

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 19, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Phill Kline (excused)  
Representative Susan 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: Representative Gwen Welshimer  
Gary Merritt, Realtor, Johnson County  
John Todd, Realtor, Wichita, Kansas  
Larry Richard, Continental Real Estate & Realty School of Kansas  
Cleve Smith, Stoneborough Real Estate, Inc. Wichita, Kansas  
Steve Miller, Home Real Estate, Wichita, Kansas  
John Brughoni, Kansas Auctioneers Association  
Lynn Hoyt, Real Estate Center, Wichita, Kansas  
Grant Delmar, Stoneborough Real Estate, Wichita, Kansas  
Merrill F. Suter, Hearth-Side Realty, Cheney, Kansas  
Paul Brown, Paul R. Brown & Associates, Inc.-written only  
Betty Spingler, Paul R. Brown & Associates, Inc. Wichita, Kansas  
Susan Crockitspoon, Coldwell-Banker in Wichita, Kansas  
Brenda Thome, Century 21 Advantage-written only  
Rick Hodge, Gillette Real Estate, Inc. -written only  
Roger Turner, Real Estate Broker, Wichita, Kansas  
Tim Holt, Member of Task Force  
Robert Branson, Branson & Associates, Inc. of Wichita, Kansas  
Steve Moore, The Second Regency, Inc., Wichita, Kansas

Others attending: See attached list

The Chair called the meeting to order at 3:40 p.m

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

Representative Gwen Welshimer testified in opposition to HB 2264. Representative Welshimer stated that HB 2264 prevents the Brokerage Relationship and Real Estate Transaction Act (BRRETA) from sunseting. The conferee stated that HB 2264 modifies that Act to exempt some licensees in order to gain their support. (Attachment 1)

Gary Merritt testified in opposition to HB 2264. The conferee stated that as a real estate broker, he is opposed to this bill because this bill does not serve the public interest. The conferee related that studies in the early 1980s disagreed on the extent of problems with real estate transactions. The conferee discussed all the requirements currently placed on realtors. The conferee stated that the traditional role of the realtor was to represent the seller, because the seller paid the commission. Mr. Merritt stated that buyers are reluctant to pay for representation. The conferee stated that under the provisions of HB 2264 the seller would be paying the buyer's part of the commission. The conferee discussed dual agency disclosure. The conferee stated that the work of the task force was focused in the wrong direction. The conferee stated that this bill involves money/property and fiduciary responsibility. The conferee stated that case law history gave protection to consumers under common law, and that this bill removes that protection. The conferee stated that a simple

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 19, 1997.

solution would be to stop the claim of agency by encouraging all people to get brokers' license.

In answer to a question by a Committee member, Mr. Merritt stated that there has been no problem with splitting of commissions, but that lenders have a problem with paying commissions for the buyers. The conferee stated that if a few definitions were changed in the present law the major issues could be resolved with dual agency without enacting HB 2264.

Other conferees testifying in opposition to HB 2264 included: John Todd of Wichita, (Attachment 2); Larry Richard, Continental Real Estate & Realty School of Kansas, (Attachment 3); Cleve Smith, Stoneborough Real Estate, Inc. of Wichita, (Attachment 4); Steve Miller, Home Real Estate, of Wichita, (Attachment 5); John Brughoni, Kansas Auctioneers Association, (Attachment 6); Lynn Hoyt, Real Estate Center of Wichita, (Attachment 7); Grant Delmar, Stoneborough Real Estate, (Attachment 8); Merrill F. Suter, Hearth-Side Realty, Cheney, (Attachment 9); Paul Brown, Paul R. Brown & Associates, Inc. provided written testimony only (Attachment 10); Betty Spingler, co-owner of Paul R. Brown & Associates, Inc., (Attachment 11); Roger Turner, Broker from Wichita, (Attachment 12); Brenda Thome, Century 21 Advantage of Wichita provided written testimony only, (Attachment 13); Robert E. Branson, President of Branson & Associates, Inc. of Wichita provided written testimony only, (Attachment 14); Steve Moore, The Second Regency, Inc. in Wichita provided written testimony only, (Attachment 15)

Following are several of the issues addressed by the conferees in opposition to HB 2264:

1. Several conferees stated that there was a problem with the provisions in HB 2264 that treat residential and commercial transactions different under agency law.
2. Several conferees stated that there was a problem because commissions paid by the seller will not only go to the seller's agent, but will also go to the buyer's agent.
3. Many conferees stated that HB 2264 limits flexibility for buyers because they must agree under contract to look only with one agent.
4. Some of the conferees stated that there is a problem because the buyer's agent does not need to be involved in the actual finding of a property to receive a commission.
5. Many conferees related that by its very nature this legislation places buyers and sellers in an hostile relationship.
6. Some conferees stated that the BRRETA bill while being touted as consumer legislation does little to protect the public interest, and is really a struggle among real estate licensees over money or market-share while allowing some liability protection for real estate licensees.
7. Some conferees stated that this legislation will adversely affect small real estate companies because of designated agent requirements.
8. A conferee related that this bill seems to impose excessive penalties for violating the rules. i.e. proper forms etc.
9. Several conferees mentioned that invitations to information and discussion meetings on this legislation were selective and did not provide for equitable representation of all licensees.
10. Many conferees noted that the common law has worked for many years in protecting buyers and sellers.
11. The conferees stated that this legislation puts into statute the ability for the Real Estate Commission to develop rules and regulations that are contrary to the free market system.
12. Mr. Holt stated that HB 2264 does not represent the recommendation of the Task Force.

Susan Crocketspoon, Coldwell-Banker in Wichita testified in opposition to HB 2264. The conferee stated that BRRETA places the buyer and seller relationships under a law which results in an hostile(inimical) relationship. The conferee stated that she was not provided the opportunity for input into this legislation.

Tim Holt, Broker/Owner of Golden Realtors stated that he was a member of the Task Force and that the recommendations of the Task Force were disregarded. The conferee stated that HB 2264 does not represent the task force report. (Attachment 16)

The Committee members discussed with the conferees issues concerning provisions of this bill that would limit liability of the licensee, [Sec. 32(b)]; that would remove fiduciary responsibility; and that requires additional forms to be completed.

The Chair adjourned the meeting at 7:10 p.m.  
The next meeting is scheduled for February 20, 1997.

# HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 2-19-97

NAME	REPRESENTING
JOHN BRUGNONI	KANSAS AUCTIONEER ASSOCIATION
JOHN Shoemakers	KANSAS AUCTIONEER ASSOCIATION
<del>Susan (Jack) Hager</del>	<del>Caldwell Leaker Dennis Beard</del> <i>Beard</i>
<del>Betty Ann Springler</del>	<del>Paul R. Beswick Assoc., Inc.</del>
<del>Merrill F. Sutor</del>	<del>Heathcote Realty Inc</del>
<del>John R. Fichtl</del>	<del>John Todd &amp; Associate</del>
<del>Pat Buchanan - Sejon</del>	<del>Attn - Rep. Carl Holmes</del>
David Tallman	KBA
Samuel Dipton	REMAX Associates of Topeka
Jan Duncan	KREC
Deborah Beam	Grasby, Inc. Realtors
JIM BISHOP	KANSAS ASSOCIATION OF REALTORS
Mike McBrew	" " "
Karen Gehle	" " "
<del>Ann Beam</del>	<del>" " "</del>
LARRY D. RICKARD	Continental Real Estate and Realty School of Kansas
LYNN HOYT	Real Estate Center, Wichita
Queen Welshon	<del>Self</del> - Leg.
CLEVE SMITH	Stowborough Real Estate

STATE OF KANSAS

#1  
GWEN WELSHIMER  
REPRESENTATIVE, EIGHTY-EIGHTH DISTRICT  
SEDGWICK COUNTY  
6103 CASTLE  
WICHITA, KANSAS 67218  
316-685-1930  
DURING SESSION  
LEGISLATIVE HOTLINE  
1-800-432-3924  
OFFICE: 913-296-7687



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: ADMINISTRATIVE RULES & REGULATIONS—  
MINORITY LEADER  
GOVERNMENTAL ORGANIZATION—  
MINORITY LEADER  
FINANCIAL INSTITUTIONS  
HEALTH & HUMAN SERVICES

DATE: February 19, 1997  
TO: Rep. Tim Carmody, Chairman, and  
Members, House Judiciary Committee  
FROM: Rep. Gwen Welshimer  
SUBJECT: HB2264, Substitute Legislation for the BRRETTA ACT

*Gwen Welshimer*

HB2264 reinstates the BRRETTA ACT. It is modified to exempt some licensees in order to gain their support. I urge this committee not to divide the real estate profession in this manner. It is simply not fair. I urge this committee to reconfirm your decision of last year, to let the BRRETTA ACT sunset in July of this year by taking no action on this bill.

My background is 22 years as a real estate licensee. For many of these years, I was an Association member. At this time, I operate independently from the Association because the cost is prohibitive for the small amount of time I have to work during the interim. I am licensed under the Commission as a broker, but do not maintain membership in the Association of Realtors. Being a non-member, I am not a "Realtor." I am an "independent broker."

With the public service interruption to my business, I am grateful to have any real estate business I can get, commercial or residential. I am qualified for both.

Under BRETTEA, if I list 2 or 3 properties in an estate, such as two small commercial buildings plus a residence, I have one client under two different agency laws. If the suggested commercial amendment goes on this bill, it will be embarrassing to explain my position to such a client.

You have heard testimony from commercial transaction brokers who have told you that commercial transactions are very different from residential. At the same time, they told you they had never completed a residential transaction. If no residential transactions, how is it they know the difference? I have done both and I do know that every buyer, seller, and transaction is different, but not commercial vs residential necessarily. The commercial transaction treatment in BRRETTA is a political move to quiet the objections to BRRETTA by commercial transaction brokers. Doesn't this action alone tells you the importance of BRRETTA? This should prove it isn't necessary in the first place.

*House Judiciary  
Attachment 1  
2/19/97*

Put yourself in the place of a seller. Every one of you will probably sell one or more properties in the future. When you list your property, you agree to pay a commission to your agent. Bretta forces you to cut the agreed amount in half and pay the other half to the buyer's agent who by law is required to put the screws to you and will.

Now, put yourself in the place of a <sup>Buyer</sup> seller. Under BRRETTA, you can't shop around for your dream home. You must agree under contract to look only with the first agent to get his hands on you. If you find out you don't like that agent, or he gets busy with two or three dozen others he has signed up, tough luck. Getting away from him will be a confrontation. Let's say in the middle of it all you get transferred to another Kansas town 200 miles away. You have a relative there from whom you buy by owner. Will you be sued for commission by your buyer's agent? If you buy from a builder in the new town, will the builder pay the agent who did no work and was 200 miles away? You, the buyer are the one under contract and will be the one to be sued.

I see no consideration for sellers or buyers in BRETTEA. There is no protection, no opportunity, no simplification, no market driven reasons here. If there were, no deals would have been made. The deals themselves prove the lack of need for the legislation.

You were told about meetings all over the state. I was never invited to one. You have letters from others who have been honored emeritus members of KAR who were not invited. I called the Commission and found out about a meeting in Wichita to discuss BRRETTA. Along with several of their members, I attended a meeting to which I was obviously not invited. The Real Estate Commission sends out a ballot in newsletters to canvass all licensees for such things as mandatory liability insurance. But only 2-3 lines saying the Task Force was finished and a bill was being prepared was sent on BRETTEA. Many were not familiar with the issue at all. So no vote has ever been asked for by the Commission and KAR. There has been a vehicle, time, and money to do it.

It is said that the old law is not clear. I say, this is not an improvement. There are no two agents who understand it in the same way. I had no trouble with agency in 21 years. In my 22nd year, with BRRETTA, my seller was insulted by the way she was treated by the Buyer's agent and refused to continue with the transaction at a time when she was not legally free to do so. After that, I worked with a buyer and my submitted a buyer's offer to a large company in Wichita. We received their a new printed contract as a counter offer which was very different in the fine print giving surprising advantages to the seller. My buyer was angered. She had entered the transaction in good faith and felt mistreated. Buyers and Sellers are not dumb. They expect a certain amount of honor and good values to make them feel good about their new home or investment.

#2  
To: The House Judiciary Committee

Date: February 19, 1997

Subject: The BRRETA BILL (House Bill 2264)

Dear House Judiciary Committee:

My name is John Todd. I am a licensed real estate broker. I own my own real estate company. I am here to speak for myself. I do not speak for anyone but myself. And even though I am a member of the Kansas Association of Realtors I do not speak for the Association, and by the same token, *they do not speak for me*. The primary thrust of my marketing efforts in the Wichita area is the sale of new homes. I pride myself in helping expand the local tax base and providing jobs for construction workers and business for our material suppliers.

The BRRETA BILL has been touted as **consumer legislation!** The BRRETA BILL in my opinion has little to do with protecting the public's interests.

The BRRETA BILL is really a struggle among real estate licensees over **money or market share** with some liability protection for real estate licensees from the **consumer**.

1. **Money or Market Share.** In every transaction there is a buyer and a seller. Buyer and seller representation was legal under the old law and has been practiced for many years. Historically, seller representation has been the primary market force *because* sellers were willing to pay real estate commissions to agents to convert their real estate equities into cash. Historically, buyer representation has not been as widespread and market driven, *because* most buyers don't want to pay a real estate agent or anyone else commissions to help them spend their cash in the purchase of real property. During the last 3 to 5 years buyer agency has become popular. There are two reasons for this, both of which are not market driven. Real estate agents found out that they could list real estate buyers and essentially control half of the real estate transaction (Remember in every real estate transaction there is a buyer and a seller.) The Multiple Listing Service allowed the buyers agent to collect a portion of the real estate commission (which was deducted out of the seller's proceeds.) at closing.

In order to accommodate this *new* source of revenue and this *new* marketing concept (which was not new), changes in the Real Estate License Law would be helpful. One change would be to codify into statutory law the exact definition of Buyers Agent, Sellers Agent, a new contrived Designated Agent, etc. (Please take a look at those definitions in the front part of House Bill 2264.) And to make a provision in the law that would legitimize the Multiple Listing Service practice of splitting real estate fees by saying: "Compensation (in a real estate transaction) is presumed to come from the transaction".

Armed with this "new" marketing tool, Buyers Agency was launched in earnest. Now the agent could get around the buyer's reluctance to pay commissions for buying real

House Judiciary  
Attachment 2  
2/19/97

estate, because the commission came out of the transaction, and was deducted from the sellers proceeds at closing. Larger companies were eager to grab on to this new concept because with their multitude of agents they could essentially capture half of the real estate market by listing the buyers.

2. **Liability protection** for real estate licensees from the consumer (your constituents). With the popularization of Buyers Brokerage a problem arose for the real estate broker who had historically been a Sellers Agent. What happened when one of his listed buyers wanted to purchase a property from one of his listed sellers. Now we have Disclosed Dual Agency. Most brokers were uncomfortable with Disclosed Dual Agency because of the liability they took on from being an agent for two masters with adversarial interests. When the Brreta Act became law in 1996 a provision called Designated Agent was added to the law which allowed brokers to represent both sides of the transaction legally. This Designated Agent concept did not work well for smaller companies as admitted to by our Kansas Association of Realtors lobby in the February 9, 1996 Wichita Business Journal article (enclosed). I don't know of many attorneys who will allow the clients with adversarial interests to be represented by their law firm; however, real estate brokers apparently know no fear when market share is at hand.

If the BRRETA ACT is consumer legislation, why would real estate brokers want to remove their liability for disclosure regarding material matters by shifting their liability to other people who many times are unlicensed home inspectors, and by doing so, essentially remove themselves from liability for property defects. Please see page 49 of House Bill 2263 as marked in yellow. Is the transfer of liability from the licensee to someone else in a real estate transaction in the *consumers best interest*?

The Brreta Act, as I see it, is an *abuse* of the legislative process. Is it right to Substitute Statutory law for Common Law as it relates to Agency so that certain real estate companies more favorably for market share? I don't believe so. Does the the state have any need to deal with compensation in real estate transactions? I believe the law should be silent regarding compensation; however, if you want to be fair regarding compensation, please change the law to read: "a buyer or seller who wishes to be represented in a real estate transaction can hire a real estate agent to do so, provided the buyer or seller pays for the services he desires". This language at least will allow *free market forces* to determine where compensation comes from.

Thank you for allowing me to speak. I would be glad to answer your questions.

Sincerely,

  
John R. Todd

Todd

1 Sec. 32. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,106 is  
2 hereby revived to read as follows: 58-30,106. (a) A seller's agent or a  
3 landlord's agent shall be a statutory agent with the duty and obligation  
4 to:

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

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

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

9 (A) Seeking a price and terms which are acceptable to the client,  
10 except that an agency agreement with a seller may provide that the broker  
11 shall not be obligated to continue to market the property after an offer  
12 has been accepted by the seller;

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

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

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

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

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

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

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

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

40 (d) (1) A seller's or landlord's agent owes no duty or obligation to a  
41 customer, except that a licensee shall disclose to any customer all adverse  
42 material facts actually known by the licensee, including but not limited  
43 to:



DISCLOSURE OF ALTERNATIVE AGENCY RELATIONSHIPS

Todd DAAR

Real estate licensees are required by law to provide this form to prospective buyers and sellers of real estate for which the present or intended use is one to four residential units.

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

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

THE CHOICES AVAILABLE TO YOU IN KANSAS

SELLER'S AGENT. A Seller's Agent has the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting and a duty to represent the seller's interests in the sale of the property. This includes the duty to seek a price and terms which are acceptable to the seller. A Seller's Agent also has a duty to disclose to the seller all material information acquired from the buyer or from any other source.

SUBAGENT. Sellers may authorize their agent to offer subagency to other firms. A subagent (agent of the agent) also represents the seller's interests. Sellers have the same liability for acts of a subagent as they do for the agent they hire.

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

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

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

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

THE CHOICES AVAILABLE TO YOU WITH THIS FIRM

Brokerage firm: \_\_\_\_\_ Name of licensee: \_\_\_\_\_

This firm authorizes its agents to act as a:

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

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

- Offer cooperation to Subagents  yes  no Offer cooperation to Buyer's Agents  yes  no
- Offer compensation to Subagents  yes  no Offer compensation to Buyer's Agents  yes  no

OPTIONAL ACKNOWLEDGMENT

Completion of this section is not required by law. However, you may acknowledge receipt of this form by circling "seller" or "buyer" and signing below. Keep in mind that this form is not a contract—if you choose to have an agent represent you, a written agency agreement (contract) must be signed.

\_\_\_\_\_  
Seller or buyer

\_\_\_\_\_  
Seller or buyer

\_\_\_\_\_  
Date

DAAR Form No. 2 approved by the Kansas Real Estate Commission on May 8, 1996 for mandatory use by real estate licensees regarding the sale of real estate for which the present or intended use is one to four residential units.

