

Approved: 3/20/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on February 18, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Adkins (excused)
Representative Howell (excused)
Representative Kline (excused)
Representative Mays (excused)
Representative Shriver (excused)
Representative Wagle (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee:

Frank Henderson, Executive Director of Victims Compensation Board
Francis Throne, Chair, Kansas Real Estate Commission
Jean Duncan, Director, Kansas Real Estate Commission
Jim Bishop, Pittsburg-KAR President
Tom Byler, Wellington-Task Force Member
Susan Bowers, Overland Park-Task Force Member
Dan Sight, Overland Park-Task Force Member
Bill Powell, Wichita, KAR Past President
Barry West, Wichita, Kansas
Vi Forgeron, Manhattan, Kansas
Brian Jones, Pittsburg, Kansas
Marlin Penner, Wichita Commercial Broker
Rob Curtis, Olathe, specializing in new home construction and sales
Pat Tholen, Overland Park, KAR Past President
B. J. Melvin, Colby, Kansas, KAR, Past President
Mary Laham, Wichita, Kansas
Don Eusey, Emporia, Kansas
Cal Lantis, Ottawa, Kansas-Written testimony only
Don Stewart, Fort Scott
Jamie Holt, Wichita, Kansas
Jon Fort, Garden City, Task Force Member
Sue Wenger, Mulvane, Kansas
John Green, Topeka, KAR Past President
Dale Powell, McPherson, Kansas
Vern Jarboe, Topeka, Kansas, Task Force Member
Rob Stewart, Snyder, Sheets, & Goseland, Wichita, Kansas-Written testimony only
Mike McGrew, Lawrence, Kansas, KAR President-Elect

Others attending: See attached list

Chairperson Representative Carmody called the meeting to order at 3:40 p.m.

The Chair welcomed the new Vice Chair, Representative Presta and Representative Susan Wagle as a new Committee member.

HB 2313: Extending crime victim's compensation coverage to Kansas residents who have been victims of foreign terrorism.

Frank Henderson, Executive Director of the Victim Compensation Board testified before the Committee in support of HB 2313. The conferee stated that this bill was necessary to comply with the new eligibility requirements contained in the federal codes. (Anti-terrorism and Effective Death Penalty Act of 1996) The conferee stated that HB 2313 meets the federal VOCA (Victims of Crime Act) compensation grants eligibility requirements. (Attachment I)

In response to Committee questions, the conferee related the federal definition of terrorism and discussed the grant eligibility requirements.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 18, 1997.

HB 2264-Brokerage relationship in real estate transaction act. (BRRETA)

Francis Thorne, Chairperson of the Kansas Real Estate Commission spoke in support of HB 2264. Mr. Thorne related that BRRETA has been brought about primarily for consumer protection. (Attachment 2)

Jean Duncan, Director, Kansas Real Estate Commission testified in support of HB 2264. The conferee stated that this bill amends the Brokerage Relationship in Real Estate Transaction Act (BRRETA) and the Real Estate Brokers' and Salespersons' License Act. The conferee discussed the background for the bill. The conferee described each section of the bill. (Attachment 3)

During discussion with Committee members the conferee stated that this bill provides disclosure to the consumer regarding the agent's relationship. The conferee stated that this bill sets duties and obligation of the realtor in statute and codifies current case law. Ms Duncan stated that this bill amends the DAAR form requirements.

Jim Bishop, KAR President from Pittsburg testified in support of HB 2264. The conferee referred to the request of the 1996 legislature for a compromise on the original BRRETA legislation. The conferee stated that the task force appointed last year by the KREC developed a compromise which answers most of the specific issues raised with the 1995 BRRETA legislation. The conferee stated that the commercial brokers, who last year asked to be exempt (SB 710), are now in favor of the BRRETA legislation as modified by HB 2264. The conferee stated that provisions in HB 2264 exempts them from the agency brochure requirement and creates the Transaction Broker. The conferee stated that many new home construction contractors and the licensees who market their homes now support BRRETA because of the provisions in HB 2264. The conferee related that many small brokerage firms who opposed BRRETA last year did so because of the signature requirement on the DAAR form and the general frustration with the agency issue because of the close relationship many agents in small towns have with everyone in their town, forcing them into being "disclosed dual agents." They now support this legislation. (Attachment 4)

Tom Byler from Wellington and a Task Force Member testified in support of HB 2264. (Attachment 5)

Susan Bowers of Overland Park and a Task Force member testified in support of HB 2264. The conferee stated that the initiation of the BRRETA Act was a result of a survey conducted by the Federal Trade Commission. The conferee stated that this law was designed for real estate licensees to explain their role in a transaction. The conferee stated that large corporations have asked for buyer representation. (Attachment 6)

Dan Sight, Sight Commercial Realty, Inc. testified in support of HB 2264. The conferee stated that he had served on the task force, and is a Director of KAR. The conferee referred to a survey he had distributed to commercial brokers assessing their response to the proposed license law. The conferee addressed issues brought up by those opposed to BRRETA. (Attachment 7)

Bill Powell from Wichita testified in support of HB 2264 as a small independent business person in real estate. (Attachment 8)

Barry West from Wichita President/Broker Owner of Coldwell Banker Dinning-Beard Realtors testified in support of HB 2264 and BRRETA. The conferee addressed issues raised by opponents of this legislation. (Attachment 9)

Vi Fogerson an independent business person from Manhattan testified in favor of HB 2264 and BRRETA. The conferee discussed why agency disclosure was important and responded to some of the objections to this legislation. (Attachment 10)

Vernon Jarboe an attorney in Topeka practicing real estate law testified in support of HB 2264. (Attachment 11)

Brian K. Jones from Pittsburg testified in support of BRRETA and HB 2264 as a small independent real estate company owner. (Attachment 12)

Marlin K. Penner, President of John T. Arnold Associates, Inc. of Wichita, Kansas testified in support of HB 2264. The conferee offered an amendment concerning commercial transactions which would allow the broker to share information important to the transaction, unless specifically prohibited by the parties thereto. (Attachment 13)

Rob Curtis, Olathe, who is involved in the sale of newly constructed homes, testified in support of HB

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 18, 1997.

2264. The conferee stated that the sales commission comes from the transaction. The conferee related that many large corporations are driving the buyer to know who represents them.

Pat Tholen of Overland Park testified as a past President of KAR in support for HB 2264. The conferee stated that BRETETA provides professional pro-consumer solution to a long term problem of disclosure of agency relationship. (Attachment 14)

B. J. Melvin, Chairperson, Governmental Affairs, Kansas Association of Realtors testified in support of HB 2264. The conferee shared the background of the BRRETA legislation and the reason for the provisions in HB 2264. (Attachment 15)

Mary Laham from Wichita, Kansas testified as a Branch Broker for a large brokerage firm in support of HB 2264. (Attachment 16)

Don Eusey, President, Action Management & Realty, testified in support of HB 2264. The conferee related that the Emporia Board of Realtors support this bill. (Attachment 17)

Don Stewart from Fort Scott and owner of two offices testified in support of HB 2264 and of BRRETA. The conferee related support for BRRETA and HB 2264 on behalf of the Bourbon County Board of Realtors. (Attachment 18)

Jamie Holt from Derby, Kansas of Estates Unlimited Realtors testified in support of BRRETA and HB 2264. The conferee addressed many of the opponents' objections. (Attachment 19)

Jon Fort from Garden City, Kansas testified in support of HB 2264 and BRRETA as an independent business person, a farmer, a developer and the owner/broker of ARC Real Estate, Inc. The conferee stated that he was a member of the Task Force and that this legislation will explain the choice of representation available to the customers/clients. (Attachment 20)

Sue Wenger from Mulvane, Kansas testified in support of HB 2264 and BRRETA as an independent business person. (Attachment 21)

John Green from Topeka, Vice-President of the Coldwell Banker Griffith and Blair, residential division, and past president of the Kansas Association of Realtors testified in support of HB 2264 and BRRETA. (Attachment 22)

Dale Powell from McPherson, Kansas and operator of a small real estate office testified in support of HB 2264. (Attachment 23)

Mike McGrew with McGrew Real Estate, Inc. in Lawrence, Kansas testified in support of HB 2264 and BRRETA. Mr. McGrew stated that he is the current President-Elect of KAR. The conferee addressed different aspects of the bill. (Attachment 24)

Cal Lantis, Lantis & Associates, Broker/Owner from Ottawa, Kansas, offered written testimony in support of HB 2264 as introduced, as it changes BRRETA. (Attachment 25)

Rod Stewart, Snyder, Sheets, Stewart & Goseland, Inc. of Wichita, Kansas offered written testimony in support of HB 2264 and BRRETA. (Attachment 26)

The Chair stated that testimony from the opponents of HB 2264 will be heard at the continuation of the hearing on HB 2264 tomorrow, February 19, 1997.

The Chair adjourned the meeting at 6:40 p.m.

The next meeting is scheduled for February 19, 1997.

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 2-18-97

NAME	REPRESENTING
DAVID TALLMAN	KBA
DEAN WINEINGER	INDEL CORP / Remax Assoc.
Suzanne Siplon	RE/MAX Associates
Kate Curtis	KAR / Cedar Mesa
TOM BYLER	J.L. BYLER REAL ESTATE TASK FORCE
Jean Duncan	KREC
FRANCIS X THORNE	KREC
FRANK HENDERSON JR	KANSAS ATTORNEY GENERAL
DALE Powell	DALE Powell RE/MAX McPherson
George Barbee	Barbee & Assoc's
Sean C. Payant	Kansas Assn. of Realtors
Karen Geble	Kansas Assn. of Realtors
Christy Stinger	KANSAS ASSN. OF REALTORS
Brian K Jones	Jones Realty
Donald L Stewart	Stewart Realty Co., Inc.
Vi Fogarty	Realty Group Inc/Bill's - KAR
Konnie Woods	Winfield Board of Realtors
Kel Woods	
Susan Bowers	Johnson County Board of Realtors

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 2-18-97

NAME	REPRESENTING
Don Siggs	Task Force, Topeka Board of Realtors
Sherry A. McGowan	RE/MAX Assoc of Topeka
B.J. Newlin	Hazlett Auction & Realty Co. Inc.
Marilyn Kersenbrock	Homeland Real Estate, Colby
JOHN FURCIBERGER	PRADA SMOOT
Janice Salt	WICHITA AREA ASSOC. / ESTATES UNLIMITED RETS
Bill Winger	WICHITA AREA ASSOC / RE/MAX Associates
Mary A. Lahan	Ks Assoc of Realtors / Wichita
William E. Powell	WICHITA AREA ASSOC. OF REALTORS
Jim Clow	KC DAA
Don Bussey	Emporia Board of Realtors
Michael C. McGrew	Ks Assoc. Realtors / Lawrence
PAT Tholen	Johnson County Bd of Realtors
KAREN FRANCE	Ks Assoc of REALTORS
Gregory A. McJannet	SELF
John Green	Self and KANSAS ASSOCIATION OF REALTORS
Don Sant	Self KAR Dist Task Force
Barry Nest	Oldwell Banker Dun Beane
Jacqueline Dakes	Ks. Auctioneers Assoc.



CARLA J. STOVALL
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GLENDAL. CAFER, CHAIR
DORTHY STUCKY HALLEY
CARLOS COOPER

**Statement of Frank S. Henderson, Jr.
Executive Director, Crime Victims Compensation Board
Before House Judiciary Committee
Re: House Bill 2313**

February 18, 1997

Chairman Carmody and Members of the Committee:

I am Frank Henderson, Jr, Executive Director of The Crime Victims Compensation Board. We are a division of the office of the Attorney General. I thank you for the opportunity to address the committee today and express my support of House Bill 2313.

