721-2621

March 6th, 1996

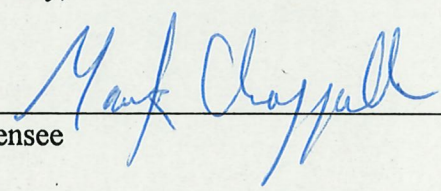
To: Members of the House Judiciary Committee

Ref.: Brokerage Relationships In Real Estate Act (BRRETA ACT)

Dear Members of the House Judiciary Committee;

Brokerage Relationship in Real Estate Act, passed by the 1995 Kansas Legislators should be repealed in its entirety. The Kansas Legislators should appoint a Committee to investigate the Kansas Real Estate Commission and its relationship with a trade organization, The Kansas Association of Realtors, who has pushed this new law through on grounds that the licensed real estate professionals of Kansas supported it. This law impacts the way I do business and as a member of Kansas Association of Realtors , I strongly oppose the BRRETA Act.

Sincerely;



Licensee

520 S. HOLLAND
SUITE 512
WICHITA KS
67209



(316) 721-8282
Fax (316) 721-2621

March 6th, 1996

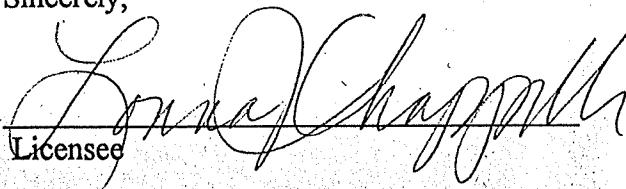
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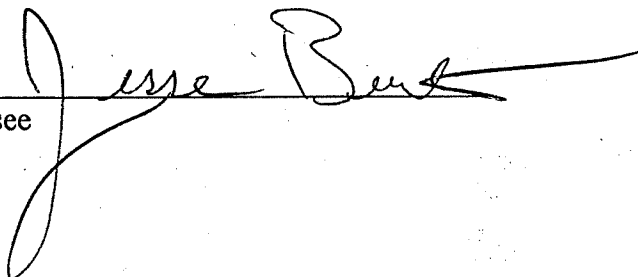
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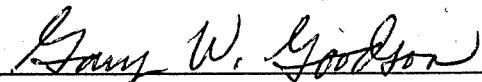
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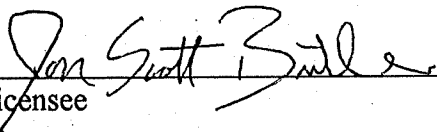
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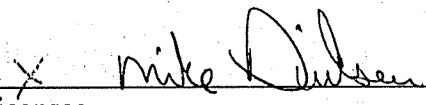
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6 7 2 0 9



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Ref. : Brokerage Relationships In Real Estate Act (BRRETA ACT)

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As a licensed contractor building new homes, I have found that marketing through a Real Estate Broker is essential for my business. I enter into an agreement with the Broker to compensate the Broker selling my homes.

The BRRETA, as written, is in my opinion, detrimental to the marketing efforts of my listing Broker, and will directly impact the way he and I do business.

I strongly oppose the BRRETA and, urge you to repeal it in its entirety.

Sincerely,

Artich Inc
Contractor *David L. Gardner V.P.*

520 S HOLLAND
SUITE 512
WICHITA KS
67209



(316) 721-8282
Fax (316) 721-2621

March 6th, 1995

To: Members of the House Judiciary Committee

Ref. : Brokerage Relationships In Real Estate Act (BRRETA ACT)

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I strongly oppose the BRRETA and, urge you to repeal it in its entirety.

Sincerely,

Ed Uoge for Cassidy, LLC
Contractor

520 S. HOLLAND
SUITE 512
WICHITA KS
67209



(316) 721-8282
Fax (316) 721-2621

March 6th, 1995

To: Members of the House Judiciary Committee

Ref. : Brokerage Relationships In Real Estate Act (BRRETA ACT)

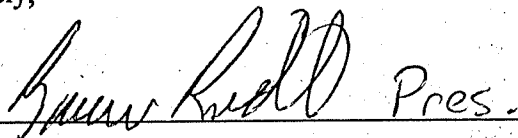
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I strongly oppose the BRRETA and, urge you to repeal it in its entirety.

Sincerely,


Contractor
WOODFRAME CONST. INC.

520 S HOLLAND
SUITE 512
WICHITA KS
67209



(316) 721-8282
Fax (316) 721-2621

March 6th, 1995

To: Members of the House Judiciary Committee

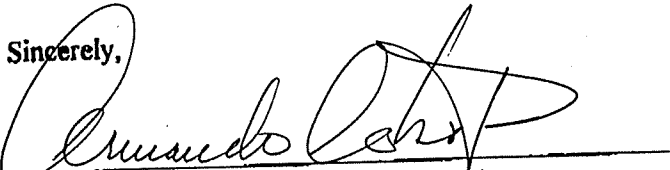
Ref. : Brokerage Relationships In Real Estate Act (BRRETA ACT)

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I strongly oppose the BRRETA and, urge you to repeal it in its entirety.

Sincerely,

Contractor *ARMANDO LOPEZ*

520 S. HOLLAND
SUITE 512
WICHITA KS
67209



(316) 721-8282
Fax (316) 721-2621

March 6th, 1996

To: Members of the House Judiciary Committee

Ref.: Brokerage Relationships In Real Estate Act (BRRETA ACT)

Dear Members of the House Judiciary Committee;

Brokerage Relationship in Real Estate Act, passed by the 1995 Kansas Legislators should be repealed in its entirety. The Kansas Legislators should appoint a Committee to investigate the Kansas Real Estate Commission and its relationship with a trade organization, The Kansas Association of Realtors, who has pushed this new law through on grounds that the licensed real estate professionals of Kansas supported it. This law impacts the way I do business and as a member of Kansas Association of Realtors, I strongly oppose the BRRETA Act.

Sincerely;

Licensee

Real Estate Center

3219 E. Douglas
Wichita, Kansas 67218
(316) 682-0077 FAX (316) 685-~~5500~~
6563

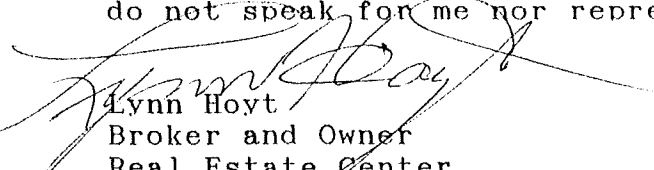
March 6, 1996

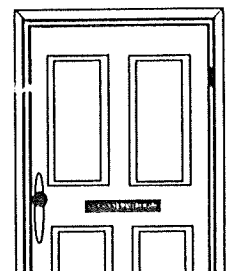
House Judiciary Committee:
House of Representatives
State Capitol
Topeka, Ks. 66612

Subject: SB710 and HB2814

Please amend SB 710 and substitute HB 2814. I support the complete repeal of the BRRETA license act that became effective January 1, 1996. Please amend SB710 to repeal this onerious Act.

I am a member of The Kansas Association of Realtors (KAR). They do not speak for me nor represent me.


Lynn Hoyt
Broker and Owner
Real Estate Center



12-29

LEEWOOD HOMES, INC.

Custom Builder

3500 North Rock Road.
Building 2200, Suite 204
Wichita, KS 67226

Phone no. 316-636-5290
Fax no. 316-636-5375

MEMO

February 28, 1996

To: Members of House Judiciary Committee

From: Joe Lee, President
Leewood Homes, Inc.

Re: Senate bill #710 BRRET Law

I would like to take this opportunity to be heard about the BRRET Law that took effect January 1, 1996.

1) I believe this law was not considered with all of the knowledge that should have been brought out or it would not have been passed. There are so many areas that this bill needs to have input into that could NOT have been considered.

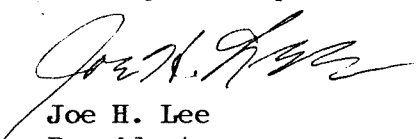
2) This bill will cause the price of housing to go UP due to the way the bill is written.

3) We certainly have no opposition to representation if the buyer wants it. However, if they want it, let them do as they have always been able to do and that is pay for it. Do NOT penalize the person that does NOT want nor feel like they need it.

4) We in the Building Industry have always welcomed Co-op Realtors; however, to be able to call and say they have gotten their Buyer to sign the agreement to Buyer Broker, then never show up until closing and collect a check, is NOT representation.

We ask for a moratorium on the BRRET Law for 1996 so that more input may be involved before passing.

Thank you for your consideration.


Joe H. Lee
President



Quality ✧ Energy Conscious ✧ Builder

JOHN TODD & ASSOCIATES

REAL ESTATE
805 SOUTH MAIN, SUITE 103
WICHITA, KANSAS 67213

(316) 262-3681

February 14, 1996

Mr. A. J. Lang
Kansas Real Estate Commission
Three Townsite Plaza, Suite 200
120 SE 6th Ave.
Topeka, Kansas 66603-3511

Re: The Kansas Real Estate Brokers' and Salespersons' License Act which deals specifically with Brokerage Relationships in Real Estate Transactions which became effective January 1, 1996.

Dear Commissioner Lang:

Enclosed is a copy of an article in the Wichita Business Journal which discusses how the New Agency Law will have a *negative impact* on small real estate companies. I have highlighted with yellow marking pen a quote made by Karen France, a lobbyist for the Kansas Association of Realtors in which "France admitted there may be a few drawbacks (to the new Act). Smaller companies, for instance, may find themselves cut out of some opportunities. Well, the designated-agent provision just won't work out in a small office, France explained. A husband-and-wife team, for instance, wouldn't be big enough to benefit from that."

As a member of the Real Estate Commission, you are aware of the large number of *small* real estate firms who operate in small towns as well as larger cities all over our state, and how important it is for these people to be *included* in legislation affecting their industry.

On February 5, 1996 I sent you a copy of a January 31, 1996 letter I mailed to Attorney General Carla Stovall's office asking for her opinion regarding this new Act. Enclosed is a letter from the Attorney General's office which indicates that they will *not* issue an opinion regarding the questions I raise in that letter.

Since this issue affects so many licensee's in the state, would it be possible for the Commission to ask the Attorney General's office to respond to questions in my letter?

Sincerely,


John R. Todd

Enclosures

12-31

HOMES PLUS

Local Realtors concerned about new disclosure regulations

By PAUL ARCHER

Regulations that further detail the evolving relationship between would-be home buyers and residential real estate agents went into effect at the first of the year.

Prospective home buyers working with a real estate agent now must sign a form that explains the buyer's options in creating a relationship — often incredibly complex — with a real estate professional.

The regulations, passed by the state Legislature last year, also provide for dual agency in a transaction — a new level of service between real estate agents and prospective buyers and sellers.

"It permits agents who are all in the same company to continue to represent buyers, once their buyer becomes interested in an in-house listing," said Karen France, a lobbyist for the Kansas Association of Realtors, a trade group that helped craft the legislation.

"For example, if I worked for a real estate company and I had a buyer that was interested in one of (the company's) in-house listings, then I could not represent them as a buyer's agent. I could only become a disclosed dual agent for them, and I could not provide the level of service as I can as a buyer's agent."

Under the newly crafted designated-

agency provision, the rest of the agents in a particular office would represent the seller of the property, and the original agent would then dedicate his service as a representative of the buyer.

So what's all the fuss about?

"What we've tried to do here is clarify what the agency relationships are for the buying and selling public when they're involved in a real estate transaction," said France.

"We've provided a list of what the responsibilities are for real estate agents when you're buying or when you're selling property."

France said most real estate agents were already providing their clients with the required information on the different types of agency relationships.

But that doesn't mean all agents are thrilled with the new law.

"This law is in conflict with the way we

New disclosure law:

- Requires that buyers sign form regarding Realtor options.
- Allows companies to provide dual-agency service.
- Releases Realtors from being responsible for faulty information supplied by seller.

Source: Kansas Association of Realtors, Wichita Area Association of Realtors

do business," said Jim Miner, a broker for Crown III Realty. "We're going to have to change our way of doing business in order to confirm with their new law."

Miner said there is too much gray in the way brokers are being made to disclose service information to their clients, such as when disclosure is made, how it is presented to the client,

and who needs to make the disclosure.

"This is the only business that I'm aware of that is doing anything like this," Miner said. "They don't do it with insurance, or stocks and bonds, or when someone is buying a new car."

Miner was quick to add, however, that he's not opposed to disclosure. He said he wonders whether the real estate industry should be forced by law to hold their clients' hands.

Charles Downs, president and broker for

C. Downs Realty, agreed. He said he thought that many buyers would lose clients when the agent has to make a 10-minute presentation to an interested buyer or seller.

"I'm afraid many will simply lose interest," Downs said. "I'm afraid this new law will end up costing agencies some clients."

He said he was "horrified" to learn the Kansas Association of Realtors was instrumental in passing the law, and added that he felt like the state trade group failed to take the pulse of Realtors regarding the measure.

But France defended the group's involvement.

"What this does is create a more level playing field with all real estate agents offering the same form so the public can see a difference between firms when they're shopping for a real estate agency."