Todd

1 rules and regulations adopted hereunder or the brokerage relationships  
 2 in real estate transactions act or rules and regulations adopted thereunder  
 3 as such act governs the sale or lease of real estate that is one to four  
 4 residential units, the commission may institute an action in the district  
 5 court of the county in which the person resides or in the district court in  
 6 the county in which such act or practice occurred for an injunction to  
 7 enforce compliance with the act or rules and regulations. The commission  
 8 shall not be required to give any bond or pay any filing fee for initiating  
 9 such action. Upon a showing that the person has engaged in any act or  
 10 practice in violation of the act or rules and regulations, the court may  
 11 enjoin all such acts or practices and may make any orders necessary to  
 12 conserve, protect and disburse any funds involved.

13 Sec. 17. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3064,  
 14 as revived by section 16 of this act, is hereby amended to read as follows:  
 15 58-3064. Whenever any person has engaged in any act or practice that  
 16 constitutes a violation of this act or rules and regulations adopted here-  
 17 under or the brokerage relationships in real estate transactions act or rules  
 18 and regulations adopted thereunder ~~as such act governs the sale or lease~~  
 19 ~~of real estate that is one to four residential units~~, the commission may  
 20 institute an action in the district court of the county in which the person  
 21 resides or in the district court in the county in which such act or practice  
 22 occurred for an injunction to enforce compliance with the act or rules  
 23 and regulations. The commission shall not be required to give any bond  
 24 or pay any filing fee for initiating such action. Upon a showing that the  
 25 person has engaged in any act or practice in violation of the act or rules  
 26 and regulations, the court may enjoin all such acts or practices and may  
 27 make any orders necessary to conserve, protect and disburse any funds  
 28 involved.

29 Sec. 18. On and after July 1, 1997, K.S.A. 1996 Supp. 58-3065 is  
 30 hereby revived to read as follows: 58-3065. (a) Willful violation of any  
 31 provision of this act or the brokerage relationships in real estate trans-  
 32 actions act, as such act governs the sale or lease of real estate that is one  
 33 to four residential units, is a misdemeanor punishable by imprisonment  
 34 for not more than 12 months or a fine of not less than \$100 or more than  
 35 \$1,000, or both, for the first offense and imprisonment for not more than  
 36 12 months or a fine of not less than \$1,000 or more than \$10,000, or  
 37 both, for a second or subsequent offense.

38 (b) Nothing in this act or the brokerage relationships in real estate  
 39 transactions act, as such act governs the sale or lease of real estate that is  
 40 one to four residential units, shall be construed as requiring the commis-  
 41 sion or the director to report minor violations of the acts for criminal  
 42 prosecution whenever the commission or the director believes that the  
 43 public interest will be adequately served by other administrative action.

Todd

# HOMES PLUS

## New agency law

Continued from page 9

Realtors be held accountable for faulty information supplied to them by sellers. In the past, Schintgen said, agents could be held liable for relaying bad information on a property to a prospective customer.

"Now, a Realtor is no longer obligated to confirm the information they've been given about a property," said Schintgen. "It hasn't happened very often in the past, but now Realtors are able to protect themselves from damages as a result of passing on faulty information provided to them by an independent source, such as a home inspector or the seller of the property."

While most of the new law will be a benefit to buyers, sellers, and real estate agents alike, France admitted there maybe a few drawbacks. Smaller

companies, for instance, may find themselves cut out of some opportunities.

"Well, the designated-agent provision just won't work out in a small office," France explained. "A husband-and-wife

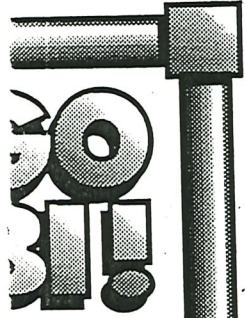
team, for instance, wouldn't be big enough to benefit from that."

An increase in paperwork may be another drawback for some, said Schintgen. The effort in keeping disclosure forms up-to-date and all the signatures filed may take extra time.

"Overall, we think the changes will work out for the best," Schintgen said. "We're going to be able to provide a complete look at the different levels of service for customers, and be able to serve


them more completely under one roof." Paul Archer is a free-lance writer living in Wichita.

*"What this does is create a more level playing field with all real estate agents offering the same form so the public can see a difference between firms when they're shopping for a real estate agency," said Karen France, a lobbyist for the Kansas Association of Realtors.*




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VALUATION!



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Over 20,000  
influential executives read  
The Business Journal



# HOMES PLUS

## Local Realtors concerned about new disclosure regulations

By PAUL ARCHER

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

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

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

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

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

Under the newly crafted designated-

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

So what's all the fuss about?

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

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

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

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

"This law is in conflict with the way we

### New disclosure law:

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

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

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

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

and who needs to make the disclosure.

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

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

Charles Downs, president and broker for

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

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

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

But France defended the group's involvement.

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

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

Another modification made to existing law gives more strength to the age-old adage "caveat emptor." No longer will

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Your Dream Home



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WICHITA AREA ASSOCIATION OF REALTORS® - UNIFORM PURCHASE CONTRACT

In consideration of the mutual agreements herein, it is mutually agreed that Seller will sell to Buyer and Buyer will buy from Seller, the following property on the following terms and conditions:

1. BUYER: \_\_\_\_\_

2. SELLER: \_\_\_\_\_

3. PROPERTY ADDRESS: \_\_\_\_\_

(CITY, STATE, ZIP CODE) \_\_\_\_\_

LEGAL DESCRIPTION \_\_\_\_\_

4. PURCHASE PRICE: Buyer shall purchase and pay to Seller as consideration for the above described real property the

amount of: \_\_\_\_\_ Dollars \$ \_\_\_\_\_

In a manner as follows:

EARNEST MONEY: ..... \$ \_\_\_\_\_

(See paragraph 5)

NEW MORTGAGE PROCEEDS: ..... \$ \_\_\_\_\_

(See paragraph 6) (Does not include mortgage insurance)

MORTGAGE ASSUMED: (See paragraph 11) ..... \$ \_\_\_\_\_

Type loan \_\_\_\_\_ Lender \_\_\_\_\_ Present interest rate \_\_\_\_\_%

Approximate present payment \$ \_\_\_\_\_ per month including \_\_\_\_\_

Assumption rate \_\_\_\_\_ Assumption fees shall be paid by \_\_\_\_\_

OTHER: (See paragraph 10) ..... \$ \_\_\_\_\_

APPROXIMATE BALANCE DUE from Buyer at closing ..... \$ \_\_\_\_\_

subject to adjustments and prorations (not including closing costs or pre-paid items)

Sellers agrees to pay loan costs prohibited to be paid by Buyer on government loans up to \$ \_\_\_\_\_

Buyer agrees to pay loan costs in approximate amount of: \_\_\_\_\_

Buyer agrees to pay prepaid items in approximate amount of: \_\_\_\_\_

\_\_\_\_\_ agrees to pay discount points not to exceed: \_\_\_\_\_

\_\_\_\_\_ agrees to pay for Home Warranty Plan (copy attached) in approximate amount of: \_\_\_\_\_

Title Evidence to be ordered from: (See paragraph 17) \_\_\_\_\_

5. EARNEST MONEY: Pursuant to paragraph 28, the Buyer does hereby deposit with \_\_\_\_\_ (Company Name), earnest money in the form of \_\_\_\_\_ and in the amount of \$ \_\_\_\_\_, as a security that the terms and conditions of this Contract shall be fulfilled by the Buyer. Earnest money shall be deposited within five business days after Contract is accepted by all parties. Said EARNEST MONEY shall be applied to the purchase price at closing.

6. NEW FINANCING: Applicable when the purchase of this property is contingent upon the Buyer obtaining a \_\_\_\_\_ first mortgage loan at an initial interest rate not to exceed \_\_\_\_\_% plus required Mortgage Insurance or VA Funding Fee, and for a term of \_\_\_\_\_ years. Buyer shall apply for said loan within seven (7) working days after the Contract is signed by all parties and use every reasonable effort to obtain the above-noted loan. This offer is subject to and contingent upon the Buyer qualifying for and obtaining a mortgage commitment on or before \_\_\_\_\_. Buyer shall pay for and cause to be ordered an appraisal and credit report at loan application. If property does not appraise for at least the purchase price, this Contract may be renegotiated or Contract will become null and void; or in the event Buyer is unable to obtain such financing, the Buyer shall promptly notify the Seller or his broker in writing. In either such event, the earnest money, less accrued expenses, shall be refunded to the Buyer, pursuant to paragraph 28, and this transaction will be null and void. Loan costs, prepaid expenses including any mortgage insurance and discount points, if any, shall be paid as specified in paragraph 4. Buyer will have the necessary funds available to close this transaction, payable by cashier's check or certified funds.

7. APPRAISER/LENDER REQUIREMENTS: Should lender or appraiser require improvements or repairs, Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract. If Seller elects NOT to make said repairs/improvements, Buyer may make said repairs at Buyer's own expense. Buyer shall pay for first inspection of required repairs/improvements. Seller shall pay for any subsequent re-inspections which may be necessary.

8. CLOSING AND POSSESSION: The parties agree that time is of the essence and Buyer agrees to make final settlement on or before \_\_\_\_\_. Seller agrees to give possession as follows: \_\_\_\_\_

9. AGENCY DISCLOSURE:

Listing Broker/Licensee is functioning as an: ( ) Agent of the Seller ( ) Dual Agent

Selling Broker/Licensee is functioning as an: ( ) Agent of the Seller ( ) Agent of the Buyer ( ) Dual Agent ( ) Designated Agent

Seller and Buyer acknowledge that disclosure(s) of licensee agency status required pursuant to applicable state laws were made prior to their execution of this contract.

10. MISCELLANEOUS: \_\_\_\_\_

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**11. EXISTING MORTGAGE FOR ASSUMPTION OR OWNER CARRY:** The Seller shall punctually pay and comply with the terms of any existing mortgage, related note, or escrow Contract (Contract for Deed) hereinafter referred to as Instrument, until the date of closing and delivery of Deed. If said Instrument is being assumed by the Buyer, the Buyer shall, on and after the date of closing, punctually pay, defend, indemnify and hold Seller free and harmless from all of the terms, conditions and provisions of said Instrument. If Seller is carrying some or all of the purchase price, or if a non-qualifying Instrument is being assumed, acceptance of this Contract is subject to Seller's approval of Buyer upon Buyer providing a current credit report, job verification(s), financial statement and verification of funds within seven (7) working days of Contract acceptance, unless Seller has waived, in writing, said requirements. In such an event, the Seller shall furnish the Buyer, at closing, a copy of any Instrument to be assumed and an assumption statement with respect to the Instrument showing the principal balance, method of payment, interest rate, and sufficient information to show that said Instrument is not in default. If the Instrument requires acceptance of the Buyer by the Instrument holder, and the Instrument holder denies acceptance of the transfer; or, if this Contract (in paragraph 4) is subject to Buyer's assumption of an Instrument at the original interest rate and with the original terms of said Instrument, and said original rate/terms are denied by Instrument holder, then the Buyer shall, prior to closing, have the option of either rescinding this Contract and obtaining a return of the earnest money (less expenses as hereinabove stated) or accepting the assumption of a modified Instrument and proceeding with the purchase. Interest accruing on above-stated Instrument shall be prorated as of the date of closing. On loan assumptions any reserve or escrow account held by any mortgagee for taxes, special assessments, mortgage insurance and other insurance shall be purchased by Buyer at closing. Assumption of the mortgage loan by buyer does not release seller from liability unless they request and obtain a release of liability from the mortgagee and insurers of the loan, if any. Without such a release, sellers may be liable for any deficiency resulting from a subsequent foreclosure of the mortgage assumed.

**12. TERMITE INSPECTION:** The improvements shall be inspected by a licensed termite treatment company selected by the Buyer and at the cost of the Buyer, unless payment by Buyer is prohibited by lender/guarantor/insurer, in which case the Buyer shall select and Seller shall pay for said inspection. If the dwelling, garages (attached or unattached) or other improvements are found to have active or inactive termite infestation that was untreated or partially treated, treatment shall be made at Seller's expense by a licensed exterminator of Seller's choice. Buyer has been advised that the termite inspection will be a report of the visual evidence of termite infestation based on inspection of accessible areas only on the date of the inspection. Normally, no inspection will be made in areas which are obstructed or inaccessible. The report will not guarantee that infestation or damage does or does not exist or will not occur.

Buyer may at Buyer's option secure an inspection for visible damage including structural damage as a result of present or past termite activity. Said inspection shall be made by a licensed building contractor at Buyer's expense. If said inspection reveals visible damages, Buyer may request in writing the repair of said damage. Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract and return earnest money. If Seller elects NOT to make said repairs/improvements, Buyer may make said repairs at Buyer's own expense. However, if Seller is unwilling to repair Buyer-requested termite damage, Buyer reserves the right to cancel or renegotiate this Contract. These inspections shall take place as soon as possible.

In the event Buyer does not have the premises inspected, then Buyer shall be obligated to purchase property regardless of any termite infestation or termite damage and the Seller and broker are relieved and released of any obligations relating thereto. Seller agrees that Buyer or Buyer's representative may inspect any repairs before the closing date.

**13. PROPERTY:** The real estate described herein, together with improvements attached thereto, shall include, if any, gas heaters, attic fan and/or ceiling fans, central air-conditioning, all window air-conditioning unit(s), lighting, heating and plumbing equipment and fixtures, bathroom mirrors and attached mirrors, window and porch shades, shutters, storm windows and doors, screens, all window and door coverings now in place, attached curtain and drapery rods, awnings, television antenna and antenna equipment, keys, water softener (if owned), attached outside cooking units, gas lights, automatic garage door equipment including remote transmitters, attached and unattached wall-to-wall carpeting, built-in kitchen appliances, attached shelves, fire, smoke and burglary detection systems (if owned), mail boxes, installed waterwell pumps, propane/butane tanks(s) (if owned by Seller), storage buildings, swimming pool and all pool equipment, all flowers, trees and shrubs, and anything else buried, nailed, bolted, screwed, glued or otherwise permanently affixed to the premises, or any improvements thereon, with any exceptions or additions as noted in Miscellaneous paragraph 10.

**14. PRORATION OF TAXES AND RESERVES:** Seller represents and warrants that all taxes and special assessments shall be paid from the proceeds of the sale as herein provided. All ad valorem taxes, the current annual installment of special assessments, rentals, homeowner's association dues, and interest, if any, shall be adjusted and prorated as of closing date, unless otherwise agreed. General taxes shall be prorated for the calendar year on the basis of taxes for the previous year unless the previous year's assessed valuation was based on a lesser-improved property, in which case said taxes shall be determined from the assessed valuation and the officially-established mill levy prevailing at closing. Special assessments shall be prorated on the basis of the amount (for the calendar year) ascertainable at the time of closing by the closing agent. The Buyer understands that the Buyer is responsible for payment of all ad valorem taxes and special assessments becoming due after the closing date and that Buyer is assuming all unmatured installments of special assessments. Periodic reappraisal, required by law, may result in a change in taxes.

**15. INSURANCE:** Seller shall maintain current insurance in force until closing date. The Buyer at closing shall furnish insurance policies necessary for the protection of the Instrument holder(s), containing loss clauses in favor of the Instrument holder(s) as their interests may appear. If required and so specified, the insurance policies shall be held by the Instrument holder(s) or escrow agent until said lien is paid in full. Buyer agrees to purchase flood insurance policy if and when required by the lending agency pursuant to federal law. Should possession take place prior to closing, Buyer shall secure hazard insurance for personal property effective on or before possession date.

**16. CASUALTY LOSS:** In the event of property damage to the premises by fire or other casualty prior to closing, the Seller shall restore same. In the event repairs cannot be completed prior to closing, Buyer and Seller may renegotiate this contract or declare it null and void. If the estimated cost of repair exceeds 10% of the purchase price, either Buyer or Seller may cancel this Contract and all earnest money shall be returned to Buyer, less expenses.

**17. TITLE EVIDENCE:** The Seller shall cause to be furnished to Buyer a title insurance company's title binder to issue. After closing, a title insurance policy in an amount equal to the full purchase price naming Buyer as the insured. Except for assumptions under paragraph 4, the title binder shall show marketable title vested in Seller, subject to: Easements, encroachments which would be disclosed by survey, rights-of-way of record, trees, plantings and fences thereon; restrictions and protective covenants of record, provided no forfeiture provisions are contained therein; unmatured special assessments, zoning laws, ordinances and regulations; rights of tenants in possession; the liens, if any, described therein; and those exceptions which are standard to American Land Title Association's Form B or as specified herein and, in an assumption, the mortgage securing the loan, which the Buyer is assuming. A copy of the title binder will be furnished to lender, listing broker, and selling broker as promptly as possible. The Seller and Buyer shall each pay one-half the cost of the title policy. In the event the Contract is for new construction the builder/Seller may receive builder discount if any. Buyer shall pay for any lender's/mortgagee's/Instrument-holder's, title insurance coverage. Seller shall have reasonable time, not to exceed 30 days from scheduled closing date, to furnish marketable title. The Seller shall be responsible to use due diligence to resolve any title defects at Seller's expense subject to the foregoing exceptions. Should the Seller be unable to furnish marketable title subject to the foregoing exceptions, and should this Contract be terminated due to same, then the earnest money shall be refunded promptly to the Buyer and the Seller shall reimburse to the Buyer the cost of Buyer's accrued loan costs, attorneys' fees for examining title, and title insurance cancellation fees, and all parties shall be released from any further liability hereunder.

**18. DEED AND DOCUMENTS FOR CLOSING:** In the event a title or abstract company prepares a Deed and Affidavit of No Liens and other necessary documents to complete this transaction, the charge for same, in addition to the cost of closing the transaction, shall be shared equally between the Buyer and Seller, but if Lender prohibits Buyer from doing so, Seller shall pay such costs.

**19. REPRESENTATIONS AND RECOMMENDATIONS:** It is hereby agreed and acknowledged by the parties hereto that, unless otherwise stated in paragraph 10 (Miscellaneous), neither the listing nor selling brokers, or their agents, employees, or associates have, on their own behalf, any representations or warranties, expressed or implied, with respect to any element of the subject property. Any information furnished to either party through the Multiple Listing Service or in any property condition report should be independently verified by that party before that party relies on such information. Any representations made herein have been made by the listing/selling brokers based on information supplied by sources believed to be reliable, and brokers and their associates have not assumed any responsibility, directly or indirectly, with respect to any representation or warranties which have been made, if any. Since the selling/listing brokers are acting as brokers only, they shall, under no circumstances, be held liable to either the Seller or Buyer for performance or lack of performance of any other terms or conditions of this Contract, or for damages arising out of or relating to the contents of this Contract over the performance or non-performance of either of the parties to this Contract. **Again, it is emphasized that if the parties hereto feel representations have been made, they must be set forth specifically and in writing in paragraph 10 (Miscellaneous) if said understood or implied representations are to be effective or enforceable.**

**20. INSPECTION:** The Buyer has carefully examined the premises and the improvements located thereon, and in making the decision to buy the property, the Buyer is relying wholly and completely upon Buyer's own judgment and the judgment of any contractors or inspectors Buyer may have selected.

