

Approved: 4-26-96  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 21, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Parkinson (excused)

Committee staff present: Michael Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Janice Brasher, Committee Secretary

Conferees appearing before the committee: Representative Welshimer  
Tom Byler, President Summer County Board of Realtors  
Marlin Penner, John Arnold and Associates  
Tom Johnson, J. P. Weigand & Company  
Steve Martens, Martins Companies  
Ken Schmanke, Cohen-Esrey Real Estate

Others attending: See attached list

The Chair called the meeting called to order. The Chair stated that due to time limitation and the number of conferees on both bills scheduled for hearings, the hearing on **SB 642** will be referred to Senator Harris's Subcommittee.

**SB 710--Exempt certain commercial or investment transactions from brokerage relationships in real estate transactions act.**

Representative Welshimer spoke concerning the repeal of the Kansas Real Estate Transaction Act, (BRRETA) passed last session. The conferee stated that if the BRRETA Act is not to be repealed then enact **SB 710**. Representative Welshimer discussed the BRRETA Act and difficulties with it and stated that she had been receiving a large number of calls expressing concerns with the new law. Representative Welshimer recommended that **SB 710** be amended to include all licensees and that **HB 2814** that does repeal the BRRETA Act be amended into this bill. (Attachment 1)

In response to the Chair's question, the conferee stated that the BRRETA Act confuses the public and reduces the agent's creditability with client. The conferee discussed problems with having the client sign the DAAR form.

Tom Byler, Summer County Board of Realtors testified in support of **SB 710**, and recommended exempting all licensees from BRRETA Act. The conferee stated that his organization believes that dual agency is unethical. (Attachment 2)

During discussion with Committee members, Mr. Byler stated that at the time the BRRETA Act was passed, there was not significant information given to realtors regarding this bill and its impact.

Committee members discussed issues concerning dual agency, and stated that endeavors were made to contact every resource person concerning BRRETA last session. The Committee members noted that the Real Estate Commission requested this act and it was mentioned that support for BRRETA was not unanimous on the Real Estate Board.

In response to Committee discussion Mr. Byler stated that the industry was not aware of the impact of BRRETA and particularly the impact of requiring potential clients sign the DAAR form.

Marlin Penner of Wichita testified in support of **SB 710** and stated that brokerage and real estate transactions for commercial property is different than those transactions for residential property. The conferee outlined

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 21, 1996.

characteristics of commercial transactions. (Attachment 3)

During Committee discussion about the bill, Mr. Penner stated that it was generally understood last year that BRRETA Act (**SB 110**) would not become law. The conferee related that this bill arose out of a problem within a Johnson County real estate agency. The Committee members and conferee discussed problems the BRRETA Act poses to small real estate agencies.

Steve Marten, President of Marten Companies, testified in support of **SB 710**. The conferee pointed out the fundamental differences in commercial transaction and residential transactions. The conferee stated that the BRRETA Act placed commercial transaction at a great disadvantage. (Attachment 4)

Tom Johnson, J. P. Weigand & Company testified in support of **SB 710**. Mr. Johnson stated that he is presenting a petition of Certified Commercial Investment Members which calls for amending the Brokerage Relationships in Real Estate Transaction Act, (**SB 110**) to not apply to transactions regarding the sale or lease of "commercial or investment real estate property". (Attachment 5)

Ken Schmanke, Cohen-Esrey Real Estate, Inc. testified in support of **SB 710**.

Written testimony in support of **SB 710** was provided by Larry Richard, Continental Real Estate, (Attachment 6); Donald Ablah, Classic Real Estate, Inc., (Attachment 7); John Todd & Associates, (Attachment 8); Tri-County Board of Realtors, (Attachment 9).

Written testimony in opposition to **SB 710** was provided by Jean Duncan, Director Kansas Real Estate Commission. (Attachment 10)

The Chair adjourned the meeting at 11:00 a.m.

The next meeting is scheduled for February 22, 1996.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-21-96

NAME	REPRESENTING
Jim Robertson	SRS
Ken Forley	OJA
Paul Shelley	OJA
Fay McClain	Johnson Co Dist Cts
Tom Jalusow	J.P. Weigand & Son Inc.
STEVE MARTENS	THE MARTENS Companies
Marlin Penner	John T. Arnold Assoc. Inc.
John R. Krueger	KAR
Anne McDonald	Court Trustee (OJA)
Jerry Elliott	Court Trustee of County
Jim Byler	SUMNER Co. BOARD OF REALTORS
Karen Delshermi	Self-Rep. & RE Broker
Matt Lynch	Judicial Council
Charles Prather	Court Trustee (9th)
Ken Schmanke	Cohen-ESKEY
Brenda Hobb.	The Hobb company
Jamie Corkhill	SRS/CSE
Jean Duncan	Real Estate Commission
Sue Philipp	KMS ALLIANCE