"Their intent was to get Kansas law in synch with what was happening with the kinds of changes being made nationwide," added Kathy Schintgen, president of the Wichita Area Association of Realtors.

Another modification made to existing law gives more strength to the age-old adage "caveat emptor." No longer will

Please turn to page 14

HOMES PLUS

New agency law

Continued from page 9

Realtors be held accountable for faulty information supplied to them by sellers. In the past, Schintgen said, agents could be held liable for relaying bad information on a property to a perspective customer.

"Now, a Realtor is no longer obligated to confirm the information they've been given about a property," said Schintgen. "It hasn't happened very often in the past, but now Realtors are able to protect themselves from damages as a result of passing on faulty information provided to them by an independent source, such as a home inspector or the seller of the property."

While most of the new law will be a benefit to buyers, sellers, and real estate agents alike, France admitted there maybe a few drawbacks. Smaller

companies, for instance, may find themselves cut out of some opportunities.

"Well, the designated-agent provision just won't work out in a small office," France explained. "A husband-and-wife

team, for instance, wouldn't be big enough to benefit from that."

An increase in paperwork may be another drawback for some, said Schintgen. The effort in keeping disclosure forms up-to-date and all the signatures filed may take extra time.

"Overall, we think the changes will work out for the best," Schintgen said. "We're going to be able to provide a complete look at the different levels of service for customers, and be able to serve

them more completely under one roof."

Paul Archer is a free-lance writer living in Wichita.

"What this does is create a more level playing field with all real estate agents offering the same form so the public can see a difference between firms when they're shopping for a real estate agency," said Karen France, a lobbyist for the Kansas Association of Realtors.

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influential executives read

The Business Journal

12-33

JOHN TODD & ASSOCIATES

REAL ESTATE

805 SOUTH MAIN, SUITE 103
WICHITA, KANSAS 67213

(316) 262-3681

January 31, 1996

Ms. Carla Stovall, Attorney General
STATE OF KANSAS
Kansas Judicial Center
Topeka, Kansas 66612-1597

Dear Attorney General Stovall:

Enclosed is a copy of the section of the Kansas Real Estate Brokers' and Salespersons' License Act which deals specifically with Brokerage Relationships in Real Estate Transactions which became effective January 1, 1996, which is marked as Exhibit "A". Enclosed also is a copy of the Disclosure of Alternative Agency Relationships form as Adopted on October 19, 1995 by the Kansas Real Estate Commission for mandatory (emphasis supplied) use by real estate licensees on and after January 1, 1996. See DAAR Form No. 1 marked as Exhibit "B".

I am not an attorney. I have been licensed to sell real estate in the State of Kansas for nearly 20 years. Based on my many years of sales and marketing experience, I feel qualified to advise you that in my opinion, that portion of this new Act dealing with Brokerage Relationships in Real Estate Transactions is bad legislation and does not serve the *public's best interests*. The mandatory use of DAAR Form No. 1 is an unnecessary intrusion of the State into our industry, and ultimately results in what I would classify as a *restraint of trade*.

The onerous effects this Act and the use of the mandatory DAAR Form No. 1 has on the real estate industry and the sellers and buyers of real estate may not be evident unless one views it from its practical application in the marketplace.

I sell new homes for a home builder as his agent. Let's assume that I am holding one of my builder's new homes open with the specific intent of finding a buyer for his new home, and a prospective buyer comes through my open house as a result of my advertising or open house signs. Under the new law, the first question I must ask this prospective buyer is "Are you working with a real estate agent?". In the event the buyer indicates that he has exclusive buyer agency representation with another real estate broker, New Section 3, Paragraph (O) (see Exhibit A) provides: "A licensee shall not negotiate a sale of real estate directly with a buyer the licensee knows has an agency agreement granting exclusive representation to another broker." At this point, I cannot enter into any *substantive discussion* with this prospective buyer regarding his purchase of this home. Having attended a seminar sponsored by the Kansas Association of Realtors, and a seminar sponsored by the Wichita Area Association of Realtors, and

having attended two meetings held by the Kansas Association of Realtors, and one held by Ms. Jean Duncan, Director of the Kansas Real Estate Commission, there is a wide range of views as to what "substantive discussion" means, leaving the door open for a *wide* range of interpretations among real estate practitioners. In my opinion, substantive discussion could include, a discussion of the price of the new home, a discussion relating to what options are available with the new home and the price of each, any special financing the builder might be offering, and anything which might be construed as making the purchase of this property attractive to this buyer. The *safe* route for me to take with this prospective buyer, would be to tell him nothing, and invite he and his agent to visit the property at a later date, and *hope* that the agent would bring him back. I feel confident, that my builder would *not approve* of my actions relating to this prospect in this situation because in his view, I would be sending a prospective buyer away from his new home which is costing him \$500 to \$600 per month in construction interest, the payment of which has a direct impact on the profit he will realize when this property is sold. This portion of the new Act is clearly not in my builder/seller's best interest.

Let's go back to the open house described above. This time a young couple comes through the open house looking for their first home, and they are not working with another real estate agent. I let them browse through the new home on their own, having discovered over the years that most people prefer an initial look at a home without a "salesman" looking over their shoulder or tagging along. I believe the same principal of non-sales interference comes into play when I shop at J. C. Penney's for a shirt; however, the J. C. Penney sales clerk doesn't have to ascertain whether or not I am working with a Sears or Dillard's store's sales clerk in trying to purchase a shirt. I don't want the sales clerk bothering me while "I am just looking". By the same token, when I have found the style of shirt which interests me, I can't wait to find a sales clerk to help me find my shirt size, to obtain the shirt price, and to enter into *substantive discussion* relating to the purchase of the new shirt. This same *urgency* exists for my prospective home buyer couple. Unfortunately, under the new real estate Act, I can't enter into *substantive discussion* with these prospective new home buyers until I have advised them of the *agency* choices available to them as detailed on the mandatory DAAR Form No. 1 (see Exhibit B enclosed). At this point in time, the last thing this young couple has on their mind is a 10 to 15 minute *seminar* on agency relationships presented by the real estate agent, topped off by the agent asking them to sign the DAAR Form No. 1 acknowledging that they have attended his presentation. I suppose that next year the Legislature and the Real Estate Commission will come up with a short quiz the agent can administer at the completion of his presentation to determine how effectively he has presented this information. It should be easy for anyone, even without sales experience, to visualize the *negative* impact this break in the flow of the customer's attempt to find out simple things about this property like price, expected monthly payments, special financing, other homes being offered, and their price range; all of which are a *natural* part of the preliminary (*substantive*) *discussion* which takes place with any customer prior to their making their home buying decision. Can you imagine how many customers and shirt sales J. C. Penney would lose if their sales clerks were required to make similar disclosures? Can you imagine how totally frustrated I would be if I had to set through a

disclosure presentation and sign a form for the sales clerk when I just wanted to look at the shirts and happen to make the mistake of asking the price or if the shirt were on sale? Can you imagine the frustration the J. C. Penney sales clerk would have if he were required to advise me the customer of my right to have a Sears or Dillard's sales clerk represent my interests in the purchase of a shirt, and that the Sears or Dillard's sales person could share in the commission for the shirt sale? I hope these examples give you some idea of how intrusive this Act with the DAAR Form No. 1 is in our business, and the actions they require from real estate sales people actually *restricts or restrains* what I have always believed to be *the free market*.

Now let's switch our attention back to the young couple described in the prior paragraph. Let's assume that they have enough interest in the new home that they submit to my presentation of alternative agency relations as detailed in the DAAR Form No. 1. If I *adequately* explain the alternative agency relationships available to them, which I think is the *intent* of this Act, aren't a certain percentage of my prospective buyers going to opt for Buyer's Agency and immediately walk out the door to seek the services of a buyer's agent with another real estate firm? Keep in mind that I haven't entered into any *substantive discussion* with these prospective buyers, and they may not even know the price of my builder's new home, let alone special financing, or other reasons why this property might fit their needs. What guarantee do I have that the buyer's agent will even bring them back to my builder's new home? Haven't I through my actions (as required by this Act and the DAAR Form) just *ran away* one of my builder/seller's prospective buyers and thus deprived him of a potential sale? Haven't I just *violated the fiduciary responsibility* I have with my builder/seller as his agent? Can't you see that under the *guise of protecting the buying public's interests*, this Act has *totally ignored* the real estate *seller's interests*? In my J. C. Penney example above, how long do you think the J. C. Penney sales clerk would last if through his actions he sent his customers to Sears or Dillards? How could the J. C. Penney sales clerk provide a living for his family by running away prospective Penney's customers, and then encouraging them to come back with a Sears or Dillards sales clerk to share in his compensation (commission) for the shirt sale?

In the event the couple mentioned above decides they want to be "*represented*" in a Disclosed Dual Agency capacity, since after looking Disclosed Dual Agency illustration on the cartoon side of the DAAR Form No. 1, it would appear that perhaps this method of "*representation*" would solve everybody's problems and be most fair to all parties to a potential transaction. As an agent in this capacity I have just become *neutral*. Right? I now choose to walk where *angels fear to tread*. I am going to *serve* two masters, not with standing the fact that I have represented the seller/builder's interests for several years. And, conveniently, New Section 8, Paragraph (i), provides: "In any transaction, a broker may withdraw from representing a client if either client does not consent to a disclosed dual agency. Such withdrawal shall not prejudice the ability of the broker to continue to represent the other client in the transaction...". I fail to see any benefit to the general public from this portion of the new Act, and I view the position I

am placed as a Dual Agent as *fertile ground* for both buyers and sellers along with their attorney's to litigate with the intention of taking my personal assets for their own use.

The Designated Agent choice does not work for my firm since I work as a one person company. I would suspect that a majority of the brokerage firms in small towns around the state are one and two person companies. I am amused by what people around Wichita refer to "big" real estate companies. I don't believe the largest real estate company in Wichita has more than 200 sales people, which pales in comparison to the number of sales people employed by J. C. Penney or Sears in their stores nationwide, or even limited to the number of sales people in just their Kansas stores. The Designated Agent choice as enumerated in the New Section 9 of the Act *discriminates unfairly* against the small real estate firms. This unfair discrimination; however, may be a blessing in disguise to the small brokerage company when a sharp attorney decides to challenge a "large" real estate firm trying to operate under this portion of the statute in a Court of Law. I don't think the public's interest is served by allowing small or large brokerage firms to work *both sides* of the street, as is apparently the intent of this new section of the Act.

In order to help you understand the potential damage this new Act will have on the real estate industry's ability to serve the public's interests, it would be helpful for me first to give you some background as to why the real estate brokerage industry exists, and what services they provide for the general public.

The need for people who specialize in the sale and marketing of real estate came about as a result of the *public's need* for assistance in converting the *equity* in their real property to *cash* or other property. The owner of a \$60,000.00 house with a \$30,000.00 first mortgage loan secured by the property is the owner of a \$30,000.00 *equity* in the property (\$60,000.00 less \$30,000.00 equals \$30,000.00 *equity*). An argument could be made that the person owning this \$30,000.00 real estate equity is not broke. The fact of the matter is that he would be *hard pressed* to find a grocery store, gas station, or other neighborhood merchant who would be willing to accept payment for their goods and services with his *non-liquid, non-divisible* \$30,000.00 real estate equity. Out of this scenario rises the need to convert real estate equity to *cash* which is *liquid, divisible*, and *universally accepted* by almost everyone in the marketplace.

If converting real estate equity into cash were easy, I believe that everyone would be selling their own properties. I have never met anyone who enjoyed paying real estate brokerage fees or commissions. However, as a practical matter, most property owners do not want to sell their own properties, because they have no idea as to what the property is worth, what type of financing is available, what sales options are available to them, and therefore in this complex society they prefer hiring practitioners who specialize in the sale and marketing of real estate, and they are willing to pay a commission for the successful completion of same.

On the other hand, most people I have met who possess cash or the ability to borrow it, don't usually want to hire someone to help them spend it. I suppose if the fee for hiring someone to help them spend their cash were paid out of the transaction (as New Sec. 5. (a) provides/see Exhibit A), this new concept might grow in popularity. However, the merchant would probably kill the program by reducing the price charged for goods and services if a Buyer's Cash Broker was not involved. If the need for such a service were *universal*, we would have a Personal Property Industry or a Cash Industry specialized in helping people make *prudent* buying decisions, and this new Industry could be regulated by the Legislature with the appropriate Personal Property or Cash Commissions and the trade industries National Association of Cash and Personal Property Brokers as well as the Kansas Association of Same, etc. etc. *Isn't it the ultimate irony, that the industry which came about as a result of the consumer's need for help in marketing their REAL ESTATE ultimately finds itself encumbered with a new Agency Act which literally promotes the interests of everyone in the REAL ESTATE transaction except the consumer who owns REAL ESTATE!*

Frankly, the concept of Buyer's Brokerage in the real estate industry came about as a result of how Seller's Brokerage was set up, with real estate brokers acting as Agent's for the Seller. It is unfortunate that Real Estate Brokerage got tied up with Agency in the first place, since in my opinion, most real estate sales people act as *facilitators* who put real estate transactions together for *commissions*, and not as true agents of any party to the transaction except themselves. This does not mean that they do a bad job for the general public or that they are bad people. It means that they are following the nature of sales in the marketplace, and they are performing a public service. It also means that through their efforts in the marketplace they are able to provide a living for themselves and their families which is the reason most people work. The Real Estate Industry has been able to *get by* operating in this fashion for years, with I suspect few lawsuits starting out as Agency lawsuits per se, with Agency issues being added after the fact to other litigation by alert attorneys, who understands the dilemma real estate brokers are placed in with this Agency burden.

