

Approved: March 20, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Emert at 10:15 a.m. on March 18, 1997 in Room 514-S of the Capitol.

All members were present except: Senator Feleciano (excused)
Senator Oleen (excused)

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Representative Gwen Welshimer
John Brugnani, Ks. Auctioneers Asso. (KAA)
John Todd & Asso., Wichita
Matt Eck, Matt Eck Real Estates
Cleve Smith, Stoneborough Real Estate, Wichita

Others attending: See attached list

HB 2264 -BROKERAGE RELATIONSHIPS IN REAL ESTATE TRANSACTIONS

All of the following conferees are **opponents** of **HB 2264 (BRRETA)**

Conferee Welshimer appeared before committee offering "ten simple opinions" for why she opposes **HB 2264**. (attachment 1) Brief discussion followed.

Conferee Brugnani, an auctioneer and real estate salesperson from Leavenworth, Ks. testified that the majority of KAA members who are members of Kansas Association of Realtors (KAR) cannot remember being polled on **HB 2264** and therefore doubt any testimony which declares that the majority of KAR members support the bill. He called the bill a "litigators dream" because of its complexity. Mr. Brugnani stated that the KAA is concerned about how this bill will effect the small and rural agency with its fines and regulations and stated it was felt it was further intrusion by the government with minimal benefit to the consumer. (attachment 2)

Conferee Todd testified before committee calling the Brreta Bill "the most anti-consumer legislation to be considered by the legislature in several years" pointing out specific areas in **HB 2264** which he stated give credence to his claim. He stated that he felt the bill's real intent is to serve the needs of special real estate interest groups and shared why he felt that was true. He stated he hoped the bill would be allowed to sunset and offered some "consumer friendly" changes in the event it did not. Conferee Todd provided informational data in the form of personal and other correspondence, including a letter to the attorney general and to the Wichita Eagle regarding the Brreta Bill; copies of articles from Kansas Realtor News; a list of people resource contacts regarding Brreta; a copy of the Disclosure of Alternative Agency Relationships Form (DAAR); an exclusive buyer agency agreement form; a Kansas Real Estate Commission (KREC) Update (from Dec. 19 meeting); KREC appointed members; Brreta Task Force and Consumer Legislation; an Analysis of Brreta by former Rep. Merritt; copy of a public survey conducted of all Kansas Licensee's on Brreta Bill; and a copy of **HB 2264** with underlined portions and questions and comments detailed in the margins. (attachment 3)

Conferee Eck echoed Conferee Todd's sentiments about **HB 2264** being a "totally anti-consumer and pro-Realtor" bill. He asked the committee to either allow the bill to sunset or change three areas in the bill, areas which he delineated. (attachment 4)

Conferee Smith provided a copy of the pages of **HB 2264** with items in question underlined and requested that the committee read the packet and answer the questions before making a voting decision on the bill. He stated he was concerned about the criminal penalties in the bill; the language regarding compensation; liability protection for the licensee; increase in fine rates and "government intervention into my life". He requested committee allow the bill to sunset. He also included a copy of a KREC Update from their Dec. 19 meeting. (attachment 5)

Written testimony from Betty M. Spingler and Paul Brown of Paul Brown and Asso. in Wichita requesting committee allow the Brreta Bill to sunset, was distributed to committee members. (attachment 6)

Senator Emert appointed a subcommittee to review the proposed amendments to **HB 2264**, consider testimony on the bill and report their recommendations back to committee. Members of the subcommittee are: Senator Goodwin, Senator Donovan and Senator Schraad, who will Chair the subcommittee.

Meeting adjourned by the Chair at 10:54 a.m. The next scheduled meeting is Wednesday, March 19, 1997.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/18/97

NAME	REPRESENTING
Jacquie Dukes	Ko. Auctioneers Assn.
JOHN BRUGNOVI	Kansas Auctioneers Association
Stan Clark	Senate
Sean Payant	Kansas Assn. of Realtors
Shayna Dalton	Kansas Assn. of Realtors
Karen Gehse	" " "
Karen Frankel	KAR
Tom Green	KAR + Local Real Estate Company
Michael McGrew	KAR + Lawrence R E Company
Jan Aman	KREC
Marla A. Payant	
Debbie Beam	Crosley, Inc. Realtors Topeka
MATT ECK	Matt Eck Real Est Inc
John R. Todd	John Todd + Assoc
CLEVE SMITH	Stowborough Real Estate
JAMES PITTSBURGER	KREC
Luen Alshemi	Leg
Steve Parker	Wichita Eagle