#1  
 GWEN WELSHIMER  
 RE NTATIVE, EIGHTY-EIGHTH DISTRICT  
 SEDGWICK COUNTY  
 6103 CASTLE  
 6103 CASTLE  
 WICHITA, KANSAS 67218  
 316-685-1930  
 DURING SESSION  
 LEGISLATIVE HOTLINE  
 1-800-432-3924

MEMBER TAXATION  
 LOCAL GOVERNMENT, MINORITY LEADER  
 ADMINISTRATIVE RULES & REGULATIONS  
 FINANCIAL INSTITUTIONS & INSURANCE



TOPEKA

FEBRUARY 21, 1996

HOUSE OF  
REPRESENTATIVES

SB 710

TO: TIM EMERT, CHAIRMAN, SENATE JUDICIARY COMMITTEE  
 AND COMMITTEE MEMBERS

THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE YOU THIS MORNING. I AM A MEMBER OF THE HOUSE OF REPRESENTATIVES AND AN INDEPENDENT REAL ESTATE BROKER, LICENSED SINCE 1975. I HAVE SOLD COMMERCIAL AND RESIDENTIAL REAL ESTATE IN KANSAS SINCE 1980. I AM ALSO A KANSAS CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER.

THE REAL ESTATE TRANSACTIONS ACT HAS PROVEN TO BE A BARRIER TO THE NORMAL COURSE OF BUSINESS FOR BOTH COMMERCIAL AND RESIDENTIAL REAL ESTATE TRANSACTIONS. I BELIEVE THAT THE REQUIREMENTS OF THE ACT CONFLICT WITH EACH OTHER AND THAT THE PUBLIC IS GIVEN A MESSAGE THAT IS CONFUSING AND POSSIBLY HARMFUL TO THEIR RIGHTS. I SUPPORTED THE PASSAGE OF THIS ACT LAST YEAR BECAUSE I THOUGHT I IT HAD SUPPORT OF A MAJORITY OF LICENSEES.

NOW, I AM RECEIVING LETTERS AND PHONE CALLS FROM BROKERS FROM A MAJORITY OF URBAN AND RURAL AREAS IN THE STATE. THEY ARE DESPERATE TO PUT AN END TO THIS NEW LAW. THEY ARE AUCTIONEERS, BUILDERS, INDEPENDENT BROKERS AND MEMBERS OF THE KANSAS ASSOCIATION OF REALTORS. THEY WORK WITH ALL TYPES OF REAL ESTATE TRANSACTIONS. THOSE WHO ARE NOT SUPPORTING THE REPEAL APPEAR TO BE LICENSEES FROM LARGE OFFICES, SUCH AS 30-100 AGENTS. IF THE REQUIREMENTS OF THE ACT WORKS FOR THEM, THERE IS NOTHING TO STOP THEM OR THE ASSOCIATION FROM ADOPTING SIMILAR POLICIES. IT JUST DOESN'T WORK FOR EVERYONE AND SHOULD NOT HAVE BEEN ENACTED INTO LAW.

IF WE HAVE GIVEN THE IMPRESSION THAT SOME LICENSEES CAN'T ADJUST TO CHANGE, DON'T CARE ABOUT THEIR CLIENTS, CUSTOMERS, OR THE PUBLIC, OR THAT THEY'RE JUST "CRY-BABIES," I MUST SAY WITH CONVICTION THAT THERE COULD BE NO GROUP OF PROFESSIONAL LICENSEES MORE CONSIDERATE AND CONCERNED ABOUT THE WELFARE OF THE PUBLIC. THEY SPEND 90% OF THEIR TIME WORKING FOR FREE AND ALWAYS HAVE. THEY HAVE ALLOWED THEMSELVES TO BE REGULATED BEYOND ALL REASON WITHOUT A WORD OF OBJECTION. BUT NOW COMES THE TRANSACTIONS ACT. IT AFFECTS THEIR CLIENTS, CUSTOMER, THE PUBLIC. AND NOW YOU HEAR FROM THEM ABOUT THEIR PASSION FOR THE PROFESSION.

THERE ARE 13,000 LICENSEES IN KANSAS. 6,500 ARE INDEPENDENT BROKERS AND ASSOCIATES, 7,500 ARE MEMBERS OF THE KANSAS ASSOCIATION OF REALTORS. REALTY SCHOOL OF KANSAS HAS SURVEYED OVER 1,000 LICENSEES WITH OPINION RESULTS OF 75% IN FAVOR OF REPEALING THE TRANSACTIONS ACT.

I HOPE THAT WHEN YOU WORK THIS BILL YOU WILL CONSIDER ALL TRANSACTIONS AND REPEAL THE KANSAS REAL ESTATE TRANSACTIONS ACT.

Sen. Jud.  
 2-21-96  
 Attach 1

*Continental Real Estate*

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

"Serving Kansans Since 1973"

Rep. Gwen Welshimer  
State Capitol Building  
Topeka, KS. 66612  
FAX 913/296-0251

2/20/96

Re: Senate Bill 710 AND House Bill 2814  
Page 1 of 4 for distribution to all  
Committee members on Senate Bill & House Bill

Dear Rep. Welshimer:

Thank you for your call regarding the subject Bill. I have attended Kansas Real Estate Commission meetings for years, as I did this month, and I have always found it difficult to be alerted to legislation relating to real estate matters and real estate education matters, as I also own Realty School of Kansas(RSK).