Sales people, including real estate sales people, act as *facilitators* in sales transactions. In the *average* real estate transaction, *both parties win* or the transaction doesn't go together.

If on the other hand, real estate sales people act as Agents for parties in a real estate transaction, as detailed in the New Agency Sections of this Act, they start acting like Attorneys do with their clients, creating an *assumption of hostility* between the parties to the transaction and creating an *adversarial relationship*, both of which are *not needed* and are *counter-productive* to the forces found in the *free marketplace*. Buyers and seller are ultimately harmed by this system which puts a burden on both Agents to *communicate* less instead of more. It cuts down *communication* in general. It creates *extra work* for everyone. And in the long term, the *general public* will pay more for real estate services. All of which *damages the public's interests*.

I have marked the more *onerous* sections of this new Act (see Exhibit A in it's entirety) with yellow marking pen since they are the ones dealing with Agency Relationships, and would be glad to visit with you in detail about how the provisions as legislated in this Act unnecessarily *encumber* the real estate industry. Frankly, many of the provisions of this new Act (not marked in yellow) are welcome relief to real estate practitioners and are sorely needed by our industry. However, the legislative cures administered in this Act to *reform* Agency, overshadow the other benefits achieved. The passage of this new Act to me symbolizes government's attempt on all levels to *control our lives*. This legislation helps those regulators, who under the *guise* of helping us, want to control our every move thus stifling productivity in this country and strangling our economy. The Real Estate Commission will *enjoy* new revenue from the *finer* they will levy against real estate broker's who fail to have the DAAR Form's in their files, or other required agency paperwork.

In all the real estate seminars I have attended over the years, a majority of the instructors teach that the Real Estate Broker's License Act is *consumer legislation* designed to protect the *public's interest*. Having been in sales for almost 30 years, and having observed other salespeople in the marketplace during that time, I believe I have a pretty *good handle* as to how these sales people in this industry will handle this new Agency Act and the DAAR Form. Many will *ignore* it. Many will be glad they are near retirement so they will not have to deal with it. Others will devise creative ways to *look good* when the Real Estate Commission comes calling for their annual inspection, which for the most part will create the image of compliance, without an ounce of effort going into informing the general public regarding agency relationships. While others will *live* with the law, and make an *earnest attempt* to abide by the Law, spending hours of their time in *non-productive* seminars educating the consumer who can then hire the above mentioned *fast tract artist*, as a buyer's agent. From a practical standpoint, the public could care less about representation unless they are *pumped up* by some excited salesman. And, unfortunately, the more complicated the system becomes (ie: this new Agency Act), the more susceptible it is to abuse. I feel confident that as a result of this new Law, there are real estate practitioners running all over town "signing people up", not necessarily because they want to help them, but because they want to make a *fast buck* without having to work too hard for it. These people have always been out there, and they have always made it harder for those practitioners who try to live by the Law and just want to see everyone in the transaction *win*.

In fact, the reason this new Act came into being was I would suspect a result of the efforts of what I would hope were *well meaning people* who are on the staff of the Kansas Association of Realtors (KAR), the National Association of Realtors (NAR), with input from the National Association of Real Estate License Law Officials (NARELLO), which the Director of the Kansas Real Estate Commission is a member. I am a member of the two Realtor organizations, and have no connection with the NARELLO. The KAR and the NAR both take it upon themselves to act as the voice of the real estate industry; however, they do not speak for me, and I believe there are dozens of members who do not want them speaking for them, plus there are dozens of real estate brokers who are not


members of these two organizations. Unfortunately, association staff members, and staff members with the Real Estate Commission are exposed to all the problem real estate transactions, and hear all the *negative* stories about real estate people in our industry, and they are not exposed to the dozens of successful real estate transactions which close every day, and as a result are *eager to suggest regulation* in the form of proposed legislation to the Legislature to correct the ills of the real estate industry. I haven't visited with a single real estate person in the Wichita market who was aware of any changes to the license Law relating to Agency, which means that this legislation became law without input from people in the marketplace. This new Act needed input from sales people directly involved in the marketplace and not from association people who lack experience in the marketplace, and who as a result don't have any concept of the negative impact this legislation will have on our industry out in the marketplace.

I am not interested in becoming involved in politics. I have some fear of reprisal from the Realtor Associations and the Real Estate Commission, but the issues which threaten our industry if this Act remains Law, outweigh personal concerns.

My primary desire is to sell new homes in the Wichita area market, and to put together transactions which benefit my builder and his buyers, and at the same time expand the tax base, creates construction industry jobs, and provide a living for my family and me. I take a great deal of pride in my activities in the marketplace and frankly resent having to spend the kind of time it takes to write a letter of this nature trying to get government off my and my industries neck, time which could more productively be spent selling new homes, creating additional jobs, and putting more money into the State Treasury in the form of State Income Tax. I have found however, that the opponents of free enterprise often lie within our own system.

I would ask that your office look into this legislation and determine if it is Constitutional, if it is a Restraint of Trade, if it is vague, if it should be set aside while meaningful legislation can be worked up which protects the public interest and does not destroy the real estate industry.

Sincerely,


John R. Todd

Enclosures 2

**Kansas Real Estate Brokers'
and Salespersons' License Act**

**Brokerage Relationships in
Real Estate Transactions Act**

effective January 1, 1996

**Kansas Real Estate Commission
Rules and Regulations**

**Kansas Real Estate Brokers'
and Salespersons' License Act**

with amendments effective
7-1-95 through 12-31-95



KANSAS REAL ESTATE COMMISSION
Three Townsite Plaza, Suite 200
120 SE 6th Ave
Topeka, KS 66603-3511

KANSAS REAL ESTATE COMMISSION

Three Townsite Plaza, Suite 200
120 SE 6th Ave
Topeka, KS 66603-3511

CO-44

JOHN R. TODD
1559 PAYNE
WICHITA, KS 67203

EXHIBIT

"A"

**BULK RATE
U.S. POSTAGE
PAID
TOPEKA, KS.
PERMIT NO. 157**

12-41

DISCLOSURE OF ALTERNATIVE AGENCY RELATIONSHIPS

This disclosure is to enable you—a prospective buyer or seller of real estate—to make an informed choice before working with a real estate agent. The sale of real estate may involve one or more real estate licensees. Since a licensee may be the agent of a buyer or a seller, or both, it is very important to understand whose interests are represented by each agent.

You should not assume that an agent is acting on your behalf unless you have signed a contract with that licensee to represent you. As a customer, you represent yourself. Any information which you, the customer, disclose to the agent representing another party will be disclosed to that other party. All licensees representing other parties are obligated to treat you honestly, give you accurate information, and disclose all known adverse material facts.

THE CHOICES AVAILABLE TO YOU IN KANSAS

SELLER'S AGENT. A Seller's Agent has the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting and a duty to represent the seller's interests in the sale of the property. This generally means a duty to market the property to find a buyer willing to pay the highest price on the most advantageous terms as quickly as possible. A Seller's Agent also has a duty to disclose to the seller all material information acquired from the buyer or from any other source.

SUB-AGENT. Sellers may authorize their agent to offer sub-agency to other firms. A sub-agent (agent of the agent) also represents the seller's interests. Sellers have the same liability for acts of a sub-agent as they do for the agent they hire.

BUYER'S AGENT. A Buyer's Agent has the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting and a duty to use his or her expertise to help the buyer find a suitable property and to acquire it at the most advantageous price and on terms suitable to the buyer. A Buyer's Agent also has a duty to disclose to the buyer any material information acquired from the seller or from any other source.

DISCLOSED DUAL AGENT. A real estate agent may represent more than one party only with the informed consent of all parties to the transaction. Disclosed dual agency is most likely to occur when a buyer represented by a Buyer's Agent wants to purchase a property listed by that agent's firm.

The buyer and seller must sign a dual agency consent agreement, which fully describes the duties and obligations of the disclosed dual agent. A disclosed dual agent may not disclose any confidential information that would place one party at an advantage over the other party and may not disclose any of the following information without the informed consent of the party to whom the information pertains: That a buyer is willing to pay more than the price offered; that a seller is willing to accept less than the asking price; motivating factors of either party for buying or selling; or that a party will agree to financing terms other than those offered.

DESIGNATED AGENT. An alternative to disclosed dual agency is a designated agent who represents the buyer. The designated agent may show properties listed by other agents in that agent's firm to the buyer. The other agents represent the seller. The designated agent performs all the duties of a Buyer's Agent, while the other agents perform the duties of a Seller's Agent. The designated agent CANNOT continue to represent the buyer exclusively IF: (1) the buyer wants to see a property which was listed personally by the designated agent; or (2) the designated agent's broker becomes directly involved in the transaction. Either situation would trigger a disclosed dual agency but ONLY with the written consent of both parties.

THE CHOICES AVAILABLE TO YOU WITH THIS FIRM

Brokerage firm: _____ Name of licensee: _____

This firm authorizes its agents to act as a:

- Seller's Agent Buyer's Agent Designated Agent Sub-Agent Disclosed Dual Agent

Unless agreed differently in the listing agreement, the following is our firm's policy on offering cooperation and compensation to other agents:

- Offer cooperation to Sub-Agents yes no Offer cooperation to Buyer's Agents yes no
Offer compensation to Sub-Agents yes no Offer compensation to Buyer's Agents yes no

ACKNOWLEDGMENT

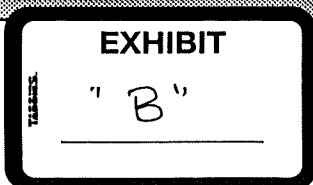
Real estate licensees are required by law to provide this form to prospective buyers and sellers. The licensee presenting this form to you has explained alternative agency relationships and has indicated the type(s) of agency which his or her firm offers. Keep in mind that this form is not a contract—if you choose to have an agent represent you, a written agency agreement (contract) must be signed. Please acknowledge receipt of this form by circling "seller" or "buyer" and signing below.

Seller or buyer

Seller or buyer

Date

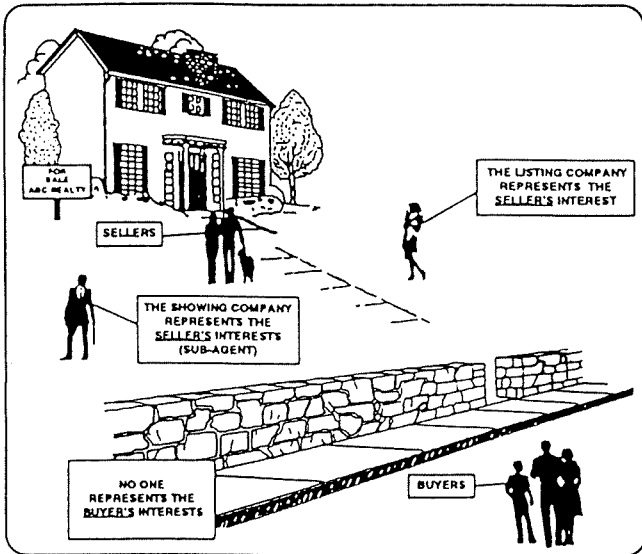
Adopted on October 19, 1995 by the Kansas Real Estate Commission for mandatory use by real estate licensees on and after January 1, 1996.
DAAR Form No. 1



12-42

WHAT'S THE DIFFERENCE?