STATE OF KANSAS

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: MARCH 18, 1997
TO: SEN. TIM EMERT, CHAIRMAN AND
MEMBERS, SEN. JUDICIARY COMMITTEE
FROM: REP. GWEN WELSHIMER
SUBJECT: HB2264, REAL ESTATE BROKERAGE RELATIONSHIPS

Thank you for the opportunity to testify. To save time, I will offer ten simple opinions why I oppose this bill.

- (1) Nobody understands it.
- (2) Licensees who do not understand it may acquire misdemeanor police records or convictions of one year in prison, if one agency document is misfiled/not found during an audit.
- (3) Buyers who do not understand it may be sued for commission by their own buyer agent/"agency representation".
- (4) Builders who do not understand it may use their special privileges under the law and lead the buyers into suits with their buyer agents.
- (5) Commercial transaction brokers who do not understand it may be the first to experience a police record when they violate residential agency or commercial agency upon the showing or sale of a property which has both.
- (6) Relocation agents who do not understand it could work for weeks selling a house only to have a buyer agent from the previous Kansas location claim their entire commission.
- (7) Sellers who do not understand it may not abide by Kansas law which requires they pay a buyer's agent a commission for putting the screws to them.
- (8) Investors who do not understand it, will find they have lost their freedom to independently search out good buys.
- (9) First-time homebuyers who do not understand it may sign a buyer agency agreement and never see the agent again.
- (10) Brokers who think they understand it may not supervise agents properly because so much of their liability has been shifted to buyers and sellers.

*Senate Judiciary
attachment 1 3-18-97*

TESTIMONY OF JOHN BRUGNONI
BEFORE THE SENATE JUDICIARY COMMITTEE
ON BEHALF OF
THE KANSAS AUCTIONEERS ASSOCIATION (KAA)
HOUSE BILL NO. 2264-BRETTA
MARCH 17-18, 1997

Chairman Emert, Members of the Committee,

I am John Brugnoni an auctioneer and real estate salesperson from Leavenworth, Kansas. Thank you for this opportunity to appear before you on behalf of the KAA with regard to our position on House Bill No. 2264, Brokerage Relationships in Real Estate Transactions Act-the so-called BRETTA Act. THE KANSAS AUCTIONEERS ASSOCIATION OPPOSES THE BRETTA ACT AND DOES NOT WANT IT TO BECOME LAW.

You have heard that the majority of Kansas Association of Realtors members support the act. We doubt this reflects reality. Our basis of doubt lies in the fact that most of our auctioneer/real estate salespersons who are also Kansas Association of Realtors (KAR) members do not remember being polled. Moreover, most do not recall the issue being discussed with the membership of their local real estate board. We strongly suggest that at the grass roots level, the worker bee real estate person, there is significant opposition to this act. We believe that it is viewed by a large majority with hostility and fear.

The BRETTA Act is a very big bill. When you stop to consider the amount of implementation rules and regulations that will be required by this bill it becomes a gargantuan bill. The complexity of its implementing rules and regulations builds a labyrinth that assures people will become lost and hurt. It is, in our view, a litigators dream. To paraphrase the popular film: If you pass it, they will come to pay.

Consider this scenario for a moment. It is a reality that occurs in over 90% of the real estate brokerages state wide on at least a weekly basis. THE SALES MEETING! First order of business: new listing. The salesperson with a new listing proudly describes the property location, its amenities and its price. The salesperson might even comment on the sellers motivation. Next order of business: old listings. Here the same agent might discuss the previously listed Brown property. It has been listed a while. Results are less than desired. He might reemphasize how motivated the Brown's are to sell and - gee whiz- they are willing to accept \$10,000.00 less! Please bring offers! I must suggest at this point that no one in that agency can be a buyers agent for that property. Therefore, I must openly ask how is BRETTA going to be implemented? I would suggest that many end runs will be attempted. The large agency may pull it off. The little guy, the rural small family office, is not going to be able to implement it. BRETTA sets the scene for small business catastrophe. We sincerely fear that the oversight authorities will over zealously police the provisions of the law. We fear the imposition of excessive fines. Consider that not using the exact words provided by the oversight authority on a contract has produced a \$50.00 per contract fine. That can add up to a great deal of money. BRETTA provides fertile ground for even greater and more frequent fines. The non- passage of BRETTA will avoid these calamities.