The Antiterrorism and Effective Death Penalty Act of 1996, signed into law by President Clinton on April 24, contained a number of victim related provisions. Included in these were the availability of VOCA (Victims of Crime Act) compensation grant funds.

This act provides for a new VOCA-eligibility requirement that each state must offer compensation benefits to its own residents who are injured or killed in terrorist attacks outside the borders of the United States. The law gives until April 24, 1997 to come into compliance with the new eligibility conditions for receiving federal VOCA compensation grants.

House Bill 2313 amends K.S.A. 74-7301 (e) to contain in the definition of "criminally injurious conduct", "an act of terrorism" as defined in 18 U.S.C. 2331, committed outside of the United States against a Kansas resident.

This bill also expands the definition of "victim", in K.S.A 74-7301(m), extending eligibility to those persons who suffer personal injury or death as a result of an act of terrorism as defined in 18 U.S.C. 2331, committed outside of the United States.

The Antiterrorism Act authorizes the U.S. Department of Justice, Office For Victims of Crime, to retain up to \$50 million in an emergency reserve fund which may be used for supplemental grants to assist victims of terrorist acts or mass violence outside or within the United States.

The provisions contained in House Bill 2313 satisfy the requirements for compliance with The Antiterrorism and Effective Death Penalty Act. This will allow Kansas to continue to apply for and receive VOCA compensation and assistance grants. We will receive \$4.6 million in VOCA grants this year.

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THANK YOU.

I AM FRANCIS X. THORNE, CRB
CHAIRMAN OF THE KANSAS REAL ESTATE COMMISSION
HERE ARE SOME POINTS I WOULD LIKE TO EXPRESS TO THE HOUSE JUDICIARY
COMMITTEE.

- * I HAVE BEEN SELLING REAL ESTATE AND BUILDING HOMES IN THE LANSING-LEAVENWORTH AREA FOR 24 YEARS.
- * I AM PAST PRESIDENT OF OUR BOARD OF REALTORS AND PAST CHAIRMAN OF OUR MLS.
- * LAWS SIMILAR TO OUR BRRETA ARE NOW IN SOME THIRTY STATES AND BEING ADDED TO OTHERS AS WE SPEAK.
- * BRRETA HAS BEEN BROUGHT ABOUT PRIMARILY AS CONSUMER PROTECTION. EVERY BUYER AND SELLER HAS A RIGHT TO KNOW WHO IS REPRESENTING WHOM IN ALL THE REAL ESTATE BEING BOUGHT AND SOLD.
- * IN THE LANSING-LEAVENWORTH AREA, ALL THE REAL ESTATE AGENTS WHO ARE ACTIVELY SELLING AND LISTING ARE, AND HAVE BEEN HAVING BUYERS AND SELLERS SIGN DOCUMENTS THAT THE LAW OF AGENCY HAS BEEN EXPLAINED TO THEM. COPIES OF SUCH DOCUMENTS ARE THEN KEPT IN THE OFFICE FILE.
- * 99.9% OF ALL REAL ESTATE SOLD AND BOUGHT IN LANSING-LEAVENWORTH IS BEING HANDLED BY AGENTS BELONGING TO A PROFESSIONAL ASSOCIATION, KNOWN AS THE KANSAS ASSOCIATION OF REALTORS. (KAR) LARGE AND SMALL OFFICES.
- * REALTORS IN OUR AREA ARE SELLING RESIDENTIAL, COMMERCIAL AND FARM LAND.
- * IN CLOSING, I WANT TO THANK OUR DIRECTOR ...JEAN DUNCAN...WHO ...THIS FRIDAY...WILL CELEBRATE HER 20TH YEAR WITH THE KANSAS REAL ESTATE COMMISSION AND IS KNOWN THROUGHOUT THE PROFESSION...BOTH HERE IN KANSAS, AND IN MANY OF OUR SURROUNDING STATES...FOR HER UNDERSTANDING AND KNOWLEDGE OF ALL THE LAWS, RULES AND REGULATIONS PERTAINING TO OUR PROFESSION.
- * THANK YOU FOR ALLOWING US TO MAKE OUR PRESENTATION AND WE ASK YOU TO PLEASE SUPPORT HOUSE BILL 2264.

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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: FEBRUARY 18, 1997
SUBJECT: HB 2264

Thank you for the opportunity to testify.

HB 2264 amends the brokerage relationships in real estate transactions act (BRRETA) and the real estate brokers' and salespersons' license act. The amendments are to become effective October 1, 1997.

The BRRETA amendments are based on legislation proposed by a task force which was appointed pursuant to 1996 SB 710. SB 710 provided for the sunset of BRRETA on July 1, 1997 and reinstatement of the license act as it was prior to BRRETA. HB 2264 revives those sections, thereby extending current law until October 1, 1997.

To identify the sections:

Revived sections (which are repealed October 1, 1997)
3, 11, 13, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 37, 39, 41, 43, 45

BRRETA legislation proposed by the task force, with some modifications by the Real Estate Commission
1, 23, 25, 27, 29, 31, 33, 35, 38, 40, 42, 44

For your information, at the end of my testimony I have indicated the modifications from the task force proposal which were made by the Commission.

License act amendments due to BRRETA; also other amendments requested by the Real Estate Commission
2, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 17, 19, 21, 46

New Section 1 provides for a new relationship under BRRETA: a transaction broker. This is a major change proposed by the task force. A transaction broker assists with a real estate transaction without being an agent of either party. Obligations and responsibilities, which are spelled out, do not include promoting the interests of a party; that is, a transaction broker does not have the fiduciary duties that an agent has. A transaction broker does have the same duty to disclose material

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facts as a seller's or buyer's agent. A transaction broker cannot disclose certain information without the consent of the parties--such as that a party is willing to pay more or accept less than the asking price; that they would agree to different financing terms; or their motivating factors. The transaction broker takes a neutral position. An example. A broker in a small town knows the seller and most prospective buyers. It's difficult for the broker to act as agent for one party because of his relationship with the other party. The seller just wants to sell; the buyer just wants to buy. They don't feel they need representation. The service that a transaction broker offers fits their needs. Situations where a licensee must act as a transaction broker will be mentioned under another section.

The Kansas Association of Realtors will request an amendment to this section. The Commission has reviewed their amendment and will not be opposing it.

Until we get to Sec. 23, we will be looking at license act amendments.

Sec. 2 (p 4) permits a real estate broker or salesperson to organize as a professional corporation. Ties to section 14.

Sec. 4 (p 7)--58-3035. Definitions as used in the license act. Deletes "agency agreement" and "commercial or investment real estate property" because of BRRETA amendments.

Sec. 5 and 6. Updates statute references only.

Sec. 7 (p 10)--58-3039. Provides for issuance of a 6-month temporary license to new salespersons. The licensee must take the 30 hour post-license salesperson's course during the 6-month period before being issued a regular license. The course currently has to be taken by the first or second license renewal, and because of our staggered renewal system, can be between 7 and 29 months. The course is designed for new licensees and is needed as soon as possible. A temporary license solves the problem by not tying the course to license renewal.

Sec. 8 (p 12)--58-3042. Provides for licensure of individuals who perform real estate activities for a brokerage company. Under current law, a salesperson cannot be an officer of a corporation or a member of a partnership, association or limited liability company. The amendment eliminates that prohibition.

Sec. 9 (p 12)--58-3045. Renewal of licenses. Amended because of the new provision for temporary licenses. Contains some clean-up language. Provision for prorating fees is moved to 58-3063.

Sec. 10 (p 13)--58-3046a. Educational requirements. Current law provides that new salespersons take a 30-hour post license course. The new language in subsection (f) provides that the course be taken prior to expiration of the temporary license prescribed by section 7.

Sec. 12 (p 17)--58-3050. Removes references to BRRETA governing the sale or lease of real estate that is one to four residential units (all transactions to be covered by BRRETA).

Sec. 14 (p 24)--3062. Removes provisions covered by BRRETA. Includes other amendments:

Page 29, beg. at line 17. Under current law salespersons and associate brokers may receive commissions only from their supervising broker. New language (A) permits receipt of compensation from another salesperson or associate broker who employs the licensee as a personal assistant. Both licensees must be licensed under the supervision of the same broker and they must have written agreement of the supervising broker. New language (B) permits commissions to be paid to a professional corporation instead of the individual salesperson or associate broker. This is the reason for amending the professional corporation act under section 2.

Page 30, beg. at line 27. Deals with contracts which provide for earnest money to be held by someone other than a real estate broker. Currently, the listing broker must obtain a receipt from the escrow agent for the contract and earnest money. Paragraphs (2) and (3) are added to place the responsibility on a buyer's broker if the property is not listed and on a transaction broker if neither seller nor buyer has an agent. On page 31, beg. at line 24, the commission is given authority to adopt regulations to provide that the contract must include notification of whether the escrow agent maintains a surety bond and notification that rules and regulations governing the disbursement of earnest money held in trust accounts of real estate brokers do not apply to the transaction.

Sec. 15 (p 31)--58-3063. Fees. No increase in fees. Changes in (4)-(7) place fees on a 2-year basis instead of annual; (15) provides for a 6-month fee for temporary license, (1/4 of the 2-year fee). Provides for prorated fees in (b).

Sec. 17, 19 and 21. References to BRRETA governing the sale or lease of real estate that is one to four residential units are removed.

Sec. 23 (p 37)--58-30,101. Deletes the exemption of commercial or investment real estate property transactions from BRRETA. The task force and the commission believe that all transactions should be under BRRETA.

Provides for BRRETA to supersede duties and responsibilities of the parties under the common law, including fiduciary responsibilities of an agent to a principal. The task force and the commission felt it important that this provision be included to clear up any ambiguity. The intent of BRRETA was to codify case law.

Provides that failure to comply with 58-30,103 or 58-30,110 (the sections on agency agreements and disclosing brokerage relationships) will not by itself render any agreement void or voidable. This language was in the license act prior to BRRETA and inadvertently omitted from BRRETA.

Sec. 25 (p 39)--58-30,102. Definitions as used in BRRETA. The definition of disclosed dual agent is stricken. A major change proposed by the task force is the repeal of 58-30,108, the section permitting disclosed dual agency. They felt the term itself is an oxymoron.

Definition of "designated agent" is amended to include a designated agent for the seller. Under current law, a designated agent may only represent a buyer.

"Ministerial acts" is a new definition. These are acts that a licensee may perform without creating an agency.

The definition of "qualified third party" has been moved from sections where the term is used.

"Transaction broker" is defined.

Sec. 27 (p 43)--58-30,103. The current section, captioned written agency agreements, is revised to include transaction brokerage relationships. Transaction broker agreements may be oral or in writing. A licensee working with a party is considered to be a transaction broker unless an agency relationship has been established or an offer of subagency has been accepted.

Agency agreements must be in writing. Under current law, the duties and obligations of an agent, as set forth in sections 58-30,106 and 58-30,107, must be specified in the agency agreement. This is changed to "refer to" the duties (page 44, line 24).

Agency agreements must also spell out any potential for licensees to act as a transaction broker or a designated agent. Time frames for obtaining written agency agreements are set forth.