TRADITIONAL REAL ESTATE PRACTICE ALL AGENTS REPRESENT THE SELLER



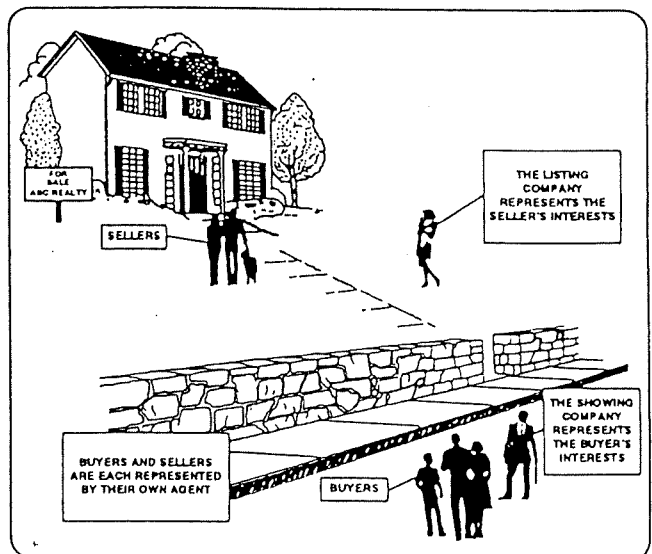
LEGAL DUTIES OF SELLER'S AGENT TO SELLER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep seller's information confidential
- Disclose if buyer is unable to complete contract

LEGAL DUTIES OF SELLER'S AGENT TO BUYER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep buyer's information confidential
- Disclose material defects of property
- Disclose if seller is unable to complete contract

BUYER REPRESENTATION SHOWING COMPANY REPRESENTS THE BUYER'S INTERESTS ONLY



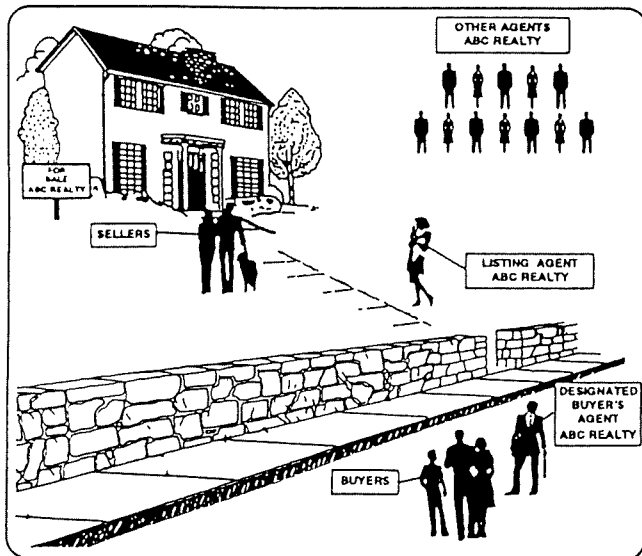
LEGAL DUTIES OF BUYER'S AGENT TO SELLER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep seller's information confidential
- Disclose if buyer is unable to complete contract

LEGAL DUTIES OF BUYER'S AGENT TO BUYER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep buyer's information confidential
- Disclose material defects of property
- Disclose if seller is unable to complete contract

DESIGNATED AGENT - BROKER AUTHORIZES AGENT TO REPRESENT BUYER WHEN SHOWING COMPANY LISTINGS



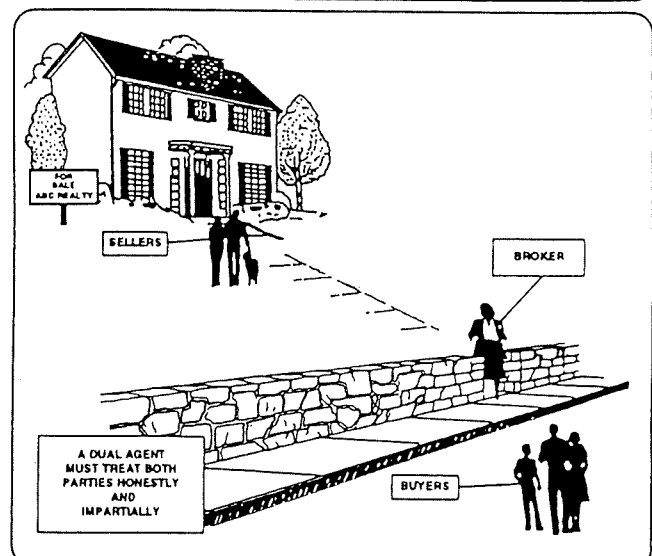
LEGAL DUTIES OF LISTING AGENT & OTHER AGENTS TO SELLER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep seller's information confidential
- Disclose if buyer is unable to complete contract

LEGAL DUTIES OF DESIGNATED AGENT TO BUYER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep buyer's information confidential
- Disclose material defects of property
- Disclose if seller is unable to complete contract

DISCLOSED DUAL AGENCY ONE COMPANY REPRESENTS BOTH BUYER AND SELLER INFORMED CONSENT TO LIMITED AGENCY



LEGAL DUTIES OF DISCLOSED DUAL AGENT TO SELLER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep seller's information confidential
- Disclose if buyer is unable to complete contract

LEGAL DUTIES OF DISCLOSED DUAL AGENT TO BUYER

- Obtain best price
- Suggest negotiating strategy
- Disclose all information agent knows
- Keep buyer's information confidential
- Disclose material defects of property
- Disclose if seller is unable to complete contract



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

February 6, 1996

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

John Todd
805 S Main, Suite 102
Wichita, Kansas 67213

Dear Mr. Todd:

Attorney General Carla Stovall has requested that I respond to your letter dated January 31, 1996 regarding the brokerage relationships in real estate transaction act.

In your letter you request an Attorney General opinion concerning whether the act is constitutional, a restraint of trade or vague. Unfortunately we are not able to comply with your request. This office issues legal opinions in accordance with the Attorney General's Statement of Policy Relating to the Furnishing of Written Opinions (copy enclosed.)

It appears to me that your comments and arguments would be more appropriately directed to your Kansas senator or representative who have authority to initiate repeal or amendments to Kansas statutes. You may be interested in House Bill No. 2814 which I received today as the bill, if passed, would repeal the brokerage relationships in real estate transactions act (copy enclosed.)

I am sorry we cannot be of assistance to you in this matter.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL

Camille Nohe
Assistant Attorney General

CN:jm
Enclosures

MEMO FROM JOHN TODD:
I was not aware that a private citizen could not address and get assistance from the AG's office on a matter affecting his livelihood. I would suggest that this be changed.

12-44

JOHN TODD & ASSOCIATES

REAL ESTATE
805 SOUTH MAIN, SUITE 103
WICHITA, KANSAS 67213

(316) 262-3681

February 23, 1996

The Honorable Tim Shallenburger
Speaker of the Kansas House of Representatives
Kansas House of Representatives
State Capitol
Topeka, Kansas 66612

Re: **HOUSE BILL NO. 2814** which would repeal The Kansas Real Estate Brokers' and Salespersons' License Act which deals specifically with Brokerage Relationships in Real Estate Transactions which became effective January 1, 1996.

Dear Mr. Shallenburger:

I recently mailed you a copy of my letter to Attorney General Carla Stovall dated January 31, 1996 which details my opposition to the new Real Estate Act as referenced above and provides detailed information relating to my *support* for the *passage* of *House Bill No. 2814*. (Enclosed is a copy of that letter for your convenience.)

I have heard that you are *supportive* of the *passage* of *House Bill No. 2814*. I have also heard that Representative Al Lane, Chairman of the Business, Commerce, and Labor Committee has been *under intense pressure* by a member of the Kansas Real Estate Commission as well as by the lobby for the Kansas Association of Realtors (KAR), who control the disbursement of campaign funds from that organization, into making sure this Bill never reaches the House floor for a vote.

I am told that out of the approximate 13,000 real estate licensee's in the state of Kansas, only approximately 7,500 are members of the Kansas Association of Realtors. I am a member of the Kansas Association of Realtors and can tell you that when the (1995) Senate Bill 110, the new Real Estate Transactions Act was passed into Law by the 1995 Legislature, I was not asked for *input* regarding that legislation, and having visited with *dozens* of KAR members in recent weeks, I haven't visited with anyone who had *input* regarding it's passage. It would appear to me that passage of this legislation was instituted and supported by people who represent a *small minority* of the licensee's in the state.

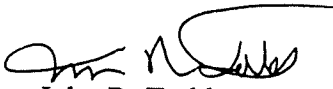
Enclosed is a copy of a letter I mailed to members of the Kansas Real Estate Commission with an article which appeared in the Wichita Business Journal with an interesting quote (marked with yellow marking pen) from the KAR lobby person indicating how the new Act works against *smaller* real estate companies.

Enclosed also are the results of a small random survey provided by the Realty School of Kansas which was sent to licensee's throughout the state, the results of which provides some interesting *feedback* from licensee's regarding their opinion on this issue.

Enclosed is a copy of ideas compiled by Mr. Larry Rickard, Realty School of Kansas regarding: What the OPPOSITION to the NEW LAW is NOT ABOUT, and What the OPPOSITION to the NEW LAW IS ABOUT!

Please do what you can to *insure public debate* of HB 2814 to *include experienced and currently active real estate practitioners*. Perhaps assignment of HB 2814 to another committee will *insure the needed debate*.

Sincerely,


John R. Todd

Enclosures

P. S. Government *intrusion* into real estate transactions is *not* in the *public's best interests*.

cc: Representative Al Lane

Please notice the similarities (they are identical in wording) of the two letters I received from Legislators. I have been told that the Lobby for the Kansas Association of Realtors probably wrote these letters for these two Legislators, and that she has been running all around the State Capitol influencing Legislators with indications of withdrawal of Realtor REPAC money if they "buck" KAR's wishes. Since KAR membership is only about 6,500 out of the approx. 13,000 licensee's in the State, and it appears to me that only a "small" number of the KAR members favor the new BRRETA ACT, that the Legislators need to pay more attention to the "public interests" rather than money they "might" receive from a PAC group representing rather "narrow" interests.

SABRINA STANDIFER
REPRESENTATIVE, 103RD DISTRICT
317 W. 41ST ST. N.
WICHITA, KANSAS 67204



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
FEDERAL & STATE AFFAIRS
LABOR & INDUSTRY

FOR MORE INFORMATION:
TOPEKA: TOLL FREE
(800) 432-3924
OR (913) 296-7665
WICHITA (316) 832-1967

February 22, 1996

John Todd
John Todd & Associates
805 South Main, Suite 103
Wichita, KS 67213

Dear Mr. Todd,

Thank you for your letter regarding the Brokerage Relationships in Real Estate Transactions Act.

I understand the new law has additional requirements for licensees, but it also has protections for licensees as well. I know that change is never an easy process, but it is a fact of life for all of us.

While there has been some discussion of amending or repealing the new law, since it has only been in effect since January 1, it is unlikely that anything will be done with it in this session. I understand that the Kansas Real Estate Commission is opposing any changes to the law in the 1996 session so they can work with real estate licensees to see what things may need to be done in the 1997 session to fine tune the legislation.

If you have any specific changes which you would like to recommend, you may want to forward them to Jean Duncan, the Director of the Kansas Real Estate Commission at (913) 296-3411, Three Townsite Plaza, Suite 200, 120 SE 6th Ave., Topeka, KS, 66603-3511.

Please let me know if I can be of any further assistance to you in this area.

Sincerely,

A handwritten signature in cursive script that reads "Sabrina Standifer".

Sabrina Standifer

State of Kansas

Senate Chamber

PAUL FELECIANO, JR.

STATE SENATOR, 28TH DISTRICT
SEDGWICK COUNTY
815 BARBARA
WICHITA, KANSAS 67217-3115
316-522-7875



Office of Democratic Senator

STATE CAPITOL
TOPEKA, KANSAS 66612-1504
913-296-7355

February 20, 1996

Mr. John R. Todd
John Todd & Associates
805 S. Main, Suite 103
Wichita, KS 67213

Dear John,

Thank you for your letter regarding the Brokerage Relationships in Real Estate Transactions Act.

I understand the new law has additional requirements for licensees, but it also has protections for licensees as well. I know that change is never an easy process, but it is a fact of life for all of us.

While there has been some discussion of mending or repealing the new law, since it has only been in effect since January 1, it is unlikely that anything will be done with it in this session. I understand that the Kansas Real Estate Commission is opposing any changes to the law in the 1996 Session so they can work with real estate licensees to see what things may need to be done in the 1997 Session to fine tune the legislation.

If you have any specific changes which you would like to recommend, you may want to forward them to Jean Duncan, the director of the Kansas Real Estate Commission at (913) 296-3411, Three Townsite Plaza, Suite 200, 120 SE 6th Ave, Topeka, KS, 66603-3511.

COMMITTEE ASSIGNMENTS

COMMITTEE MEMBER:
COMMERCE
LOCAL GOVERNMENT
JUDICIARY
ASSESSMENT & TAXATION
GOVERNMENTAL ORGANIZATION

JOINT COMMITTEE:
ARTS & CULTURAL RESOURCES
INVESTMENTS, PENSION & BENEFITS

CHILDREN & YOUTH ADVISORY COMMITTEE
KANSAS COUNCIL ON EMPLOYMENT & TRAINING

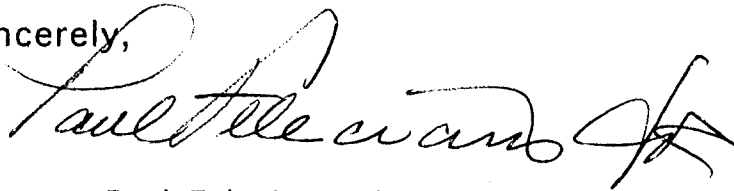
NCSL ASSEMBLY ON FEDERAL ISSUES
COMMERCE AND COMMUNICATIONS COMMITTEE

12-49

Page 2

Please let me know if I can be of any further assistance to you in this area.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul Feleciano, Jr.", with a stylized flourish at the end.

Senator Paul Feleciano, Jr.
Twenty-Eighth District

sks

Of the approx. 13,000 real estate licensee's in the State of Kansas, only approx. 6,500 are Realtors and members of the Kansas Association of Realtors. In the event KAR is able to organize a "choreographed" letter writing campaign to you, please keep in mind that they actually represent only HALF of the licensee's of the State and keep in mind that many Realtors strongly oppose the new BRRETA Act! It would appear that KAR only speaks for a small number of the licensee's in the State of Kansas.