PLEASE ACCEPT THIS LETTER AS MY INPUT TO YOU AND ALL MEMBERS OF THE COMMITTEE. ALTHOUGH IT IS EASY TO BE IN FAVOR OF MOST ANY LEGISLATION THAT EASES THE BURDEN OF UNNECESSARY REGULATIONS, IT WOULD BE MUCH MORE APPROPRIATE, EQUITABLE, AND EFFICIENT TO USE HOUSE BILL 2814 to REPEAL THE Brokerage Relationships in Real Estate Transactions Act (BRRET).

SENATE BILL 710 is basically asking that Commercial Brokers be excluded or exempted from having the "flu"; while, permitting all other licensee's to contract the illness. It is an outgrowth of the passage of the new BRRET Law that was:

- A. Passed under the "guise" that the industry wanted it, when in fact it is opposed by:
- 1). Many of the Realtors organization, which represents approximately 50% of all licensee's AND as evidenced by your Bill and the Commercial brokers are very opposed to it. Likewise, many of the residential brokers are also opposed to (my random surveys show a majority based on state wide random survey) the law.
  - 2). Non-Realtor member licensee's, the other 50% of the industry is also opposed to the new law.
  - 3). The Home Builders are also opposed to the Law.
  - 4). etc.

THUS, each splinter group is making an effort to "cut" their own deal to modify and/or exclude their area, when in fact the answer to the "disease" is Repeal the Law and avoid all of the changes and modifications. Likewise, would it not be a "conflict of interest" to attempt exclude certain licensee's? The Law of Agency applies to all licensee's, BUT a simple solution is repeal of the new law AND establish and reaffirm the "facilitator" concept with limited liability, as it is the "pure" broker status the brokerage business was founded upon. Then Commercial brokers and traditional brokers all over the state would be served without risk of "conflict of interest" &/or "grandfather" considerations.

Sincerely yours,  
Larry D. Rickard, Owner  
Lic'd Broker Ks/Mo/Ok/NM/Tx

1-2

# Evelyn M. Boone Real Estate

1401 West Main, Suite B 316-431-7160 Chanute, Kansas 66720  
(. Main and Number)



Evelyn M. Boone  
Broker

Representatives:  
Gary A. Merritt  
State Capital Rm 175-W  
Topeka, Ks 66612

February 13, 1996

Gwen Welshimer  
State Capital Rm 279-W  
Topeka, Ks 66612

Dear Representatives,

This is a bad law #2814 and it does not help the public or the Real Estate industry. Our job, Requires us to help the public by negotiating between the parties and help both of them.

We negotiate, we have limited liability as long as we disclosed and were honest, and it is our job to make things happen, whether we are working with seller or buyer.

\* Please Repeal this Law ... it does not serve the true Real Estate profession.

Sincerely,

Charlotte Monk  
Sales Associate

Lic # SP00046822



## SUMNER COUNTY BOARD OF REALTORS

WELLINGTON, KANSAS

February 21, 1996

TO: Tim Emert, Chairman and  
Members of the Senate Judiciary Committee

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

SUBJECT: 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 solves some of the many problems created by last year's highly controversial legislation. Our board membership consists of residential, commercial, and agricultural brokerages. Naturally, we believe that all real estate licensees should be exempted from BRRETA.

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. When BRRETA is repealed, those who wish to practice "dual agency" will still be able to under the provisions of our previous licensee law. They can also use the written disclosure form at their first meeting with a client or customer if they wish.

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Attach. 2



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, your 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. 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

#3  
Marilyn Parmer

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

February 21, 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.

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## **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 an issue.

**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.

# 24

THE  
**MARTENS**  
COMPANIES

(316) 262-0000 • P.O. Box 486 • Wichita, Kansas 67201

February 21, 1996

Members of the Senate Judiciary Committee:

I am writing to urge your support and approval of Senate Bill 710. The purpose of the bill is to exempt commercial transactions from agency legislation that went into effect January 1, 1996.

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 specialize in commercial real estate. These are people who work with informed buyers and sellers, landlords and tenants. Most consumers have some form of outside expertise, either through an attorney or accountant.

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 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



Specialists in Commercial/Industrial/Farm Real Estate Services

Sen. Jud.  
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Attach 4

Senate Judiciary Committee  
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Page Two

and expertise. Under the current law, a real estate agent is limited in what services he or she can offer due to definitions of dual agency and the designated agent. It is not unusual to develop relationships with customers and clients where they are a seller at times and a buyer in other transactions.