*Senate Judiciary
Attachment 2
3-18-97*

Consider that BRETТА would allow a salesperson within an agency to pay assistants working for them. I know of salespersons in a large metropolitan area that employ as many as seven assistants. In one case, three are advertised as buyer agents. Talk about a law with its own built in contradictions! How in these cases will BRETТА be implemented? We don't think it can be. The amendment granted commercial brokers was based on almost similar circumstances. BRETТА should not pass. Let us require the real estate industry to openly advise consumers they represent sellers. BRETТА requires us to advise clients to seek expert advice from lawyers inspector, etal whether we are a buyers or sellers agent. Consequently, the artificiality of Buyers agency, Transaction Broker, etal established by BRETТА does not make sense. We don't expect that of automobile agencies. And when you add up what you pay for automobiles and trucks in a life time, one wonders if in fact a house is the largest expense you have.

The KAA is deeply concerned that BRETТА will cause great difficulty for the small and rural agency. We foresee a magnitude e of fines and regulation which will force people out of their current livelihood. For many it will have serious money consequences. We ask why is it necessary. We do not believe the consumer will benefit. The consumer must protect himself now from two quarters rather than one. Finally, consider that BRETТА and its rules and regulations will be a perennial problem for this body. There really isn't any need for it.

BRETТА maximizes bureaucracy and government spending while minimizing return for government spending. It intrudes government into an industry with minimal benefit to either and especially the consumer it is touted to protect. **DO NOT PASS THE BRETТА BILL.**

Chairman Emert, Members of the judiciary committee, thank you for this opportunity to present the KAA position on BRETТА.

To: Senate Judiciary Committee

Date: March 18, 1997

Subject: Is the Brreta Bill (House Bill No. 2264) anti-consumer Legislation?

Dear Senate Judiciary Committee Member:

The Brreta Bill, being promoted by Realtor special interest groups, (House Bill No. 2264) is the most *anti-consumer* legislation to be considered by the Legislature in several years. This Bill has something for everyone in a real estate transaction *except* the seller of real estate, who, you guessed it, gets to pay the real estate commission, and gets stuck with the liability relating to the condition of his property.

Like a lot of legislation coming out of Topeka these days, the language of the Brreta Bill is complicated. Special interest legislation always needs to be complex so as to camouflage the *real intent* behind the words written in the Bill. The *public* needs to be made aware of the *real meaning* of the words in this Bill to determine for themselves, whether this Bill really serves the needs of the consumer or if it was promulgated for the benefit of Realtor special interests groups.

Section 32 (6)(b) of the Bill provides: "If... the licensee advised the client (the buyer) to obtain expert advise (from perhaps an unlicensed home inspector) as to material matters about (the sellers property) which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters.". Does this shift of liability from the real estate licensee to an unlicensed home inspector appear to be *consumer driven* legislation? What benefits does this provide for the public?

The proposed language in Section 30(a) of the Bill seems innocent enough: "Compensation (in a real estate transaction) is presumed to come from the transaction...". Why would the real estate industry want to codify into law where the "compensation in a real estate transaction" comes from if there isn't some special interest motivation?

Historically, real estate compensation has been paid by the sellers of real estate. The reason the sellers of real estate are willing to pay real estate licensees compensation is the *need* on the part of the sellers for the expertise of the real estate licensee in converting their real estate equities into cash. This *market driven need* is the very reason the real estate industry exists today.

Historically, the buyers of real estate have not felt the *need* to compensate the real estate licensee for helping them convert their cash into real property. I believe most people feel capable of taking their cash to the marketplace and spending it without paying anyone compensation for assisting them in doing so. Thus, I don't believe there is any compelling *market driven need* on the part of the buyers of real estate to having their

Senate Judiciary
attachment 3
3-18-97

cash tied up under "Exclusive Buyer Agency Agreements" with the obligation *to pay* a real estate licensee's *compensation* for converting their cash into real estate equities.