- A property condition report is attached and made part of this contract.
- This offer is subject to acceptance by the Buyer of a property condition report within \_\_\_\_\_ days.
- A property condition report is not available

Buyer's Initials \_\_\_\_\_ Buyer agrees that the purchase price was negotiated after consideration of all defects in the real estate of which Buyer was aware or reasonably should have been aware. Buyer hereby agrees to hold listing/selling brokers harmless if Seller has failed to disclose any known defect or material fact regarding the property. **Buyer waives any claim for property defects unless Buyer secures, at Buyer's expense, an inspection of the property, including but not limited to the roof, structure, all electrical, mechanical, and plumbing equipment, and appliances.**

IN THE EVENT BUYER FOR ANY REASON DOES NOT OBTAIN SAID INSPECTIONS, AS ALLOWED OR STATED ABOVE, BUYER SHALL BE DEEMED TO HAVE ACCEPTED THE CONDITION OF THE PROPERTY AS SATISFACTORY AND SELLER AND SELLER'S BROKER ARE RELIEVED FROM ANY AND ALL LIABILITIES HERETO, except for Seller's obligation as noted in paragraph 22.

These inspections shall be obtained within \_\_\_\_\_ business days of Contract acceptance. These inspections are not intended to ascertain the cosmetic imperfections of the property or other items that the Buyer has already considered in determining the purchase price. Seller shall cooperate in all respects in allowing Buyer's contractors access to the premises, and will activate utilities, if necessary, to complete inspections. If Buyer has not notified Seller, or agent, in writing within 72 hours of inspection completion of any defect revealed by the inspection(s), then this Contract shall be in full force and effect.

However, if as a result of these inspections, Buyer requests, in writing, repairs or replacements to rectify reported defects, Seller, at Seller's sole option, may make said repairs, renegotiate, or cancel this Contract and return the earnest money; provided that, if Seller elects to cancel this Contract, Buyer may waive Buyer's request for repairs or replacements.

If the total estimated cost of repairs exceeds \_\_\_\_\_% of the purchase price, Buyer may cancel this Contract and all earnest money shall be returned to Buyer, less expenses.

Seller agrees to give Buyer reasonable access to the property before the closing date so that Buyer and Buyer's representatives may, at Buyer's expense, re-inspect the property for confirmation of condition or to inspect any repairs made pursuant to this paragraph.

The parties agree and the Buyer represents that once the Contract has in fact been closed, that Buyer in all respects again has acknowledged that Buyer has accepted the premises without condition or qualification. Broker(s) shall not be responsible for the conduct of third parties providing specialized services required or permitted by this Contract, including but not limited to lender, title insurance company, escrow agent, closing agent, wood infestation, mechanical, structural or other inspectors or repair personnel, whether those services were arranged by Buyer or Seller or broker on behalf of either. Buyer and Seller are aware of the availability of a home warranty program for which the broker(s) may receive an administrative fee if said program is purchased and both have separately accepted/rejected purchase of the program. Although one program may have been specifically offered to Buyer and/or Seller, the broker(s) involved have made no representations about the quality of the programs offered, and all parties to this Contract understand that they may seek alternate home warranty coverage.

**21. ENVIRONMENTAL CLAIMS:** Buyer and Seller agree that broker and broker's agents do not have any expertise in evaluating the environmental condition of the property described in paragraph 3, and that broker and broker's agents have made no representation concerning environmental condition except as may be noted in paragraph 10 (Miscellaneous). Buyer or Seller may retain an environmental inspection firm to inspect the property.

**22. INTERIM MAINTENANCE:** Seller agrees to maintain heating (sufficient to avoid frozen water lines), sewer, plumbing and electrical systems, and any appliances and equipment being conveyed, in proper working order, and to maintain the lawn, shrubbery, trees and pool, if any, until possession if possession occurs at or after closing. If possession is given to buyer prior to closing, refer to attached addendum. Buyer will be solely responsible for obtaining insurance to cover any casualty loss occurring after closing, even if possession is retained by Seller after closing.

**23. LIENS:** Seller represents and warrants that there are no unpaid (whether recorded or not) chattel mortgages, conditional sales contracts, financing statements, or security agreements affecting any fixture, portion of the premises or item of personal property covered by this Contract. Any existing liens upon the premises which the Seller is required to remove under this Contract may be paid and discharged from the sale proceeds at the closing of the sale.

**24. SURVEY:** Broker recommends that Buyer acquire a survey on the property being purchased, regardless of lender's survey requirements.

**25. BROKERAGE FEES:** The party handling the closing of this transaction is hereby authorized and directed to collect and disburse the brokerage fees at closing.

**26. ALTERATIONS:** Any alterations of the terms and conditions of this Contract must be agreed to in writing by both Buyer and Seller.

**27. SURVIVAL:** The provisions of paragraphs 5, 8, 9, 10, 11, 12, 13, 14, 17, 19, 20, 21, 22, 23, 24, and 28 shall survive closing.

**28. DISPOSITION OF EARNEST MONEY:** In the event this contract fails to close, the earnest money shall be disbursed according to an agreement signed by both parties. Pursuant to Kansas Statute 58-3061 (g), the broker can only disburse earnest money 1) pursuant to written authorization of buyer and seller; 2) pursuant to a court order; or 3) when a transaction is closed according to the agreement of the parties. Notwithstanding any other terms of this Contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and Seller agree that failure by either to respond in writing to a certified letter from Broker within seven (7) days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within thirty (30) days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto. If a dispute arises over disposition of funds or documents deposited with the escrow agent or the listing broker, Seller and Buyer agree that any attorney's fees, court costs and/or other legal expenses incurred by the escrow agent and any broker in connection with such dispute shall be reimbursed from the earnest money or other funds deposited with the escrow agent or listing broker. In addition to forfeiture of earnest money to Seller or return of earnest money to Buyer, Buyer and Seller shall both have the option of enforcing specific performance of this Contract or any other remedy allowed by law or equity.

29. **HEIRS AND ASSIGNS:** This Contract shall be fully binding upon the parties, their heirs, executors, administrators, successors and assigns (subject to paragraph 31). No assignment shall serve to release or relieve the party assigning from any responsibilities or obligations hereunder.

30. **KANSAS LAW APPLIED:** This Contract and its validity, construction and performance shall be governed by the laws of Kansas.

31. **AGREEMENT APPROVAL:** This Contract constitutes the entire agreement between the parties and supersedes any previously executed contracts, representations, verbal or written, to buy and/or sell the property. Neither this Contract, nor any interest herein, shall be transferred or assigned by Buyer without the prior written consent of Seller.

Buyer and Seller hereby acknowledge receipt of separate expense itemizations estimating approximate costs to be incurred in acquiring or disposing of this property. Buyer and Seller also acknowledge that they have read the entire Contract and that by signing page four (4) of this four (4) page Contract that they agree to all terms contained therein.  
IN WITNESS WHEREOF, said parties hereunto subscribe their names.

**THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.**

BUYER \_\_\_\_\_

SELLER \_\_\_\_\_

DATE \_\_\_\_\_ SS# \_\_\_\_\_

DATE \_\_\_\_\_ SS# \_\_\_\_\_

BUYER \_\_\_\_\_

SELLER \_\_\_\_\_

DATE \_\_\_\_\_ SS# \_\_\_\_\_

DATE \_\_\_\_\_ SS# \_\_\_\_\_

AGENT \_\_\_\_\_

AGENT \_\_\_\_\_

FIRM \_\_\_\_\_ TELE \_\_\_\_\_

FIRM \_\_\_\_\_ TELE \_\_\_\_\_

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Todd

Exclusive right to sell agreement between the undersigned Seller and Broker for the property known as \_\_\_\_\_

is exclusive and irrevocable for the period beginning \_\_\_\_\_ and ending \_\_\_\_\_

LEGAL DESCRIPTION \_\_\_\_\_

The property is offered for sale for the sum of \_\_\_\_\_

on the following terms: \_\_\_\_\_ Cash \_\_\_\_\_ Conventional \_\_\_\_\_ Assumption \_\_\_\_\_ FHA \_\_\_\_\_ VA (Seller understands that certain fees in

connection with a VA loan cannot be paid by the Veteran, therefore must be paid by the Seller)

\_\_\_\_\_ Owner Carry on the following terms: \_\_\_\_\_

together with all improvements thereon and the following items, if any: Keys, drapes, curtains, drapery rods, curtain rods, valances, blinds, window and porch shades, screens, shutters, awnings, storm windows & doors, wall-to-wall carpeting, mirrors fixed in place including bathroom mirrors, ceiling fans, mail boxes, television antennas, permanently installed heating and air conditioning units and equipment, built-in kitchen appliances, built-in security and fire detection equipment, lighting fixtures, plumbing fixtures, water softeners (if owned by Seller), all automatic garage door opener equipment including transmitters, attic fans, attached gas grills, attached shelves, water well pumps, shrubbery and all other property owned by Seller and attached to the above described property, except the following exceptions and/or additions: \_\_\_\_\_

1. The Broker agrees to perform the terms of this contract, exercise reasonable skill and care for the Seller, promote the interests of the Seller with the utmost good faith, loyalty and fidelity, seek a price and terms acceptable to the Seller, and, subject to the following, present all written offers, counteroffers and back-up offers in a timely manner. The Seller agrees that (please initial one):

\_\_\_\_\_ the Broker shall not be obligated to continue to market the property or present subsequent offers after an offer has been accepted by the Seller unless the purchase contract permits the Seller to continue to market the property and consider other offers until closing.

or

\_\_\_\_\_ the Broker shall not be obligated to continue to market the property or present subsequent offers after an offer has been accepted by the Seller.

2. The Seller agrees to pay the Broker a brokerage fee of \_\_\_\_\_% of the selling price if the Broker produces a ready, willing and able buyer for the property at the price and subject to the terms stated, or later agreed upon, or if the sale, lease or exchange of the property is made by the Seller or any other person, during the term of this exclusive right to sell listing agreement.

3. Such compensation shall be paid if property is sold, leased, exchanged, conveyed, or otherwise transferred within \_\_\_\_\_ days after the termination of this agreement or any extension thereof to anyone with whom the agent has negotiated or to whom the agent has exposed the property prior to final termination, provided Seller has received notice in writing, including the names of prospective purchasers, before or upon termination of this agreement or any extension thereof. However, Seller shall not be obligated to pay such compensation if a valid listing agreement is entered into during the term of said protection period with another licensed real estate Broker and the sale, lease, exchange, conveyance or transfer of the property is made during the term of said protection period.

4. The Seller authorizes Broker to cooperate with other brokers, including buyers' brokers, and to offer subagency and to divide with other Brokers such compensation in any manner acceptable to brokers. The Seller agrees that Broker shall:

	(please initial)		(please initial)
Offer cooperation to sub-agents	_____ Yes _____ No	Offer cooperation to buyer's agent	_____ Yes _____ No
Offer compensation to sub-agents	_____ Yes _____ No	Offer compensation to buyer's agent	_____ Yes _____ No

5. Seller acknowledges receiving and signing the "Disclosure of Alternative Agency Relationships" form. Seller understands and agrees that Broker can show the property, and obtain offers from, all prospective buyers, including buyers with whom the Broker has an agency relationship.

A. Pursuant to paragraph 9, Seller consents to disclosed dual agency, subject to both buyer and Seller signing a Dual Agency Consent Agreement

(please initial) \_\_\_\_\_ Yes \_\_\_\_\_ No

B. Pursuant to paragraph 10, Seller consents to property being shown by a designated agent for the buyer

(please initial) \_\_\_\_\_ Yes \_\_\_\_\_ No

6. Seller hereby acknowledges the availability of home protection programs (please initial one):

\_\_\_\_\_ Seller chooses to provide such coverage and hereby acknowledges receipt of home protection policy application. Broker may receive an administrative fee.

\_\_\_\_\_ Seller does not choose to provide such coverage.

7. The provisions on the reverse side are incorporated by reference as if fully set forth at this point.

8. \_\_\_\_\_

Seller hereby acknowledges receipt of a copy of this agreement.

\_\_\_\_\_  
Brokerage

\_\_\_\_\_  
By \_\_\_\_\_ Date

\_\_\_\_\_  
Broker's Address

\_\_\_\_\_  
Broker's Phone Number

\_\_\_\_\_  
Seller \_\_\_\_\_ Date

\_\_\_\_\_  
Seller \_\_\_\_\_ Date

\_\_\_\_\_  
Seller's Address

\_\_\_\_\_  
Work Phone \_\_\_\_\_ Home Phone

9. Seller acknowledges that real estate agents associated with the Broker may have clients who have retained them to represent them as a buyer or seller in the purchase of property. If a buyer client becomes interested in making an offer on this property, then the Broker is in the position of representing both buyer and seller in that transaction. Since both the listing and selling agents are associated with the Broker and operating under the Broker's license, they would each be agents for both the Seller and the buyer, making them dual agents. This representation, known as dual agency, can create the potential for conflicts of interest. In a disclosed dual agency, the Broker will not represent the interest of either party to the detriment of the other. Buyer and Seller have the responsibility to determine the price they will pay or accept, and the Broker shall cease to serve as either Seller's or buyer's sole and exclusive agent. A disclosed dual agent will not disclose any confidential information that would place one party at an advantage over the other party unless the disclosure is required by law or failure to disclose would constitute fraudulent misrepresentation. The dual agent will not disclose any of the following information without the informed consent of the party to whom the information pertains: That a buyer is willing to pay more than the price offered; that a Seller is willing to accept less than the asking price; motivating factors of either party for buying or selling; or that a party will agree to financing terms other than those offered. Broker may not act as a disclosed dual agent without the informed written consent of Seller and buyer. The informed consent shall be evidenced by a Dual Agency Consent Agreement which must be signed by the buyer prior to showing of the property and by the Seller before an offer can be presented.

10. Seller also acknowledges that Broker may designate agents licensed with Broker's firm to act as the legal agent of the buyer to the exclusion of all other licensees affiliated with the Broker. This means that the designated agent(s) represents the buyer's interests exclusively and that the Broker's listing agent and all other affiliated licensees perform the duties of a Seller's Agent. The designated agent CANNOT continue to represent the buyer exclusively IF: (1) the buyer wants to see a property which was listed personally by the designated agent; or (2) the designated agent's Broker becomes directly involved in the transaction. Either situation would trigger a dual agency relationship requiring the written consent of both buyer and Seller.

11. Seller also understands and agrees that as part of marketing the property, Broker will be showing buyers properties other than Seller's and providing buyers with information on selling prices in the area.

12. The Seller agrees to divide equally with the Broker any earnest money deposited with a contract and forfeited by a buyer, but not in excess of the amount to which the Broker would be entitled had the transaction closed.

13. The Seller gives the Broker the right to place a For Sale sign on the property and to remove all other signs during the term of this listing agreement.

14. The Seller agrees to refer all inquiries and offers received during the term of this listing agreement to the Broker.

15. The Seller agrees to provide the buyers of the property with evidence of clear title and to provide inspection reports, if any, when called for in a sales agreement. The Seller hereby agrees to indemnify and hold harmless the Broker, Broker's agents and employees from any liabilities, costs, or expenses with respect to said inspections.

16. Seller agrees to leave utilities on during the term of this listing or until final settlement of a sales transaction, whichever is later.

17. Seller agrees to thoroughly review the listing information prepared by the Broker and advise the Broker immediately of any errors or omissions. Seller further stipulates that the age of the property and the dimensions of the lot as shown on the listing information are accurate to the best of Seller's knowledge. The attached property condition report is hereby made a part of this agreement.

18. SELLER HAS BEEN ADVISED AND UNDERSTANDS THAT THE LAW REQUIRES DISCLOSURE OF ANY KNOWN MATERIAL DEFECTS IN THE PROPERTY TO PROSPECTIVE BUYERS AND THAT FAILURE TO DO SO MAY RESULT IN CIVIL LIABILITY FOR DAMAGES. SELLER AGREES TO INDEMNIFY AND HOLD HARMLESS BROKER AND BROKER'S AGENTS FROM ANY CLAIMS THAT REQUIRED DISCLOSURES WERE NOT MADE, INCLUDING REASONABLE ATTORNEY FEES OF BROKER AND BROKER'S AGENTS. SELLER hereby warrants that the information provided to the Broker as well as the information provided herein is true and correct according to the Seller's best knowledge and belief, and agrees to hold Broker and Broker's agents and any cooperating brokers and agents harmless from any damages, costs, attorney fees, or expenses whatsoever arising by reason of Seller not disclosing any pertinent information, giving any incorrect information, or the breach of any terms and conditions of this agreement.

19. Seller authorizes Broker to contact any lending institution or mortgage holder to obtain any information which may be appropriate.

20. The Broker will disclose to the Seller all adverse material facts actually known by the Broker about the buyer and advise the Seller to obtain expert advice as to material matters known by the Broker but the specifics of which are beyond the Broker's expertise. When the Seller has been so advised, no cause of action for any person shall arise against the Broker pertaining to such material matters. The Broker will disclose to any customer and Seller any adverse material facts actually known by Broker, related to the physical condition of the property, which contradict any information included in a written report that has been prepared by a qualified third party and provided to a customer or Seller. However, Broker owes no duty to conduct an independent inspection of the property to verify accuracy or completeness of any statements made by Seller or any qualified third party. Broker will account in a timely manner for all money and property received. The Broker will comply with all requirements of the Brokerage Relationships in Real Estate Transactions Act of Kansas and comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes and rules and regulations. The Broker will keep all confidential information about the Seller confidential unless disclosure is required by statute, rule or regulation, or unless failure to disclose would constitute fraudulent misrepresentation. The Broker will disclose to any customer all adverse material facts actually known by the Broker, including but not limited to: environmental hazards affecting the property which are required by law to be disclosed, the physical condition of the property, any material defects in the property or title thereto, or any material limitations on the Seller's ability to perform under the terms of the contract.

21. The Broker may enter the property at reasonable times for showings to prospective buyers and for inspections and appraisal. The Seller agrees to furnish the Broker a key to the property and permit the Broker to place a Multiple Listing Service lock box on the premises during the term of this listing agreement or until final settlement of a sales transaction, whichever is later.

22. The Broker is not responsible for vandalism, theft, or damage of any nature to the property.

23. It is understood and agreed that the Broker will submit pertinent information concerning this property to the Multiple Listing Service of the Wichita Area Association of REALTORS® in accordance with its rules and regulations. Seller acknowledges and understands that the sales data and/or expiration data can and may be distributed at the discretion of the Wichita Area Association of REALTORS®, Inc. to its authorized members, and authorizes Broker to release all data on the herein described property.