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. 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

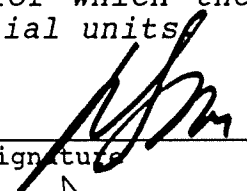

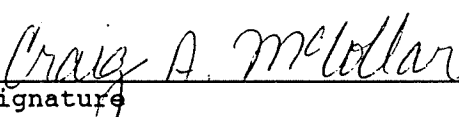

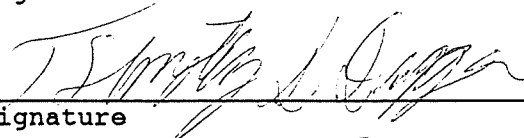
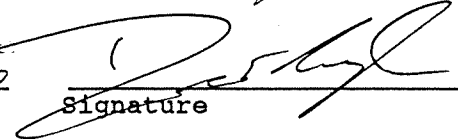
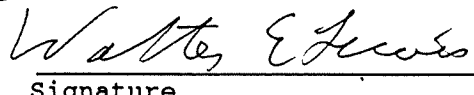
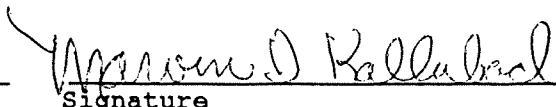
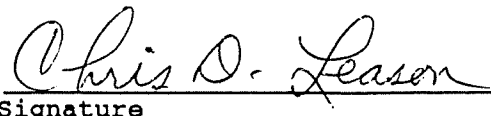
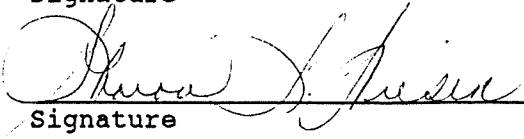
**PETITION**

The undersigned Certified Commercial Investment Members hereby petition the Kansas Legislature to amend the Brokerage Relationships in Real Estate Transactions Act, Senate Bill No. 110 passed in the 1995 Legislature (which has now been designated as K.S.A. 58-30,101 et. seq.) as follows:

K.S.A. 58-30,101 is hereby amended to read as follows:

(a) K.S.A. 1995 Supp. 58-30,1010 through 58-30,112 shall be known and may be cited as the brokerage relationships in real estate transactions act.

(b) This Act shall not apply to transactions regarding the sale or lease of "commercial or investment real estate property". Commercial or investment real estate property shall mean any real estate for which the present use is other than one to four residential units

<u>2-12-96</u> Date	<u></u> Signature	<u>MAURICE L. STETTIN</u> Printed Name
<u>2-12-96</u> Date	<u></u> Signature	<u>ROD M. STEWART</u> Printed Name
<u>2-12-96</u> Date	<u></u> Signature	<u>Craig A. McEllar</u> Printed Name
<u>2-13-96</u> Date	<u></u> Signature	<u>LEO A. GOSELAND</u> Printed Name
<u>2-12-96</u> Date	<u></u> Signature	<u>TIMOTHY S. NUGGER</u> Printed Name
<u>2-12-96</u> Date	<u></u> Signature	<u>DAVID LAYLL</u> Printed Name
<u>2-12-96</u> Date	<u></u> Signature	<u>WALTER E LEWIS</u> Printed Name
<u>2-12-96</u> Date	<u></u> Signature	<u>MARVIN D KALLENBACH</u> Printed Name
<u>2-12-96</u> Date	<u></u> Signature	<u>CHRIS D. LEASON</u> Printed Name
<u>2-12-96</u> Date	<u></u> Signature	<u>SHARON L. WICKSTEN</u> Printed Name

Sen. Judd  
2-21-96  
Attach 5

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2/5/96  
Date

[Signature]  
Signature

GARY KRUEGER  
Printed Name

2-9-96  
Date

[Signature]  
Signature

GARY SWIDER  
Printed Name

2-9-96  
Date

[Signature]  
Signature

RC STURM  
Printed Name

2/9/96  
Date

[Signature]  
Signature

B. R. CLAYTON, JR  
Printed Name

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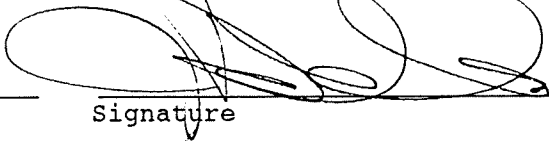

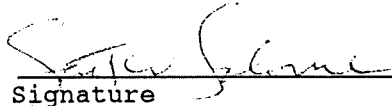
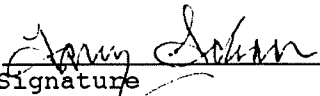
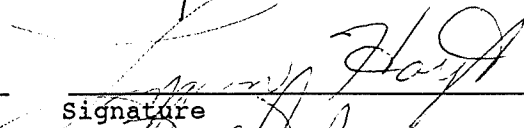
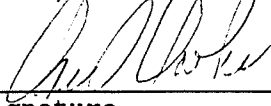
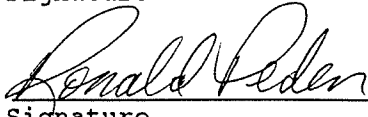
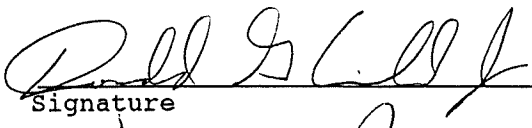
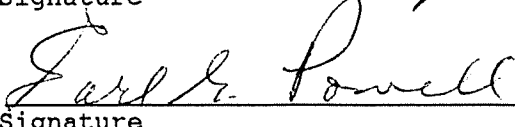
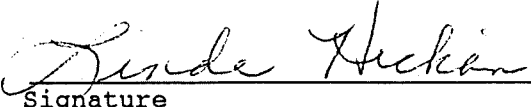
**PETITION**