Page 45, line 32. Relates to a situation where a seller's or landlord's agent knows that the buyer or tenant has an exclusive agency agreement with another agent. The seller's or landlord's agent may not contact the buyer or tenant and may not initiate negotiations. However, the new language permits the seller's or landlord's agent to negotiate directly with the buyer or tenant with the buyer's or tenant's informed consent. An example. A buyer comes to a new homes subdivision and the

buyer's agent is not with him. The buyer wants to write an offer and doesn't want to wait on his agent. Before any negotiations are begun, the buyer must sign a consent agreement. A consent agreement form will be adopted by the commission by rules and regulations.

Page 46, line 2. Permits a buyer's or tenant's agent to present an offer to the seller or landlord if the seller's or landlord's agent is present.

Sec. 29 (p 46)--58-30,104 and Sec. 31 (p 48)--58-30,105. The sections on termination of agency relationships and compensation are amended to cover transaction brokers.

Sec. 33 (p 51)--58-30,106. Requirements of seller's or landlord's agent.

Strikes "exercise reasonable skill and care for the client" and "seeking a price and terms which are acceptable to the client."

Provides that all offers be presented even when the property is subject to a contract of sale. Under current law, the seller may instruct the broker in the agency agreement not to submit offers after an offer has been accepted by the seller. The Kansas Association of Realtors will request an amendment to put back current language in this section and also in the section on buyer's and tenant's agents. The Commission supports the amendments.

Page 52, line 42. Permits the seller's or landlord's agent to perform ministerial acts for the customer.

Page 53, line 15. Permits sellers and landlords to authorize their agent to cooperate with a transaction broker (or cooperate with and pay compensation to).

Sec. 35 (p 55)--58-30,107. Requirements of buyer's or tenant's agent.

Strikes "exercise reasonable skill and care for the client" and "seeking a price and terms which are acceptable to the client."

Provides that all offers be presented. Deletes provision that buyer may instruct the broker in the agency agreement not to submit offers after the client enters into a purchase contract.

Page 57, line 18. Permits the buyer's or tenant's agent to perform ministerial acts for the customer.

Page 57, line 39. Permits buyers and tenants to authorize their agent to receive compensation from a transaction broker.

Sec. 38 (p 59)--58-30,109. This section covers transactions where **both** buyer and seller have agency agreements with the brokerage firm--commonly called in-house sales. [This section does not address an in-house sale where a broker's listing is sold to a buyer customer or where neither party is represented.]

Page 60, lines 1-7. Subsection (a) covers transactions where designated agents have **not** been appointed. The brokerage firm has a buyer client who wants to see a property listed by the firm. The firm may act as a transaction broker with informed consent of both parties--the firm ceases to act as agent for either party. The parties must sign a transaction broker addendum to the agency agreements (the buyer signs prior to writing the offer; the seller prior to signing the contract). A transaction broker addendum form will be adopted by the commission by rules and regulations.

Page 60, beg. at line 8. Subsection (b) covers transactions where designated agents **have been** appointed. Current law provides only for designated agents for buyers; designated agents for sellers has been added. A designated agent has all of the duties and obligations of a seller's or buyer's agent and acts for the client to the exclusion of other affiliated licensees. The supervising broker acts as a transaction broker; a designated agent may seek advice or assistance from the broker. With designated agents, both seller and buyer continue to receive client-level services. Under subsection (a), both seller and buyer cease to be represented in the transaction--both buyer and seller are assisted by licensees acting as a transaction broker.

*See
San Francisco*
Lines 34-42. In some firms, supervising brokers actively list and sell property. Paragraph (2) addresses a situation where a designated agent's buyer client wants to see the supervising broker's own listing. This provision permits the supervising broker, with the written consent of the seller, to appoint another licensee to act as designated agent for the seller as to that specific buyer. The supervising broker then acts as a transaction broker.

Sec. 40 (p 62)--58-30,110). The disclosure of alternative agency relationships (DAAR form) is replaced by a brochure entitled real estate brokerage relationships. The task force viewed the brochure as a much-simplified version of DAAR. By rule and regulation, the commission will prescribe language to describe a seller's agent, a buyer's agent and a transaction broker for inclusion in the brochure.

Licensees must furnish the brochure to a prospective buyer or seller at the first practical opportunity. The only acknowledgement of receipt will be in the contract for sale. A licensee is not required to provide a copy of the brochure in the following instances:

the licensee is acting solely as a principal and not as an agent for another;

the communication from the licensee is a solicitation of business;

the transaction is regarding the sale or lease of commercial property or the sale of residential property of more than four units;

the transaction is regarding the sale of property by public auction;

the licensee is only performing ministerial acts; or
the customer or client has already received the brochure from the licensee's brokerage firm.

Sec. 42 (p 63)--58-30,111. Imputed knowledge. References are changed: client to "client or customer"; statutory agent to "statutory agent or transaction broker"; misrepresentation to "misrepresentation or omission"

Sec. 44 (p 64)--58-30,112. The commission to provide sample forms of agency agreements instead of suggested forms.

Sec. 46 (p 65)--74-4202. Kansas real estate commission; organization. Removes reference to BRRETA governing the sale or lease of real estate that is one to four residential units.

Technical amendments. Please make the following amendments:

Page 31, line 13 - change "not" to "nor"

Page 31, line 28 - change "rules and regulations" to "statutes"

Page 32, line 6-7 - should read "~~an-annual~~ a two-year"

Page 39, lines 33 and 39 - add "or acts as a transaction broker" after the word "tenant"

Page 51, line 26 - change "contract sale" to "contract for sale"

Page 63, line 5 - "lease" should be deleted as it confuses the issue; the brochure has to be provided to prospective buyers and sellers (not landlords and tenants)

Page 64, line 1 - change "transmission" to "transaction"

The commission respectfully requests that you recommend the bill for passage. Thank you.

MODIFICATIONS BY THE KANSAS REAL ESTATE COMMISSION
House Bill 2264

The Kansas Real Estate Commission made the following changes to the task force proposed legislation:

- Page 3, line 9: changed "without the informed consent" to "without the consent"
- Page 3, line 42: added "or cooperate and pay compensation to other brokers"
- Page 44, line 21: added
- Page 44, line 43: added paragraph (3)
- Page 45, line 32: new language for "o"
- Page 51, line 15: deleted
- Page 51, lines 18-21: deleted
- Page 53, line 15-17: added
- Page 55, line 39: deleted
- Page 55, lines 42-43; page 56 lines 1-2: deleted
- Page 57, line 39: added "or from a transaction broker"
- Page 60, lines 34-42: added
- Page 63, line 19: changed "every" to "the initial"

February 18, 1997

To: House Judiciary Committee

From: Jim Bishop, President Kansas Association of REALTORS®

Subject: Brokerage Relationships in Real Estate Transactions Act (BRRETA)

Thank you for the opportunity to address this committee on legislation that is vital to our industry in the State of Kansas. In 1994, Sharon Millett, a member of the National Association of REALTORS®'s Agency Task Force said, "There is a crying demand for clear guidance on agency coming from the brokerage community." Our state recognized the market forces were wanting more options for representation.

The 1996 legislature, via a compromise worked out in the House Judiciary Committee, gave us a charge to work out a piece of legislation to handle the concerns brought to you by some of our members and other licensees. Senate Bill 710 contained four provisions.

1. The exemption of commercial transactions from the application of BRRETA, due to the different nature and clientele involved in a commercial transaction.
2. The removal of the requirement for a prospective buyer or seller to sign the Disclosure of Alternative Agency Relationships (DAAR) form.
3. The requirement that the Kansas Real Estate Commission (KREC) appoint a task force to study the problems raised by the original BRRETA legislation.
4. A sunset date of July 1, 1997, if this legislature does not act.

We have done what you requested us to do. As the professional association representing 7,000 of the 11,413 real estate licensees whose licenses are on active status at the Kansas Real Estate Commission, and through the Task Force appointed by the KREC, we have developed a compromise which answers most of the specific issues raised with BRRETA last year.

1. The commercial brokers who last year were asking you to exempt them from BRRETA will today be testifying in favor of this compromise which brings them under BRRETA in large part because they are exempted from the agency brochure requirement and also because of the creation of the Transaction Broker which the Task Force legislation recommends.
2. The new home construction contractors and the licensees who market their homes for them were asking you to repeal BRRETA because of their frustration over the inability to deal with buyers who were represented by buyer's agents and the agent could not be found at the time the buyers were ready to buy. They will be testifying in support of this legislation because of the allowances permitted in this bill.
3. Many small brokerage firms opposed BRRETA last year because of the signature requirement on the DAAR form and the general frustration with the agency issue because of the close relationship many agents in small towns have with everyone in their town, forcing them into being "disclosed dual agents", a term they felt was an oxymoron. Some of those brokers are here in support of this bill because of the simplified agency disclosure brochure and because the transaction broker concept more closely reflects their business relationships.

What you will hear today is that, to the extent possible, we have done what you have asked us to do last year. We have discussed, negotiated and addressed the concerns raised by BRRETA, and we have brought about a workable compromise. Please listen closely to what these proponents have to say and do not let BRRETA sunset.

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2/18/97



J. L. BYLER REAL ESTATE



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AREA CODE 316-326-7488

February 18, 1997

TO: Rep. Tim Carmody, Chairman and
Members of the House Judiciary Committee
FROM: Tom Byler, Member of the 1996 SB 710 Agency Task Force
RE: House Bill 2264 (amending BRRETA)

Last year I testified before this committee in an effort to repeal BRRETA. At that time it was my sincere belief that the overly zealous disclosures negatively affected economic and industrial development. The act was confusing and it attempted to legitimize "dual agency" which is a complete conflict of interest. Paramountly, BRRETA conflicted with common law and placed licensees in a legal predicament, since it did not clearly abrogate common law. Having served on the 1996 SB 710 Agency Task Force, I strongly believe that HB 2264 is progressive legislation for both the public and industry and has successfully addressed my concerns with the 1995 act. Coincidentally, the State of Florida, the second largest jurisdiction, is enacting legislation almost identical to this bill. I personally feel that this legislation will serve as a model for other states to emulate in the future.

HB 2264 accomplishes the following regarding brokerage relationships:

1. relieves commercial brokers and auctions from any written disclosures prior to a contract,
2. prohibits the unethical usage of "dual agency,"
3. creates a new "transaction broker" relationship for Kansas based upon Colorado license law which will enable a broker to supervise "designated agents" and will also solve agency dilemmas present in rural areas, commercial transactions and real estate auctions,
4. simplifies agency practices as the disclosures and consents that were necessary to make "dual agency" lawful were so comprehensive and specific that the typical licensee could not undertake them as a matter of routine,

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2/18/97*

5. mandates a less intimidating disclosure brochure for consumer education of brokerage relationship choices in residential sales,
6. standardizes brokerage practices by not discriminating between commercial and residential transactions,
7. clearly abrogates common law.

I am opposed to any amendments which will vacate a customer's right to limited confidentiality during a "transaction broker" relationship. Not only would such an amendment lower the statutory standard below the moral minimum, but it would once again place a licensee in legal jeopardy as it would allow a "transaction broker" to take advantage of one customer for the benefit of another and subsequently, the broker would be guilty of acting as an "undisclosed agent." This bill already allows a broker to disclose confidential matters with the customer's consent as an exception.