Real Estate licensees have a desire to control *market share*. In a real estate transaction there is always a buyer and a seller. Wouldn't it be interesting if the special interests groups in the real estate industry could *devise a plan*, through statutory law, which would allow them sign-up Exclusive Buyer Agency clients by solving the buyers unwillingness to pay licensees compensation as described above by simply allowing the "compensation to come from the transaction" and actually have the compensation, through language in the Exclusive Listing Agreement with the seller, paid out of the sellers cash proceeds at closing for the benefit of the buyers broker!

How would you like being the seller of real estate and having the *agent you hire for compensation* advise you that you should consider allowing him to co-operate with buyers agents and pay them compensation out of the real estate fee he is collecting from you? Is this not like hiring an agent and allowing him to bring your adversary into the transaction for part of the compensation you are paying? Does this have anything to do with protecting the public's interest or is this really a ploy for *market share or money*?

The proposed language in Section 23 of the Bill: "The provisions of the brokerage relationships in real estate transactions act shall supersede the duties and responsibilities of the parties under the common law, including fiduciary responsibilities of an agent to a principal." means that the broad "common law" which has protected the public's interests for many years is now being "replaced" with narrow "statutory law". Again, one needs to ask the question why? Does it have something to do with the Realtors special interest groups desire to control market share or money?

For the discussion of this section of the Bill, I will limit my discussion here to Section 25(k) "Designated agent". When Buyer Brokerage became popular a couple of years ago, real estate brokers, from predominately larger firms, became concerned about the potential liability they faced when trying to represent both sides of the real estate transaction as "dual agents". They felt like they had to offer Buyer Agency in order to maintain *market share*. In order for them to "legally" represent "both sides" of the real estate transaction without taking on the liability of becoming "dual agents", a new form of agency was created by statutory law called: "Designated agent". Can a real estate licensee really work both sides of the transaction and protect the interests of both buyer and seller? How does this concept actually mesh with the true meaning of *fiduciary relationship* as defined by the common law of agency? Is this *consumer driven* legislation?

There appears to be only one logical solution to the problems posed by this *flawed* legislative attempt, and that is to **let the Brreta Act and the Law sunset** like the 1996 Legislature so wisely provided. The old law provides for *consumer oriented* common law protections for buyer and seller agency clients, without the encumbrances promoted to benefit selected groups in the real estate industry.

In the event a sunset of the Brreta Act does not materialize, then perhaps some *consumer friendly* changes can be made to House Bill 2264 before it becomes law, and detailed as follows:

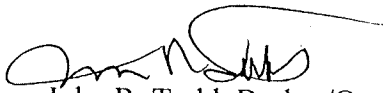
1. Change the compensation clause in Section 30(a) to read as follows: "A buyer or a seller of real estate can employ the services of a real estate licensee to assist them in the purchase or sale of real property, provided that the prospective buyer or seller who desires those services, pays for those services." This levels the playing field for buyers and sellers by letting the *free market* work.

2. The statutory law language in the Bill relating to agency needs to be deleted from the BRRETA Bill with the common law of agency left in place to protect the publics interests.

3. The liability protection as detailed in Section 32(6)(b) of the Bill needs to be deleted or at least revised to protect the public's interests.

The Brreta legislation, in my opinion, has little to do with protecting the publics interests. You can *best serve* the publics *needs* and the *interests of your constituents* by **opposing** House Bill 2264 and thus **allow the Brreta Act to sunset.**

Sincerely,


John R. Todd, Broker/Owner

John Todd & Associates
805 South Main, Suite 103
Wichita, Kansas 67213
(316) 262-3681 office
(316) 264-6295 home

P. S. I am a licensed real estate broker in the state of Kansas. I own my own real estate company in Wichita. The opinions expressed in this letter are my own. 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.*

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.