MAR-04-1996 15:56

KS ASSN OF REALTORS

P. 02
913 267 1867 P. 02



Kansas Association of REALTORS®

75 years

3644 S.W. BURLINGAME ROAD • TOPEKA, KANSAS 66611-2098
TELEPHONE 913/267-3610 • 1-800-366-0069
FAX 913/267-1867



To: Board Presidents and Executive Officers
Members of the Board of Directors

From: John Green

Date: March 4, 1996

NOW IS THE TIME TO SPEAK UP

The new license law (BRRETA) is in serious trouble and your Representatives and Senators need to hear from you today. You can phone, fax, or write but do it now.

The last couple of weeks have been difficult for your Association and the new license law. There are small but strong groups of members and non members who feel strongly that the new law should be repealed now, and they are getting your Senator's and Representative's attention. During the last two weeks we have been in an uncomfortable and defensive position during two meetings called by legislators sympathetic to licensees who support repeal and criticized for our active involvement in supporting the new law. Karen France is doing a terrific job trying to keep the true issues in front of the Legislature but she can no longer do it alone.

Last week the Senate passed a bill that would put a one year moratorium on all commercial transactions. We are concerned since a large group of Senators wanted a bill that would put a total moratorium on the new act. In the next couple of weeks the House will consider this bill, and we know there will be efforts to amend the Senate bill and change the moratorium to a total repeal of the law. This is not what the Directors said at the Board of Directors meeting in January.

During a conference call on March 1 the Executive Committee felt that considering the pressure that is being applied that it was necessary to modify our position to allow the moratorium on commercial transactions to move forward without opposition from your Association. We regret having to modify our position and are very committed to ending modification of the law at commercial transactions.

This is clearly a highly emotional issue with a number of Kansas licensees. There are people who truly believe this act is wrong and will seriously hurt their ability to earn a living. It is not our Association's attitude to turn a deaf ear to anyone, regardless of whether they are a member or not. Between the 1996 and 1997 legislative sessions we must be prepared to objectively review the law and work with the Real Estate Commission and all licensees to make adjustments where appropriate. I know you support such a position. To repeal the law or expand the moratorium to residential transactions will only cause total chaos for licensees and the public across the state who have already put the law into effect. Please act today, tomorrow is too late.

12-52

MAR-04-1996 15:57

KS ASSN OF REALTORS

913 257 1867

P. 03

P. 03/06

On the Executive Committee conference call, there was consensus that there was widespread support for the law amongst our members, but it had yet to be communicated to legislators. Additionally, it was pointed out that there was a positive response from the buying and selling public when they were presented their agency choices in the DAAR form. The Executive Committee members suggested that, perhaps it would be good to have the public let the legislators know they appreciate having those alternatives made known to them so they can make informed choices.

In order to assist you and your members in communicating to the legislators, we have developed a variety of sample letters to legislators which members can feel free to write. It would be good if the letters were handwritten, but typed is fine also. All of the samples are short and to the point and should not take too long to personalize and drop in the mail. We have also developed sample letters that our members could invite satisfied consumers to sign, and the member could drop in the mail for them.

We have attached a list of the legislators for each board for your reference. All letters could include reference to SB 710 and a statement like: "I am a REALTOR® from _____. I have been in the business for _____ years. I specialize in the area of _____."

All letters can be addressed to the legislators without a room number to the following address:

Representative _____
State Capitol
Topeka, KS 66612

Senator _____
State Capitol
Topeka, KS 66612

The central Fax # for all legislators is : (913) 296-1153

Sample letters for members to send to Legislators:

Dear Senator/Representative _____ :

I am writing to ask you to retain the Brokerage Relationships in Real Estate Transactions law which was passed in 1995. The law only went into effect January 1 of 1996 and should be given a chance to be implemented.

The agency law is good for our prospective customers and clients. When I present the Disclosure of Alternative Agency Relationships form to consumers they know where they stand and who is representing them when I have finished my presentation. Why repeal something that is good for the consumers and really works?

Sincerely,

Dear Senator/Representative _____ :

Please do not support any plan to repeal the new Brokerage Relationships in Real Estate Transactions Act. This law is a big step toward simplifying the issues of fidelity between buyers and sellers. I believe that after everyone has had a chance to get used to it, it will go a long way toward protecting buyers, sellers and agents.

Please vote no to repealing or putting a moratorium on this law.

Sincerely,

Dear Senator/Representative _____ :

The new Real Estate Broker Agency law that went into effect in January of this year should be given a chance and I think it will be good for everyone--the public, as well as the REALTORS®. The more that we work with it, the better we understand it and are better professionals because of it. Please give the law a chance to work.

Sincerely,

Sample letters from buyers and sellers to legislators:

NOTE : Can be adjusted to allow for multiple sellers and buyers

Dear Senator/Representative _____:

I understand from my REALTOR® that the legislature is considering repealing the new law which requires REALTORS® to disclose the different kinds of agents I can work with when I buy or sell real estate.

I have just

- _____ listed my house
- _____ sold my house
- _____ started shopping for a house
- _____ bought a house

and had the opportunity to have those options explained to me. I thought it was very good to have that information presented to me at the beginning of the process so that I could know how to proceed.

I think this kind of disclosure is very important to have when I am dealing with the largest investments of my life. I ask that you do not support any legislation which would take this requirement away.

Sincerely,

Name _____

Address _____

Dear Senator/Representative _____:

This letter is to request that you do not repeal or put a moratorium on the Real Estate Broker Agency Law that went into effect January 1 of this year.

The law mandates real estate agents to offer their customers alternative agency relationships at the first meeting, which lets the customer know of the options available to him. Although a customer is not forced to make a decision at that time, they are made aware of the options available and can then make an informed decision as to how they want to be represented in the transaction. I also believe this law reduces the REALTORS® liability.

Thank you,

Dear Senator/Representative _____:

I understand that legislation has been introduced which proposes to repeal or stop implementation of the new Broker Agency Relationship Law which just became effective January 1, 1996.

I believe the current law can be good for the real estate industry and not only provides the consumer with more options for representation, but also mandated disclosure of those choices and what your company has chosen to offer.

I urge you to let the law stay in place for at least one year, so our industry can adjust to the changes and have time to educate the public regarding the benefits.

Thank you,

Dear Senator/Representative _____:

I am asking that you continue to allow us to use the present law of agency for real estate agents as a way of doing business. This makes it possible for us to do our job and keep our fiduciary duty to the person we are actually representing.

If after a year we find there are flaws in this law, we will let you know so that we can work together to amend it at that time. Don't fix it if it isn't broken.

Sincerely,

Dear Senator/Representative _____:

I hope you will not support repealing or putting a moratorium on the new license law for the real estate industry. For the first time both buyer and seller are made aware of how real estate agents are able to work on their behalf. There will be problems to work out, but we now have a clearer idea of how we can best serve the public.

Sincerely,

2/23/95

representative Powell:

Please come to my open house this Sunday at 6656 Scottsville in Park City, Ks. and I will show and explain to you how the new real estate Act works against the sale of new homes and our builders.

Thanks,

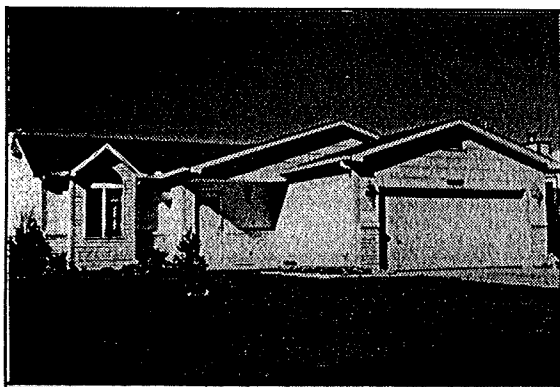
John Todd

DOM PLAN

900

+ OPTIONS
location
chool District

New Homes similar to the home pictured above.

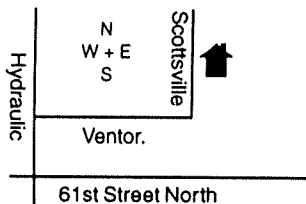


New Homes similar to the home pictured above.

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Valley Center School District



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Open 2 to 5 Sundays or by Appointment

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12-57

JOHN TODD & ASSOCIATES

REAL ESTATE
805 SOUTH MAIN, SUITE 103
WICHITA, KANSAS 67213

(316) 262-3681

February 23, 1996

Representative Tony Powell
Kansas House of Representatives
State Capitol
Topeka, KS 66612

Re: **House Bill No. 2814**

Dear Representative Powell:

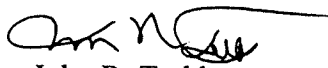
Thank you for your February 20, 1996 letter of support regarding the new Real Estate Broker's Act which became effective January 1, 1996.

This new Act is *just as harmful* to the *residential* real estate market as it is to the *commercial* market.

I sell new homes for a builder here in the Wichita area. Please look at the enclosed DAAR Form No. 1, a copy of which is enclosed, and let me take you through the steps I must take with a *prospective new home buyer* which is required under the new Act. Before I can enter into *substantive discussion* regarding the buyer's interest in purchasing the new home, like answering questions about *price, terms offered, marketing programs being offered*, I must first explain the buyer his *rights* under the new Act by presenting a 5 to 10 minute plus *seminar* regarding *agency options* available to the buyer. If you were just "out looking" at new homes, can't you imagine that the last thing you have on your mind is a seminar presented by the real estate agent? Wouldn't you be inclined to tell the agent to *stuff it*? Can you imagine the builder's interest in hearing his sales agent *turn buyers off* and literally *sending them away* when he has literally hundreds of thousands of dollars invested in new homes with construction loan interest accruing at the tune of \$25.00 to \$30.00 per day per house?

This new Act and the mandated DAAR Form No. 1 is utter nonsense. It an intrusion by the government into matters which should be left to the free market. It *does not* serve the *public's interest*, and needs to be *repealed!*

Sincerely,


John R. Todd

Enclosures

Enclosed is a copy of a survey from the Kansas Real Estate Commission which I received recently regarding Errors and Omissions Insurance. I note with a great deal of interest that the question: "Do you favor mandatory E & O Insurance?" is not asked in this survey. I have heard that the Real Estate Commission favored passage of the BRRETA ACT in 1995 and wonder how they could take a position on legislation of this importance without input from licensee's around the state? The KAR lobby person who promoted the BRRETA legislation in 1995 must have lulled the Commission to sleep on this one. Please review my letter to a Commissioner with a copy of the Wichita Business Journal with a quote from KAR's lobby indicating that the BRRETA Act "will not provide the opportunity for the small company...". Please note also in one of my letters that KAR only represents around HALF of the licensee's with the other HALF as non-Realtor members. It seems to me that the Real Estate Commission should be required to take surveys from members before embarking on major legislation affecting our industry.

1. # Years in Business: [19] 2. # of agents [1]
3. Do you have E&O at present? [X] past []
4. If YES to #3, purchased through local agent [X]
other []
5. If YES to #3:
- | | |
|------------------------|--------------|
| Liability Limits | \$ 1,000,000 |
| Deductible: | \$ 1,000 |
| Approx. Annual Premium | \$ 563 |
| OR per transaction | \$ _____ |
6. Is or was coverage provided for under policy for:
Licensed Agents? [X] Unlicensed office staff? []
7. Business Services you provide: Listing/Sales [X]
Appraising [] Auction [] Counseling []
Property Mgmt [] Consulting [] Other []
8. Do you have concerns about environmental [X]
Fair Housing [X]?
9. Comments, if any: Enclosed is a copy of
my policy. This is the most
~~economical E & O I have ever had~~
~~and it seems to cover more than~~
~~previous policies.~~

Please complete and return immediately

Willard W. Garvey
300 W. Douglas, Suite 1000
Wichita, KS 67202
(316) 261-5396, FAX (316) 262-5101

February 22, 1996

John R. Todd
John Todd & Associates
805 S. Main, Suite 103
Wichita, KS 67213

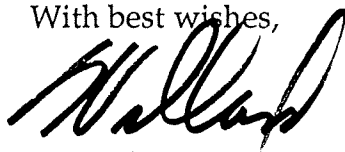
John, I agree with your February 16th letter. Like all Socialism, this act adversely impacts the consumer. In addition to your concerns about government intrusion, bureaucracy, mandated forms and institutional concerns, my view is that it violates the First Amendment -- the right of free speech.

For nearly 50 years I have regretted succumbing to Larry Roberts urging me to not oppose the Kansas law licensing real estate agents. The "bait" was that we would be "grandfathered" which of course was repudiated. Basically, government and the politicians are part of the Socialist establishment and are totally unqualified to license, regulate or intrude upon competitive enterprise. The costs are enormous and the benefits minimal.

In the aggregate, the costs of Socialism have grown from about 11% of our productive economy prior to FDR to about 75% today of the time and dollars of the American consumer.

It took us 50 or 60 years to get here and unless we can carry thru with the present promised revolution it may take the same length of time to regain our freedoms -- the Bill of Rights, free markets, and free choice.