The undersigned Certified Commercial Investment Members hereby petition the Kansas Legislature to amend the Brokerage Relationships in Real Estate Transactions Act, Senate Bill No. 110 passed in the 1995 Legislature (which has now been designated as K.S.A. 58-30,101 et. seq.) as follows:

K.S.A. 58-30,101 is hereby amended to read as follows:

(a) K.S.A. 1995 Supp. 58-30,1010 through 58-30,112 shall be known and may be cited as the brokerage relationships in real estate transactions act.

(b) This Act shall not apply to transactions regarding the sale or lease of "commercial or investment real estate property". Commercial or investment real estate property shall mean any real estate for which the present use is other than one to four residential units.

<u>2/9/96</u> Date	 Signature	<u>J. DOUGLAS MALONE</u> Printed Name
<u>2/9/96</u> Date	 Signature	<u>KEN MAECHTEN</u> Printed Name
<u>2-9-96</u> Date	 Signature	<u>Scott W. Salame</u> Printed Name
<u>2/9/96</u> Date	 Signature	<u>Larry Schaar</u> Printed Name
<u>2-9-96</u> Date	 Signature	<u>LYNN HOYT</u> Printed Name
<u>2/9/96</u> Date	 Signature	<u>FRED FARHA</u> Printed Name
<u>2/9/96</u> Date	 Signature	<u>RONALD PEDEN</u> Printed Name
<u>2/9/96</u> Date	 Signature	<u>DONALD G. ARNOLD JR.</u> Printed Name
<u>2-9-96</u> Date	 Signature	<u>Earl E. Powell</u> Printed Name
<u>2-9-96</u> Date	 Signature	<u>LINDA HICKAM</u> Printed Name



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2-9-95  
Date

[Signature]  
Signature

Calvin H. Klaassen  
Printed Name

2-9-96  
Date

H. Craig Ablah  
Signature

H. CRAIG ABLAH  
Printed Name

\_\_\_\_\_  
Date

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<u>7/9/96</u> Date	<u><i>Angela Pittbain</i></u> Signature	<u>ANGELA W. PITTBAIN</u> Printed Name
_____ Date	_____ Signature	_____ Printed Name
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*Continental Real Estate*PAGE 1 of 4  
Fax3241 EAST DOUGLAS  
WICHITA, KANSAS 67218  
(316) 685-3852*"Serving Kansans Since 1973"*

Senator Tim Emert  
 Attn: David Toland  
 KANSAS SENATE JUDICIARY COMMITTEE  
 Topeka, Ks. 66612  
 FAX 913/296-6718

2/20/96

Re: Your Call and Senate Bill 710

Dear Senator Emert:

Thank you for your call regarding the subject Bill. I have attended Kansas Real Estate Commission meetings for years, as I did this month, and I have always found it difficult to be alerted to legislation relating to real estate matters and real estate education matters, as I also own Realty School of Kansas (RSK).

PLEASE ACCEPT THIS LETTER AS MY INPUT TO YOU AND ALL MEMBERS OF THE COMMITTEE. ALTHOUGH IT IS EASY TO BE IN FAVOR OF MOST ANY LEGISLATION THAT EASYS THE BURDEN OF UNNECESSARY REGULATIONS, IT WOULD BE MUCH MORE APPROPRIATE, EQUITABLE, AND EFFICIENT TO USE HOUSE BILL 2844 to REPEAL THE Brokerage Relationships in Real Estate Transactions Act (BRRET).

SENATE BILL 710 is basically asking that Commercial Brokers be excluded or exempted from having the "flu"; while, permitting all other licensee's to contract the illness. It is an outgrowth of the passage of the new BRRET Law that was

A. Passed under the "guise" that the industry wanted it, when in fact it is opposed by:

- 1). Many of the Realtors organization, which represents approximately 50% of all licensee's AND as evidenced by your Bill and the Commercial brokers are very opposed to it. Likewise, many of the residential brokers are also opposed to (my random surveys show a majority based on state wide random survey) the law.
- 2). Non-Realtor member licensee's, the other 50% of the industry is also opposed to the new law.
- 3). The Home Builders are also opposed to the law.
- 4). etc.

THUS, each splinter group is making an effort to "cut" their own deal to modify and/or exclude their area, when in fact the answer to the "disease" is Repeal the Law and avoid all of the changes and modifications. Likewise, would it not be a "conflict of interest" to attempt exclude certain licensee's? The Law of Agency applies to all licensee's, BUT a simple solution is repeal of the new law AND establish and reaffirm the "facilitator" concept with limited liability, as it is the "pure" broker status the brokerage business was founded upon. Then Commercial brokers and traditional brokers all over the state would be served without risk of "conflict of interest" &/or "grandfather" considerations.