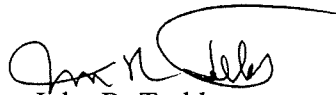
I have enclosed a copy of the letter I mailed to our Kansas Association of Realtors president dated January 15, 1997 stating my *opposition* to their support for the BRRETA ACT for the following reasons: 1. In the September/October 1996 issue of our Association newsletter our Association president admitted 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 publics 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,



John R. Todd

Enclosures 2

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

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



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

Basic & 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

Errors & Omissions 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

It 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

"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 -



KANSAS ASSOCIATION OF REALTOR

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

JOHN TODD & ASSOCIATES

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

(316) 262-3681

January 31, 1996

Ms. Carla Stovall, Attorney General
STATE OF KANSAS
Kansas Judicial Center
Topeka, Kansas 66612-1597

Dear Attorney General Stovall:

Enclosed is a copy of the section of the Kansas Real Estate Brokers' and Salespersons' License Act which deals specifically with Brokerage Relationships in Real Estate Transactions which became effective January 1, 1996, which is marked as Exhibit "A". Enclosed also is a copy of the Disclosure of Alternative Agency Relationships form as Adopted on October 19, 1995 by the Kansas Real Estate Commission for mandatory (emphasis supplied) use by real estate licensees on and after January 1, 1996. See DAAR Form No. 1 marked as Exhibit "B".

I am not an attorney. I have been licensed to sell real estate in the State of Kansas for nearly 20 years. Based on my many years of sales and marketing experience, I feel qualified to advise you that in my opinion, that portion of this new Act dealing with Brokerage Relationships in Real Estate Transactions is bad legislation and does not serve the *public's best interests*. The mandatory use of DAAR Form No. 1 is an unnecessary intrusion of the State into our industry, and ultimately results in what I would classify as a restraint of trade.

The onerous effects this Act and the use of the mandatory DAAR Form No. 1 has on the real estate industry and the sellers and buyers of real estate may not be evident unless one views it from its practical application in the marketplace.

I sell new homes for a home builder as his agent. Let's assume that I am holding one of my builder's new homes open with the specific intent of finding a buyer for his new home, and a prospective buyer comes through my open house as a result of my advertising or open house signs. Under the new law, the first question I must ask this prospective buyer is "Are you working with a real estate agent?". In the event the buyer indicates that he has exclusive buyer agency representation with another real estate broker, New Section 3, Paragraph (O) (see Exhibit A) provides: "A licensee shall not negotiate a sale of real estate directly with a buyer the licensee knows has an agency agreement granting exclusive representation to another broker." At this point, I cannot enter into any *substantive discussion* with this prospective buyer regarding his purchase of this home. Having attended a seminar sponsored by the Kansas Association of Realtors, and a seminar sponsored by the Wichita Area Association of Realtors, and

The Attorney General's office advised me that they did not consider requests for review of legislative matters from citizens. The only people who could request her office to investigate a matter was a member of the legislature, the governors office, or a regulatory commission, board, or bureau. I believe the questions asked of the Attorney General are still valid, and that an Attorney General's opinion should be sought.

having attended two meetings held by the Kansas Association of Realtors, and one held by Ms. Jean Duncan, Director of the Kansas Real Estate Commission, there is a wide range of views as to what "substantive discussion" means, leaving the door open for a *wide* range of interpretations among real estate practitioners. In my opinion, substantive discussion could include, a discussion of the price of the new home, a discussion relating to what options are available with the new home and the price of each, any special financing the builder might be offering, and anything which might be construed as making the purchase of this property attractive to this buyer. The *safe* route for me to take with this prospective buyer, would be to tell him nothing, and invite he and his agent to visit the property at a later date, and *hope* that the agent would bring him back. I feel confident, that my builder would *not approve* of my actions relating to this prospect in this situation because in his view, I would be sending a prospective buyer away from his new home which is costing him \$500 to \$600 per month in construction interest, the payment of which has a direct impact on the profit he will realize when this property is sold. This portion of the new Act is clearly not in my builder/seller's best interest.