24. THIS PROPERTY WILL BE OFFERED, SHOWN AND MADE AVAILABLE FOR INSPECTION AND SALE TO ALL PERSONS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN.

2-13

EXCLUSIVE BUYER AGENCY AGREEMENT

Todd

1. THIS AGREEMENT is between \_\_\_\_\_ described hereafter as the "BUYER" and \_\_\_\_\_ described hereafter as the "BROKER". By this Agreement the BUYER retains and appoints the BROKER as BUYER'S Exclusive Agent to assist BUYER in the procurement of property and to negotiate terms and conditions acceptable to the BUYER for the procurement of certain property as generally described in this Agreement.

2. BUYER desires to purchase real property which meets the following description:

Type: \_\_\_\_\_ Residential \_\_\_\_\_ Income \_\_\_\_\_ Vacant Land \_\_\_\_\_ Commercial

Approximate price range \$ \_\_\_\_\_ to \$ \_\_\_\_\_

General location: \_\_\_\_\_

Preferred terms: \_\_\_\_\_

3. This agreement shall begin \_\_\_\_\_, 19\_\_\_\_ and continue until midnight \_\_\_\_\_, 19\_\_\_\_. In the event of termination, compensation due broker shall be subject to provisions of paragraph 4.

4. For performing the services herein, whenever possible, BROKER'S fee shall be paid from the proceeds of the transaction, in which event BROKER'S fee shall be as provided in seller's listing agreement; or, if the property is listed under a cooperating agency, BROKER'S fee shall be that portion of the commission offered by the cooperating agency. If BROKER'S fee is not paid from the transaction, BUYER shall pay BROKER, upon the closing of the purchase or exchange, a sum equal to \_\_\_\_\_ % of the purchase price.

BROKER'S fee is deemed earned and payable if BUYER, or any person acting for BUYER, purchases or exchanges any property of the nature described during the Agreement term, whether through services of BROKER or otherwise. The fee is deemed earned if BUYER, or any person on BUYER'S behalf, purchases or exchanges any property exposed to BUYER by BROKER within \_\_\_\_\_ days after termination of this Agreement.

If seller enters into a Real Estate Purchase Agreement and fails to close, with no fault on the part of BUYER, BUYER shall be relieved of any obligation to pay the fee described herein. If such transaction fails to close because of the fault of the BUYER, BROKER'S fee will not be waived, but will be payable immediately by the BUYER.

5. BROKER'S OBLIGATIONS: BROKER agrees to perform the terms of this Agreement, exercise reasonable skill and care for the BUYER, promote the interest of the BUYER with the utmost good faith, loyalty and fidelity (modified appropriately in the situation of Dual Agency), seek a price and terms acceptable to the BUYER, and, subject to the following, present all written offers, counteroffers and back-up offers in a timely manner. The BUYER agrees that (please initial appropriate paragraph):

\_\_\_\_\_ BROKER shall not be obligated to seek other property, or present them to BUYER, after BUYER has entered into a contract to purchase.

\_\_\_\_\_ BROKER shall not be obligated to seek other property, or present them to BUYER, after BUYER has entered into a contract to purchase, unless the purchase contract permits BUYER to continue to seek other property, and purchase it instead of the subject property, until closing.

BROKER will disclose to the BUYER all adverse material facts actually known by the BROKER and advise the BUYER to obtain expert advice as to material matters known by the BROKER but the specifics of which are beyond the BROKER'S expertise. BROKER shall account in a timely manner for all money and property received, comply with all requirements of the Brokerage Relationships in Real Estate Transactions Act of Kansas and comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes, rules and regulations. The BROKER will keep all confidential information about the BUYER confidential unless disclosure is required by statute, rule or regulation or failure to disclose would constitute fraudulent misrepresentation. No cause of action for any person shall arise against BROKER for making any required or permitted disclosure. BROKER will disclose to potential Sellers all adverse material facts actually known by the BROKER, including but not limited to material facts concerning the BUYER'S financial ability to perform the terms of the transaction.

6. DISCLOSURE OF BROKER'S ROLE. At the time of initial contact, BROKER shall inform all prospective SELLERS and their agents with whom BROKER negotiates pursuant to this Agreement, that BROKER acts on behalf of a BUYER. BUYER authorizes BROKER to cooperate with other Brokers and share any compensation due under this Agreement.

7. Unless otherwise requested in writing, BROKER may disclose BUYER'S identity to third parties. BUYER agrees to provide BROKER, upon request, relevant personal and financial information in regard to BUYER'S ability to acquire property of the character and quality described above.

8. Agency Relationship: BUYER acknowledges receiving and signing the "Disclosure of Alternative Agency Relationships" form. Broker is duly licensed under the laws of the State of Kansas as a Real Estate Broker and agrees to use BROKER'S best efforts as BUYER'S Agent to locate property as described in Paragraph 2 and (except where Dual Agency arises) to negotiate the terms and conditions for the procurement of said property. BUYER understands that sellers of real estate also select the BROKER to serve as seller's agent in listing property ("Company Listing") for sale. In the event the BUYER shall at any time desire to see or negotiate pertaining to a "Company Listing", the BROKER, and BROKER'S sales associates, may serve in either of two Agency Relationships:

A. DISCLOSED DUAL AGENT RELATIONSHIP: A real estate agent may represent more than one party only with informed written consent of all parties to the transaction. Disclosed dual agency is most likely to occur when a buyer represented by a buyer's agent wants to purchase a property listed by that agent's firm. In all other situations, BROKER shall act exclusively as the BUYER'S Agent.

EXCLUSIVE BUYER AGENCY AGREEMENT

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BROKER'S fee is deemed earned and payable if BUYER, or any person acting for BUYER, purchases or exchanges any property of the nature described during the Agreement term, whether through services of BROKER or otherwise. The fee is deemed earned if BUYER, or any person on BUYER'S behalf, purchases or exchanges any property exposed to BUYER by BROKER within \_\_\_\_\_ days after termination of this Agreement.

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BROKER will disclose to the BUYER all adverse material facts actually known by the BROKER and advise the BUYER to obtain expert advice as to material matters known by the BROKER but the specifics of which are beyond the BROKER'S expertise. BROKER shall account in a timely manner for all money and property received, comply with all requirements of the Brokerage Relationships in Real Estate Transactions Act of Kansas and comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes, rules and regulations. The BROKER will keep all confidential information about the BUYER confidential unless disclosure is required by statute, rule or regulation or failure to disclose would constitute fraudulent misrepresentation. No cause of action for any person shall arise against BROKER for making any required or permitted disclosure. BROKER will disclose to potential Sellers all adverse material facts actually known by the BROKER, including but not limited to material facts concerning the BUYER'S financial ability to perform the terms of the transaction.

6. DISCLOSURE OF BROKER'S ROLE. At the time of initial contact, BROKER shall inform all prospective SELLERS and their agents with whom BROKER negotiates pursuant to this Agreement, that BROKER acts on behalf of a BUYER. BUYER authorizes BROKER to cooperate with other Brokers and share any compensation due under this Agreement.

7. Unless otherwise requested in writing, BROKER may disclose BUYER'S identity to third parties. BUYER agrees to provide BROKER, upon request, relevant personal and financial information in regard to BUYER'S ability to acquire property of the character and quality described above.

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2-15

## MAKEUP OF THE KANSAS REAL ESTATE ESTATE COMMISSION:

The five members of the Real Estate Commission are appointed by the Governor.

Today

One member is non-licensed.

Four Members are licensees.

The Four licensed members are affiliated with the following franchises:

1. Coldwell Banker
2. Century 21
3. ERA

## THE BRRETA TASK FORCE:

The Brreta Act has been touted as consumer legislation.

1. If the Brreta Act is consumer legislation, why was only one member of the Brreta Task Force a non-real estate licensee?
2. Why weren't consumers or consumer groups invited to the Task Force Hearings?
3. Does this mean that the Brreta Act affect only real estate licensees and those who make their living from the real estate industry?
4. Perhaps the Brreta Act is not consumer legislation?

IF THE BRRETA ACT IS NOT SUNSETTED, LANGUAGE SIMILAR TO THE FOLLOWING WILL BE ADDED TO OUR REAL ESTATE CONTRACTS, AND WILL BE THE ONLY DISCLOSURE SOME AGENTS WILL USE.

32. AGENCY DISCLOSURE: The buyer and seller acknowledge receipt of a Disclosure of Alternative Relationships Brochure No. \_\_\_\_\_, which was mandated by the Kansas Real Estate Commission on \_\_\_\_\_, 1997.

JOHN TODD & ASSOCIATES

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

(316) 262-3681

February 19, 1997

House Judiciary Committee  
STATE CAPITOL  
Topeka, Kansas 66612

Subject: **SUNSET THE BRRETA ACT**

Dear House Judiciary Committee Member:

I am a member of the Kansas Association of Realtors. I *oppose* the BRRETA ACT, and ask that you allow this law to *sunset*.

The *leadership* of the Kansas Association of Realtors will be launching a program to tell you how Association members like myself and other non-Association real estate licensee from across the state support the BRRETA ACT. Please keep the following facts in mind when you are approached with their arguments. Of the estimated 13,000 real estate licensees in the state, approximately 6,500 are members of the Kansas Association of Realtors, or about 50%. This means that approximately half of the licensees in the state have *no voice* in legislative matters affecting their livelihood.


I have enclosed a copy of the letter I mailed to our Kansas Association of Realtors president dated January 15, 1997 stating my *opposition* to their support for the BRRETA ACT for the following reasons: 1. In the September/October 1996 issue of our Association newsletter our Association president admitted that half of the Association's membership wanted the Act repealed. 2. At our Association's convention held last September in Wichita, the Governmental Affairs Committee of our Association rejected my suggestion to survey our entire membership to determine how a majority of our members felt regarding this issue. 3. Our Associations leadership held a meeting here in Wichita on December 8, 1996 to formulate policy regarding the BRRETA ACT. They invited only six to eight brokers from the predominantly larger brokerage firms in the Wichita area to speak for the estimated 1,300 members who belong to the Wichita Area Association of Realtors.

Based on the actions of our state Realtors Association as detailed above, one could conclude that our Association leadership is *not concerned* that half of their members oppose this law. They are *not interested* in conducting a survey to find out what a majority of their members think. And, they are willing to allow only six to eight people to speak for the their estimated 1,300 members in the Wichita area. One might conclude that our Association is being driven by people with their own *special interest agenda* which they are paying for with my membership dues.

Fortunately, for the real estate industry, an independent survey of all of the estimated 13,000 Kansas real estate licensees was conducted in 1996. Of those licensee's who responded to the survey, over 90% wanted to let the BRRETA ACT sunset in 1997, and over half of those respondents were members of the Kansas Association of Realtors. The results of the survey also indicated that over 90% of the licensees wanted fewer laws, less regulation, opposed classification of licensees, opposed mandatory forms, and felt that the promulgation of laws like BRRETA resulted in more government growth, higher costs, selectively benefited special interest groups, and resulted in a restraint of trade.

If you allow the BRRETA Act to sunset, the real estate industry can serve the needs of our customers and clients, and your constituents, under the existing Real Estate License Act. And hopefully *market driven forces* versus *special interest forces* can lead to constructive changes in the present law to *better serve the public's interests*.

Sincerely,



John R. Todd  
Broker/Owner

Enclosures

JOHN TODD & ASSOCIATES

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

(316) 262-3681

January 15, 1997

Mr. Jim Bishop, President  
KANSAS ASSOCIATION OF REALTORS  
3644 S.W. Burlingame Road  
Topeka, Kansas 66611

Subject: BRRETA

Dear Jim:

I am a member of the Kansas Association of Realtors. I understand that you and our Association's Board of Directors are meeting soon to decide whether or not our Association is going to endorse the recommendations of the BRRETA Task Force with the 1997 Legislature. Prior to your Board meeting I wanted to make you and the Directors aware that I am opposed to the BRRETA Act and to the recommendations of the BRRETA Task Force, and ask that you support letting the BRRETA Act sunset. I believe that I am not alone in my opposition to BRRETA and that a majority of your members also oppose it.

I believe the comments of our past president John Green in the September/October 1996 issue of *Kansas Realtors News* (copy enclosed) indicates an awareness of membership opposition to BRRETA on the part of Association leadership when he said: "I have experienced a number of controversial issues during the last sixteen years but nothing like what the new law created. Half of the membership wanted to leave the law in place during 1996, and the other half wanted it repealed during the 1996 session".

In September I attended the Governmental Affairs Committee meeting at the KAR Convention here in Wichita. At that meeting I suggested that KAR survey their entire membership in an effort to find out their views regarding BRRETA, and was surprised when the Committee rejected my suggestion.

On December 8, 1996 you held an Association leadership meeting here in Wichita to discuss the proposed agency legislation from the BRRETA Task Force. I did not receive an invitation to your meeting (see enclosed letter), and came to your meeting as an uninvited guest. Your meeting was attended by six to eight of the Wichita area's predominantly larger brokerage firms. I was surprised that you didn't invite all of your Wichita area members or at least all of the area brokers to a meeting involving subject matter which impacts everyone's livelihood.



An independent survey of all of the estimated 13,000 Kansas real estate licensees was conducted in 1996. Of those licensee's who responded to the survey, over 90% wanted to let the BRRETA Act sunset in 1997, and over half of those respondents were members of the Kansas Association of Realtors. The results of the survey also indicated that over 90% on the respondents wanted fewer laws, less regulation, opposed classification of licensees, opposed mandatory forms, and felt that the promulgation of such resulted in more government growth, higher costs, and selectively benefited special interest groups and were a restraint of trade.

In the event you question the results of the aforementioned survey, I again suggest that KAR conduct it's own survey of all members and licensees prior to taking any final position on the BRRETA legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Todd", with a long horizontal flourish extending to the right.

John R. Todd

Enclosures 2

cc: KAR Zone Vice Presidents, and  
other interested parties.

## Helpful Numbers

### KAR Education

800/366-0069

For all real estate educational needs – continuing education, post license, GRI, appraisal and all designations by NAR, call the KAR education division.

### Kansas Real Estate Commission

913/296-3411

*All license renewal inquiries*

### KS Real Estate Appraisal Board

913/296-0706

*Appraisal & Continuing Education*

### Blue Cross/Blue Shield

*Health Care*

800/874-1823

Topeka: 913/232-1622

Wichita: 316/269-1670

### John P. Pearl & Associates

*Health Care*

800/447-4982

### Mutual of Omaha

*Health care and more*

800/624-5554

### Homeowners Marketing Services

*Home & Contents Insurance*

800/879-2828

### NAR PHONE NUMBERS

#### Chicago Offices:

Appraisal Department: 312/329-8451

Board/Member Policy: 312/329-8399

Convention: 312/329-8577

Customer Service: 800/874-6500

Education: 312/329-3278

EO Leadership: 312/329-8514

GRI: 312/329-3282

Legal Affairs: 312/329-8270

Member Services: 312/329-8490

NAR Library: 312/329-8292

#### Washington, DC Offices:

Governmental Affairs: 202/383-1088

Internal Op's: 202/383-7532

Public Affairs: 202/383-1289

Research: 202/383-1062

Today's REALTOR®: 202/383-1013

## The

# Officer's Corner ...

by John Green - KAR President-1995-1996

**I**t is less than one month until the convention as I pen this article and that signals to me it is again time for the changing of the guard. It is also a time to reflect back on what your Association and what the dedicated officers, members and staff have accomplished in such a short period of time. During the last twelve months your Association has encountered more change than in any other time in the last ten years, changes that were brought about by a major shift in the approach our Association took in regards to the treatment of our members. Beginning in 1996, KAR would no longer refer to Kansas REALTORS® as "members," but rather they would be referred to as



"customers." Through the strategic planning process, it was decided major changes must take place immediately or we would risk loss of members. With major change in a short period of time, there comes uncertainty and often an insecure feeling about what lies ahead, and wonder if the changes will bring the positive results that were

identified as part of the new strategic plan.

These feelings of concern were shared by a number of our members who, fortunately, allowed the new plan time to work and mature as it was designed to do. Our Association has adapted, and we are truly headed in a new direction. We no longer have "members" but rather dedicated "customers."

It was just a year ago that Karen Gehle started as our new Chief Executive Officer. Karen and her staff have worked very hard this year to help the Association put on a new face, to meet the challenges of Board and State of Choice, and to truly treat you as a "customer" who expects good courteous

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*"When strong leadership combines with a well-qualified staff and a committed group of members, then there is no limit to what can be accomplished!"*

---

service. During the last twelve months, Karen and other members of the executive committee have met one on one with a number of the key brokers across the state. These meetings have proven to be extremely productive and have led to a number of changes in the way we will interact with our members in the future. In addition to the broker meetings, your officers have met with a number of the officers of member boards. Excluding the RAP sessions, your Chief Executive Officer and your elected officers have visited over 30 of the Association's 38 boards, not an easy task but one that was truly worth the effort. I feel this kind of member interaction will, in the future, be the strength of the Association. Those who participated in the meetings with the officers of the member boards learned very quickly that no two boards are alike and each board, along with our members-at-large have unique needs and require different services from KAR.

- Continued on Page 5 -

## Officer's Corner ...

- Continued from Page 3 -

You can't review 1996 without addressing the new agency law that took effect on January 1, 1996. I have experienced a number of controversial issues during the last sixteen years but nothing like what the new law created. Half of the membership wanted to leave the law in place during 1996, and the other half wanted it repealed during the 1996 session. Non-member licensees had no idea what was going on and were quick to blame the Association for poor and confusing legislation. What did happen is a credit to all.

Deep down, I found that most people would agree that there were some good provisions included in the law. When it was all said and done, we learned a number of valuable lessons. It was easy last spring to point the finger at the other guy, but the truth is we all can share some blame for the confusion surrounding the agency law. Tomorrow is a new day. I am sure the Agency Task Force will present all of us with a workable law that we can present to the 1997 legislature. The second time around we will be a unified body working together to implement legislation that will be beneficial to our members and to the public.

Speaking of being beneficial to our members, and to the public, I am reluctantly reminding you to sit down and make your contribution to RPAC if

you have not already done so. I do this reluctantly because at the May meetings, I made an impromptu promise to Larry VonFeldt, and to you, that I would make a Life Member contribution of \$1000 to RPAC if the state met 100% of our dollar goal and the goal of 70% participation. Well, we are getting closer to that goal and it looks like I might just have to deliver on my promise. All kidding aside, I really believe in the RPAC program and the good that it does for our members and the public by supporting political candidates who support real estate ownership and the free enterprise system. I will be honored to write that check of \$1000 to RPAC — but you are going to have to make me by making your contribution to RPAC today!