Sincerely yours,  
 Larry D. Rickard, Owner  
 Lic'd Broker KS/Mo/Ok/NM/Tx

Sen. Jud.  
 2-21-96  
 Attach. 6

*Realty School of Kansas* (R.S.K.)

OVERVIEW

p. 1 of 2

L. D. RICKARD  
PRESIDENT-BROKER

SHARI RICKARD  
BROKER



3241 EAST DOUGLAS  
WICHITA, KANSAS 67218  
(316) 686-3652

"Serving Kansans Since 1973"

RE: New Law (BRRET) Brokerage Relationships in Real Estate Transactions

WHAT the OPPOSITION to the NEW LAW IS NOT ABOUT, and

What the OPPOSITION to the New Law IS ABOUT!

1. IT IS NOT ABOUT THE INDUSTRY BEING OPPOSED TO DISCLOSURE!

Our previous agency Law provided for full disclosure to buyers & sellers

2. IT IS NOT ABOUT THE INDUSTRY BEING UNWILLING to ACCEPT CHANGE!

Brokers, Builders, Developers all work with constant change & problems

NOTE: The attached or enclosed exhibits and supporting material will assist with providing a more detailed explanation of the following points.

1. IT IS ABOUT BROKERS, DEVELOPERS, & BUILDERS wanting to conduct their businesses without excessive rules & regulations that are an intrusion on "FREE ENTERPRISE", "RESTRAIN TRADE", and do not serve the industry or the public.

2. IT IS ABOUT ELIMINATING THE "PURE" BROKER or traditional real estate brokerage concept that is the very foundation of brokerage. A "Pure" Broker is a "facilitator" or "transactional" broker assisting both Sellers and Buyers with a "win" "win" result for the benefit of both parties. This type of brokerage is fully recognized by NAR and the Consumer Federation note: Exhibits

3. IT IS ABOUT CREATING LAWS & REGULATIONS FORCING "HONEST", "HARDWORKING", "SUCCESSFUL" BUSINESSMEN TO ACT LIKE ATTORNEYS. The "Pure" Broker or "Facilitator" works with or for both parties AND leaves it to an Attorney to pursue "dishonest" Brokers. Brokers are not Attorneys and should not be asked to work under the "adversarial" concept.

4. IT IS ABOUT OPPOSITION TO GROWING LEGISLATION and "RED TAPE"! Follow the # of forms, etc., needed for a Broker-Agent to work with a Seller and a Buyer, if the agent should show or sell the Seller's property to the Buyer? To quote one Realtor, "J.C. Penny does not require their salesperson to make sure they provide customers with a seminar or notice they should go to Sears and check out their shirts first?"

5. IT IS ABOUT PASSING A LAW THAT PERMITS DISCRIMINATORY PRACTICES THAT FAVOR LARGE REALTY COMPANIES vs. SMALL REALTY COMPANIES. E.G. Small Co's are instructed not to use "designated agents". Also see public remarks of KAR lobbyists-Attorney.

6. IT IS ABOUT OPPOSITION TO HAVING NO REPRESENTATION! e.g. KAR members having officers and/or KAR Lobbyists (Attorney) pursue laws the members are either not in favor of or have not been appraised of?

7. IT IS ABOUT THE USE OF MEMBERS RPAC MONEY TO "BUY" INFLUENCE for the PASSAGE OF LAW(S) THAT MEMBERS DO NOT FAVOR or SUPPORT?

8. IT IS ABOUT GETTING LAWS PASSED UNDER THE "GUISE" OF THE INDUSTRY WANTS IT, WHEN:

A. BUYERS and SELLER (PUBLIC) don't favor the law (note: Consumer Fed.)

B. MAJORITY OF REAL ESTATE LICENSEE'S DON'T FAVOR LAW:

- 1) Approx. 50% of Licensee's are Realtors AND many realtors oppose the law
- 2) The other 50% of Licensee's (non-realtors) had little or no input, AND BOTH GROUPS EXPRESS OPPOSITION (see survey exhibit)

C. COMMERCIAL BROKERS (Realtors) don't favor the new law

D. BUILDERS are opposed to the law

E. SEVERAL ATTORNEYS FEEL IT IS A BAD LAW, or OPPOSE THE LAW

6-2

*Realty School of Kansas* (R.S.K.)

OVERVIEW

L. D. RICKARD  
REALTOR

SHARI RICKARD  
BROKER



3241 EAST DOUGLAS  
WICHITA, KANSAS 67218  
(316) 685-3652  
"Serving Kansans Since 1973"

p. 2 of 2

Opposition to BRRET (cont.)