Let's go back to the open house described above. This time a young couple comes through the open house looking for their first home, and they are not working with another real estate agent. I let them browse through the new home on their own, having discovered over the years that most people prefer an initial look at a home without a "salesman" looking over their shoulder or tagging along. I believe the same principal of non-sales interference comes into play when I shop at J. C. Penney's for a shirt; however, the J. C. Penney sales clerk doesn't have to ascertain whether or not I am working with a Sears or Dillard's store's sales clerk in trying to purchase a shirt. I don't want the sales clerk bothering me while "I am just looking". By the same token, when I have found the style of shirt which interests me, I can't wait to find a sales clerk to help me find my shirt size, to obtain the shirt price, and to enter into *substantive discussion* relating to the purchase of the new shirt. This same *urgency* exists for my prospective home buyer couple. Unfortunately, under the new real estate Act, I can't enter into *substantive discussion* with these prospective new home buyers until I have advised them of the *agency* choices available to them as detailed on the mandatory DAAR Form No. 1 (see Exhibit B enclosed). At this point in time, the last thing this young couple has on their mind is a 10 to 15 minute *seminar* on agency relationships presented by the real estate agent, topped off by the agent asking them to sign the DAAR Form No. 1 acknowledging that they have attended his presentation. I suppose that next year the Legislature and the Real Estate Commission will come up with a short quiz the agent can administer at the completion of his presentation to determine how effectively he has presented this information. It should be easy for anyone, even without sales experience, to visualize the *negative* impact this break in the flow of the customer's attempt to find out simple things about this property like price, expected monthly payments, special financing, other homes being offered, and their price range; all of which are a *natural* part of the preliminary (*substantive*) *discussion* which takes place with any customer prior to their making their home buying decision. Can you imagine how many customers and shirt sales J. C. Penney would lose if their sales clerks were required to make similar disclosures? Can you imagine how totally frustrated I would be if I had to set through a

disclosure presentation and sign a form for the sales clerk when I just wanted to look at the shirts and happen to make the mistake of asking the price or if the shirt were on sale? Can you imagine the frustration the J. C. Penney sales clerk would have if he were required to advise me the customer of my right to have a Sears or Dillard's sales clerk represent my interests in the purchase of a shirt, and that the Sears or Dillard's sales person could share in the commission for the shirt sale? I hope these examples give you some idea of how intrusive this Act with the DAAR Form No. 1 is in our business, and the actions they require from real estate sales people actually *restricts or restrains* what I have always believed to be *the free market*.

Now let's switch our attention back to the young couple described in the prior paragraph. Let's assume that they have enough interest in the new home that they submit to my presentation of alternative agency relations as detailed in the DAAR Form No. 1. If I *adequately* explain the alternative agency relationships available to them, which I think is the *intent* of this Act, aren't a certain percentage of my prospective buyers going to opt for Buyer's Agency and immediately walk out the door to seek the services of a buyer's agent with another real estate firm? Keep in mind that I haven't entered into any *substantive discussion* with these prospective buyers, and they may not even know the price of my builder's new home, let alone special financing, or other reasons why this property might fit their needs. What guarantee do I have that the buyer's agent will even bring them back to my builder's new home? Haven't I through my actions (as required by this Act and the DAAR Form) just *ran away* one of my builder/seller's prospective buyers and thus deprived him of a potential sale? Haven't I just *violated the fiduciary responsibility* I have with my builder/seller as his agent? Can't you see that under the *guise of protecting the buying public's interests*, this Act has *totally ignored* the real estate *seller's interests*? In my J. C. Penney example above, how long do you think the J. C. Penney sales clerk would last if through his actions he sent his customers to Sears or Dillards? How could the J. C. Penney sales clerk provide a living for his family by running away prospective Penney's customers, and then encouraging them to come back with a Sears or Dillards sales clerk to share in his compensation (commission) for the shirt sale?

In the event the couple mentioned above decides they want to be "*represented*" in a Disclosed Dual Agency capacity, since after looking Disclosed Dual Agency illustration on the cartoon side of the DAAR Form No. 1, it would appear that perhaps this method of "*representation*" would solve everybody's problems and be most fair to all parties to a potential transaction. As an agent in this capacity I have just become *neutral*. Right? I now choose to walk where *angels fear to tread*. I am going to *serve two masters*, not with standing the fact that I have represented the seller/builder's interests for several years. And, conveniently, New Section 8, Paragraph (i), provides: "In any transaction, a broker may withdraw from representing a client if either client does not consent to a disclosed dual agency. Such withdrawal shall not prejudice the ability of the broker to continue to represent the other client in the transaction...". I fail to see any benefit to the general public from this portion of the new Act, and I view the position I

am placed as a Dual Agent as *fertile ground* for both buyers and sellers along with their attorney's to litigate with the intention of taking my personal assets for their own use.