With best wishes,


Willard W. Garvey

WWG:cg

*P.S.: Keep up the
good fight!
MB*

JOHN TODD & ASSOCIATES

REAL ESTATE
805 SOUTH MAIN, SUITE 103
WICHITA, KANSAS 67213

(316) 262-3681

February 16, 1996

Mr. Willard Garvey
Garvey Industries, Inc.
300 W. Douglas
Wichita, Kansas 67202

Dear Mr. Garvey:

I was visiting with Mr. Charles Downs today about an issue which affects the real estate industry, and he suggested that you might have an interest in knowing what we are trying to do to reverse the effects of a new Real Estate Agency Act, which was passed by the 1995 legislature, and how it negatively impacts our industry.

It appears to me that the *free enterprise system*, which has made our industry and our country what it is today, is *under attack*.

I attended a Kansas Real Estate Commission meeting in Topeka yesterday and was stunned by what I witnessed. They totally support this new legislation, and fail to see the *governmental intrusion* into our business, and endorse the *mandated forms* we are now required to use, which ultimately helps the *bureaucracy*, which they are a part of, attempt to exercise control over our industry. No one spoke up for free enterprises. No one spoke up for or apparently recognized the *negative impact* these *government imposed encumbrances* have on productivity in the marketplace.

I know you have been an interested in matters which affect free enterprises, and thought you might be interested in what our state government is trying to impose on us.

Sincerely,


John R. Todd

Enclosures

12-62

JOHN TODD & ASSOCIATES

REAL ESTATE

805 SOUTH MAIN, SUITE 103
WICHITA, KANSAS 67213

(316) 262-3681

February 5, 1996

Francis X. Thorne
Kansas Real Estate Commission
4501 Commercial Pl.
Leavenworth, KS 66048

Re: The Kansas Real Estate Brokers' and Salespersons' License Act which deals specifically with Brokerage Relationships in Real Estate Transactions which became effective January 1, 1996, a copy of which is enclosed and marked Exhibit "A".


Dear Commissioner Thorne:

Those portions of the above referenced Act which deal specifically with Agency Relationships is bad legislation and does not serve the *public's best interests*. The mandatory use of Disclosure of Alternative Agency Relationships form (see DAAR Form No. 1, marked as Exhibit "B" enclosed) results in what I view as an unnecessary intrusion of the State into our industry. Please review the enclosed copy of my letter to Attorney General Carla Stovall dated January 31, 1996 which details my objections to this Act and the mandated use of the DAAR Form No. 1.

I understand House Bill 2814, now in committee, would repeal this Act; and I would ask your support for the repeal of this Act. In addition, I would ask your help in passing legislation which more accurately reflects what real estate practitioners actually do in the marketplace, and that is acting as *facilitators* who put real estate transactions together in a *fair and honest* manner for the *benefit of all* parties involved in the transaction. This new legislation should *retain* the *provisions* of the Act we are asking be repealed, which *limit our liability*.

I would suggest Public hearings be held, regarding this new legislation, with input from people who make their living in the real estate marketplace, as opposed to real estate *association* people who may *mean well*, but lack the practical experience to know what works best in the marketplace and best serves the *public's interests*.

Sincerely,


John R. Todd

Enclosures 3

12-63

**TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
FRANK STUCKY, OWNER-BROKER OF STUCKY & ASSOC.
1994 KAR PRESIDENT
MARCH 7, 1996**

SUBJECT: SB 710

Thank you for the opportunity to testify. I come before you today as an owner broker of a small real estate firm in Newton and as the President of the Kansas Association of REALTORS® who appointed a Task Force made up of members across the state to study this issue. The report of that Task Force became the basis for SB 110. I strongly support the legislation passed last year, and with the exception of the moratorium on commercial transactions, ask you to keep the law in its present form.

The law of agency, as it applies to real estate agents has been a very difficult area for many years. The law of agency, as developed in English common law does not really reflect the relationships which exist between principals and agents in the real estate industry. Nonetheless, those concepts have been artificially imposed upon the industry over the years and the industry has tried to adapt accordingly.

However, new developments in the marketplace in the past 10 years, such as buyer's agency, have stretched the agency concepts to new limits, creating a lot of uncertainty for licensees who are trying to conduct their business in a professional manner and for members of the public who do not know what they can legally expect from a real estate licensee. Our existing license law is, for the most part, silent as to guidance in this very difficult area. This leaves the Real Estate Commission in a precarious position, because they have little or no statutory authority for sanctioning a licensee who failed to represent their client. The public is forced into the court system for relief.

This is not just a Kansas phenomenon, but a nationwide one. In speaking to REALTORS® across the country, as well as their legal counsel it became clear that some clearcut clarifications of the real estate agency relationship were needed. Our NATIONAL ASSOCIATION OF REALTORS® appointed a Presidential Task Force to study the problem, and in 1993 that task force made up of both large and small brokerages from across the country developed a nine point recommendation list for the individual state associations to examine.

In 1993, our state association appointed a task force made up of brokers from Liberal, Colby, Johnson County, Wichita and many other towns in between to study the issue. We also included members of the Kansas Real Estate Commission and its staff. After many very heated sessions that Task Force finally arrived at a compromise version which the members felt workable. Our full board of directors approved those recommendations in September and the Kansas Real Estate Commission approved them in October of 1994. The bill before you embodies those recommendations.

Colby, Johnson County, Wichita and many other towns in between to study the issue. We also included members of the Kansas Real Estate Commission and its staff. After many very heated sessions that Task Force finally arrived at a compromise version which the members felt workable. Our full board of directors approved those recommendations in September and the Kansas Real Estate Commission approved them in October of 1994. The bill before you embodies those recommendations.

The goal was to codify and clarify existing case law into one document in order to serve both licensees and the public. In many ways, it did create additional duties on our membership, something we did not do lightly. However, we believe that the trade off for these additional duties would be the establishment of clear guidelines under which our members could conduct their business.

This appears to be a very lengthy bill, however, the second half of the bill is primarily technical cleanup language, making way for the statutory changes of the first half.

58-30,101 Title of Act

58-30,102 Definitions

This section provides several definitions of terms which were used in the industry, but were largely undefined, except on a case by case basis. This method of definition created a hodge podge of meanings and understandings leaving many uncertainties for licensees and the public alike.

58-30,103 Written Agency Agreements

This section lays out the minimum requirements for agency agreements are for buyers agents, sellers agents and dual agents. Specifically, the section lays out:

1. When agency agreements must be drawn
2. The minimum terms the agreement must contain
3. Requirements for providing copies of the agreements to the principal
4. Disclosure requirements if there is a potential for dual agency
5. Prohibitions against licensees including a power of attorney within an agency agreement.
6. Prohibitions against interfering with existing agency agreements, where the customer or client is already represented.

58-30,104 Termination of Relationships

This has been a gray area for licensees. Licensees who were trying to handle the termination of relationships properly were unclear what had to be kept confidential. For example, a common dilemma was what a licensee was to do when they represent a seller in one transaction, then that same seller becomes a buyer of a house listed by the same agent. If confidential financial information had been garnered during the first sale, was an agent legally obligated to disclose that information to the seller in the second transaction? This section clarifies that if the seller in the first transaction told the agent the information was confidential, then that agent would be prohibited from disclosing it in the second transaction. Without language to this effect, agents were put in a legal bind as to how to best serve their

principal.

58-30,105 Compensation

This section clarifies that the compensation is not the determining factor in creating agency relationships, it is the written agency agreement which is the determining factor. With the growth of buyer agency in the marketplace, questions have arisen as to who represents whom if the commission is technically paid by the seller. However, in truth the commission is generated from the transaction itself. There would be no commission paid if a willing buyer and seller never got together. This clarifies that licensees should not merely rely on who is paying the commission, but are legally obligated to carry out their agency duties as outlined in their agency agreements.

The section also provides a list of whom a broker may pay a commission to, in the event of a sale.

58-30,106 Minimum requirements of a seller's agent

This section, along with the next two sections, lay out the specific statutory duties which agents must adhere to for both customers and clients in the real estate transaction. This list comes from existing case law, not only from Kansas, but also other states. The existing license law is silent as to what those duties are and we spend many many hours advising both the public and our members as to what the proper methods of representation are under the law.

Under this section, a seller's agent, in representing a client, must:

1. Perform the terms of the written agreement made with the client;
2. Exercise reasonable skill and care for the client;
3. promote the interest of the client with the utmost good faith, loyalty and fidelity--the bill goes on to list the ways in which this duty is carried out

Additionally, this section lays out what a licensee's responsibilities are to customers, another piece of information which has been made available only in a hodge podge method. Under these provisions, a seller's agent must disclose any known defects to the potential purchasers but is not required to disclose unknown material defects, i.e. ones that cannot be seen or ones which the seller does not disclose to the agent.

If a professional inspector is hired to inspect the property and does not discover a defect which the agent is aware of, then the agent must disclose that defect to the purchaser. If, on the other hand, if a professional inspector is hired and fails to find a defect which neither the seller has informed the agent about, nor is it something the agent knows, then the agent would not be held responsible for the failure of the professional, trained in their field, to discover and disclose that defect. Real estate licensees are not plumbers, electricians or engineers and cannot be held to that standard. However, the section clearly states that they will be held to exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for the licensure as a broker or

salesperson.

The last paragraph of the section is very important in that it clearly lays out that a seller cannot be liable for punitive or exemplary damage for the licensee's failure to perform any of the duties delineated in this section, unless they have engaged in fraudulent or malicious conduct themselves. In many court cases sellers have been charged with punitive damages for the wrongful acts of their agents, over which they had not control. We feel this is a severe inequity.

58-30,107 Minimum requirements of a buyer's agent

This section mirrors the previous section by providing the "do's and don'ts" for buyers agents. The concept of buyers agency has been a very large change in the real estate marketplace. Whereas in the past, most agents represented sellers and buyers were treated as customers who went unrepresented, a growing number of buyers are demanding representation at the same level as the sellers. This evolution has caused many of the gray areas in the agency law as it relates to the real estate industry. This section creates a list of what licensees must do if they take on the responsibility of providing buyer representation. This list lets the buyer, the agent and the seller and their agent know exactly what a buyer's agent can and cannot do.

58-30,108 Rules for operating as a dual agent

While the practice of dual agency is discouraged, many buyers and sellers are content to have that sort of relationship with agents in a real estate transaction. The advent of buyer's agency has increased the utilization of dual agency, but with that process numerous gray areas have arisen as to what the limitations are on agents acting in a dual agency capacity. This section lays these out in a very clear cut manner, putting everyone in the transaction on notice of what the agent can and cannot do for them, so that they can make an informed choice about accepting that kind of agency relationship. By laying this out to the buyers and sellers who are considering this type of relationship, it should provide the information they need to decide that, in fact, they are better served by seeking representation elsewhere. On the other hand they can make an informed choice that they are sophisticated enough to not need the detailed assistance single agency would provide and are willing to, essentially, go it alone.

58-30,109 Separate representation in one firm

Under existing case law, if one agent in a brokerage firm is performing as a buyer's agent for any buyer, and that buyer becomes interested in a listing of another agent of the firm, the buyer's agent, the listing agent and the broker of that firm are all considered dual agents. This is the case, even though the buyer's agent has never had any previous contact with that seller. A dual agency relationship kicks in the very limited list of possibilities which have been laid out in the previous section, thus severely limiting the ability of the listing agent to really go to bat for the seller, or the ability of the buyer's agent to really go to bat for the buyer. Not to mention the position of the broker, who in all likelihood has never met the

buyer or the seller, but is now considered the agent of both of them.

The Illinois legislature addressed this problem by creating another level of agency relationships called the Designated Agent. Six other states have followed suit and this section embodies that idea. Under this concept, if a broker designates a particular agent in the firm to be a buyer's agent as to a particular buyer, then, as to any listings of the firm, other than the buyer's agent's own listing, that buyer's agent is considered to be a designated agent, rather than a dual agent. The broker is not considered to be a dual agent unless the broker becomes involved in the transaction, for example, by showing an in-house listing to the buyer or by becoming involved in the negotiation process. At that point the broker and the buyer's agent will be considered dual agents and the previous section kicks in. Additionally, if a designated agent's buyer indicates interest into one of the designated agent's listings, then the designated agent will once again be treated as a dual agent. The rules for utilizing the designated agent are laid out in this section.

58-30,110 Disclosure of agency relationships

This section was designed to provide solid information to the buying and selling public as to what they can expect when they enter into a real estate transaction. Under this section the Kansas Real Estate Commission was required to develop a document lays out, in straightforward language, what alternative agency relationships are available to the buying and selling public. This document must be presented by licensees to buyers and sellers at the beginning of the buying and selling process.

This section also requires agents to disclose to other agents what the capacity of their agency relationship is, i.e. whether they are acting as a seller's agent or a dual agent. This disclosure is crucial so that each licensee knows what sorts of information they can or cannot disclose to the other agent they are dealing with in the transaction.

58-30,111 Imputed knowledge

This section clarifies that a seller or buyer cannot be held liable for any representations made by their agent unless they knew of the misrepresentation. At the same time agents are not liable for the misrepresentations of their buyer or seller, unless they knew of them and did not properly disclose them.

58-30,112 Rules and regulations

Merely gives the authority to the Kansas Real Estate Commission to generate the rules and regulations necessary to carry out the provisions of the bill.