Finally, now is the time to turn to next year's leadership team and give them the support that you have given this year's leadership team. Your 1997 president, Jim Bishop, and the other members of the executive committee are well prepared to continue to move your Association in new directions. Your staff consists of the most qualified and committed individuals we have ever had, and they all look forward to serving you in 1997. The only other ingredient to a successful year is your continued support and participation. When strong leadership combines with a well-qualified staff and a committed group of members, then there is no limit to what can be accomplished! ❖

*John*

## My 28 Years in Real Estate

by Viola Kinzer  
Pratt Board of REALTORS®



In 1968, I became the first female REALTOR® in Pratt and in 1972, the first female Broker. Also, I was Treasurer for many years and was the first woman on the Board to hold the office of President.

After working for the Scott & Hodges Insurance and Real Estate Agency for 19 years in the insurance department, I decided I wanted to sell real estate along with the insurance. I then did a self-study course and took the test. In 1983, I retired from the insurance part and continued to sell real estate.

Back in the 60's only men were active in real estate, so one can see why women were not accepted. After a couple of years another lady joined the ranks and the men finally decided that women were capable of selling real estate.

The Pratt Board now consists of eleven women REALTORS® and six men. Seven of the women are Brokers.

As we all know, selling real estate today is a lot more stressful than in the past, but I have enjoyed my 28 years in the business. ❖

### THE PRESENT ...



*Look not mournfully into the Past.*

*It comes not back again.*

*Wisely improve the Present.*

*It is thine.*

*Go forth to meet the shadowy Future,  
without fear, and a manly heart.*

— Henry Wadsworth Longfellow



Executive Offices:  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611-2098  
Telephone 913/267-3610  
Fax 913/267-1867

November 22, 1996

[REDACTED]  
[REDACTED]  
[REDACTED]  
Wichita, KS [REDACTED]

Dear [REDACTED]

The leadership of the Kansas Association of REALTORS® would like to take an opportunity to meet with you on Friday, December 6, 1996, 8:30 a.m. at the Wichita Board Office to discuss the proposed agency legislation from the KREC Agency Task Force.

We have invited several brokers from the Wichita area to meet with KAR President Jim Bishop, President-Elect Mike McGrew, First Vice President Rob Curtis and Chief Executive Officer Karen Gehle. This meeting is informational and educational in nature - an opportunity to discuss the task force's report and proposed changes to the license law and how they effect real estate transactions in Kansas. We hope to provide you with a finalized copy of the proposed legislation prior to this meeting.

Due to space limitations, we were not able to invite all Wichita brokers. We hope your schedule will permit your attendance. Thank you.

Sincerely,

Jim Bishop  
KAR President

#3

Rickard

19 February, 1977

able Representatives of Judiciary committee.  
State Capitol Building  
Topeka, Kansas 66612

Dear Judiciary Committee Members:

I fully support permitting the BRRETA law to "SUNSET", and I ask that you consider supporting "SUNSET" of the law. YOU PREVIOUSLY RECEIVED an "orchestrated" effort to retain it, but our REVIEW may provide you with a fuller understanding, more "SUCCINCT", & COMPREHENSIVE perspective of the law & issues raised. Thank you!

SUNSET BRETTA: "It DISCRIMINATES, "CONFLICT of INTEREST", "PROMOTES "RED TAPE", "INCREASES COSTS", SERVES "SPECIAL INTEREST" groups AND NOT THE PUBLIC , & it's "RESTRAINT of TRADE"

"HOW" DID THE LAW "COME ABOUT", and HOW DID WE GET INTO THE EXISTING "MORASS"?

- #1. Primarily BRRETA resulted from The NATIONAL ASSOC. of REALTORS (NAR) decision (policy) to pass agency laws in all 50 states for the protection of Realtors. NAR commenced a "National Forum" in approximately 1985, to pass laws in every state. The concern was that the legal profession (attorneys) would "sue" those "Realtors" that were practicing "inappropriate" agency. LIKEWISE, did not an Attorney for NAR , promulgate for years that Brokers be professional & act like Attorneys (Agency , Adversarial concept, a Realtor representing the Buyer & Seller), vs. the traditional broker?
- #2. THEN, NAR policy (agency) was promulgated in each State via. the respective State Association. IN KANSAS, The KANSAS ASSOC. of REALTORS (KAR) which REPRESENTS "only" approx. 50% OF ALL Kansas Real Estate Licensees pursued the policy through the Kansas Real Estate Commission (KREC), where majority of the Commissioners are members of KAR vs. Non-Members or public members.
- #3. THIRD, Commissions, ARRELO (Assoc. of Real Estate License Law Officials), and the Real Estate Educators Association help initiate and promote forms, regulations, education, etc., they "PERCEIVE" to be "THE ANSWERS" to solving problems in the market place. They also have a "NATIONAL FORUM" and "ORGANIZATION" that helps to foster the growth of more regulations and "red tape". It has been suggested that the largest percentage, or the majority of such contributors have limited or little "long term" experience in the market place. Often to them, the administration of "paperwork" AND more regulation or "red tape", is an "end" in itself, VS. in the MARKET place or PRIVATE enterprise, "paperwork" is only a means to the "end" or production. The creation of more regulation, forms, etc., becomes the end work and results in more revenues, positions, etc.
- #4. Thus, while the majority of licensees AND the public are "OUT WORKING", such ORGANIZATIONS, as ABOVE are "FREE" to promote such laws as BRRETA, regulations, etc., for their respective special interest while the majority of the industry AND the public knew little, if anything about it. This was found to be the case with the BRRETA Law, which RESULTED in the "NIGHTMARE and CONFUSION" it has elicited. Obviously, it is normally promoted "AS FOR THE PROTECTION of the PUBLIC"???
- #5. THEREFORE, when the majority of the licensees (Realtors & Non-Realtor licensees) AND THE PUBLIC became "truly" aware of the law or experienced it, IT WAS QUICKLY APPARENT that the LAW was NOT WANTED, NOT PRACTICAL, and NOT WANTED by the Industry OR the public. Certainly, it is a GIVEN that the industry, AND THE PUBLIC'S CONSTERNATION for THE LAW is "void" of sufficient channels or motivation to express their "true" dismay for the ever growing "morass" of regulation(s) purportedly sponsored for their interest!
- #6. THEN, the KANSAS LEGISLATURE received THIS "OBJECTIVE" FEEDBACK from their constituents AND voted to "SUNSET" the Law and asked that a Task force be appointed. A "Task Force" was appointed with the majority of appointees from KAR members or "loyalists", instructors, etc., with "token" representation from the opponents of the law.
- #7. KAR, KREC, special interest groups "CIRCLED the WAGONS" in a political effort to reinstate the law.
- #8. HOWEVER, many LICENSEES (Both Members of the Realtors organization AND non-member licensees) have AND WANT TO "SUNSET" THIS "ONEROUS" BRRETA LAW!. DESPITE the "ORCHESTRATED" effort by the KAR officers and lobbyists to keep the law from sunseting. NOTE: The "Task force" met in Three (3) towns, AND neither KAR was willing to survey their membership, NOR was KREC willing to Survey all licensees as did the RSK survey.

WHY?, a number of additional FACTORS or ISSUES are SIGNIFICANT as to WHY "SOME" SUPPORT THIS LAW?

- #1. KAR or INDUSTRY efforts to OBTAIN "EQUITABLE" LIABILITY PROTECTION and the KANSAS REAL ESTATE COMMISSIONS'S INTEREST TO OBTAIN ADDITIONAL "control" and "REGULATION" of the industry.
- #2. CONCERN for ORGANIATIONAL recognition, position, AND power. Certainly, there is concern for the exercise of power by KAR & KREC, AND the desire to "save face" with the legislature; given, the original representation made

House Judiciary  
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- power by KAR & KREC, AND the desire to "save face" with the legislature; given, the original representation 1 by KAR and the KREC, that BRRETA, was what the industry & public wanted. Likewise, as a member of the LEADERSHIP, if you don't support OR "echo" the "party line" (NAR, KAR, KREC), YOU DON'T MOVE UP IN POSITION. You support NAR's, KAR's, policy if you expect to "get along, go along". Any person, or anyone that expresses opposition, is a "rebel", "too vocal", "resisting change", etc.
- #3. Fact is, BRRETA results in the ESTABLISHMENT of a new "MASS" (for one example, REVIEW the mandatory COURSE outline meant to explain it to licensees) of LAWS, REGULATIONS, mandatory FORM(s), new BODY of INFORMATION, increased POWER and BUREAUCRATIC control over private enterprise, THAT HAS LITTLE IF ANY VALUE for the KNOWLEDGE and the PRACTICE OF REAL ESTATE for the industry or public.
- #4. BRRETA would also serve to provide KREC with additional capacity to LEVY FINES (primarily a function of the Judicial branch of Gov't) AND GENERATE REVENUES to foster more growth of government.  
E. G. Use of the "wrong" mandated form OR clause; although, it does not decrease the quality of the service AND assistance to the public, is somewhat of a "major crime" with a fine, e.g. agency \$250.00.
- #5. BRRETA PROMOTES "DISCRIMINATION", "RESTRAINT of TRADE", and "CONFLICT of INTEREST".  
The law, as admitted by many-including the Attorney & Lobbyists for our KAR organization, DISCRIMINATES against small companies (e.g. can't practice designated agency). It may very well discriminate against WOMEN, as mostly women work residential VS. commercial brokers are primarily men. IT SERVES TO PROMOTE ORGANIZATIONAL MEMBERSHIP by such practices as primarily permitting only input FROM "Lobbyists" or KAR.
- #6. Accelerates & promotes THE ESTABLISHMENT of a "BODY OF INFORMATION" that SERVES MORE AS both an "ENTRY" and "PRACTICING" BARRIER for the restraint of trade in Real Estate VS. the value of PRACTICAL EXPERIENCE and KNOWLEDGE THAT SERVES BEST TO BENEFIT THE PUBLIC & INVESTORS.  
E.G. THE REQUIREMENT to use specific forms, be familiar with "red tape", etc., would serve to discourage the "public" and private practitioners. EVEN an ATTORNEY drawing a contract that includes all of the required items for a VALID CONTRACT would require the attorney to additionally know little "nuances" that have little to do with a valid contract, OR the Agent(S) or parties the Attorney has prepared the VALID document (Contract) for would be subject to FINES????
- #7. The NEED for a BROKER and BROKERAGE evolved with the requirement THAT a BROKER by necessity often must work with both parties (be fair & honest) while selling a property OR helping a Buyer purchase; HOWEVER, ATTORNEY(S) for NAR have advocated for years that Brokers (agents) should adopt the Attorney concept of Agency, Adversarial concept, VS. establishing law (for FACILITATOR or TRANSACTIONAL brokers), THAT recognizes AND provides liability protection for what "traditional" Brokers perform; while, not excluding Selling or Buyer Brokerage. A majority of Brokers with extensive, diversified experience (e.g. small towns, list, sell, handling the closing, etc. OR brokers that choose to practice "true" brokerage), understand the requirements to help the public AND be honest and fair with them.  
NOTE: Very few Sellers want to Sell for too little, AND very few Buyers want to pay too much; THUS, the market forces serve to both help protect the public AND encourage brokers be fair and equitable with both parties.
- #8. Given: That "ethics" can not be legislated, & that any CO., or BROKER, or ORGANIZATION (NAR, KAR, etc.) that "TRULY" BELIEVES in THE BRRETA ACT----can ADOPT THE FEATURES THROUGH their own IN HOUSE policy, or AMENDMENTS to their REGULATIONS or ETHICS (many long term Realtors maintain the Sds. & Practices for Realtors already cover these issues).

**RESOLUTION of BRRETA & these issues in view of the conflicting interest shown above, MAY BE SIMPLE---if :**

- #1. **YES, "SUNSET" BRRETA**--are not most of the expressed views either "red herrings" or "charades" expressed to support BRRETA meant to obtain OR achieve other goals?
- #2. Then (after BRRETA "sunset"), AMEND the "OLD" existing License Act by "merely":  
A. Grant "liability protection" desired by the industry for Agents AND public (used to promote retention of BRRETA)  
B. Replace "dual agency" with "transactional" or "facilitator" Broker--which permits brokers to practice traditional brokerage (as it was "conceived", working with both parties-while being fair & honest). THUS, THE INDUSTRY WOULD AND COULD PRACTICE:  
1. "Facilitator" or "Transactional", both another word for "Traditional Broker"  
2. Seller Brokerage AND  
3. Buyer Brokerage, for the brokers that want to offer each  
NOTE: Eliminate "Designated" Brokerage---it "discriminates" against small firms AND is analogous to ONE Attorney in a Firm "suing" The Boeing Co., & another Attorney in the same firm defending Boeing
- #3. Leave Industry Cooperation & Compensation issues to the industry
- #4. Restrict & reduce the "nepotistic"like efforts of KAR & KREC (info. & meeting should be fully open for scrutiny).  
Sincerely,

Larry D. Rickard, Lic'd Bkr Ks/Ok/Mo/NM/Tx  
Continental Real Estate, & Realty School of Kansas (RSK), "Serving Kansans Since 1973"



Kansas Association of REALTORS®

3644 S.W. BURLINGAME ROAD • TOPEKA, KANSAS 66611-2098  
TELEPHONE 913/267-3610 • 1-800-366-0069  
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**TO:** KAR MEMBERS TESTIFYING AS PROPONENTS OF THE BRRETA BILL  
**FROM:** KAREN FRANCE, DIRECTOR OF GOVERNMENTAL AFFAIRS  
**DATE:** FEBRUARY 12, 1997  
**RE:** HEARING INFORMATION

RECEIVED FEB 13 1997

Thank you for agreeing to testify. Your willingness to participate is a credit to you and your industry. President Jim Bishop and I thought it would be helpful for you to know exactly what you need for the hearing on February 18, 1997.

**Location:** House Judiciary Committee meeting. State Capitol, Room 313 South—which is the Old Supreme Court Room

**Time:** The Judiciary Committee meeting will begin at 3:30 p.m. We will gather together all testifiers at 2:30 p.m. by the information desk on the first floor. We will go from there to a meeting room where we can visit with everyone and touch base on any last minute issues. As an added suggestion, you might want to come earlier to meet with your own legislator(s), whether or not they are on the House Judiciary Committee. You might even consider taking them to lunch if you can. This bill will eventually go to the full House and Senate for debate and the personal touch while you are in the Capitol can sure make a difference.

**What do you need to bring?:**

Please bring written testimony. Depending upon where you fall in the lineup (see enclosed list of testifiers) you may or may not want to read it. We anticipate the Chair may allow 2-5 minutes for each presenters' remarks. Regardless, you will need to bring 27 copies of your written remarks to be distributed to the Judiciary Committee members.

**Who will you be speaking to?:**

You will be speaking to the members of the House Judiciary Committee. We have attached a list of the members of the Committee, their occupations and where they are from, just to give you a little background. There are 21 members of the committee. Less than half of them are attorneys. The rest are a mixture of professions. In general, just think of them as people, just like yourself.

Continued ...

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MEMORANDUM  
BRRETA Testifiers  
Page 2

**How do you make your presentation?:**

The Chair, Tim Carmody from Overland Park, will call each person, one at a time, from the list we will provide him. When he calls your name, step up to the podium and begin your remarks.

**What should you say?:**

It is always good to start by stating your name and where you are from. We are also trying to have a common theme for all of our presenters to include a statement like, "I am an independent business person. I have been in the business \_\_\_ years. There are \_\_\_ people in my firm. I sell \_\_\_\_\_ (insert your specialty--residential, commercial, agricultural property raw land auction or any mixture that is appropriate.) Thank them for the opportunity to testify and begin your personal presentation.

We have enclosed copies of the letters the Legislators are receiving from the opponents of BRRETA so you can see what the opponents are saying. Once you have taken time to read through the opponent letters, you will find several predominant themes: 1) BRRETA is discriminatory between male and female, commercial and residential practitioners; 2) BRRETA promotes red tape, creates government intrusion, serves special interests, etc.; 3) The Kansas Association of REALTORS® only represents 50% of Kansas licensees and they were never willing to nor did they ever survey their membership to see what they wanted; 4) That BRRETA could potentially provide the Real Estate Commission with more power and revenue from fines levied under BRRETA.

In addition to the testimony you deem necessary to provide to convey your personal convictions and beliefs regarding why you support BRRETA, you may also wish to address any of the issues the opponents raise. To help clarify some of the opponents comments ...

1) At the end of 1996 there were 11,645 active licensees in the state of Kansas. The Association represents approximately 7,000 licensees as REALTOR® members which works out to be 60% of the active licensees.

Continued ...



MEMORANDUM  
BRRETA Testifiers  
Page 3

2) 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.

3) The opponents state that KAR is unwilling to "survey" its members. For those of us who understand statistical data gathering, 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. The Officers and staff believed personal meetings and interviews with members would provide much more meaningful input rather than a paper survey which can be tailored to produce subjective, desired results.

4) 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 transactions - 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.

Upon conclusion of your remarks – 1) thank them again for the opportunity to testify; 2) ask for their support of House Bill 2264 and specifically the Brokerage Relationships in Real Estate Transaction Act; and 3) tell them you will be glad to answer any questions they may have.

Continued ...

MEMORANDUM  
BRRETA Testifiers  
Page 4

**What happens after I am done speaking?:**

After you are done speaking, if time permits, the Chair will ask the Committee members if they have any questions for you. Respond to any questions to the best of your ability. Don't be afraid to say you do not know or understand a question. You can always get back to them with any information not immediately at your fingertips. After the questions, the Chair will thank you and then you may be seated.

**How long will the hearing last?**

The hearing will last approximately one and ½ hours. At this point in time it appears they will only have proponents of the bill on February 18 and opponents the next day.

We hope this answers most of your questions and concerns. If you have not previously requested and received a full copy of HB 2264, please call Shayna at the KAR office and she will send you a copy.

We appreciate your willingness to take time from your busy schedule to testify. Please feel free to call Jim Bishop, 316-231-4370, Karen Gehle or myself at the Association office if you have any questions or need additional information. See you on the 18<sup>th</sup>!

Enclosures:

House Judiciary Committee Members  
BRRETA Testifiers from KAR  
Opponent letters

#4

STONEBOROUGH REAL ESTATE, INC.  
103 E. 53RD ST. CT. SOUTH  
WICHITA, KANSAS 67216  
(316)-524-1606

February 18, 1997

House Judiciary Committee

Subject: BRRETA (Brokerage Relationships in Real Estate Transactions Act) Task Force Bill. Please **OPPOSE** and **vote against** the Task Force Bill.