HB 2264 will refine practices which have been bewildering in the past. It is my belief that it is incumbent upon the Kansas Legislature to codify real estate relationship practices for the mutual benefit of the public and industry. If no action is taken to pass HB 2264 we are condoning the industry's confusion of agency practices to the public. I request that you give the Task Force Draft and HB 2264 every consideration for its passage.

Sincerely,



Tom Byler

Broker and 1996 Agency Task Force Member

**Summerson-Burrows,
REALTORS®**

8101 College Boulevard, Suite 100
Overland Park, KS 66210
(913) 661-8500
Fax (913) 661-8550
February 18, 1997

Members of the Judiciary Committee:

Good afternoon. I am Susan Bowers, a residential real estate agent with Prudential Summerson-Burrows in Overland Park. There are eighty-five agents in my firm. This is my nineteenth year in real estate. Thank you for the opportunity to testify before you today.

We are present to discuss the merits of the Broker Relationships in Real Estate Transactions Act. The title of this act says it all: broker relationships in real estate transactions. This act dots the 'i's' in professionalism. BRRETA clearly defines the duties and responsibilities each licensee is obligated to perform.

The Kansas Real Estate Commission and the Kansas Association of Realtors did not *dream* the need for this act. In reality, the consumer caused a need for this type of legislation.

In the early 1980's the Federal Trade Commission conducted a survey of people who had recently purchased homes. These people were asked who represented them in their real estate transaction. An overwhelming majority responded that their real estate agent represented them. At the time, this was not so. Agents primarily represented sellers. Thus, the Agency Disclosure Law was initiated. This law was designed for real estate licensees to explain their role in a transaction - Which party they represented while treating all parties fairly.

With this disclosure in effect, buyers - and, in my market in Johnson County - large corporations (Sprint and Yellow Freight, specifically) asked for buyer representation. The corporations were guaranteeing these same employees a buyout on their homes when they left Johnson County. It was in the corporations best interest for the buyer to make a prudent choice of property in the first place.

With this brief sketch of background on representation, it is important for all to understand - the public - the consumer - created the need for buyer representation. With choices of representation comes the need for legislation such as the BRRETA Act to define representation and the duties involved.

BRRETA achieves two very basic goals: 1) It requires the real estate licensee to inform the consumer of their choices in representation in a real estate transaction. And 2) It defines the licensee's role in each of the agency relationships.

As a member of the task force responsible for this House Bill 2264 before you, we traveled across the state to hear the pros and cons on this legislation. The opposition to this act desires to see BRRETA sunset. Most of the opponents have been in the business longer than myself. Over and over, we heard - "just let us do business the way we always have done it." BRRETA allows them to do business the way they have always done business legally! BRRETA allows these individuals to act as a transaction broker rather than an undisclosed dual agent. In small communities where everyone knows each other and their business, it would be difficult to represent one party or the other. As a transaction broker under BRRETA the licensee must treat both parties fairly, without representation to either party in order to facilitate the transaction.

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If BRRETA sunsets, there will be no disclosure to the consumer of their choice in representation. The only disclosure will be to tell them who the agent they are working with is working for. There will be only limited guidelines for the duties and responsibility of a licensee in regards to agency. In closing, it is essential BRRETA be passed in order to protect both the consumer and the licensee.

Thank You,

A handwritten signature in cursive script that reads "Susan Bowers". The signature is written in dark ink and is positioned above the printed name.

Susan Bowers

#7

SIGHT

COMMERCIAL
REALTY, INC.

February 18, 1997

Dear House Judiciary Committee Members,

My name is Dan Sight and I am the owner of Sight Commercial Realty, Inc. in Overland Park, Kansas. I have owned my own business for three and one-half years and now employ four agents. I have been a real estate agent for 13 years. I served on the agency task force and I am a Director of KAR, 1994 President of the Johnson County Board of REALTORS, 1995 Kansas City CCIM Chapter President, 1995 Johnson County REALTOR of the year and 1994 Commercial REALTOR of the year.

I appreciate the opportunity to speak with this organization on a subject of which I have come to know more than I ever dreamed I would need to know.

I have been involved in organized real estate activities for a quite some time. Serving on the above task force was the most difficult job I have ever had, and the most thankless. I also felt that it was the most important task that I ever took on. I am a simplistic person and I approached this job hoping we could simplify this real estate agency law. I came to find out that it is anything but a simple law.

This is a subject where there is a myriad of ideas, thoughts and different situations. This law deals with commercial property, residential property, auctioneers, new home agents, buyers' agents, sellers' agents, transaction brokers, designated sellers' agents and designated buyers' agents.

We had to take the above situations into consideration when we met. The task force was made up of members from all segments of the business. It was a great group of people. We met on many occasions, and had many heated discussions. We went on the road to meet with REALTORS and licensees in Wichita, Dodge City and Lawrence.

I felt, as the sole commercial practitioner on the committee, a responsibility to come up with a law that worked for commercial brokers as well as residential. I went to Wichita in June to meet with the Kansas CCIM Chapter. I met in July with the Topeka CID group and the Kansas City CCIM Chapter. Most recently, I met last week and talked to the SIOR (Society of Industrial and Office REALTORS). I also sent out a survey asking commercial brokers to respond the proposed license law. I sent it to 224 commercial real estate practitioners in the State of Kansas. I received 64 responses (28.5%) and 89% of those were in favor of what we had proposed.

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2/18/97

SIGHT

COMMERCIAL
REALTY, INC.

I felt that it was important to bring commercial transactions back into BRETТА. Right now we in effect have two real estate license laws for the State of Kansas, one for commercial, the other for residential. It is very confusing to licensees that work in the many small towns and cities in our State.

I know the real estate licensee law that we have before you is a good law. It is good for consumers in our state and it is good for licensees in our state. The bottom line is that whether consumers are buying their first house, their first building for their business or relocating a manufacturing plant, they are entitled to agency disclosure. They are also entitled to have an agency relationship that works for their particular situation. Replacing dual agency with transaction broker is an excellent way of handling a transaction where you are working with both parties.

The best explanation of dual agency I have come from a young man in Dodge City. He said he was trying to explain dual agency to a consumer, and she said, "Isn't that like a lawyer representing both the plaintiff and the defendant?" Lawyers cannot do that and neither should a real estate broker. It makes much more sense to represent the transaction.

I have read that some people claim that this is a discriminatory law. "It is different for commercial and residential brokers. You know that commercial is predominately made up of men and residential of women." This is such a vague generalization. That is just not the case and should be dismissed as having no merit.

Some people claim that the KREC is just looking for more power and money. I find that to be an insult to Jean Duncan the Director of the KREC. We, as a State, are very fortunate to have such a quality, fair and honest person to serve in that capacity. She has no motives but to come up with a fair, honest and enforceable real estate law.

Lastly, I urge this committee and the Kansas Legislature to pass BRETТА 97 or House Bill 2264. I support this as a member of the agency task force, a real estate licensee, a KAR director, as Chair of the Governmental Affairs Committee at the Johnson County Board of REALTORS and most importantly as a small commercial REALTOR.

Thank you for the opportunity to speak with this committee and I will be more than happy to answer any questions that you may have,

Respectfully submitted,


Dan Sight, CCIM

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#8

TO: HOUSE JUDICIARY COMMITTEE
FROM: BILL POWELL
DATE: FEBRUARY 18, 1997
RE: HB 2264

My name is Bill Powell and I am from Wichita. I am a small independent business person. I have been in the Real Estate profession 20 years and served as President of the Wichita Assoc. of Realtors in 1990 and as President of the Kansas Assoc. in 1993. There are 6 members in my firm which by today's standards is considered a small Real Estate company. Our concentration is primarily residential sales.

I want to thank you for giving me and others the opportunity to testify in support of this very important Bill.

I am aware that you have received letters from some licensees that are not in support of this Bill but it is my firm belief that the overwhelming majority of our membership are in support of specific guidelines on agency which HB 2264 accomplishes so that we can better serve our customers and clients. We now have clear cut guidelines on Buyer Agency, the ability to have separate representation with the Buyer and Seller by two different agents within one firm with Designated Agency and the ability to act as a Transaction Broker, doing away with the potential conflict of interest of a Disclosed Dual Agent. All of these changes are, in my opinion, extremely beneficial to the buying and selling public which we serve.

This legislation has no provisions in it that will increase our cost of doing business as some would lead you to believe. A small company like mine is not in any way affected adversely by this BRRETA Act as compared to the larger firms, so I can't see any reason why it would force the small firms out of business. That scare tactic is just ludicrous. If it wasn't fair to all Real Estate practitioners, I wouldn't be here today.

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A lot of the underlying concern about this Bill and the one that preceded it last year is the requirement by the licensee to disclose up front “at the first practical opportunity”, the different forms of agency relationships and who we represent and the options for the Buyer and Seller. In fact, we have been required since 1989 to disclose who we represent at the first meeting with potential Buyers of Real Estate. The problem was that we could do it verbally at this first encounter, and if we didn’t, the buying public was none the wiser as to our legal obligation. They were only left to finding out when they read it in the Real Estate Purchase Agreement. My true feelings is that this disclosure responsibility was swept under the table by most agents because we were not required to give the Buyers printed information, which is required by the existing Act and the new Bill.

Now when an agent meets with a Buyer for the first time, the Buyer is informed as to the options of Agency representation in the purchase of Real Estate. And that is what the opponents don’t want! Some have chosen to not offer Buyer Agency in their firm, which is fine. Some who primarily sell only new homes and represent a Builder feel that having to disclose agency options upfront to potential Buyers is not a comfortable act and may infact send Buyers running to find someone to represent them.

The concerns of the opposition is clearly financial! To keep the buying public in the dark, is fine with them. Please do what is right and pass this legislation that our customers and clients, your constituents, will all benefit from.

Again, I want to thank you for the opportunity to testify and if you have any questions that I would be able to answer, I would be happy to!

Respectfully Submitted,

Bill

Bill Powell, CRB

Broker

Camelot Realty, Inc.



DINNING • BEARD,
REALTORS®

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February 14, 1997

G. BARRY WEST
President / Owner

Honorable Tim Carmody
Chairman
House Judiciary Committee

Re: Brokerage Relationships
and Real Estate Transactions
Act

Dear Mr. Chairman:

My name is Barry West. I am President/Broker Owner of Coldwell Banker Dinning-Beard Realtors, Wichita, Kansas. We have three offices, 148 realtor associates and we are primarily a residential firm and doing some limited commercial business.

It is my strong belief that the recommendations made by the BRRETA task force for changes in the existing Act are in the best interest of buyers, sellers, and real estate practitioners.

Buyers and sellers need to know the options available to them in selecting what representation they want in buying or selling real estate. Disclosure should be made early on and understanding assured.

I would also make the following observations relative to some of the comments I have heard in opposition to BRRETA.

The KREC has the authority to enforce the license law and impose fines when violations of the law are found. However, the KREC does not retain any of the revenue generated by the fines they impose. This money goes to the general fund of the state. Secondly, some opponents say the KREC has already levied fines for violations of BRRETA. However, the fines they have levied have been for failure to have agency agreements in writing. This requirement has been in force since 1988 and was not a result of BRRETA.