We knew this was a comprehensive bill but it addressed so many issues which had arisen for consumers and licensees, it was long overdue.

FAIR
ANALYSIS OF THE BROKERAGE RELATIONSHIPS
IN REAL ESTATE TRANSACTIONS ACT

DATE: March 7, 1996

FROM: Vernon L. Jarboe

Attorney in Private practice Topeka
Educator in Real Estate for Washburn University and KAR
Licensed Broker

The principle question of the day must be why BRETA was adopted in the first place and why, if at all, should it be retained.

The answer is simple and found in undeniable principles:

1. BRETA benefits consumers which is the foundation of the Kansas Real Estate License Act.
 2. BRETA benefits the licensees of this state in delivering full, fair and complete service to consumers with less risk.
 3. BRETA fosters competition in the real estate service industry permitting principles of supply and demand to operate.
 4. BRETA and DAAR 1 will lessen litigation.
-

1. BRETA benefits consumers - which is the foundation of the Kansas Real Estate License Act.

Benefits to consumers are found in several areas:

- A. Consumers will know who they are working with.
- B. Consumers will know what the agent does and does not know about the property.
- C. Consumers are more likely to get needed expert advice.
- D. There will be a reduction in dual agency.

A. Consumers will know who they are working with.

In my experience of representing both licensees and consumers I found the consumer often did not understand the disclosure given under the old law. It was easy for the consumer to believe that the agent showing them property, the only person a buyer sees in average transactions, was working for them. National studies confirm this perception among 80% of consumers.

Additionally, there was no effective way for the Real Estate Commission, a local board or membership group to monitor whether disclosure was given let alone the effectiveness of disclosure under the old law. Generally, assuming *implied* consent, the consumers certainly rarely gave *informed* consent. Lawyers

would argue that *uninformed* consent is not consent at all to the agency relationship pre BRETA.

B. Consumers will know what the agent does and doesn't know about the property.

There was no requirement pre BRETA to suggest the use of experts to the consumers of real estate services. Certainly, those of us advising the industry on risk reduction made that a part of standard advice. However, under the old law the consumer would assume the licensee might know many things which the licensee did not see as within the purview of their expertise.

C. Consumers are more likely to get needed expert advice.

The law now requires a licensee to suggest use of third party experts to advise the real estate services consumer about conditions on the particulars of which the agent is without knowledge. The old law required only disclosure of facts the licensee "knew or should have known". Since there is no training, an agent is required to take, with respect to physical conditions at a property the licensee is not necessarily informed about many issues a buyer or seller would want to know. On the other hand the real estate services consumer may believe the licensee has more information and knowledge than they actually have.

D. Reduction in dual agency.

BRETA should reduce the occurrence of dual agency. This will arise because the agents involved and the consumers will be more aware of the possibility of dual agency. With this heightened awareness and a more clear understanding of the ramifications of dual agency it is less likely either the licensee or consumer will elect dual agency.

2. BRETA benefits the licensees of this state in delivering full, fair and complete service to the consumers.

A. Licensees are more likely to get informed consent of consumers before entering into agency relations.

B. Licensees are more likely to recognize who they are working for.

C. Reduces risk in dual agency situations.

D. Reduces risk for nondisclosure of material conditions.

A. Licensees are more likely to get informed consent of consumers before entering into agency relations.

Under the law, before BRETA, licensees were disclosing the agency choice they had made. Under BRETA, with the use of the DAAR 1 form, licensees are giving more information to consumers. The consumers are making a choice based on information rather than simply accepting a decision made by the licensee's

broker. Even if we assume an implied consent under the old law, more often than not the consent was not informed consent and little better than no consent at all.

B. Licensees are more likely to recognize who they are working for.

Since licensees using the DAAR 1 form are required to discuss, in a face to face context with consumers, the agency issues it heightens licensee sensitivity to their own position. In becoming prepared to face consumers, explain the options and offer choices, many licensees have learned agency issues for the first time. This will cause them to stop and think. Rather than sometimes acting in their own self interest they will put the interest of their client ahead of their own.

C. Reduces risk in dual agency situations.

There is less risk to the licensee in dual agency situations that do arise. Proving consumers gave informed consent will be much easier to do in the presence of DAAR 1. I believe fewer cases of dual agency will arise with heightened awareness by both consumers and licensees of dual agency problems. Because of the new knowledge licensees acquire when learning to use and through using the DAAR 1 they will do a better job as dual agents in identifying danger areas.

D. Reduces risk for nondisclosure of material conditions.

It is important to remember the property used to belong to the seller and will be owned by the buyer. It is rational to believe they should conduct themselves accordingly in evaluating the condition of the property. However, with the old law it was the duty of the licensee to disclose all known and knowable conditions. With the new law's emphasis on informing consumers on the limitations of the licensees knowledge reliance on licensees for defect discovery and liability should be lessened.

3. BRETA fosters competition in the real estate service industry making the principles of supply and demand operate.

A. BRETA makes it more likely that consumers will have "product knowledge" with respect to the product "real estate services" and therefore make more informed choices.

B. BRETA increases the likelihood that more agency choices will be available to all Kansans.

C. BRETA makes it more likely there will be less disclosed dual agency and more importantly less undisclosed dual agency practiced in Kansas.

A. BRETA makes it more likely that consumers will have "product knowledge" with respect to the product "real estate

services" and therefore make more informed choices.

It is inherent that a competitive market involves informed consumers. If consumers do not understand there are choices, what the choices are or how the choices affect them then competition will not operate properly. Convincing a buyer of the benefits of buyer agency in an imperfect market is like convincing an Australian Aborigine about the benefits of automotive travel. First they would ask why you want to travel so far anyway. The DAAR 1 form has made consumers more effective in making these choices. In teaching agency I often give an understanding of the benefits of buyer agency and ask the class how many would select it now that they know about it. Among experienced agents, in markets where buyer agency has never been practiced, I usually get 80-90% of these "consumers" electing buyer agency. This shows the power of knowledge in affecting consumption.

B. BRETA increases the likelihood that more agency choices will be available to all Kansans.

Since I teach not only in metro markets but also in Goodland, Liberal, Arkansas City, Pittsburg and Horton I can tell that buyer agency is being practiced all over the state of Kansas. This was not true before BRETA and DAAR 1. It is clear that licensees all over the state see the market and competitive advantages of offering these services.

Because DAAR 1 accurately depicts the limitations of disclosed dual agency neither brokers nor consumers will elect to practice this unless there is no other choice. Some brokers choose not to practice it at all and refer all dual agency situations to other brokers. This too is an illustration of the benefits of better information in the market.

C. BRETA makes it more likely there will be less disclosed dual agency and more importantly less undisclosed dual agency practiced in Kansas.

With more knowledge, thought and disclosure I believe fewer licensees will find themselves in undisclosed dual agency. Now, they know what it looks like. Before BRETA it often passed by as an innocent conflict of interest. Since it was not recognized, by licensees in the past, dual agency was much more dangerous when it was discovered in the context of litigation.

4. BRETA and DAAR 1 will lessen litigation.

A. Litigation will lessen because consumers will be happier with the licensees honesty in who they work for.

B. Litigation will lessen with more straightforward legislative law than confusing common law to apply to the industry.

C. Litigation will lessen with increased professionalism in the industry.

House Judiciary Committee

March 7, 1996

Jon Fort
1123 E. Kansas Plaza
Garden City, Kansas 67846
(316) 275-8200

My Testimony is in conjunction with the Kansas Association of Realtors.

I am in favor of The Brokerage Relationship in Real Estate Transaction Act Law that went into effect January 1, 1996.

Background Information:

I am the Owner/Broker of ARC Real Estate, Inc. with a total of 10 agents. The principle place of business is located in Garden City, Ks. I have agents located in Garden City, Dodge City, Scott City, and Ulysses. ARC Real Estate specializes in buying and selling agricultural land, residential housing, commercial real estate and auctions. ARC offers seller agency, buyer agency, designated agency, sub agency and disclosed dual agency services.

Concerning the Brokerage Relationship in Real Estate Law:

My experiences as a buyer agent have been positive. So far during 1996 approximately 70% of our office transactions have included buyer agents.

If the new agency law is explained properly, most customers/clients will choose to have representation. It is important for every client, buyer or seller to have all the information for them to make the best choices for themselves.

All parties at some point will have to deal with their first real estate transaction, making it necessary to have appropriate information. For a large portion of clients buying or selling real estate is one of the largest financial transactions they will make in their life, making it crucial that they have professional representation.

Through the defined agency position, liability can be reduced to both buyers, sellers and real estate agents. There is a clear and disclosed path concerning the responsibility of the realtor as to whose interest they are representing. The current required disclosure forms eliminate a great deal of confusion for both buyers and ~~Sellers~~. This disclosure form also allows the realtors to educate the public they do have a choice. This also forces the realtors to educate themselves as to how they might better serve the public. Buyer agency agreements allow the opportunity to help buyers purchase property not currently exposed to the market or for sale by owner.

Under the law all offices have a choice as to what services they

will offer to the public. Any company may continue the traditional sales service where they choose only to represent the seller. This law should help eliminate some of the current problems facing realtors relating to compensation for services. It also allows agents to specialize in one area or another (listing or selling) if they choose.

This law is not a large firm verses small firm issue. It will work for all types of firms. The law works in all sizes of communities, in every situation the consumer needs to know who is working on their behalf. Primarily what this law needs now is more education for all parties and more time to allow it to work. The Kansas Association of Realtors will continue to improve on the disclosure forms to make them more user friendly. The bottom line is, now the public has a choice that should not be taken away.

HAZLETT Auction & Realty

505 N. Franklin Street • P.O. Box 874 • Colby, Kansas 67701 • (913) 462-8271

Testimony to the House Judiciary Committee

March 7, 1996

FROM: B.J. Melvin

I am a Broker Associate with Hazlett Auction and Realty in Colby, KS. My Business is mostly farm and ranch sales, commercial sales, and auctions. I was a member of the Agency Task Force that helped develop the Agency law that is currently on the books.

I see nothing wrong with requiring the real estate industry to disclose who they are honestly representing in a real estate transaction. It is certainly not a difficult thing to do whether you are selling at private treaty or at auction.

In fact, I feel it makes it easier, when employed by a buyer to make that disclosure up front to all parties in transaction and thereby limiting my liability in regard to the selling broker and his associates and any statements they may make.

Whether at auction or private treaty its very easy to notify prospective buyers that you are the agent of seller and will represent the seller only, and letting them know they have the option of having a buyer agent represent them. By doing this, it puts the buyer on notice that you are not and will not be looking out for his best interest, which in the past is what some buyers assumed.

I urge you to oppose any effort to repeal this law. Thank you.

March 7, 1996

To: The House Judiciary Committee

**From: David H. Antrim, broker-owner
Antrim-Piper, Wenger, Inc. Realtors
Salina, Kansas**

**Position: I support the new real estate law. I am opposed to its repeal;
I am opposed to a moratorium on this new law.**

I have been active in the real estate profession since 1975. It has been my sole vocation for over twenty years. Our industry has experienced many changes during my brief tenure in the business. Some of these changes were beneficial; some were not. Nearly all were uncomfortable, because change is neither natural, nor easy.

Our new real estate law is without a doubt the most radical change our industry in Kansas has experienced. Its implementation, on a day-to-day basis, is a challenge. But the value of the new law, its purpose, make the challenge of implementation worthwhile.

In the past, the public--our customers and clients, had but a vague understanding of their relationship with real estate agents and their companies. More often than not, the customer believed that the agent worked on their behalf, when, more often than not, the agent had a legal relationship with the client...usually the seller. The responsibilities and obligations which were owed by the agent to the parties were often cloudy and ill-defined.

In recent years, home-purchasers learned that representation was available to them also...representation was not limited just for sellers. But, what exactly did representation mean? And, how was it obtained? Was it available for all? What obligations did the agent owe the client, and vice-versa? These issues, and more, were unclear...both to the public, and to the real estate industry.

The new Kansas real estate law addresses these issues. It obligates our industry to specifically cover these issues with the public. It gives the individual agent, and company the flexibility to offer a variety of services to the public...it does not dictate a "one size fits all" policy to the individual companies throughout the state. The new law will result in a better informed public, a public which will begin to understand the role and duties of a real estate agent. Perhaps most

importantly, the new laws helps the public understand their RELATIONSHIP to the agent.

I would not suggest that our new law is perfect. It is, however, based on the principle that the public whom we serve is entitled to a full disclosure of the roles and responsibilities of the real estate professional. I believe that over the coming years, ways will be discovered to fine-tune this law for the benefit of all parties. To repeal this law would be a set back to the people that we serve, and to the professionalism of our industry, which we are committed to improve.

The new law is a challenge to implement for the industry; it is sometimes a challenge for the public to understand...but the challenges are worth the effort.

(Note: The Board of Directors of The Salina Board of Realtors, which represents over 100 licensees in Salina, has taken a position in support of the new Kansas real estate law. It is their belief that the new law will serve to enhance the quality of service to the public, and enhance the professionalism of the industry.)