It is *discriminatory* legislation which sets apart Commercial real estate transaction Brokers vs. Residential transaction Brokers. Currently both must pass the SAME exams to receive Real Estate Licenses. In Commercial transactions it is harder to establish value, since it requires three (3) different Market Appraisal Approaches, in lieu of two (2) approaches used in Residential transactions, and it is much more difficult to find comparable properties. In most cases, there exists the possibility for a Commercial broker to buy low and sell high, **after** they have "helped" establish value of a property. Also, it is known that **Women** comprise the majority of Residential real estate brokerages, and **men** the majority of Commercial brokerages. Why then should women be subjected to a different set of laws than men, and subjected to fines and penalties not imposed on men?

The Kansas Association of Realtors and the Kansas Real Estate Commission have joined efforts to enact cumbersome and confusing legislation under the guise that this is what the majority of the dues paying licensees want. In fact, the Bill is ready to be introduced and no notification has yet come out of the KREC to the licensees at large. This Bill is a Regulators "dream come true" if it passes. In fact, the KREC has already voted to **TRIPLE** their fines for infractions imposed by failure to comply with "**mandated**" regulations. **Four** of the five Kansas Real Estate Commissioners are licensed and associated with Franchise's, **BIG vs SMALL** real estate firms. Large offices can set policy as to how they conduct business. Legislation is not needed to "regulate" that small firms have to be operated the same as large offices.

The pretense that this Bill would lessen complaints and law suits is false. There are no law suits pending, nor have there been regarding Agency relationships. Even if there was **one**, it would not warrant changing the way ALL independent contractors must conduct business. That is supposed to be the role of the Judicial system. I passionately believe that this Bill will create more conflict, and the BRRETA ACT should be allowed to **SUNSET**.

Cleve Smith, Broker-Associate  
Stoneborough Real Estate, Inc.

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Members of the Judiciary committee

RE: Opposition to BRRETA

Feb 19, 1997

I am an independent business person from Wichita and have been in the Real Estate business for 5 years. I am very active in sales and meet with the public primarily by holding daily open houses in new home communities.

I am here in opposition to the BRRETA law because I feel that this law is not there to protect the public but it does confuse the public. I would like you to ask yourselves how many of your constituents have contacted you to tell you that the Realtors need to have more disclosures or that they feel they are not adequately protected without the BRRETA law. It seems more than passing strange to me that a majority of the people that stand up in support of this bill are in some way connected to the real estate industry and are not the so called "public" that are in such need of this protection, how many of the people who stood before you to testify as to the need of this bill were actually the home buying public seeking this protection.

I feel you will help the public more by allowing the free market system to prevail, by this I mean that if an agent is providing a needed and desired service to the public they will be focusing their energy on helping people find the home that meets their needs and not spending their time trying to sign them up to be their agent, giving them a stack of business cards and sending them on their way telling them to "call me when you find something".

There are plenty of avenues for the public to follow, if they feel they were cheated or misrepresented in some way, they can seek an attorney's help and file suit, if they were not provided adequate service they can find another Realtor to assist them. In this way you will truly help the public find the best service for their need not by making them believe that unless they have an agency agreement with a Realtor they will not be adequately represented in the transaction, the most powerful motivation for a fair and honest transaction is competition, if people are not treated fairly and honestly they will go down the road to the competition.

I would also like for you to review the penalties imposed for violating these rules, it seems to me just a bit excessive to threaten to impose prison terms for not having the proper forms in the file of a transaction that was successfully closed and all parties satisfied.

Steve Miller

House Judiciary  
Attachment 5  
2/19/97

#6

TESTIMONY OF JOHN J. BRUGNONI  
BEFORE THE JUDICIARY COMMITTEE  
ON BEHALF OF  
THE KANSAS AUCTIONEERS ASSOCIATION (KAA)  
HOUSE BILL No. 2264-BRETTA  
FEBRUARY 18-19, 1997

Chairman Carmody, Ladies and Gentlemen,

Thank you for this opportunity to appear before you on behalf of the Kansas Auctioneers Association with regard to our position on house Bill No. 2264, Brokerage Relationships in Real Estate Transactions Act- the so called BRETTA Act.

Our Association conducted its annual convention during the period February 6-9, 1997. BRETTA was the subject of lively discussion during that meeting. The results of those discussions will be the main thrust of my testimony. Before addressing those points, may I introduce myself: I am John Brugnoni, Leavenworth, Kansas. I am an active auctioneer and a licensed real estate salesperson. At the recent convention, a major changing of the guard was necessitated by the ill health of our legislative Committee Chairperson Bob Wilson, Manhattan, Kansas. He is known to many of you through previous contact with this committee and as the KAA representative on the BRETTA Task Force. It was so difficult for one person to follow in Bob's footsteps that John Shoemaker, an active auctioneer and real-estate salesperson in Tonganoxie, Kansas and I were elected as Co-Chairpersons of the KAA Legislative Committee. Bob will continue to be active after his convalescence from surgery. John and I are also Directors of the KAA. KAA is mindful of its responsibilities toward this important committee. We pledge our good faith, the highest standard of ethics, and collaboration to arrive at a common good.

The BRETTA Task Force met its mandate to review issues and provide a consensus way ahead for BRETTA. Albeit with some reservations, the KAA can support the recommendations contained in the BRETTA Task Force Final Report dated November 26, 1997. The rationale for suspension of the common law in favor of statutory law called out in the bill is not clearly understood by all members. It raises some question in their mind as to the effect upon their day to day operations. At the time of our convention, a copy of the proposed bill, as amended by BRETTA Task Force, was not available for review. This clouded the issue. Developing a position without a document to review is difficult. While the KAA understands the time constraints, we believe that at least the members of the BRETTA Task Force should review the bill and assure this committee that it is in consonance with their recommendations. It was learned after the convention that the delay in printing of the bill was caused in part by a technique applied to cover the time frame from July 1, 1997 when BRETTA sunsets to October 1, 1997 when House Bill No. 2264 would take effect. We understand that the enactment delay of House Bill No. 2264 is envisioned to allow for a training period on the new law. The bill was not received until February 11, 1997. We do not believe this allows sufficient time for the Task Force or any other interested party to accurately represent their approval or concerns during these hearings.

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Moreover, a quick review of proposed House Bill No. 2264 reveals that four items have been introduced that are not recommendations of the BRETТА Task Force. These are:

1. Page 4, line 28, the addition of real estate broker or salesperson as a professional service,
2. page 11, line 14 to line 42, adds language to implement a new category of temporary license
3. Page 29, line 24 to line 30, adds language for the payment of personal assistants,
4. Page 12, line 13 to line 20, adds language concerning corporate officers as a salesperson.

It is not known if these issues are of the plain vanilla variety without controversy. No agency of which I am a member has brought these issues to my attention. There is no way of knowing if there is a majority resistance to them. More importantly, as presented they may be perceived as having been reviewed and recommended by the Task Force when in fact they were not. We believe their introduction in this manner is inappropriate. Review by a reconvened BRETТА TASK FORCE is suggested to determine their acceptability

The KAA would like to impress upon the members of this committee that, in any case, the agency relationships detailed in the proposed House Bill No. 2264 are subjecting the small and rural broker to an unacceptable economic risk. The personnel assets to implement the provisions of the proposed legislation are not available in the small and rural agency. In the less populated areas, the size of the pie may not permit hiring additional personnel. In other words, construction of the inter-office "Great Wall of China", even if willing, may not be possible. Seller and buyer agency have been with the industry for a long time. This division of fiduciary responsibility is embraced. It can be accepted that in the larger metropolitan areas, a more detailed set of rules may be required. However, we seriously question that a state law is required to cover these needs. Certainly, it is within the purview of the affected real estate boards to establish and police policies for other agency relationships. The result will be a state law and local policies which will guide the whole while allowing for the vagaries of its parts. Our Association takes the position that an honest hard working businessperson should not be subjected to a state law which will cause economic hardship through no fault of his/her own. We are deeply concerned that the enforcement of the proposed law will visit upon the small and rural broker undue economic hardship which may cause their unwilling departure from the real-estate industry. No matter how willing he or she is to apply the law, a very costly mistake may result through no fault of their own.

Chairman Carmody, Ladies and Gentlemen, thank you for this opportunity to talk to you about the Kansas Auctioneers Association concerns with regard to proposed House Bill No. 2264. It is emphasized we wish to cooperate and develop a statute that is compatible to the need of all participants in the Kansas real estate industry. Although we have reservations, the BRETТА TASK FORCE FINAL REPORT of November 26, 1996 appears to be a way ahead. Careful study of recommendations outside that report is strongly recommended. Again thank you for the opportunity to present the concerns of the KAA.

#7

To : The House Judiciary Committee

Date : February 19, 1997

Subject: Please sunset the BRRETA ACT

My name is Lynn Hoyt. I live in Wichita. I am the owner of Real Estate Center.

I have been licensed to sell real estate for 31 years and have been a Broker for 21 years. There are 4 persons in my firm and our primary interest is in residential property. I am a member of the Kansas Association of Realtors, and I oppose the BRRETA ACT. Thank you for allowing me the opportunity to express my views to your committee.

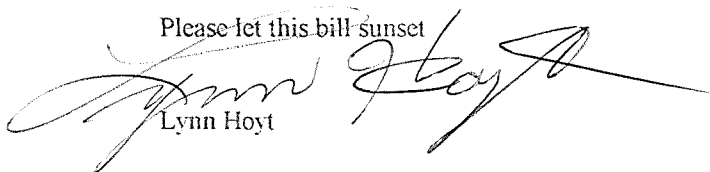
Sad to say, I am led to believe that many people who are charged with the responsibility of enacting this bill have not read and understood what this bill is doing. Some have been convinced that this is only a matter of declaring Agency. One letter of response that I received from the legislature thanked me for my letter of support for this bill when what I said was to please let it die.

One example would be that were this law applied to the farming industry, a representative of a manufacturer would have to get someone from another manufacturer to represent the prospective buyer in the purchase of a piece of equipment that may well be equal to the expense of a home.

Meetings were held to garner support for this act. Apparently the ones conducting these meetings felt I was not qualified to be invited. They were attended only by a selected group of persons who must have thought that due to my advanced age and experience I would only confuse the issue with facts.

Agency declaration is nothing new as I have operated as a Buyer Agent when asked to locate property for a person. As a Sellers agent when I have listed property for sale. One proponent of this bill was heard to say that all a you have to do to satisfy this requirement is to go down the street and get some one to step in as a buyer rep. I do not believe this to be ethical and it just isn't right.

Please let this bill sunset

  
Lynn Hoyt

House Judiciary  
Attachment 7  
2/19/97

**Results from the only PUBLIC SURVEY Conducted of all Kansas Licensee's on the B.R.R.E.T. ACT (Excessive Regulation)**

**--Permit the LAW to SUNSET as SCHEDULED--**

1. How many years have you been licensed: LESS THAN 5 YEARS 12 % OF RESPONDENTS BY # YRS.  
 more: 5 to 10 YEARS 17 % 10 to 20 YEARS 31 % 20 to 30 YEARS 24 % 30 + YEARS 16 %

2. WERE YOU AWARE of the BRRET Act (new agency law, DAAR form, & many changes in the License Act) BEFORE IT WAS INTRODUCED and PASSED into LAW?.....YES 34 % NO 70 %

NOTE: The new BRRET Act replaced the Old Agency law that required Licensee's to tell Buyer and Seller who they represent AND to include an agency statement in the purchase contract. BRRET required each agent to give an explanation about agency, company policy, etc. to Buyers & Sellers, AND have them sign a DAAR form & keep it for 3 years. Through the efforts of many licensee's, public, and legislators, the new BRRET act was modified AND IS SCHEDULED to be "SUNSETED" in July '97, UNLESS THE promoters of the law via. a Task Force & PAC efforts succeed in modifying the BRRET Act and passing it into law again in just another modified form.

3. DO YOU FAVOR REPEAL (let it expire, "sunset" in 1997) OF The BRRET ACT?...YES 93 % NO 7 %

A. THEN pass a LAW, with liability protection, THAT RECOGNIZES what BROKERS DO!  
 Brokers have to be negotiators, and be fair & honest with all parties?.....YES 92 % NO 8 %

4. NEW Laws and Regulations are often passed for various reasons. In your experience do you find that:  
 A. Most new laws and regulations passed are helpful to the public? .....YES 16 % NO 84 %

B. Most new laws and regulations have reduced the cost to the public?.....YES 6 % NO 94 %

C. Most new laws and regulations are promoted for the benefit of "special interest" groups YES 91 % NO 9 %

5. Do you feel like, that while you were out working, special interests groups, often paid with your dues & fees, were out promulgating new laws & regulations?..... YES 92 % NO 8 %

6. Are you aware of, possibly three of the Primary Forces that promote and develop new Laws AND Reg's on a National, State, and local level, which may INCREASE the COST to the PUBLIC of your services and your industry cost? NOTE: Each has permanent staff and funds from dues, license fees, fines, etc., that may be utilized to promote what may often be "well intended" regulations, but Stifle Free enterprise and increase time & costs.

A. ARELLO (Assoc. of Real Estate License Law Officials) .....YES 39 % NO 61 %

Note: Have a National forum to provide support for legislation from state to state, have quarterly meetings across the country with costs paid by License fees, are they not?

B. Do you feel your organization represents you & the membership at large?.....YES 25 % NO 75 %

C. Are your fees and dues used mostly to support the interest of a select few, VS. Providing the Basic services needed for a profitable & productive business?....YES 84 % NO 16 %

D. Do you feel that most REAL ESTATE EDUCATORS and Education associations reflect adequate experience in the market place?.....YES 48 % NO 52 %

Note: Have a National organization and forum to promote education and regulations

E. Do you presently belong to our REALTORS organization and K.A.R.....YES 54 % NO 46 %

F. Whether you are a member of the Realtors or a non-member, do you believe your interest AND the interest of the public was BEST served by passing the BRRET Act?.....YES 10 % NO 90 %

7. DO YOU FAVOR MANDATORY E & O INSURANCE?.....YES 31 % NO 69 %

Note: Pru. Mand. E&O--says reduce the cost to all licensee's and protect the public, etc.

"No" Mand. E&O--says provide "fertile" field for lawsuits, as all licensee's have ins., gov't should not dictate, it's business decision, etc., and cost will go up

8. DO YOU OPPOSE STATE MANDATED E&O INSURANCE?.....YES 76 % NO 24 %  
 and favor it's each Broker's/Licensee's Business decision.

9. DO YOU FAVOR STATE or COMMISSION "MANDATED FORMS"?.....YES 34 % NO 66 %

Note: Those-Favor Mand. forms state would reduce problems by standardization, etc.

Those- Say "No" mand. forms indicate it "opens" the door for more gov't intrusion, leads to more regulators to design, approve, & regulate real estate transactions, etc. vs. licensee "learning" the business and knowing how to complete contracts.

THE FIRST KANSAS MANDATED FORM was the DAAR form and possibly "de facto" mandating of listing agreements, etc., by stating by law what must be included in them.

10. For the benefit of the public & the industry do you believe the Ka. Real Estate Commission should continue or be used to promote MORE laws, reg's, different types of licenses, mandatory E&O, mandated forms, more gov't growth, higher costs, & selectively benefit special interest or restrain trade?.....YES 8 % NO 92 %

(#10, was the only intentionally "loaded" question, requiring almost a total blind loyalty Or Anti-Private Entrp?)

Surveys were returned to: R.S.K./Realty School of Kansas, 3241 E. Douglas, Wichita, Kansas 67218, which had contended the CITIZENS of KANSAS & THE INDUSTRY did not know about OR need this new LAW.

NOTE: THE ABOVE totals or %'s may vary as some respondents elected not to answer all questions in some instances

SECONDLY, IT SHOULD BE NOTED THAT A FEW PERSONS EXPRESSED A RELUCTANCE TO RESPOND and/or REQUESTED that their NAME not be given out, and INQUIRED AS TO "WOULD THEY BE SUBJECT TO UNNECESSARY SCRUTINY or retributive TREATMENT BY THEIR ORGANIZATION and/or THE KANSAS REAL ESTATE COMMISSION"? IT must BE NOTED that it IS a "SAD COMMENTARY" for any TRADE ASSOCIATION or KANSAS STATE agency that such concerns would even be voiced; although, such concerns may be valid?

House Judiciary  
 Attachment 8  
 2/19/97



#9  
HEARTHSIDE REALTY, INC.

4707 Sunboard Drive  
Cheney, Kansas 67025  
316-721-6501

February 18, 1997

Representative Phill Kline  
State Capitol  
Topeka, Kansas 66612

Dear Representative Kline:

I operate a small brokerage firm basically selling new homes to be built from on-site models. I have been a licensed agent since 1956 and a broker from 1962, so I'm not a new kid on the block. I favor changes in the real estate license law which are truly in the best interest of buyer and seller in the private enterprise system; however the Brreta Act is a trumped-up abomination pushed by the Kansas Real Estate Commission and the Kansas Association of Realtors, of whom I'm almost ashamed to admit I'm a member.

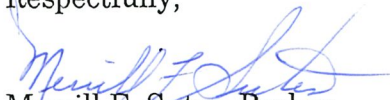
My builder, who happens to be my son, pays my real estate fee for marketing his new homes. This new law does not promote his interests at all. My experience over the years has shown me that the buying public just wants to buy a new home without being hassled by unnecessary forms, rules, and regulations. They expect to be treated fairly and I have always played with a full deck with all the cards on the table. The Brreta Act hampers my ability to provide the good service expected by our buyers, by dictating what I can say and what I cannot say.

If you see need to pass laws, channel your thinking into reigning in the asinine rules and regulations found in the Brreta Act and promoted by the Kansas Real Estate Commission and the Kansas Association of Realtors. They add new rules and regulations all the time. We are being choked by needless regulations.

The old law protected both the buyer and seller and was sufficient. I know of no cases of litigation involving agency in the State of Kansas, so apparently the Brreta Act was dreamed up by regulators who had nothing better to do but dream up senseless and unenforceable regulations which hamper my ability to work in the free market system.

I served over 20 years as a Naval Aviator in the islands of the South Pacific and Korea to preserve my constitutional rights. These rights are being infringed upon by KAR and the Real Estate Commission by the promotion of the Brreta Act by removing those rights I have fought for. I trust you will take the above into consideration as you allow the Brreta Act to sunset! No one, especially KAR and the Kansas Real Estate Commission, want to admit they made a mistake and continue to save face by offering amendments. It's like a can of worms, when you plug one hole another appears. Please permit the Brreta Act to sunset and don't introduce legislation or consider amendments to the same. You can't successfully patch a rotten inner-tube.

Respectfully,

  
Merrill F. Suter, Broker  
Hearthside Realty, Inc.