- 9. IT IS ABOUT REAL ESTATE COMMISSIONERS' FEELINGS and CONCERN FOR THEIR PRIDE BECAUSE OF HAVING SUPPORTED AND/OR ACCEPTED THE RECOMMENDATION OF KAR OFFICERS and/or LOBBYISTS-ATTORNEY THAT THE INDUSTRY WANTED THIS NEW LAW AND TO LATER FIND THE LAW IS INTRUSIVE, BAD LAW, AND WAS NOT FULLY SUPPORTED BY KAR'S MEMBERSHIP AND DID NOT RECEIVE THE SCRUTINY OF ALL LICENSEE'S INCLUDING REALTOR AND NON-REALTOR LICENSEE'S, AND THE BUILDERS AND DEVELOPERS IN THE REAL ESTAE INDUSTRY.
- 10. IT IS ABOUT LEGISLATORS CONCERNS WITH RPAC SUPPORT or OPPOSITION FOR THE REPEAL OF THE EXISTING LAW AND PROVIDING APPROPRIATE NEW LEGISLATION, IS IT NOT? SOME LEGISLATORS MAY BE CONCERNED or HAVE FEARS OF "REPRISAL"? I SHARE THOSE CONCERNS OF "REPRISAL" AND DO NOT WANT TO ELICIT ANY FURTHER OR ADDITIONAL WRATHFUL ACTS FROM THE KANSAS REAL ESTAE COMMISSION or THE/OUR REALTOR ORGANIZATION; HOWEVER FREE ENTERPRISE ISSUES MUST OUTWEIGH SUCH CONCERNS.

FINALLY-RESOLUTION-THE CONCERNS OF ALL INDUSTRY PLAYERS (Brokers, Builders, Developers, Attorneys, etc.) CAN BE RESOLVED WITH THE ACTION(S):

- "REPEAL" and "NEW LAW" legally recognizing "pure" Broker OR ADDITION to the BROKER'S LIC. ACT
  - A. REPEAL THE BRRET ACT IN IT'S ENTIRETY (eliminate the forms and "red tape" or mandates in total)
  - B. REAFFIRM the traditional "PURE" BROKER CONCEPT, MORE RECENTLY DESCRIBED AS A "FACILITATOR" (with limited liability by law), WHICH WAS AND IS THE FOUNDATION of BROKERAGE.
    - 1. It is fair & equitable to small & large companies
    - 2. It permits "honest" Brokers to practice real estate brokerage like they have for years without lawsuits and with satisfied Buyers and Sellers.
    - 3. It would resolve the concerns of the Commercial Brokers, as that is how they operate, is it not?
    - 4. It would resolve the Builder's concern with representation to protect their investment(s).
    - 5. The public was adequately protected by disclosure required by the previous agency law
  - C. THIRD, IF our KAR staff still wants the type of practice purported by the new law--they have the avenue to add it to their own rules and practices for approval or disapproval by the membeship at large, without imposing such "bad" legislation on the entire industry.

Larry D. Rickard, Owner  
Lic'd Broker Ks/Ck/Md/NM/Dx

6-3

# Realty School of Kansas (R.S.K.)

L. D. RICKARD  
PRESIDENT-BROKER

SHARI RICKARD  
BROKER



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 32% 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 21% Educational 3. ABOUT 57% the same hours
12. Do you find the regulations, associations of the industry more conducive to: SMALL 0% LARGE 86% MEDIUM 0 SAME for all 20%  
(which size company)





February 19, 1996

Senator Tim Emert  
Kansas State Capitol  
Room 143-N  
Topeka, KS 66612

Dear Senator Emert:

As members of KAR and The Kansas CCIM we feel that commercial transactions should be exempt from the new agency law legislation or any similar regulation because:

- 1) Historically there has been little or no litigation between buyers or sellers and realtors as a result of confusion regarding agency representation.
- 2) Almost every contract written for commercial sales is either written by or definitely examined by buyer's and seller's legal counsels as well as their financial advisers.
- 3) Most contracts have a "due diligence" period for the buyer to get financing, check out environmental and the lender to determine the economic feasibility of the purchase; (customarily the lender's loan officer and legal counsel scrutinize the contract as well as the economic strength of the purchase). The buyer may withdraw and have his earnest money returned if he determines that it is unwise for him to proceed at any time during the "due diligence" period. An occasional "as is, where is" short term contract is written, but this is usually a very experienced buyer purchasing from an experienced seller.

In conclusion, we submit that the buyers, sellers, realtors, lenders, or regulatory agencies not only do not benefit from the regulation, but find it an unnecessary nuisance and therefore we request that commercial transactions should be exempted from any agency laws.

Yours very truly,  
CLASSIC REAL ESTATE, INC.

Donald J. Ablah

dja.js

Sen. Jud. 2-21-96  
Attach: 7

J-N  
Emert

JOHN TODD & ASSOCIATES

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

(316) 262-3681

To: Senator Tim Emert  
Attn: Mr. David Toland  
Kansas Senate Judiciary Committee  
FAX# (193) 296-6718

Date: February 20, 1996

Subject: Senate Bill 710

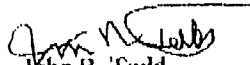
Dear Senator Emert:

I favor introduction and passage by the Senate of a Bill similar to House Bill 2814 which would repeal that portion of The Kansas Real estate Brokers' and Salespersons' License Act which deals with Brokerage Relationships in Real Estate Transactions which became effective January 1, 1996.