DATE: March 7, 1996
TO: Judiciary Committee, House of Representatives
FROM: Viola M. Fogerson
Broker, Realty Group One/BHG Manhattan, KS.
SUBJECT: Agency Law

My name is Viola M. Fogerson. I am a Realtor from Manhattan, KS. and a Broker with an Agency of 14 Agents. I have been in the Real Estate Profession for approximately 16 years and specialize in the area of Residential and some Commercial real estate.

It is difficult for me to understand why there is proposed legislation to repeal or stop the implementation of the new Broker Agency Relationship law which only became effective January 1, 1996. (Give us time to make it work.)

The new law is good for the real estate profession. It mandates that all customers or clients be given a choice of what is available to them and what our Company offers. It lets them know immediately options they have and I feel legally they deserve that right. When someone is buying or selling the largest investment they will possibly ever be involved in, why don't they deserve written disclosed representation and know what their options are? We've come a long way since the days of the one page contract. Isn't it time we think about the consumers rights?

I also believe the law reduces the Realtors liability and as a Broker, that is very important to me.

Please let the law stay in place for a least a year. If there appears to be problems, we can work together to amend them at that time.

Thank you.

Viola M. Fogerson

TESTIMONY TO HOUSE JUDICIARY COMMITTEE
MARCH 7, 1996
WINN ETZENHOUSER
MANAGING BROKER
RE/MAX, ASSOCIATES OF TOPEKA
TOPEKA, KANSAS
913-273-1100

I would like to testify in favor of SB710 as it stands--without further amendment.

The issue of "agency" in real estate is a very complicated and complex issue with a long history. You probably do not have the interest or the time to hear the history of understand the complexities of the issue.

However, if you intend to resend the present agency law that took effect Jan. 1, 1996 it is essential that you understand what you will leave us with. I assume unless you intend to rewrite the law you would have us regress back to the common law of agency as it applies to real estate and as it was interpreted by the Kansas Real Estate Commission in 1995 and in previous years.

The problem with that is that it leaves those of us in medium to large cities practicing real estate with an untenable dilemma.

Consumers today demand quality service. They also want informed choices.

The traditional way of doing real estate involves a concept of sub agency which allowed cooperation through MLS systems. Virtually all REALTOR MLS systems in Kansas and the nation assumed "sub-agency". until the spring of 1993. In late fall of 1992, the National Association of REALTORS required that all MLS systems to eliminate the presumption of sub-agency. That is we could no longer assume that the REALTOR who would use the MLS would represent the seller. NOW, buyers agents could have access and we had to decide whether or not we would cooperate with and compensate buyer's brokers who wanted to show our listings. At first, there was little change. However, when asked by union representatives in Chicago to "represent" their members in looking for homes in TOPEKA, our firm had to make a choice and we made it quickly. We began to do buyers agency when asked to do so by the consumer. Little of it happened because most consumers still did not know that they could be represented. Finally, under the advice of our attorney's we came to understand that we must make the consumer aware that we could represent them as buyers agents. Our policy was that we informed consumers and let them choose whether they wanted to be customers as was traditional or clients and have our agents represent their interests.

Over the months, as agents became better and better informed and as more and more consumers became better informed, a higher and higher percentage of our buyers chose to sign agency agreements with us so

that we could "represent" them. As Our agents became more and more comfortable assisting buyers as agents for the buyers. My best agents began to tell me that it was the only way to help first time buyers and several of my agents made the decision not to show homes to people unless they were in fact authorized to represent them.

The fact is that people--when informed--want the real estate agent to help them not only see houses but to evaluate the value of the real estate they see.

The problem was that as buyer agency grew in popularity we had more and more incidents of dual agency--when agents in my firm ended up showing and selling houses listed by our firm. My agents do not have trouble with the concept of dual agency when they sell their own listing but do have trouble with that concept when they sell a property listed by someone else in our firm. Until this year they could not do so without becoming "dual agents" and wearing handcuffs in the transaction. The worst part was the listing agents. They had a choice of not allowing the buyer agents in our own firm to show their listings or becoming dual agent if they permitted the showing.

Let me illustrate the problem by giving you a clear scenario. Suppose you had an elderly aunt--lets call her aunt Martha--who lived in Topeka. Suppose your aunt Martha had to move to an assisted living situation and needed to sell her house. Lets say you knew me and called me and asked me to find a good agent who I would recommend who would be sure to take care of her. I might refer you to --say Billie Blankenship-- one of the most seasoned, experience, and professional agents we have whom I know would represent your aunt as well as she would her own.

Now suppose another of you--had a single daughter who just got her first job --here in Topeka---and you called me and asked me to personally take care of her and see she got a great house at a good price. I would explain to you that I could not help her personally but that I would get a great agent---say Suzy Smith who has 2 daughters or her own that age. I would trust Suzy with anyone's daughter--including my own.

Now stay with me--lets walk through the same scenario two times one in 1996 with the current law and one 1995 with the old law and the one I understand would be in effect if you resend the present law.

In 1996, with the new law, Suzy could represent you daughter and survey the entire Topeka market.. 22% of the homes available would be RE/MAX listing. That's one in five. Suppose they narrowed it down to 5 homes. Lets say one was a RE/MAX listing. To save time here and to illustrate both the showing side and the listing side of the problem lets just suppose that the one in five that are being considered was Billie's listing. Your Aunt Martha,s house. Now---if that happened this week there would be absolutely no problem. Suzy would help your daughter and could represent here

and would have no duty to sell the RE/MAX listing over any of the other four. She could and she would give sound, objective, helpful advise. Your daughter may or may not choose to make an offer on your aunt's house but if she did you can rest assured that Suzy would and could do all she could to see that the got a good deal--a fair deal. Meanwhile, Billie could protect the interest of your aunt--no matter who showed the house--no matter who brought the offer.

Last year BOTH BILLIE AND SUZY COULD NOT ASSIST THEIR CLIENTS BUT WOULD HAVE HAD TO DECLARE THEMSELVES DUAL AGENTS AND EXPLAIN ALL THE LIMITATIONS THAT COME WITH THAT FORM OF AGENCY.

Neither your Aunt Martha sir---nor your daughter--sir would get the help they need.

Please do not take us backwards. "Dual agency" is not a good place to be but the public demands--and in my judgement deserves legal representation by buyers agents. Legal presumed buyer agency may be the best approach--like they do in Iowa; but the old way--like we did here until this year puts the consumer in the position of choosing a single agency buyers agent whom they may not know, or an attorney who may not know real estate values, or a buyers agent who may be forced to be a "dual agent" by definition not by choice.

Please do not tamper with the agency law that took hours and hours of dedicated study to hammer out unless you are totally aware of what you are doing and the responsibility you are assuming. If you want to get into the issue of agency--get into it --do not abdicate by listing to the critics of the new law and bury your heads the way many of these critics continue to want to do.

JIM BISHOP
& ASSOCIATES

March 7, 1996

908 S. BROADWAY
PITTSBURG, KANSAS 66762
BUS. (316) 231-4370
FAX (316) 232-3009

To: House Judiciary Committee

From: Jim Bishop, Broker

Subject: SB 110, SB 710

Thank you for this opportunity to appear before you today. I must admit that I would rather be in Pittsburg, Kansas, managing my real estate company, however, I feel so strongly about this law that I need to be here this afternoon. I am opposed to a repeal of SB 110. I have been licensed for 25 years and the owner of my own business for 20 years. I have 9 sales associates with most of them being with my company for over 10 years. I feel good about the fact that these salespeople are very well trained and well versed on the new law. They can deliver the message using the DAAR form (Section 10) without any trouble. As a matter of fact we have had almost no one refuse signing the DAAR form. Of course, we have been using a disclosure form similar to the DAAR form for over three years. Unlike the opponents, my agents like what this DAAR form triggers, in other words we like the fact that we can inform the consumer that they have options and they can discuss those options with us and choose what will benefit them. We saw alternative agency coming several years ago and began developing office policy and procedures to implement it, which included a form explaining different types of agency. Therefore, when SB110 went into effect on January 1, 1996, it was a very easy transition to begin providing the new DAAR form. I find that channeling my energy to work with change is much more productive than working against it.

There are several things about the new law that my agents like particularly Section 4 which points out when the agency is terminated, Section 5, that the compensation comes from the transaction, Section 6, advising the client to obtain expert advice on things the licensee might know but is beyond their expertise. We disclose all material facts, however, the experts that make opinions or inspections are liable and responsible for their mistakes. We are not termite experts, structural experts, or environmental experts. My agents provide alphabetical lists of those experts for the client or customer's use. Section 11 is a significant part of the new law and takes the knew or should have known aspect out of the transaction. Unless we know of a misrepresentation we are not liable. Finally, Sec 12, the commission shall provide "suggested" forms of agency agreements. The key word being suggested.

House Judiciary
3-7-96
Attachment 20

My office policy is that I offer the consumer the choice of seller agency, buyer agency, sub-agency, and disclosed dual agency. At this time I have elected not to offer designated agency. The point is-- I offer them a choice-- so that they can make an informed decision. I have letters from some of these consumers that want to tell you not to repeal the law. We've heard complaints from some licensees in Kansas that they don't like presenting the DAAR form and the buyers and sellers don't understand it. I think it is clear that the messenger cannot deliver the message. The consumer has a right to know who is going to represent them when they look for property and the sellers need to know what they can expect from the agents showing their property. It should not be hidden or undisclosed. No licensee has to "by law" offer buyer agency or designated agency, if they do not provide for it in their office policy. They can continue to do what they have been doing if that is purely representing sellers and offering sub-agency. They should not be allowed to step over the line and allow themselves to get into an undisclosed agency.

I've heard licensees say that this new law will hamper them with their efforts to sell real estate. Does that mean that giving the consumer the chance to make an informed decision is going to hamper their efforts. What's the alternative-- hiding it from them. Please do not consider a repeal of this law.

Respectfully,



Jim Bishop, Broker

HOUSE JUDICIARY COMMITTEE
REP. MIKE O'NEAL, CHAIRPERSON

TESTIMONY ON
SB 710

PRESENTED:
MARCH 7, 1996

BY:
CAL LANTIS
BROKER/OWNER
OTTAWA REAL ESTATE
OTTAWA, KS

Representative O'Neal, Members of the Committee

Thank you for the opportunity to present testimony in favor of retaining the Brokerage Relationships in Real Estate Transaction (BRRETA) law, signed into law in January of 1995, as it pertains to residential real estate transactions.

I am the broker/owner of a medium sized real estate company in Ottawa, Kansas. There are currently four full time and six part time agents with my company. Our company is the oldest real estate brokerage in the community, founded in 1963. I am currently serving as President of the Franklin County Board of Realtors, although I am not presenting this testimony in that capacity today.

BRRETA is fulfilling a needed role in the education and protection of consumers in Kansas. Real estate practitioners have traditionally served as agents for the seller (clients) in Kansas. However, most of our time is spent with buyers (customers) trying to find the right home to fit their wants and needs. Surveys have indicated that, because of the large amount of time that buyers and practitioners spend together, some buyers have mistakenly believed the practitioner is working as their agent.

One section of BRRETA requires disclosure, early in the process, of the differences in agency relationships. That section requires a form be used to disclose these differences. This form seems to be at the heart of a movement to have the entire law struck down. The form, the Disclosure of Alternative Agency Relationships (DAAR), is required to be completed at the first face to face meeting of agent and consumer in which there are substantive discussions concerning the real estate transaction. It only explains the types of agency, which have been available in common law for hundreds of years, and discloses the types of agency offered by the practitioners company.

As you know, the law was signed in January of 1995. Because of the lead time necessary to educate real estate practitioners around the state the law did not become effective until January 1, 1996. KREC started sending out information on the changes to all brokers in the state shortly after enactment of the law and classes to prepare for the changes have been available since September of 1995. So the argument that this was "Sprung on us without notice" just doesn't stand up.

The agents in my office, who range in age from 30 to 85 and in experience from 1 month to 37 years, have been to at least two classes each, seen a video on the new law that was produced by the Kansas Association of Realtors at least three times and been required to practice explaining and filling out the form in the office. We have filled out over 100 DAAR forms with both potential clients and customers. We have had no one refuse to sign the form and have had no major problems.

The truth of the matter is agents, like everyone else, are resistant to change. In addition agents feel uncomfortable disclosing to a buyer/ customer that there may be other choices available to them. This isn't an attempt by agents to mislead consumers, it is just an attempt to retain some control of a process in which agents feel they have very little control left.

This is the 90's. Some agents don't want to admit to the uncomfortable feeling of trying something new, to their resistance to change. Instead they want to lay blame at some one else's feet. It is easier to say, "we were forced into this", "we didn't have enough time to prepare" or "this law is confusing". I say that agents with this attitude will never be prepared and never educate themselves to a level of comfort so that the law isn't confusing.

In conclusion, I hope that you allow the law to remain on the books as written as it pertains to residential transactions. It provides protection for consumers as well as some risk reduction for real estate practitioners. There may be a need to refine the DAAR form, but that can be handled administratively by KREC. Like the rest of the world, our profession is becoming more complicated. Tools like BRRETA will allow us to provide service to consumers in a more professional matter.

Thank you for your time.