The Designated Agent choice does not work for my firm since I work as a one person company. I would suspect that a majority of the brokerage firms in small towns around the state are one and two person companies. I am amused by what people around Wichita refer to "big" real estate companies. I don't believe the largest real estate company in Wichita has more than 200 sales people, which pales in comparison to the number of sales people employed by J. C. Penney or Sears in their stores nationwide, or even limited to the number of sales people in just their Kansas stores. The Designated Agent choice as enumerated in the New Section 9 of the Act *discriminates unfairly* against the small real estate firms. This unfair discrimination; however, may be a blessing in disguise to the small brokerage company when a sharp attorney decides to challenge a "large" real estate firm trying to operate under this portion of the statute in a Court of Law. I don't think the public's interest is served by allowing small or large brokerage firms to work *both sides* of the street, as is apparently the intent of this new section of the Act.

In order to help you understand the potential damage this new Act will have on the real estate industry's ability to serve the public's interests, it would be helpful for me first to give you some background as to why the real estate brokerage industry exists, and what services they provide for the general public.

The need for people who specialize in the sale and marketing of real estate came about as a result of the *public's need* for assistance in converting the *equity* in their real property to *cash* or other property. The owner of a \$60,000.00 house with a \$30,000.00 first mortgage loan secured by the property is the owner of a \$30,000.00 *equity* in the property (\$60,000.00 less \$30,000.00 equals \$30,000.00 *equity*). An argument could be made that the person owning this \$30,000.00 real estate equity is not broke. The fact of the matter is that he would be *hard pressed* to find a grocery store, gas station, or other neighborhood merchant who would be willing to accept payment for their goods and services with his *non-liquid, non-divisible* \$30,000.00 real estate equity. Out of this scenario rises the need to convert real estate equity to *cash* which is *liquid, divisible*, and *universally accepted* by almost everyone in the marketplace.

If converting real estate equity into cash were easy, I believe that everyone would be selling their own properties. I have never met anyone who enjoyed paying real estate brokerage fee's or commissions. However, as a practical matter, most property owners do not want to sell their own properties, because they have no idea as to what the property is worth, what type of financing is available, what sales options are available to them, and therefore in this complex society they prefer hiring practitioners who specialize in the sale and marketing of real estate, and they are willing to pay a commission for the successful completion of same.

On the other hand, most people I have met who possess cash or the ability to borrow it, don't usually want to hire someone to help them spend it. I suppose if the fee for hiring someone to help them spend their cash were paid out of the transaction (as New Sec. 5. (a) provides/see Exhibit A), this new concept might grow in popularity. However, the merchant would probably kill the program by reducing the price charged for goods and services if a Buyer's Cash Broker was not involved. If the need for such a service were *universal*, we would have a Personal Property Industry or a Cash Industry specialized in helping people make *prudent* buying decisions, and this new Industry could be regulated by the Legislature with the appropriate Personal Property or Cash Commissions and the trade industries National Association of Cash and Personal Property Brokers as well as the Kansas Association of Same, etc. etc. Isn't it the ultimate irony, that the industry which came about as a result of the consumer's need for help in marketing their REAL ESTATE ultimately finds itself encumbered with a new Agency Act which literally promotes the interests of everyone in the REAL ESTATE transaction except the consumer who owns REAL ESTATE!

Frankly, the concept of Buyer's Brokerage in the real estate industry came about as a result of how Seller's Brokerage was set up, with real estate brokers acting as Agent's for the Seller. It is unfortunate that Real Estate Brokerage got tied up with Agency in the first place, since in my opinion, most real estate sales people act as *facilitators* who put real estate transactions together for *commissions*, and not as true agents of any party to the transaction except themselves. This does not mean that they do a bad job for the general public or that they are bad people. It means that they are following the nature of sales in the marketplace, and they are performing a public service. It also means that through their efforts in the marketplace they are able to provide a living for themselves and their families which is the reason most people work. The Real Estate Industry has been able to *get by* operating in this fashion for years, with I suspect few lawsuits starting out as Agency lawsuits per se, with Agency issues being added after the fact to other litigation by alert attorneys, who understands the dilemma real estate brokers are placed in with this Agency burden.

Sales people, including real estate sales people, act as *facilitators* in sales transactions. In the *average* real estate transaction, *both parties win* or the transaction doesn't go together.