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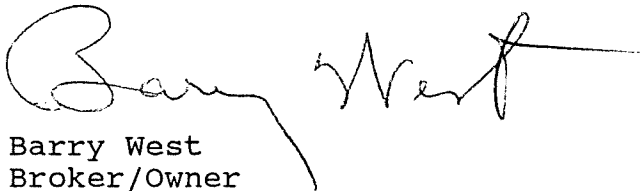


The opponents state that KAR is unwilling to "survey" its members. There are several ways to conduct a survey and since last year and the beginning of this year the Officers and staff of the Association have personally traveled around the state and met with real estate brokers and agents regarding BRRETA. On December 6, 1996 I was invited to a meeting called by members of the Task Force Officers and staff of KAR to review, discuss, and comment on BRRETA proposals. Everyone there was given ample time to comment and every viewpoint was heard, to say that our realtors were not given a chance to voice their opinions is not true.

The issue of BRRETA being discriminatory since more females are in residential real estate and males are in commercial real estate-I would just have to say I'm not quite sure where the data is to back this statement up since Kansas is a one license state and men and women who hold a real estate license can obviously conduct commercial as well as residential real estate transaction-and many do. However, I will say this-the belief seems to be that commercial brokers are exempt from BRRETA. THIS IS NOT TRUE. The only way in which commercial transactions are different from residential transactions is the disclosure brochure is not required to be presented to customers and/or clients in a commercial transaction since often times the licensee is not dealing directly with the buyer and/or the seller of the commercial property. All other BRRETA requirements are the same for commercial transactions.

Thank you for your time and I urge you to support BRRETA.

Sincerely,



Barry West
Broker/Owner

GBW/dq

#10
February 18, 1997

Please allow me to introduce myself. I am Vi Fogerson an independent business person from Manhattan. I have been in the business of Real Estate for about 18 years. There are 10 people in our firm. I personally specialize in residential real estate and only occasionally venture into the commercial market. Thank you for allowing me the opportunity to testify today. This is an extremely important issue for our profession and I am seeking your support for House Bill 2264.

As Zone Vice President I work very closely with Realtors from Manhattan, Wamego, Junction City, Abilene, Marysville, Seneca, Holton, Hiawathia, as well as areas in between. At our recent Kansas Association of Realtors Board of Directors meeting our Zone voted 100% in favor of this bill. We had representation from each of the Boards in my Zone. These Directors are instructed how to vote by their respective Board membership before they attend these state meetings. All Realtors in Kansas are encouraged to attend these meetings and let their voices be heard. Yes, there are a few of the more mature Realtors that don't like change, but they do not like education either. I feel that this Bill is truly an educational process.

Why isn't agency disclosure important? Why shouldn't someone who is making the largest investment of their lifetime not deserve representation? Why don't buyers and yes sellers deserve choices? Think about it, a customer walks into an office to spend \$200,000 or \$20,000 on a new home. Shouldn't our agency law allow them the privilege of being represented. I think so.

Just a brief response to some of the opposition. Good old boy, friendly hand shake, verbal agreement are all fine (or are they), until something goes wrong. Then all of the afore mentioned are as good as the paper they're written on and that's not much. Most agency controversy becomes an issue after a problem related to property disclosure occurs. This law is not being asked for by the public? I have yet to offer buyer agency when it has not been eagerly and graciously accepted. It's not good for Realtors. Yesterday, in visiting with a Realtor in my zone, I was given the following example. Their agency sold a property, had a professional inspect the home, he missed something and guess what "I have never been sued" all of a sudden was no longer true. Do you think they like the portion of the law that removes, know or should have known. Even in little old Wamego. Their comment "if it helps remove some liability on the part of the Realtors-don't let it sunset. Does it really require more paperwork? Maybe a little, but so do lawsuits. The liability it removes from me, needless to say, makes me feel REAL GOOD.

Please consider this bill carefully. I really don't think the Kansas Association of Realtors or the Kansas Real Estate Commission would introduce a bill that is not beneficial to all of us, as well as Kansas consumers. Do you?

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2/18/97

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#11
February 17, 1997

TO: HOUSE JUDICIARY COMMITTEE

RE: HB 2264

Mr. Chairman and Members of the Committee

I am an attorney in Topeka, practicing real estate law. I also have a broker's license and am a member of the Kansas Association of REALTORS. I have been involved in the education of real estate professionals for approximately 15 years and was privileged to be a member of the BRETA task force.

The task force was an educational experience involving numerous meetings, many hours of independent study, research and review of the subject. The outcome resulted from debates with seemingly no possible solution. This occurred with compromises that serve the industry and public well. The task force was balanced between those who disparaged BRETA, those who loved it and those who were unsure. In the end I was proud to have been a member and encourage you to give it the credence it deserves after long and careful study by a group active in the industry and concerned about a workable law.

An interesting piece of mail came to my door a few months ago. It was a survey purporting to examine the state of mind of real estate licensees about BRETA. I now see that survey promoted as representative of 13,000 opinions. I have some education in survey techniques and results. Reading the survey led me to believe the author had none. The document was so argumentative, one sided and persuasive that I and the other two licensees in my household declined to respond. How then can the survey represent 13,000 opinions? I retained a copy and would let you judge the usefulness of the document for yourselves.

I believe the BRETA amendment, found in HB 2264, provides a law that accomplishes tasks I thought impossible one year ago. It permits a broker to transact business in ways that are consistent with those a broker likes but which were against pre and post BRETA law. It eliminates the oxymoron of dual agency and protects the public by requiring disclosure of defects and delineation of whom the licensee works for. It requires licensees to suggest use of expert opinion and recognizes the benefits of buyer agency consistent with increased public demand for this service. This proposal also protects the broker from unreasonable liability exposure while making the practices of real estate licensees more professional.

In my professional life I have had significant first person contact with licensees, buyers, sellers and others involved in this business. I believe I have taught the BRETA course to more students than any other person. From my experience with licensees and the public I can tell you the public has long been confused by the broker/buyer relation, but they are now feeling more comfortable. I can tell you that the biggest problem is many old dogs that do not want to learn new tricks. In my prelicense courses over the last twelve months, students do not understand the problem existing licensees have with this law and cannot imagine operating without consumers being informed of their agency choices. Statistically we know the public likes the law because they are electing buyer agency at a rate unprecedented under the old law.

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12



Phone 316/231-0800
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Toll Free 800/582-7258
1002 N. Broadway
Pittsburg, Kansas 66762

February 18, 1997

Good Afternoon. My name is Brian K. Jones, from Pittsburg. I own a small, independent real estate company that has been run by my family since 1905. I am a third generation Realtor with 19 years of residential real estate experience. I would like to thank you for allowing me the opportunity to testify in favor of **House Bill # 2264** and specifically the *Brokerage Relationship in Real Estate Transaction Act*, or **BRETTA**.

The six agents who work in my office feel comfortable using the disclosure of alternative agency relationship form and firmly believe it is in the best interest of the public. The changing of this form to a brochure will not have a bearing on how they work and will probably make it easier for the public to understand. My agents further feel the new Section #1 allowing them to be a transactional broker will allow them to put more sales together while serving the public in a fair and equitable manner.

The changes that have been made to the designated agent part of the law are greatly appreciated. This will allow me as a broker to still manage my agents and represent our clients to the fullest extent. Because of our firm's size, I was reluctant to use the designated agent option. But with the changes I feel we can now use this option to better serve our buyer and seller clients.

Lastly, if you decide to not vote favorably on this bill, please do not let the current law sunset. Under current law and **House Bill 2264**, we as licensed real estate agents have protection from statements made and inspections performed from "qualified third parties".

If I 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 my expertise (examples: mechanical, structural, termite inspections), no cause of action for any person can arise against me pertaining to such material matters. This protection encourages me to have my customers and clients perform as many inspections as they deem necessary in order to make an informed decision in the purchase or selling of their home.

In closing I ask for your support of **House Bill # 2264** and **BRETTA**, and will gladly answer any questions you might have for me. Thank you.

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#13

Testimony before House Committee

Marlin K Penner, President
John T. Arnold Associates, Inc.
Wichita, Kansas

February 18, 1997

Re: HB 2264

For the past 24 years I have been engaged in the brokerage of commercial, industrial, and investment real estate. One year ago, I stood at this podium and opposed the BRRETA legislation. I took this position, not because I did not want brokerage to be held to a high standard, but because the regulations just did not fit the way commercial transactions are done.

First, the clientele is normally substantially different in commercial transactions. Typically the parties to commercial transactions are knowledgeable and experienced business people. These parties are normally represented by attorneys, accountants, and even environmental specialists.

Secondly, the nature of the transaction is different. It is not uncommon for buyers and sellers to function in various roles, even in the same transaction. This is especially true of the exchanging of real estate where the parties are both buyers and sellers. The broker's role is to understand the motivations of the parties and assist in crafting a plan to maximize a "win-win" transaction.

As I stated, a year ago I opposed the BRRETA legislation vigorously. However, much has happened in the past year. A

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task force was appointed to investigate the matter. Hearings were held, and brokers were given the opportunity to be heard.

The result was the new proposed legislation which you have before you. It much better reflects the issues of concern to commercial transactions. Specifically, the introduction of the "transaction broker" provision was an improvement.

In her opening remarks, Ms. Jean Duncan, Director of the Kansas Real Estate Commission, referenced an amendment she said her commission would not oppose. This provision would allow the broker to share information important to the transaction, unless specifically prohibited by the parties thereto. For a commercial transaction to be successful, the broker must be able to engage the parties in discussion relative to motivations, alternatives, and possible negotiable issues. Attached hereto is the proposed amendment.

With this amendment, I support the passage of HB 2264.

Thank you.

13-3

known by the transaction broker that were omitted from or contradict any information included in a written report described in subsection (c).

(e) If pursuant to subsection (b)(2)(B), the transaction broker advised the parties to obtain expert advice as to material matters about which the transaction broker knows but the specifics of which are beyond the expertise of the transaction broker, no cause of action for any person shall arise against the transaction broker pertaining to such material matters.

(f) ~~The following~~ information shall not be disclosed by a transaction broker without the consent of all parties:

- (1) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;
- (2) that a seller or landlord is willing to accept less than the asking price or lease rate for the property;
- (3) what the motivating factors are for any party buying, selling, or leasing the property;
- (4) that a seller, buyer, landlord or tenant will agree to financing terms other than those offered; or
- (5) any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party unless the disclosure is required by law or failure to disclose such information would constitute fraudulent misrepresentation.

~~(g) A transaction broker has no duty to conduct an independent inspection of the property for the benefit of any party to the transaction and has no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, buyer, tenant or qualified third party inspectors.~~

(h) A transaction broker has no duty to conduct an independent investigation of the buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by the buyer or tenant.

(i) A transaction broker may do the following without breaching any obligation or responsibility:

- (1) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant;
- (2) list competing properties for sale or lease;
- (3) show properties in which the buyer or tenant is interested to other prospective buyers or tenants; and
- (4) serve as a single agent or subagent for the same or for different parties in other real estate transactions.

(j) Information known to a transaction broker shall not be imputed to any party to the transaction or to any licensee within the brokerage firm engaged as a transaction broker.

(k) A transaction broker may cooperate with other brokers or coop-

If the transaction is regarding the sale of residential property of more than four units

Except as provided in subsection ~~(2)~~ if the transaction is regarding the sale or lease of commercial property or the sale of residential property of more than four units, the following information may be disclosed by a transaction

Except as provided in subsection (f)(2) if the transaction is regarding the sale or lease of commercial property or the sale of residential property of more than four units, the following information may be disclosed by a transaction broker unless prohibited by the parties:

- (1) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;
 - (2) that a seller or landlord is willing to accept less than the asking price or lease rate for the property;
 - ~~(3)~~ what the motivating factors are for any party buying, selling or leasing the property; or
 - (4) that a seller, buyer, or landlord or tenant will agree to financing terms other than those offered.
- (2) Any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party shall not be disclosed unless the disclosure is required by law or failure to disclose such information would constitute fraudulent misrepresentation.