You are in receipt of a copy of my January 31, 1996 letter to Attorney General Carla Stovall which details my position of opposition to the new Act.

Senate Bill 710 applies only to commercial real estate. Senate support and passage of a Bill similar to House Bill 2814 would help everyone in the real estate industry and not just the commercial members. This new Act is just as odious to new home sales and resale brokerage as it is to commercial real estate people.

Sincerely,

  
John R. Todd

Page 1 of 1 pages

Sen. Jud.  
2-21-96  
Attach. 8



TRI-COUNTY BOARD OF REALTORS

A MEMBERSHIP OF MARSHALL, WASHINGTON & NEMAHA COUNTY REALTORS

Rep. Gwen Welshimer  
State Capitol, Room 279-W  
Topeka, Kansas 66612

Re: Senate Bill 110-95(Real Estate Brokerage Act)

Dear Rep. Welshimer,

The Tri-County Board of Realtors officers recently met and discussed the above Senate Bill. It was a unanimous decision to write to you , our Representative and Senator to show you our concern and disapproval of Senate Bill 110-95.

If we had been made aware of this legislation prior to its passage, we would have written to you sooner and voiced our feelings. Had we Realtors been told about this bill, We do not believe it's passage would have taken place.

There is enough paperwork for the sellers and purchasers to go thru and sign, without giving them more to read through and try to understand. We as Realtors have done just fine in the past, without repercussion. We feel that this bill will cause more legal problems in the Real Estate Business. Why create a problem where none exist.

It is our Boards desire that you vote "no" to Senate Bill 110-95. Thank you for your attention in this matter.

Sincerely,

*Donald Prell*  
*Patty Day*  
*Carol Blocker*  
Tri-County Board Officers  
Donald Prell, President  
Patty Day, Vice-President  
Carol Blocker, Sec./Treas.

*Sen. Jud.*  
*2-21-96*  
*Attach 9*



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 SENATE JUDICIARY COMMITTEE  
FROM: JEAN DUNCAN, DIRECTOR  
DATE: FEBRUARY 21, 1996  
SUBJECT: SB 710

Thank you for the opportunity to testify.

SB 710 would exempt certain types of transactions from the brokerage relationships in real estate transactions act (BRRETA). Those transactions are defined as the sale or lease of any real estate for which the present use is other than one to four residential units.

The Kansas Real Estate Commission opposes the bill. The commission voted unanimously to oppose any changes to BRRETA during the 1996 session. They believe that it is too soon to take any action. The law has only been in effect since January 1.

The commission has not specifically addressed the issue of exempting certain transactions. However, I would like to place some questions before you.

It should be noted that the exemption is not limited to transactions involving knowledgeable, sophisticated sellers and buyers. Nor is it limited to transactions where the real estate licensee is a specialist in commercial transactions; i.e., the licensee that we think of as a "commercial broker." The exemption would apply to transactions anywhere in our state, not just the metropolitan areas. It would apply when a buyer has never before purchased such real estate. It would apply when a real estate licensee only occasionally handles such a transaction.

Can it be possible that **all** of these prospective sellers and buyers already understand agency relationships and their choices? The purpose of the disclosure of alternative agency relationships (DAAR) form is to ensure that all consumers are able to make an informed choice before working with a real estate agent. A DAAR form could be developed that is more appropriate for use in commercial transactions. "When" and "how" the form should be provided could be tuned up. Is it in the public interest to throw it out?

Sen. Jewel  
2-21-96  
Attach. 106

To Senate Judiciary Committee  
February 21, 1996  
page two

The law requires agency agreements with sellers and buyers to be in writing and to include the duties and obligations of the agent as set forth in the statute. They must contain a fixed date of expiration. By clearly defining the relationship, it was the intent to reduce the possibility of misunderstandings and provide a road map for broker behavior. Would it really serve the public interest to permit verbal agreements?

Also, please note that SB 710 would exempt licensees from certain provisions which were formerly contained in the license act and are now covered by BRRETA. When handling transactions exempt from BRRETA, real estate licensees would not violate the license act if, for example, they were to:

- act as undisclosed dual agents;
- act in a dual capacity of agent and undisclosed principal;
- fail to disclose who they represent in a transaction;
- take "net" listings; or
- negotiate directly with a seller or buyer who has an exclusive agency relationship with another broker.

This is surely not in the public interest.

Perhaps another approach should be taken in recognition of the differences between residential (1-4 units) and all other real estate transactions: a study of the possibility of license classifications. This would include looking at the establishment of different criteria before a licensee could handle a commercial transaction. License classification may not be the solution, but a study could be the means of addressing all of the issues.

The commission respectfully requests that you take no action during this session. Let us work with the industry to identify areas that need to be amended and come back in the 1997 session.

Thank you for your consideration.