House Judiciary  
Attachment 9  
2/19/97

#9

# REAL ESTATE PURCHASE CONTRACT

**This Agreement**, Made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
by and between \_\_\_\_\_  
party of the First Part, hereinafter referred to as "Seller," whether one or more, and \_\_\_\_\_  
party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

**WITNESSETH:** That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient warranty deed the following described real property, situated in Sedgwick County, Kansas, to-wit:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above described real property, the sum of \_\_\_\_\_ Dollars  
in manner following, to-wit: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The Seller, at his option, agrees to furnish to the Buyer, either a complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the seller, subject to: \_\_\_\_\_

The Title Evidence shall be sent to \_\_\_\_\_  
for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. The Buyer agrees to and does hereby deposit with \_\_\_\_\_ Dollars,  
the sum of \_\_\_\_\_ Dollars, earnest money, as a guarantee that the terms and conditions of this contract shall be fulfilled by him, said deposit to be applied on the purchase price upon acceptance of title by the Buyer and delivery of deed by the Seller. In the event the Buyer shall fail to fulfill his obligation hereunder, the Seller may, at his option, cancel this agreement, and thereupon the aforementioned deposit shall become the property of the Seller and his Agent, not as a penalty but as liquidated damages. Provided, however, that in the event the Seller is unable to furnish merchantable title, the earnest money deposited shall be returned to the Buyer, and this Agreement shall be null and void and of no further force and effect.

6. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer) and interest, if any shall be adjusted and prorated as of \_\_\_\_\_. Taxes shall be pro-rated for calendar year on the basis of taxes levied, or for prior year.

7. The Seller further agrees to convey the above described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.

8. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before \_\_\_\_\_

9. Possession to be given to Buyer on or before \_\_\_\_\_

10. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid \_\_\_\_% by seller and \_\_\_\_% by buyer.

\_\_\_\_\_  
\_\_\_\_\_

**WITNESS OUR HANDS AND SEALS** the day and year first above written.

\_\_\_\_\_  
BUYER  
SS # \_\_\_\_\_

\_\_\_\_\_  
SELLER  
SS # \_\_\_\_\_

\_\_\_\_\_  
BUYER  
SS # \_\_\_\_\_

\_\_\_\_\_  
SELLER  
SS # \_\_\_\_\_

**Real Estate Contract**

TO

Dated \_\_\_\_\_

Land \_\_\_\_\_



SECURITY ABSTRACT AND TITLE CO., INC.

434 North Main • Wichita, Kansas 67202

Telephone (316) 267-8374

Fax (316) 267-8115

Title Insurance • Escrow Closings • Abstracts

**SECURITY IS KNOWING**

Multiple horizontal lines for text entry.

CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE

WICHITA AREA ASSOCIATION OF REALTORS® - UNIFORM PURCHASE CONTRACT

In consideration of the mutual agreements herein, it is mutually agreed that Seller will sell to Buyer and Buyer will buy from Seller, the following property on the following terms and conditions:

1. **BUYER:** \_\_\_\_\_

2. **SELLER:** \_\_\_\_\_

3. **PROPERTY ADDRESS:** \_\_\_\_\_

(CITY, STATE, ZIP CODE) \_\_\_\_\_

LEGAL DESCRIPTION \_\_\_\_\_

4. **PURCHASE PRICE:** Buyer shall purchase and pay to Seller as consideration for the above described real property the

amount of: \_\_\_\_\_ Dollars \$ \_\_\_\_\_

In a manner as follows:

**EARNEST MONEY:** ..... \$ \_\_\_\_\_

(See paragraph 5)

**NEW MORTGAGE PROCEEDS:** ..... \$ \_\_\_\_\_

(See paragraph 6) (Does not include mortgage insurance)

**MORTGAGE ASSUMED:** (See paragraph 11) ..... \$ \_\_\_\_\_

Type loan \_\_\_\_\_ Lender \_\_\_\_\_ Present interest rate \_\_\_\_\_ %

Approximate present payment \$ \_\_\_\_\_ per month including \_\_\_\_\_

Assumption rate \_\_\_\_\_ Assumption fees shall be paid by \_\_\_\_\_

**OTHER:** (See paragraph 30) ..... \$ \_\_\_\_\_

**APPROXIMATE BALANCE DUE** from Buyer at closing ..... \$ \_\_\_\_\_

subject to adjustments and prorations (not including closing costs or pre-paid items)

Sellers agrees to pay loan costs prohibited to be paid by Buyer on government loans up to \$ \_\_\_\_\_

Buyer agrees to pay loan costs in approximate amount of: \_\_\_\_\_

Buyer agrees to pay prepaid items in approximate amount of: \_\_\_\_\_

\_\_\_\_\_ agrees to pay discount points not to exceed: \_\_\_\_\_

\_\_\_\_\_ agrees to pay for Home Warranty Plan (copy attached) in approximate amount of: \_\_\_\_\_

Title Evidence to be ordered from: (See paragraph 17) \_\_\_\_\_

5. **EARNEST MONEY:** Pursuant to paragraph 27, the Buyer does hereby deposit with \_\_\_\_\_ (Company Name), earnest money in the form of \_\_\_\_\_ and in the amount of \$ \_\_\_\_\_, as a security that the terms and conditions of this Contract shall be fulfilled by the Buyer. Earnest money shall be deposited within five business days after Contract is accepted by all parties. Said EARNEST MONEY shall be applied to the purchase price at closing.

6. **NEW FINANCING:** Applicable when the purchase of this property is contingent upon the Buyer obtaining a \_\_\_\_\_ first mortgage loan at an initial interest rate not to exceed \_\_\_\_\_ % plus required Mortgage Insurance or VA Funding Fee, and for a term of \_\_\_\_\_ years. Buyer shall apply for said loan within seven (7) working days after the Contract is signed by all parties and use every reasonable effort to obtain the above-noted loan. This offer is subject to and contingent upon the Buyer qualifying for and obtaining a mortgage commitment on or before \_\_\_\_\_. Buyer shall pay for and cause to be ordered an appraisal and credit report at loan application. If property does not appraise for at least the purchase price, this Contract may be renegotiated or Contract will become null and void; or in the event Buyer is unable to obtain such financing, the Buyer shall promptly notify the Seller or Seller's agent in writing. In either such event, the earnest money, less accrued expenses, shall be refunded to the Buyer, pursuant to paragraph 27, and this transaction will be null and void. Loan costs, prepaid expenses including any mortgage insurance and discount points, if any, shall be paid as specified in paragraph 4. Buyer will have the necessary funds available to close this transaction, payable by cashier's check or certified funds.

7. **APPRAISER/LENDER REQUIREMENTS:** Should lender or appraiser require improvements or repairs, Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract. If Seller elects NOT to make said repairs/improvements, Buyer may make said repairs at Buyer's own expense. Buyer shall pay for first inspection of required repairs/improvements. Seller shall pay for any subsequent re-inspections which may be necessary.

8. **CLOSING AND POSSESSION:** The parties agree that time is of the essence and Buyer agrees to make final settlement on or before \_\_\_\_\_. Seller agrees to give possession as follows: \_\_\_\_\_

9. **AGENCY DISCLOSURE:**

Listing Broker/Licensee is functioning as an: ( ) Agent of the Seller ( ) Dual Agent

Selling Broker/Licensee is functioning as an: ( ) Agent of the Seller ( ) Agent of the Buyer ( ) Dual Agent ( ) Designated Agent

Seller and Buyer acknowledge that a disclosure of alternative agency relationships was furnished to them.

10. **SURVEY:** Broker recommends that Buyer acquire a survey on the property being purchased, regardless of lender's survey requirements.

**11. ASSUMPTION OF MORTGAGE FOR ASSUMPTION OR OWNER CARRY:** The Seller shall punctually pay and comply with the terms of the existing mortgage, related note, or escrow Contract (Contract for Deed) hereinafter referred to as Instrument, until the date of closing and/or delivery of Deed. If said Instrument is being assumed by the Buyer, the Buyer shall, on and after the date of closing, punctually pay, defend, indemnify and hold Seller free and harmless from all of the terms, conditions and provisions of said Instrument. If Seller is carrying some or all of the purchase price, or if a non-qualifying Instrument is being assumed, acceptance of this Contract is subject to Seller's approval of Buyer upon Buyer providing a current credit report, job verification(s), financial statement and verification of funds within seven (7) working days of Contract acceptance, unless Seller has waived, in writing, said requirements. In such an event, the Seller shall furnish the Buyer, at closing, a copy of any Instrument to be assumed and an assumption statement with respect to the Instrument showing the principal balance, method of payment, interest rate, and sufficient information to show that said Instrument is not in default. If the Instrument requires acceptance of the Buyer by the Instrument holder, and the Instrument holder denies acceptance of the transfer; or, if this Contract (in paragraph 4) is subject to Buyer's assumption of an Instrument at the original interest rate and with the original terms of said Instrument, and said original rate/terms are denied by Instrument holder, then the Buyer shall, prior to closing, have the option of either rescinding this Contract and obtaining a return of the earnest money (less expenses as hereinabove stated) or accepting the assumption of a modified Instrument and proceeding with the purchase. Interest accruing on above-stated Instrument shall be prorated as of the date of closing. On loan assumptions any reserve or escrow account held by any mortgagee for taxes, special assessments, mortgage insurance and other insurance shall be purchased by Buyer at closing. Assumption of the mortgage loan by buyer does not release seller from liability unless they request and obtain a release of liability from the mortgagee and insurers of the loan, if any. Without such a release, sellers may be liable for any deficiency resulting from a subsequent foreclosure of the mortgage assumed.

**12. TERMITE INSPECTION:** The improvements shall be inspected by a licensed termite treatment company selected by the Buyer and at the cost of the Buyer, unless payment by Buyer is prohibited by lender/guarantor/insurer, in which case the Buyer shall select and Seller shall pay for said inspection. If the dwelling, garages (attached or unattached) or other improvements are found to have active or inactive termite infestation that was untreated or partially treated, treatment shall be made at Seller's expense by a licensed exterminator of Seller's choice. Buyer has been advised that the termite inspection will be a report of the visual evidence of termite infestation based on inspection of accessible areas only on the date of the inspection. Normally, no inspection will be made in areas which are obstructed or inaccessible. The report will not guarantee that infestation or damage does or does not exist or will not occur.

Buyer may at Buyer's option secure an inspection for visible damage including structural damage as a result of present or past termite activity. Said inspection shall be made by a licensed building contractor at Buyer's expense. If said inspection reveals visible damages, Buyer may request in writing the repair of said damage. Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract and return earnest money. If Seller elects NOT to make said repairs/improvements, Buyer may make said repairs at Buyer's own expense. However, if Seller is unwilling to repair Buyer-requested termite damage, Buyer reserves the right to cancel or renegotiate this Contract. These inspections shall take place as soon as possible.

In the event Buyer does not have the premises inspected, then Buyer shall be obligated to purchase property regardless of any termite infestation or termite damage and the Seller and broker are relieved and released of any obligations relating thereto. Seller agrees that Buyer or Buyer's representative may inspect any repairs before the closing date.

**13. PROPERTY:** The real estate described herein, together with improvements attached thereto, shall include, if any, gas heaters, attic fan and/or ceiling fans, central air-conditioning, all window air-conditioning unit(s), lighting, heating and plumbing equipment and fixtures, bathroom mirrors and attached mirrors, window and porch shades, shutters, storm windows and doors, screens, all window and door coverings now in place, attached curtain and drapery rods, awnings, television antenna and antenna equipment, keys, water softener (if owned), attached outside cooking units, gas lights, automatic garage door equipment including remote transmitters, attached and unattached wall-to-wall carpeting, built-in kitchen appliances, attached shelves, fire, smoke and burglary detection systems (if owned), mail boxes, installed waterwell pumps, propane/butane tanks(s) (if owned by Seller), storage buildings, swimming pool and all pool equipment, all flowers, trees and shrubs, and anything else buried, nailed, bolted, screwed, glued or otherwise permanently affixed to the premises, or any improvements thereon, with any exceptions or additions as noted in Miscellaneous paragraph 30.

**14. PRORATION OF TAXES AND RESERVES:** Seller represents and warrants that all taxes and special assessments shall be paid from the proceeds of the sale as herein provided. All ad valorem taxes, the current annual installment of special assessments, rentals, homeowner's association dues, and interest, if any, shall be adjusted and prorated as of closing date, unless otherwise agreed. General taxes shall be prorated for the calendar year on the basis of taxes for the previous year unless the previous year's assessed valuation was based on a lesser-improved property, in which case said taxes shall be determined from the assessed valuation and the officially-established mill levy prevailing at closing. Special assessments shall be prorated on the basis of the amount (for the calendar year) ascertainable at the time of closing by the closing agent. The Buyer understands that the Buyer is responsible for payment of all ad valorem taxes and special assessments becoming due after the closing date and that Buyer is assuming all unmatured installments of special assessments. Periodic reappraisal, required by law, may result in a change in taxes.

**15. INSURANCE:** Seller shall maintain current insurance in force until closing date. The Buyer at closing shall furnish insurance policies necessary for the protection of the Instrument holder(s), containing loss clauses in favor of the Instrument holder(s) as their interests may appear. If required and so specified, the insurance policies shall be held by the Instrument holder(s) or escrow agent until said lien is paid in full. Buyer agrees to purchase flood insurance policy if and when required by the lending agency pursuant to federal law. Should possession take place prior to closing, Buyer shall secure hazard insurance for personal property effective on or before possession date.

**16. CASUALTY LOSS:** In the event of property damage to the premises by fire or other casualty prior to closing, the Seller shall restore same. In the event repairs cannot be completed prior to closing, Buyer and Seller may renegotiate this contract or declare it null and void. If the estimated cost of repair exceeds 10% of the purchase price, either Buyer or Seller may cancel this Contract and all earnest money shall be returned to Buyer, less expenses.

**17. TITLE EVIDENCE:** The Seller shall cause to be furnished to Buyer a title insurance company's title binder to issue, after closing, a title insurance policy in an amount equal to the full purchase price naming Buyer as the insured. Except for assumptions under paragraph 4, the title binder shall show marketable title vested in Seller, subject to: Easements, encroachments which would be disclosed by survey, rights-of-way of record, trees, plantings and fences thereon; restrictions and protective covenants of record, provided no forfeiture provisions are contained therein; unmatured special assessments, zoning laws, ordinances and regulations; rights of tenants in possession; the liens, if any, described therein; and those exceptions which are standard to American Land Title Association's Form B or as specified herein and, in an assumption, the mortgage securing the loan, which the Buyer is assuming. A copy of the title binder will be furnished to lender, listing broker, and selling broker as promptly as possible. The Seller and Buyer shall each pay one-half the cost of the title policy. In the event the Contract is for new construction the builder/Seller may receive builder discount if any. Buyer shall pay for any lender's/mortgagee's/Instrument-holder's, title insurance coverage. Seller shall have reasonable time, not to exceed 30 days from scheduled closing date, to furnish marketable title. The Seller shall be responsible to use due diligence to resolve any title defects at Seller's expense subject to the foregoing exceptions. Should the Seller be unable to furnish marketable title subject to the foregoing exceptions, and should this Contract be terminated due to same, then the earnest money shall be refunded promptly to the Buyer and the Seller shall reimburse to the Buyer the cost of Buyer's accrued loan costs, attorneys' fees for examining title, and title insurance cancellation fees, and all parties shall be released from any further liability hereunder.

**18. DEED AND DOCUMENTS FOR CLOSING:** In the event a title or abstract company prepares a Deed and Affidavit of No Liens and other necessary documents to complete this transaction, the charge for same, in addition to the cost of closing the transaction, shall be shared equally between the Buyer and Seller, but if Lender prohibits Buyer from doing so, Seller shall pay such costs.

**19. REPRESENTATIONS AND RECOMMENDATIONS:** It is hereby agreed and acknowledged by the parties hereto that, unless otherwise stated in paragraph 30 (Miscellaneous), neither the listing nor selling brokers, or their agents, employees, or associates have made, on their own behalf, any representations or warranties, expressed or implied, with respect to any element of the subject property. Any information furnished to either party through the Multiple Listing Service or in any property condition report should be independently verified by that party before that party relies on such information. Any representations made herein have been made by the listing/selling brokers based on information supplied by sources believed to be reliable, and brokers and their associates have not assumed any responsibility, directly or indirectly, with respect to any representation or warranties which have been made, if any. Since the selling/listing brokers are acting as brokers only, they shall, under no circumstances, be held liable to either the Seller or Buyer for performance or lack of performance of any other terms or conditions of this Contract, or for damages arising out of or relating to the contents of this Contract over the performance or non-performance of either of the parties to this Contract. **Again, it is emphasized that if the parties hereto feel representations have been made, they must be set forth specifically and in writing in paragraph 30 (Miscellaneous) if said understood or implied representations are to be effective or enforceable.**

**20. INSPECTION:** The Buyer has carefully examined the premises and the improvements located thereon, and in making the decision to buy the property, the Buyer is relying wholly and completely upon Buyer's own judgment and the judgment of any contractors or inspectors Buyer may have selected.

- A Seller's property condition report is attached and made part of this contract.
- This offer is subject to acceptance by the Buyer of a Seller's property condition report within \_\_\_\_\_ days.
- A Seller's property condition report is not available

Buyer agrees that the purchase price was negotiated after consideration of all defects in the real estate of which Buyer was aware or reasonably should have been aware. Buyer hereby agrees to hold listing/selling brokers harmless if Seller has failed to disclose any known defect or material fact regarding the property. **Buyer waives any claim for property defects unless Buyer secures, at Buyer's expense, an inspection of the property by one or more qualified inspectors, including but not limited to the roof, structure, all electrical, mechanical, and plumbing equipment, and appliances.** By initialing, Buyer acknowledges having read this paragraph.

Buyers' Initials \_\_\_\_\_

IN THE EVENT BUYER FOR ANY REASON DOES NOT OBTAIN SAID INSPECTIONS, AS ALLOWED OR STATED ABOVE, BUYER SHALL BE DEEMED TO HAVE ACCEPTED THE CONDITION OF THE PROPERTY AS SATISFACTORY AND SELLER AND SELLER'S BROKER ARE RELIEVED FROM ANY AND ALL LIABILITIES HERETO, except for Seller's obligation as noted in paragraph 22.

These inspections shall be obtained within \_\_\_\_\_ business days of Contract acceptance. These inspections are not intended to identify either cosmetic imperfections or other features of the property which Buyer has already considered in determining the purchase price. Seller shall cooperate in allowing Buyer's inspectors access to the property. If Buyer notifies Seller that it will be necessary to activate any utility in order to perform an inspection, Seller will request activation of that utility.

In the event any inspection results in a report of a defect, then within three business days of receiving the report, Buyer must request in writing as a proposed amendment to the contract that Seller repair or replace the defect. If Buyer does not make such a written request in such time, then Buyer waives any claim in regard to such defect. If Buyer does make such a written request in such time, the Seller must respond in writing within three business days after Seller receives the request. If the parties do not agree in regard to the existence or nature of the defect or the appropriate repair or replacement, then both Buyer and Seller agree to negotiate with one another in good faith to resolve any differences. If the differences are not resolved within \_\_\_\_ business days after buyer receives Seller's response to Buyer's request, then this contract shall terminate.