Insert



J.C. NICHOLS
REAL ESTATE

TO: The members of the Judiciary Committee

FROM: Pat Tholen, 1995 President of the Kansas Association of REALTORS®

RE: Brokerage Relationships in Real Estate Transactions Act (BRRETA)

My name is Pat Tholen, and I am a sales associate for J. C. Nichols Real Estate in Overland Park, Kansas. I have been in real estate since 1973 in both sales and sales management. There are 425 people in our firm specializing in residential sales. Thank you for the opportunity to testify on this important legislation.

As past president of the Kansas Association of REALTORS®, I can attest to the continuous effort that was made to gain input from our members regarding the agency legislation. All across the state the cry was heard for a "level playing field" with regard to agency practices. Small & large firms, agents, managers and owners specializing in commercial, agricultural, farm land and building were asked for their input. Many personal visits were made to these various groups.

What BRETTEA gives us is a professional pro-consumer solution to a long term problem:

Decide

Disclosure

& Do - What we disclose our relationships to be.

This legislation offers choice, not mandates. Individuals can determine what their firms practices will be. Buyers and sellers can make informed choices as they consider their options in a transaction.

In my area (Metro KC), I work in both Kansas and Missouri. With my Kansas buyers, I have been able to present the Disclosure of Alternative Agency Relationships (DAAR) form at the first meeting and never once has a buyer refused to sign it. 100% of all my buyer sales in Kansas last year were "buyer" or "designated" agent sales. In over 90% of the buyer sales in our firm, the buyer wants a "buyer" or "designated" agent. It is a fluid process. It makes sense to buyers as they review their options on the DAAR form and select one.

As I learned of agents having difficulty with the DAAR form, I frequently asked them - "What was the resistance?" and "How many buyers have refused it?" Most often, those salespeople had not ever presented the form.

The BRRETA legislation is a necessary law. It is all about choice. Please don't let Kansas revert to antiquated practices in real estate. This is good for Kansas.

RESIDENTIAL SALES
EXECUTIVE OFFICE
7500 College Boulevard
Suite 100
Overland Park, KS 66210
(913)469-8300 Office
(913)469-1003 Fax

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#15

BRRETA TESTIMONY
B. J. MELVIN
Chairperson, GOVERNMENTAL AFFAIRS
KANSAS ASSOCIATION OF REALTORS
FEBRUARY 18, 1997

I am B. J. Melvin and I've been in the Real Estate business for 26 years. There are six people in the firm. I do mostly agricultural and commercial sales. I appreciate the opportunity to share my feelings on the BRRETA Bill.

I would like to share a little of my background with you in regard to the Kansas Association of Realtors and this legislation. I was the 1992 President of the Kansas Association of Realtors and have served on its Executive Committee for seven years before becoming President. I am currently the Chairperson of the Association's Governmental Affairs Committee. I have been involved in the political arena with the Association since 1985 and have seen many bills come and go. I can assure you, this is not only an excellent bill for the real estate industry, but also for the consumer.

Agency has been a topic in the real estate industry since the late 80s. In 1994 we had an agency task force of which I was a member and vice-chair for the Association. This task force, along with the Real Estate Commission, helped to formulate the original BRRETA Act that took effect on January 1, of 1996. Because of an outcry from a few disgruntled licensees the legislature in 1996 chose to pass legislation that would sunset that act on July 1 of 1997. It is in response to that action that the Kansas Real Estate Commission formulated a task force to revise that bill in a way that would make it more workable for the practitioners and more easily understood by the consumer. This is the legislation that you have before you today and it

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BRRETA TESTIMONY CONTINUED

I know that you have received letters from both proponents and opponents. And I have taken it upon myself in the last several days to research in my end of the state, what the concerns of some of the opponents really are. I find that those who have written to a legislator have reacted to mail from other opponents telling them that is an infringement upon them to do business as independent business people. As I visited with these folks, I found that none of them had requested a copy of the bill and had not read the proposed legislation.

The objections that I have heard to this legislation range from "it's unnecessary paperwork" to "I have never been sued before, therefore, why do I need this now!" When in reality all this bill does is define the way real estate agents should have been doing business all along. It simply makes it clear that it is very difficult for any person to represent more than one party in a transaction. It also asks that an agent inform the prospective customer of the types of agency that are available in a real estate transaction. The agent may do this by simply handing the customer a brochure explaining agency at the first practical opportunity. The only written disclosure required in this legislation is that at the time of contracting and that can be handled simply with the addition of a paragraph in the contract.

I fail to see why any licensee who holds himself up to be a professional in our industry would have a problem with disclosing how the industry works and what rights of representation a potential customer would have in a transaction. It is my belief that anyone that would hide from this type of disclosure must have something to hide!

I would simply conclude by asking your support for this legislation not only for our industry but for the real estate consumers of our state. Thank you. Again I appreciate the opportunity to share my views of this important legislation with you.

#16
Date: February 18, 1997
To: Members of House Judiciary Committee
From: Mary A. Laham, Wichita, KS
Re: BRRETA - House Bill 2264

I am Mary Laham from Wichita, KS. I currently work for a large brokerage firm in Wichita as a Branch Broker. Our company has over 150 licensed real estate brokers and agents specializing in commercial and residential real estate transactions. My office has over 40 agents, independent contractors, and engage primarily in residential sales.

I have been in the real estate industry for over 30 years. I started with a small firm, then became co-owner of a mid-sized firm which later we sold and I became affiliated with medium to large firms. Through the years I have owned, leased and/or sold commercial, farm and land, rural suburban, residential new homes and resale real estate. In today's world, as in all other industries, we need to specialize, which I have found my niche in residential resale and some new homes.

Like most people my age, we really do not relish change and I do relate to the opponents of this bill, BUT, if change is for the better than I will support it to the fullest extent, so now I am asking your support for the revisions to BRRETA which the task force your committee appointed last year has presented in HB2264.

To allow BRRETA to sunset would be very detrimental to consumers, mainly Buyers, as they also have a right to equal representation and should be notified of that right prior to entering into a legal binding purchase contract. A home is probably the largest expenditure most people will ever invest in and they should have professional assistance in this investment. We enter into a listing contract with Sellers which states we will work on their behalf, I can find no real reason why a Buyer should not have this same right to representation with the brokerage fees paid through the transaction, which enables both parties to negotiate through a real estate broker on an even playing field, not the old adjacent "well, we know the Seller will take asking price, what offer did you have in mind?" before writing a contract.

Yes, our office has lost commissions because of a "Disclosure of Alternative Agency Relationships" form has been presented to a Buyer and the Buyer realizes they can obtain the services of another real estate agent or broker who will work on their behalf and that broker will be paid through the transaction, but, will assist them within their expertise to obtain an acceptable price and any pertinent information that a seller agent may not have been able to disclose to Buyer. My belief is "half of something is better than all of nothing" and if Seller's or Buyer's do not feel good about the transaction, then it should not consummate regardless of guidance from others.

I was in real estate related seminar last year where a real estate broker had shown her listing to a Buyer with whom she had sold many properties through the years. The Broker was very upset because, when she presented the Disclosure of Alternative Agency Relationships form to this Buyer, the Buyer's response was "You mean I can have representation! You or someone can help me determine an acceptable price and terms for this property?" Needless to say, the broker was upset because this put her in a dual agency relationship or she would have to share part of the commission if the Buyer elected to have representation from another broker, not really having any concern for the Buyer's interest.

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Also, the law helps with total disclosure by Sellers regarding material facts of their property. The "known or should have known" terminology has no common sense basis as Real Estate Brokers are not structural engineers, electricians, plumbers, etc.

I feel this law is very consumer friendly and regulates real estate brokers-agents to assist a Buyer in a more professional manner. In my personal opinion, if BRRETA sunsets, it will set consumer advocacy and the real estate industry back into the dark ages.

In response to an opponent of this bill comments "Conflict of interest?" **Is "Buyer Beware" better? "Promotes "Red Tape?" The revisions are very "user friendly" and easy to read. "Increase Costs?" BRRETA, done right, saves money and time for all parties. Serves "Special Interest" groups?" Customers and clients are my "Special Interest" groups. Serving them makes my living!**

I would like to thank you again for the opportunity to speak on behalf of this bill and I will be glad to answer any questions you may have.

Mary

#17

ACTION MANAGEMENT & REALTY

Date: March 18, 1997
To: The Honorable Tim Carmody and members of the House Judiciary
Committee
From: Don Eusey, President, Action Management & Realty
RE: House Bill 2264

Thank you for the opportunity to testify in favor of this proposed legislation which has resulted from the Governor's Task force. I have been a small business owner since 1981 and have been involved in real estate as a profession since 1986. My property management company currently has ten employees and our brokerage firm has five sales associates.

I am here to personally support this bill. In addition, I have been asked to voice the support of the Emporia Board of Realtors for this legislation. In my opinion, this Bill has the following benefits:

- It forces brokers and sales agents to be conscious of their agency relations in every transaction and to be careful not to compromise their principle's interests.

In the early eighties, brokers almost exclusively represented sellers. Buyers and sellers both understood this, and the brokers were able to work hard to represent their sellers. However, in small towns like Emporia there was a large potential for conflict of interest, since brokers often would sell their listings to friends, relatives and/or business associates. This bill forces brokers to consider their agency relationships carefully and to disclose them to their clients and customers.

- It provides increased disclosure to buyers.

Since 1988, real estate agents have been required to verbally inform customers that they represent the seller (or the lessor). In addition the sales contracts were required to include an acknowledgment of this simple verbal disclosure. The proposed legislation would required that the disclosure be made by giving customer a brochure that explains agency in greater detail.

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- It provides statutory protection of agents from any errors or omissions of their principles or third party experts.

In the past, real estate brokers have been liable for failure to disclose material deficiencies that "should have been known". Most real estate agents have little or no expertise in subterranean insects, structural engineering or heating and air conditioning. Brokers were often held liable for misrepresenting a property's condition, even after the property had been inspected by third party experts. This bill protects brokers from buyers who have relied upon third party experts or have refused to make necessary inspections.

Although I have been told that some real estate agents do not support this bill, I do not think that it places a undue or onerous amount of regulation on the real estate industry. It attempts to address the issue of brokers selling their own listings to buyers whom they represent. It does not place a burden upon either residential or commercial practitioners. It does not increase regulation or paperwork, with the exception of providing a simple brochure to customers.

Although I am sure there will future changes in real estate regulations, at the present time, this bill provides significant benefits to the real estate industry and to their clients and customers.

#18

TESTIMONY ON HOUSE BILL 2264

My name is Don Stewart from Fort Scott. I have a real estate office in Fort Scott that I opened 22 years ago. In our Fort Scott office we have 26 salespeople including my wife, Karen, and my elder son J.R. In 1995 we expanded to a second office in Pittsburg and we have four associates and a branch broker. My two offices include three auctioneers and four licensed and certified appraisers including myself. I am the Board President of the Bourbon County Board of Realtors for 1997.

I appreciate the opportunity to be able to testify in the presence of the House Judiciary Committee. I feel like I have been in real estate long enough that I should be involved with legislation dealing with different policies that help defines agency representation. I favored BRRETA before it was voted in as a state law. I feel some areas needed changed as we used this new agency law. Hand Bill 2264 will show changes needed and will show a more clear relationship to the seller and buyer and real estate agencies.

Our oppenents have stated as follows:

1. The KREC can enforce the license law and impose fines when infractions occur. But, none of this money is held by KREC. Furthermore, it goes the state's widespread fund. Opponents state KREC has assessed financial penalties for breach of BRRETA, but these penalties issued have been for defaulting in having agency agreements in writing. This standard has been in force since 1988 and was not a result of BRRETA.
2. KREC has traveled around the state surveying its members (including brokers and agents) -- Contrary to rival beliefs. KREC feels personal meetings with members would give more useful information rather than a written survey. Paper surveys often result in subjective conclusions.
3. There is also an issue by some who think BRRETA may be discriminating as more females deal in residential real estate as opposed to commercial real estate. This simply is not true as Kansas is a one license state giving equal opportunity to men and women to conduct either residential or commercial real estate transactions. Another, incorrect assumption is that BRRETA does not apply to commercial transactions. The only difference residential and commercial transactions is the disclosure statement. The difference here is that the disclosure statement does NOT have to be presented to customers in a commercial transaction. ALL other BRRETA conditions are identical for commercial dealings.

In closing, I want to let you know my feeling about BRRETA. It is needed for our buyers and sellers and the new changes in the BRRETA Bill will help solve the issues that have come up since BRRETA passed. Speaking for The Bourbon County Board of Realtors, I would like to inform the committee that the Board accepts BRRETA with the changes in House Bill 2264. I want to thank the committee for allowing me the opportunity to testify on legislation affecting my profession and would like your support of House Bill 2264 - specifically the Brokerage Relationships in Real Estate Transactions Act. I will be glad to answer any questions members might have.

Donald L. Stewart, broker, Stewart Realty Co. Inc.
1707 S. National Ave. Fort Scott, KS. 66701
316-223-6700 or 316-223-6701 fax

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#19



733 N. BALTIMORE • DERBY, KS 67037 • (316) 788-6717

TO: Members of the House Judiciary Committee

Hello, my name is Jamie Holt. I would like to start out by thanking you for allowing me to testify before you today. I am an Associate Broker for a real estate firm in Derby, Kansas. I am an independent business person and I have been selling Residential real estate in the state of Kansas for 13 years.

I am here today because I am a strong supporter of BRETТА. I have experienced many changes in the laws that affect my profession over the past 13 years. There was a time not that long ago in real estate that we operated under the rule "Let the Buyer Beware!" Then we were strictly representing only the Seller, (unbeknownst to most Buyers) and now with BRETТА we finally have the opportunity for equal representation for everyone. I feel that this is the least that we owe both Buyers and Sellers. Equal representation for both parties is the only fair way to conduct any real estate transaction. The changes that are proposed by BRETТА will be in everyone's best interest. I strongly support any law that gives equal representation to everyone.

Some opponents to BRETТА complain about the additional records, paperwork, and disclosures that we will be required to keep. I personally feel that this is a small inconvenience for us to endure to create a fair and equal playing field for all parties involved. In the past Realtors have been held liable for things they "should have known". The term "what we should have known" scares me to death! It is very difficult for a Realtor to be an expert in all aspects of a real estate transaction. I personally am not a roofer, a termite specialist, a structural engineer, a lawyer etc., Neither do I want the responsibilities and liabilities that come with each of these professions. Under BRETТА Realtors will have the responsibility to advise their clients to seek professional inspectors and professional legal assistance when necessary. We will also no longer have the liability for what we "should have known." That is personally a great relief to me!!

Some of the opponents to BRETТА have stated that the act is discriminatory towards women. I strongly disagree with this statement. As a female I find that BRETТА gives us all an equal playing field. A real estate license in the state of Kansas gives all Realtors the opportunity to practice Commercial or Residential real estate. There may be more males than females that sell commercial real estate, but that is a choice that is available to all licensees, therefore how could this be considered discriminatory. BRETТА does not exempt Commercial Realtors. The only difference between Commercial and Residential Realtors under BRETТА is that Commercial Realtors do not have to present the disclosure brochure to their clients.

The proposed change in the name "Disclosed Dual Agent" to "Transaction Broker" is a very good idea. Our Lawyers have made us aware, that it is very difficult to represent two parties in any type of transaction. As a transactional Broker, we can now represent the "deal" instead of both parties. This should also reduce a Realtors liability.

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733 N. BALTIMORE • DERBY, KS 67037 • (316) 788-6717

In conclusion I want to reiterate that I strongly support anything that creates equality as well as anything that makes my job more professional. Change is not always easy but it is very necessary for a productive future. As Charles F. Kettering once said "My interest is in the future because I am going to spend the rest of my life there." Thank-you again for the time you have given me today to share my thoughts with you regarding BRETТА.

Sincerely,

Jamie K. Holt

20

House Judiciary Committee

February 18, 1997

Jon Fort
1123 E. Kansas Plaza
Garden City, Kansas 67846
(316) 275-8200

My Testimony is in conjunction with the Kansas Association of Realtors and as a member of the BRRETA Task Force. I am in favor of The Brokerage Relationship in Real Estate Transaction Act Law as proposed.

Background Information:

I am an independent business person, a farmer, a developer and the Owner/Broker of ARC Real Estate, Inc. with a total of 9 active licensed agents and 3 that are in the process of obtaining their license. My principle place of business is located in Garden City, Ks. with agents located in Garden City, Scott City, and soon in Ulysses and the surrounding area. ARC Real Estate specializes in buying and selling agricultural land, residential housing, commercial real estate and holding real estate auctions. ARC offers seller agency, buyer agency, designated agency, sub agency and disclosed dual agency services. I am a partner of Kansas Classic Homes L.L.C. which owns a subdivision in Ulysses, comprised of residential lots, new home construction (both spec homes and custom homes), commercial lots, commercial development, multi family apartment complexes and undeveloped land for future growth. We also have a development in Garden City where we are building townhomes on a spec or custom bases.

Concerning the Brokerage Relationship in Real Estate Law:

My experiences as a buyer agent have been positive. In 1996 approximately 65% of our office transactions have included buyer agents.

When the agency law's are explained properly, the customers/clients will understand they have choice of representation. The issues addressed in the proposed Transaction Broker designation will eliminate most of the concerns relating to inner office sales, branch offices, new construction, auctions, and for sale by owners assistance. It is vital for all customers or clients, (buyers or sellers) to know their options in order to make the best choices for their situation. For many customers or clients buying or selling real estate is one of the largest financial transactions they will make in their life; it is vital for them to be informed of their agency options for professional representation.

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Through the defined agency position, liability can be reduced for buyers, sellers and real estate agents. There is a clear and disclosed path concerning the agent's responsibilities and whose interest is represented. The proposed disclosure form eliminates a great deal of confusion for both buyers and sellers. This disclosure form also allows the licensees to educate the public concerning their choices. This also insures that licensees will educate themselves to better serve the public. Buyer agency agreements also 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 concerning the services they will offer to the public. Any company may continue the traditional sales service where they choose only to represent the seller or buyer. Also with transaction brokerage, agencies may facilitate a transaction for the buyer, seller or both with out a declaration of representation for either party. 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 is a workable solution for all types of firms. The law will work in all sizes of communities, in most every situation. The consumer needs to know who is working on their behalf and who is not. Primarily what this law needs now is more education for all parties. The Kansas Association of Realtors and the Kansas Real Estate Commission will continue to provide a clear direction for Realtors and licensees for the State of Kansas. With this law Kansas is on the cutting edge of defining agency and how it should be practiced for the consumer. The public has a choice and the licensees have a choice, that should not be taken away.

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My name is Sue Wenger and I am from Mulvane, KS. I am an independent business person with 18 years in the real estate business, 6 of those as an owner. There are 4 salespersons in my firm including myself and we list and sell residential property basicly in the southeast areas surrounding Wichita. I thank you for the opportunity to testify today.

I can't come to you today and say that the agents in my office are 100% for the BRRETA. But what I can say is that this law definitely has made a difference in the confidence level of each agent. Because of the required disclosures, they are better able to serve their clients and customers due to the clear picture they present of who they represent.

I have asked specifically if they felt the law was discriminatory. With all the documentation that is needed for the complete fulfillment of a real estate contract and because of the tremendous importance we, as an industry, place on that documentation on our "less than perfect" days, my agents do not feel descriminated against.

The BRETТА is just one more document that we can use to educate the public and spell out our responsibilities in the work place.

Has BRREТА been a burden to my company or its agents? Only if proper procedure has not been followed. Our goal is to make every real estate transaction the very best it can be. BRREТА outlines the parameters within which we operate and gives us a solid and equal playing field.

I would encourage your srupport of HB 2264, specifically the BRREТА, and I will be happy to answer questions if you have them. Thank you.

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23

Judiciary Committee Hearings (HB2264)
February 18, 1997
Presented by John Green

I am John Green from Topeka. I am vice-president of the Coldwell Banker Griffith and Blair residential division and I am immediate past president of the Kansas Association of Realtors. I have owned or managed a real estate company for the past 16 years. I supervise 54 residential agents who are supporters of the current agency law and who support the change recommended by the Task Force.

Over 10 years ago, the federal government announced that over 75% of home buyers said that the agent they worked with represented them. The Federal Government and those of us testifying today know that in fact their agent represented the Seller. Our industry had to come to grips with the fact that in years past we made a living, and, sometimes a good living, by inadvertently being less than honest with the buying public. This was not intentional but rather a result of a lack of understanding about an agent's duties to the principal.

It wasn't easy, but, gradually over many years, most states adopted a position that real estate agents must inform the buyers and sellers for whom they represented in the transaction. In the past, most real estate agencies only represented sellers. That is changing. Across the state, many agencies now are electing to also represent the buyers which has always been allowed by license law but very rarely practiced. Now the industry must take another step before it can truly establish credibility with the public and that is to inform the parties to a residential transaction that they have choices in regards to representation. Passage of House Bill 2264 will insure uniform application of what I refer to as "informed consent" regarding representation. I feel very comfortable with any law that mandates full agency disclosure, and I have concern about licensees who don't recognize the value to all of us when we inform the buyers and sellers.

You will hear from the opponents that (BRETТА) discriminates against the small broker. They are, I assume, referring to the disclosure provisions that I previously mentioned. What is discrimination? It is disclosing to the seller who the agent works for but not telling the buyer. Don't let the opponents get away with this! Allow us through the passage of this bill to let our industry continue to improve our customer-client relationships.

I hear a great deal about the fact that some licensees say that

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only the officers and the "in" people within the Association want BRETТА in place and that neither the Kansas Association of Realtors nor the Kansas Real Estate Commission wanted to do a survey for fear they would get a negative response. Both entities did a survey, the best kind. The Association went to its members in the form of town hall meetings and the Real Estate Commission held a number of meetings across the state for the sole purpose of getting input from everyone. I attended all but two of the task force meetings, and I can assure you that they listened to everyone and did a miraculous job of trying to please as many as possible and still provide strong protection for the public. You asked them to fix a problem and they did. Please don't ignore them.

The Kansas Association of Realtors at its January meeting voted to support the Task Force's recommendations. There were only two members who voted against the motion to support. The Association's Board of Directors has over 140 members from across the state. Each member is selected by the local board to represent it. Yes, we only represent 60% of the licensees in Kansas, but our members sell, based on title activity, between 80 and 85% of all the real state sold each year. Numbers of licensees doesn't mean a thing to me but rather I am interested in those doing the business and how much they are doing. The Association is in touch with our members, and it is with their blessing that we are here today.