Seller agrees to give Buyer reasonable access to the property before the closing date so that Buyer and Buyer's representatives may, at Buyer's expense, re-inspect the property for confirmation of condition or to inspect any repairs made pursuant to this paragraph.

The parties agree and the Buyer represents that once the Contract has in fact been closed, that Buyer in all respects again has acknowledged that Buyer has accepted the premises without condition or qualification. Broker(s) shall not be responsible for the conduct of third parties providing specialized services required or permitted by this Contract, including but not limited to lender, title insurance company, escrow agent, closing agent, wood infestation, mechanical, structural or other inspectors or repair personnel, whether those services were arranged by Buyer or Seller or broker on behalf of either. Buyer and Seller are aware of the availability of a home warranty program for which the broker(s) may receive an administrative fee if said program is purchased and both have separately accepted/rejected purchase of the program. Although one program may have been specifically offered to Buyer and/or Seller, the broker(s) involved have made no representations about the quality of the programs offered, and all parties to this Contract understand that they may seek alternate home warranty coverage.

**21. ENVIRONMENTAL CLAIMS:** Buyer and Seller agree that broker and broker's agents do not have any expertise in evaluating the environmental condition of the property described in paragraph 3. and that broker and broker's agents have made no representation concerning environmental condition except as may be noted in paragraph 30 (Miscellaneous). Buyer or Seller may retain an environmental inspection firm to inspect the property.

**22. INTERIM MAINTENANCE:** Seller agrees to maintain heating (sufficient to avoid frozen water lines), sewer, plumbing and electrical systems, and any appliances and equipment being conveyed, in proper working order, and to maintain the lawn, shrubbery, trees and pool, if any, until possession if possession occurs at or after closing. If possession is given to buyer prior to closing, refer to attached addendum. Buyer will be solely responsible for obtaining insurance to cover any casualty loss occurring after closing, even if possession is retained by Seller after closing.

**23. LIENS:** Seller represents and warrants that there are no unpaid (whether recorded or not) chattel mortgages, conditional sales contracts, financing statements, or security agreements affecting any fixture, portion of the premises or item of personal property covered by this Contract. Any existing liens upon the premises which the Seller is required to remove under this Contract may be paid and discharged from the sale proceeds at the closing of the sale.

**24. BROKERAGE FEES:** The party handling the closing of this transaction is hereby authorized and directed to collect and disburse the brokerage fees at closing.

**25. ALTERATIONS:** Any alterations of the terms and conditions of this Contract must be agreed to in writing by both Buyer and Seller.

**26. SURVIVAL:** The provisions of paragraphs 5, 8, 9, 11, 12, 13, 14, 17, 19, 20, 21, 22, 23, 24, 27, and 30 shall survive closing.

**27. DISPOSITION OF EARNEST MONEY:** In the event this contract fails to close, the earnest money shall be disbursed according to an agreement signed by both parties. Pursuant to Kansas Statute 58-3061 (g), the broker can only disburse earnest money 1) pursuant to written authorization of buyer and seller; 2) pursuant to a court order; or 3) when a transaction is closed according to the agreement of the parties. Notwithstanding any other terms of this Contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and Seller agree that failure by either to respond in writing to a certified letter from Broker within seven (7) days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within thirty (30) days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto. If a dispute arises over disposition of funds or documents deposited with the escrow agent or the listing broker, Seller and Buyer agree that any attorney's fees, court costs and/or other legal expenses incurred by the escrow agent and any broker in connection with such dispute shall be reimbursed from the earnest money or other funds deposited with the escrow agent or listing broker. In addition to forfeiture of earnest money to Seller or return of earnest money to Buyer, Buyer and Seller shall both have the option of enforcing specific performance of this Contract or any other remedy allowed by law or equity.

28. ASSIGN AND ASSIGNS: This Contract shall be fully binding upon the parties, their heirs, executors, administrators, successors and assigns (subject to paragraph 31). No assignment shall serve to release or relieve the party assigning from any responsibilities or obligations hereunder.

29. KANSAS LAW APPLIED: This Contract and its validity, construction and performance shall be governed by the laws of Kansas.

30. MISCELLANEOUS:

Lined area for miscellaneous text.

31. AGREEMENT APPROVAL: This Contract constitutes the entire agreement between the parties and supersedes any previously executed contracts, representations, verbal or written, to buy and/or sell the property. Neither this Contract, nor any interest herein, shall be transferred or assigned by Buyer without the prior written consent of Seller.

Buyer and Seller hereby acknowledge receipt of separate expense itemizations estimating approximate costs to be incurred in acquiring or disposing of this property. Buyer and Seller also acknowledge that they have read the entire Contract and that by signing page four (4) of this four (4) page Contract that they agree to all terms contained therein.  
IN WITNESS WHEREOF, said parties hereunto subscribe their names.

**THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.**

BUYER \_\_\_\_\_  
PRINT NAME \_\_\_\_\_  
DATE \_\_\_\_\_ SS# \_\_\_\_\_  
BUYER \_\_\_\_\_  
PRINT NAME \_\_\_\_\_  
DATE \_\_\_\_\_ SS# \_\_\_\_\_  
AGENT \_\_\_\_\_  
FIRM \_\_\_\_\_ TELE \_\_\_\_\_

SELLER \_\_\_\_\_  
PRINT NAME \_\_\_\_\_  
DATE \_\_\_\_\_ SS# \_\_\_\_\_  
SELLER \_\_\_\_\_  
PRINT NAME \_\_\_\_\_  
DATE \_\_\_\_\_ SS# \_\_\_\_\_  
AGENT \_\_\_\_\_  
FIRM \_\_\_\_\_ TELE \_\_\_\_\_

9-7

To: The House Judiciary Committee

Date: February 19, 1997

Subject: Please sunset the BRRETA ACT.

My name is MERRILL F SUTER. I am from C Heney. I work for HEARTSIDE REALTY real estate company. There are 3 people in my firm, and I primarily sell New Homes. I am/am not a member of the Kansas Association of Realtors, and I *oppose the BRRETA ACT*. Thank you for allowing me the opportunity to express my views to your committee.

Present your topic.

RIGHT OF FREE SPEECH TAKEN AWAY BY BRRETA  
DICTATORIAL PRACTICES OF KREC  
MANDATORY FORMS  
THREATS OF REPRISAL



#10

# Paul R. Brown & associates, inc.

400 Sutton Place / 209 East William / Wichita, Kansas 67202-4009 / (316) 264-0394

Paul R. Brown, M.A.I.  
Betty M. Spingler

February 3, 1997

HOUSE JUDICIARY COMMITTEE  
STATE CAPITOL  
Topeka, Kansas 66612

Subject: **OPPONENTS MAY NOT RECEIVE ADEQUATE NOTIFICATION FOR  
BRRETA HEARING IN KANSAS HOUSE.**

Dear Senator Ranson:

I have been an active Realtor for 58 years, having participated in our local, state, and national Associations of Realtors as a member and in various leadership capacities over the years. In 1996, the National Association of Realtors and the Kansas Association of Realtors honored me by awarding me the REALTOR EMERITUS DESIGNATION.

In my years in the real estate business, the BRRETA Act has caused more confusion, dissension, and grief than any other law we have had to endure. I therefore request that you allow the BRRETA Act to sunset since the prior Real Estate License Act will still be in place, and if needed, can be constructively modified to adequately serve the the rank and file Realtor and the public's best interests.

As a REALTOR EMERITUS, I was surprised and disappointed to learn that the Kansas Association of Realtors held a leadership conference here in Wichita on December 8, 1996, and only 6 to 8 Realtors were invited and I was *not invited* to attend. It grieves me that our state Association apparently did not want my input, and now they are apparently endorsing the act with input from so few.

I understand that there is an attempt by certain members of the legislature to hold a hearing on the BRRETA Bill immediately upon it's printing and assignment of a Bill number which would leave the opposition without adequate notification to enable them to attend the hearing. This is patently unfair to the many Realtors who oppose BRRETA and to your constituents.

Sincerely,

PAUL R. BROWN & ASSOCIATES, INC.

Paul R. Brown, MAI  
REALTOR EMERITUS

House Judiciary  
Attachment 10  
2/19/97



Insurance...

Management -- Appraisals -- Real Estate



#11

To: The House Judiciary Committee

Date: February 19, 1997

Subject: PLEASE SUNSET the BRRETA ACT

My name is Betty M. Spingler, and I am from Wichita, Kansas. Paul R. Brown and I own Paul R. Brown & Associates, Inc. At this time there are four people in the real estate dept. We are members of the Kansas Association of Realtors, and we OPPOSE the BRRETA ACT.

Present your topic:

Reason for opposition to BRRETA

When the Pilgrims came to America, bureaucracy was not in place. Free Enterprise is a wonderful gift and we should not dilute it.

There are some things that you cannot legislate satisfactorily - morals, responsibility and accountability.

The BRRETA ACT - is not necessary unless there are statistics presented that I have not been privileged to. I have not seen any statistics where the consumer has been abused, or have been a great number of lawsuits, or that the public has requested the legislation. If there has been none or minimal, the prior law seems adequate for the public's interest. The old saying "if it ain't broke - don't fix it" might apply. The KREC in my first years in the business was very active in the licensing of individuals, duties that pertained to the public's interest and monitoring trust accounts. Why are we or they burdening the commission with BRRETA.

The commission always earned a position of respect.

House Judiciary  
Attachment 11  
2/19/97

It seems that any real estate firm may have *its* own BRRETA ACT in *its* company policy; they can take personal responsibility and accountability for their people, thus lightening the burden of the KREC.

We do not believe that KAR is correct that everyone in their membership approves the BRETТА. They could not include those that were not notified of the meetings, those that the literature was not sent to and they did not survey by mail everyone for an opinion. KAR receives the same dues from each member - KAR should feel the obligation to spend the same time and dollars on those listed as "opponets" as the proponets.

The industry provides for the public - a hearing panel for for the public's use - at no cost - if the public files a complaint, the procedure is followed in the presentation of all facts and a conclusion is rendered.

We *all* know - there is some risk in living - change must occur when it is good. Good is good and bad is bad - but when it is necessary to rationalize as much as BRETТА has been rationalized - we don't believe it is good.

PLEASE LET BRETТА SUNSET - Let the old law of agency and disclosure prevail - have a rest peiod from all of this - then modify what is needed.

We believe, BRETТА is creating a wound that could take a long time to heal between licensees, and we should follow the Golden Rule and the Realtor's Code of Ethics.

THANK



7 12

# Roger Turner Company

Roger P. Turnoi, MAI  
Duane W. Bluck, MAI  
Troeta A. McDowell, SRA

*Real Estate Appraisals & Investments*  
401 E. Douglas, Suite 215 / Wichita, Kansas 67202  
(316) 265-7695 / FAX (316) 265-7578

February 17, 1997

Representative Tim Carmody  
Chairman of House Judiciary Committee  
Kansas House of Representatives  
State Capital Building  
Topeka, Kansas 66612

RE: HB 2264 BRRETA

Dear Representative Carmody:

As a member of the Kansas Association of Realtors and Wichita Area Board of Realtors, I wish to express my opposition to the adoption of House Bill 2264. The above-mentioned act should have expired without continued debate this year.

The overwhelming consensus among those in the real estate business is that this act is an unwarranted intrusion into marketplace activity by big brokerage firms who wish to control outside business coming into the state through their relocation affiliates.

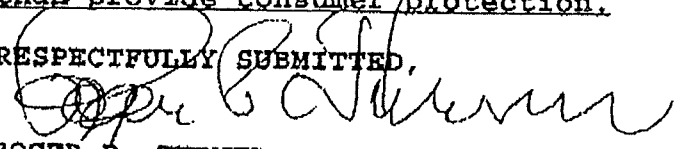
Unfortunately, the Kansas State Association of Realtors every year elects to leadership roles those in our business who can afford to go to Topeka and who now have planned a means of restricting business opportunities. If this matter were circulated throughout the Association through a certified mail return, there is no question that the vast majority of members would find no reason for the Association to actively pursue the matter further.

Further, the recent compromises suggested to the commercial broker group fully recognizes the awkwardness of the proposed law and sets up separate classes which will constantly be up for amendment by the Real Estate Commission.

This act is not a payback for legislative contributions, as many of the legislature receive the endorsement of those opposed to the act and are looking to your committee to act responsibly. The Kansas Real Estate Commission needs to provide hard evidence of the need for this legislation.

This is another example of an unneeded act which is designed to eliminate competition rather than provide consumer protection.

RESPECTFULLY SUBMITTED,

  
ROGER P. TURNER, BROKER

House Judiciary  
Attachment 12  
2/19/97

#131

February 19, 1997

TO: Honorable Members of the Judiciary Committee

From: Brenda Thome, Century 21 Advantage, 1999 N Amidon, Wichita KS  
Licensed Realtor since 1988Rick E. Hodge, Gillette Real Estate Inc., 2302 N Hood, Wichita KS  
Licensed Realtor since 1995

Subject: House Bill 2254

We regret that we are unable to testify in opposition to HB 2264 today as originally planned.

As real estate professionals we appreciate the need for consumer advocacy. However, we believe that the BRRETA Act is not in the best interest of the buying public. We recognize the tremendous investment made by the consumer when buying a home. The passage of this bill has created a climate that allows for omissions and inconsistencies which undermine the release and gathering of information prudent to all parties involved. The shift in liability created by the BRRETA Act has created a situation of increased buyer's beware and also exposes sellers to an increased potential litigation when omitted or inconsistent facts are eventually uncovered post transaction.

We believe as do you that entrepreneurship is the foundation of Kansas based businesses. As Realtors we aspire to building a business foundation that will one day translate into our own brokerage firm. The passage of the BRRETA Act facilitates the monopolization of the industry by the larger brokerage firms in metropolitan areas.

Please allow the BRRETA Act to sunset.



House Judiciary  
Attachment 13  
2/19/97

# B&A

#14

February 19, 1997

**COMMERCIAL  
INDUSTRIAL  
INVESTMENT**

House Judiciary Committee  
State Capitol, Room 313 South  
Topeka, KS 66619

Re: B.R.R.E.T.A. Bill (House Bill 2264)

My name is Robert Branson. My real estate firm is Branson & Associates, Inc. of Wichita, Kansas. For over 25 years we have been selling, leasing and managing, commercial real estate, including retail, offices, warehouse, apartments and land. At present we have five licensed brokers.

Before the above, I built and sold houses for over 13 years.

In all that time agency was not a problem. We informed all parties whom we represented.

Even some representatives of the KREC have stated that agency has not been a major problem in Kansas.

We oppose the BRRET Act, which should be allowed to "sunset". We do not need the mandated forms and additional "red tape".

We do not oppose the recommendation of the BRRET Task Force to replace "Dual Agency" with "Transaction Brokerage".

We urge two changes in the present law:

1. Clients/Customers (Seller or Buyers) SHOULD NOT BE LIABLE for acts of Agents - if the Clients or Customers did not approve of or know about same.
2. Second, LIKewise Agent (BROKERS) SHOULD NOT BE HELD LIABLE for facts that they did not know about AND for which experts were recommended to ascertain these facts to Clients/Customer.

Thank you for your consideration.



Robert E. Branson,  
President of Branson & Associates, Inc.  
435 N. Broadway, Wichita, Kansas

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## **Branson & Associates, Inc.**

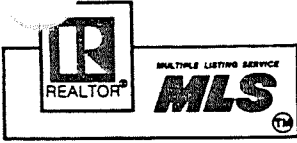
### **Real Estate Services**



435 North Broadway  
Wichita, Kansas 67202  
(316) 267-4357

House Judiciary  
Attachment 14  
2/19/97

**BROKERAGE  
LEASING  
MANAGEMENT  
CONSTRUCTION  
APPRAISAL/COUNSELING**



Lan  
Residential  
Custom Building  
Investments  
Property Management

February 17, 1997

House Judiciary Committee  
State Capitol  
Topeka, KS 66612

RE: B.R.R.E.T.A. Task Force Bill

Dear Committee Members:

I am the owner of a small brokerage firm in the Wichita Area which deals primarily with the re-sale of residential property. Our Company was established in 1983 and I have been the owner and broker since 1990.

It is to my disadvantage that I cannot be present on February 19, 1997 to testify before you. I would, however, like to make my position known to you:

I am opposed to the BRETТА BILL and ask that you allow it to sunset.

As a taxpaying citizen of a civilized nation, I truly believe that we must have laws and regulations to govern us. However, as a small business owner, I believe that too much regulation is harmful. The passage of BRETТА will place an even greater burden upon us to comply with unnecessary regulations.

Laws should be created by and for the majority of the people. If there is a question as to whether the majority do or do not want the laws, perhaps our representatives should survey all of their constituents before they pass a law that affects them.

Sincerely,

Steve Moore  
Owner/Broker

House Judiciary  
Attachment 15  
2/19/97



#  
16

9420 W. Central • Wichita, KS 67212 • (316) 729-0900 • (316) 729-9141 FAX • (800) 942-8262

RE: House Bill 2264

I have been in the Real Estate business 24 years. I sell residential resale homes and new homes, each representing 50% of my firm's business. I am a small firm with only 8 agents.

I was a member of the BRRETA Task Force this past year. I would like to point out, that HB2264 is NOT the recommendations of the task force. I am disappointed and dismayed that the legislature asked us to sit on a task force and develop a report for the Speaker of the House and the President of the Senate, and then not even take the time to consider the report. The report was filed along with two minority reports - it might be worth reading before you take final action on this bill.

Granted HB2264 is part of the task force report along with some provisions put in by the Kansas Association of Realtors and the Kansas Real Estate Commission provisions that were considered and rejected by the task force. The report was not unanimous on several issues thus the minority reports.

There are between 4,000 and 5,000 licensed real estate agents & brokers who are not represented by KAR and are not aware of the changes made by KAR to the task force in this legislation. I would venture a guess that a large number of KAR'S members are not aware of these changes.

As a task force member I feel it would have been better to introduce the task force report as the original bill and then have these groups who wanted the amendments have to justify them to your committee. In fact that was my understanding of what was going to take place when I signed off on the report.

I am truly disappointed that the hard work and time put in by the task force is being disregarded and in my opinion is actually being used as a smoke screen for KAR and other special interests to get what they originally intended in the original BRRETA act.

I think a lot of my disappointment is due to the fact that as a former legislator I have a lot more faith in an open legislative process than KAR and the other proponents of HB2264. I ask that each of you take time to thoroughly study this legislation before you take any action.

Sincerely,

A handwritten signature in blue ink that reads "Tim Holt".

Tim Holt  
Broker/Owner  
Golden Realtors

House Judiciary  
Attachment 16  
2/19/97