In Topeka, buyer representation prior to BRETТА was between 25 and 30%. In 1996, alone, the number jumped to over 80%. Numbers don't lie. The increase in the number can be traced directly to the disclosure and DARR form. When someone tells me that this law doesn't benefit the public, I have to ask them to explain the sudden rise in buyer agency across the state. I never have gotten a response to that question.



23

DALE D. POWELL
Real Estate
811 W. Kansas
McPherson, Kansas 67460
(316) 241-5055

MR CHAIRMAN, MEMBERS OF THE COMMITTEE, LADIES AND GENTLEMEN.
I AM DALE POWELL FROM MCPHERSON, KANSAS, POPULATION 13,060 AT LAST
COUNT AND HAVE BEEN IN THE REAL ESTATE PROFESSION SINCE 1973. AT ONE
TIME I OWNED ONE HALF OF ONE OF THE LARGEST OFFICES IN OUR COMMUNITY
AND TODAY OPERATE A ONE PERSON OFFICE AND YOU ARE LOOKING AT HIM. I
SELL MOSTLY RESIDENTIAL, ALSO SOME COMMERCIAL AND AGRICULTURAL
PROPERTY.

I WANT TO THANK YOU FOR THE OPPORTUNITY TO SPEAK IN FAVOR OF THE
BRETTA HOUSE BILL 2264. I WAS TAUGHT FROM DAY ONE BY A VERY STERN
BROKER THAT I HAD A FIDUCIARY RESPONSIBILITY TO TREAT FAIRLY THOSE
PEOPLE WHO WERE KIND ENOUGH TO ASK ME TO REPRESENT THEM IN THE SALE
OR PURCHASE OF PROPERTY AND TO DO WHAT I COULD TO PROTECT PROPERTY
RIGHTS FOR THE PUBLIC. OVER MY PERIOD OF TIME IN THIS PROFESSION I
HAVE NEVER STRAYED FROM THAT PHILOSOPHY. I WAS ALSO TOLD WHEN I
STARTED OUT THAT A CONTRACT WRITTEN ON A BROWN PAPER BAG, PROPERLY
SIGNED AND DATED WOULD PROBABLY STAND UP IN A COURT OF LAW AND THE
BUYER SHOULD BE ADVISED OF "CAVEAT EMPTOR" OR "BUYER BEWARE" BEFORE
HE SIGNED THE CONTRACT. THAT WAS THEN AND OVER THE YEARS THIS PRO-
FESSION HAS COME A LONG WAY IN DEFINING THE FIDUCIARY RESPONSIBILITY
WE HAVE TOWARD THE SELLING AND BUYING PUBLIC IN PROPERTY TRANSACTIONS.
"CAVEAT EMPTOR IS OUT THE WINDOW AND IS BEING REPLACED WITH A BILL
THAT I HOPE YOU WILL LOOK FAVORABLY UPON THAT CLEARLY SETS OUT IN
BLACK AND WHITE AS TO WHO REPRESENTS WHO IN A TRANSACTION AND A DIS-
CLOURE STATEMENT THAT CLEARLY PROTECTS THE PUBLIC. THIS BILL WOULD
GIVE THE SELLER AND BUYER THE CONFIDENCE THAT THEY ARE BEING REPRESENTED
HONESTLY AND FAIRLY AND ALLEVIATE THE POTENTIAL OF ENDING UP IN A
COURT ROOM. IT WOULD ALSO UPGRADE THE PROFESSIONALIAN TO A MUCH
HIGHER STANDARD FOR THOSE OF US WHO ARE IN THIS BUSINESS.

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DALE D. POWELL
Real Estate
811 W. Kansas
McPherson, Kansas 67460
(316) 241-5055

AGAIN I WANT TO THANK YOU FOR THE OPPORTUNITY TO TESTIFY AND
SINCERELY ASK FOR YOUR SUPPORT OF HOUSE BILL 2264 REGARDING THE
BROKERAGE RELATIONSHIPS IN REAL ESTATE TRANSACTIONS.

I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MIGHT HAVE. THANK YOU.

23-2

#2

McGrew

REAL ESTATE, INC.

Thank you for the opportunity to speak with you today.

I am Mike McGrew with McGrew Real Estate, Inc. in Lawrence, Kansas. Our company is an independent one office firm with 45 agents. I have been a REALTOR for 15 years and am currently the President Elect of the Kansas Association of REALTORS. I have experience selling both residential and commercial property in Douglas County. I have obtained the CRB designation (Certified Residential Brokerage Manager).

I believe that the Kansas Association of REALTORS represent the vast majority of the real estate business done in Kansas. Our approximately 7000 members subscribe to a strict code of ethics that non REALTORS do not.

We work with local, state and national authorities to preserve private property rights. We are NOT in this just for the money.

I am convinced that the dozens of meetings that the KAR leadership team has been involved in since last summer have, along with the work of the Kansas Real Estate Commission Task Force on Agency guided Kansas to a better BRRETA. Many REALTORS have spent countless hours trying to understand all the positions and possibilities that BRRETA encompasses. It is not easy but change is a part of all of our lives.


You may hear opponents of BRRETA suggesting that there is something discriminatory about this proposal. This is absurd. There are no gender, race, creed specific provisions in this proposal.

You may hear that commercial licensees are being treated differently under this proposal. Commercial licensees are covered by ALL aspects of BRRETA except for the written disclosure provision. This provision would be difficult to comply with due to the complex nature of commercial corporate buyers and representatives. It would be useless for many commercial buyers that have staffs of legal counsel to protect their interests.

You may hear that this proposal is another unnecessary intrusion of government into the lives of law abiding citizens. Our profession is involved in the largest investment that many Kansans will ever make. A certain amount of responsible regulations are important for protection of the public. The current law will sunset on July 1, 1997. Our profession will be thrown back to the gray area of common law. This is not in the best interest of the public or REALTORS. Please support HB2264.

Thank you again for this opportunity. I would be happy to answer any questions.

Sincerely,



Michael C. McGrew CRB
1997 Kansas Association of REALTORS
President Elect

House Judiciary
Attachment 24
2/18/97



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To:

**House Judiciary Committee
Honorable Tim Carmody, Chairman**

**Testimony on HB 2264
Brokerage Relationships in Real Estate Transactions**

**Presented by:
Cal Lantis, proponent**

House Judiciary
Attachment 25
2/18/97

Name: Cal Lantis

Address: 416 Pine, Ottawa, KS 66067

Occupation: Lantis & Associates, Broker/Owner, since 1990
a real estate agency w/ three full time & five part time agents
Residential, Commercial, Raw Land & Agricultural Sales

Owner Lantis Homes, LLC
Building upper bracket spec homes in Ottawa

I am president of the Franklin County Board of REALTORS®. We currently have 76 licensed agent members. We have kept our members informed during this whole process, and they feel comfortable with the Task Force recommendation. The membership, by unanimous vote of those attending our member's lunch on February 5th, 1997, endorsed the passage of HB 2264 as introduced, especially those parts dealing with the Brokerage Relationships in Real Estate Transactions Act (BRRETA). We have sent letters to that effect to our legislators, and I am here today to express that support to you.

The Franklin County Board understands that things don't stay the same. We want buyers that are clearly informed of their choices. Even though we have traditionally represented sellers, agents spend the majority of their time with buyers. The process of purchasing property requires agents and buyers (customers) to spend hours, sometimes even days together. Buyers have understandably misinterpreted the relationship. The requirements of BRRETA are helping to overcome this misinterpretation. Buyers of real property in Kansas are, for the first time, being told that they have the right to hire representation in the real estate transaction.

If BRRETA is allowed to sunset, we will be taking a step backward - back to the days of "Caveat Emptor" in real estate. I don't think we want to do that.

I would like to take a few minutes to answer the opponents that you may hear tomorrow:

1. BRRETA is not creating red tape, increasing governmental intrusion into small business, or serving special interest. BRRETA will not close any small agencies. What BRRETA does is require us to give a booklet to consumers informing them of their choices and note that in real estate contracts, it allows managers to manage their sales people; it allows agents to serve both parties in limited ways when the parties agree; and it provides risk reduction benefits for real estate professionals.

2. Not all commercial transactions are large transactions where the parties don't deal face-to-face. Almost all of the commercial transactions in our small town involve the sale of a store front from an individual to an individual. Those large transactions where there are attorneys on both sides may not need to be informed of their right to hire a real estate professional to represent them, but the buyers in small transactions certainly do.

3. No one who holds an active real estate license in Kansas can say that they have been left out of the process to develop this change in the law. There has been more notification of these proposed changes and more opportunity for input from affected parties than on any other proposed legislation that I am familiar with. The Kansas Real Estate Commission and the Kansas Association of REALTORS® have sent out mailings to licensees and members respectively. The Task Force formed by the legislature has had the required state-wide public hearings. This will be the third time this has been debated in the legislature.

4. BRRETA is not discriminatory. The majority of our commercial transactions, although mostly small transactions, are handled by my two top agents, both of whom are female. The discriminatory aspect of large commercial transactions is the “good ol’ boy network” that exists in the economic development community in this state.

5. BRRETA is not a “large company” law. We have three agents, myself included, who produce the majority of our business. We are not a large agency. We are a professional agency that understands the fact that we incur less liability if we have informed parties.

I would like to thank you for the opportunity to present testimony today on HB 2264. I ask for your support on this legislation, especially those parts that deal with the Brokerage Relationships in Real Estate Transactions Act. Please do not allow this law to sunset.

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COMMERCIAL REAL ESTATE

February 17, 1997

Representative Kim Carmody
Chairman, House Judiciary Committee
c/o Ms. Karen France
Kansas Association of Realtors

Dear Representative Carmody,

I wanted to write and express my support for the new version of the BRETТА Law as recommended by the Task Force appointed by the Kansas Real Estate Commission. I have personally spent many hours involved in conversation with my brother Brokers in trying to come up with legislation that reflects what actually takes place in the marketplace. I sincerely believe that the BRETТА Task Force, through its process of hearings and meetings, has created a law that, while not perfect, does satisfy many of the needs of the commercial and investment real estate brokers. I have visited with many of the members of our Wichita Chapter CCIM, which is the professional organization for commercial real estate brokers, and we are basically in accord with the document being presented. While no piece of legislation will be all things to all people, this represents significant changes from the law which was unfortunately handed to us last year. It represents the collective efforts of most of the major players in the real estate business in Wichita and around the state of Kansas.

I am aware that there are people who will be unsatisfied with any legislation and that there is pressure on the legislature to allow the law to sunset and not be replaced. I would urge you to withstand that pressure and pass the version being presented to you as an improvement and a very acceptable philosophy with regard to agency and real estate transactions.

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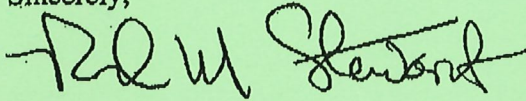
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House Judiciary
Attachment 26
2/18/97

This is a difficult are full of land mines and believe me it has had a thorough discussion all over the state with input from hundreds of real estate brokers. I sincerely thank you for the opportunity to present my opinions and urge you to pass the BRETТА Legislation as offered by the Kansas Real Estate Commission.

Sincerely,



Rod M. Stewart, S.E.C.
Principal/Broker

RMS/djd