If on the other hand, real estate sales people act as Agents for parties in a real estate transaction, as detailed in the New Agency Sections of this Act, they start acting like Attorneys do with their clients, creating an *assumption of hostility* between the parties to the transaction and creating an *adversarial relationship*, both of which are *not needed* and are *counter-productive* to the forces found in the *free marketplace*. Buyers and seller are ultimately harmed by this system which puts a burden on both Agents to *communicate* less instead of more. It cuts down *communication* in general. It creates *extra* work for everyone. And in the long term, the *general public* will pay more for real estate services. All of which *damages* the *public's interests*.

I have marked the more *onerous* sections of this new Act (see Exhibit A in it's entirety) with yellow marking pen since they are the ones dealing with Agency Relationships, and would be glad to visit with you in detail about how the provisions as legislated in this Act unnecessarily *encumber* the real estate industry. Frankly, many of the provisions of this new Act (not marked in yellow) are welcome relief to real estate practitioners and are sorely needed by our industry. However, the legislative cures administered in this Act to *reform* Agency, overshadow the other benefits achieved. The passage of this new Act to me symbolizes government's attempt on all levels to *control our lives*. This legislation helps those regulators, who under the *guise* of helping us, want to control our every move thus stifling productivity in this country and strangling our economy. The Real Estate Commission will *enjoy* new revenue from the *finer* they will levy against real estate broker's who fail to have the DAAR Form's in their files, or other required agency paperwork.

In all the real estate seminars I have attended over the years, a majority of the instructors teach that the Real Estate Broker's License Act is *consumer legislation* designed to protect the *public's interest*. Having been in sales for almost 30 years, and having observed other salespeople in the marketplace during that time, I believe I have a pretty *good handle* as to how these sales people in this industry will handle this new Agency Act and the DAAR Form. Many will *ignore* it. Many will be glad they are near retirement so they will not have to deal with it. Others will devise creative ways to *look good* when the Real Estate Commission comes calling for their annual inspection, which for the most part will create the image of compliance, without an ounce of effort going into informing the general public regarding agency relationships. While others will *live* with the law, and make an *earnest attempt* to abide by the Law, spending hours of their time in *non-productive* seminars educating the consumer who can then hire the above mentioned *fast tract artist*, as a buyer's agent. From a practical standpoint, the public could care less about representation unless they are *pumped up* by some excited salesman. And, unfortunately, the more complicated the system becomes (ie: this new Agency Act), the more susceptible it is to abuse. I feel confident that as a result of this new Law, there are real estate practitioners running all over town "signing people up", not necessarily because they want to help them, but because they want to make a *fast buck* without having to work too hard for it. These people have always been out there, and they have always made it harder for those practitioners who try to live by the Law and just want to see everyone in the transaction *win*.

In fact, the reason this new Act came into being was I would suspect a result of the efforts of what I would hope were *well meaning people* who are on the staff of the Kansas Association of Realtors (KAR), the National Association of Realtors (NAR), with input from the National Association of Real Estate License Law Officials (NARELLO), which the Director of the Kansas Real Estate Commission is a member. I am a member of the two Realtor organizations, and have no connection with the NARELLO. The KAR and the NAR both take it upon themselves to act as the voice of the real estate industry; however, they do not speak for me, and I believe there are dozens of members who do not want them speaking for them, plus there are dozens of real estate brokers who are not

members of these two organizations. Unfortunately, association staff members, and staff members with the Real Estate Commission are exposed to all the problem real estate transactions, and hear all the *negative* stories about real estate people in our industry, and they are not exposed to the dozens of successful real estate transactions which close every day, and as a result are *eager to suggest regulation* in the form of proposed legislation to the Legislature to correct the ills of the real estate industry. I haven't visited with a single real estate person in the Wichita market who was aware of any changes to the license Law relating to Agency, which means that this legislation became law without input from people in the marketplace. This new Act needed input from sales people directly involved in the marketplace and not from association people who lack experience in the marketplace, and who as a result don't have any concept of the negative impact this legislation will have on our industry out in the marketplace.

I am not interested in becoming involved in politics. I have some fear of reprisal from the Realtor Associations and the Real Estate Commission, but the issues which threaten our industry if this Act remains Law, outweigh personal concerns.

My primary desire is to sell new homes in the Wichita area market, and to put together transactions which benefit my builder and his buyers, and at the same time expand the tax base, creates construction industry jobs, and provide a living for my family and me. I take a great deal of pride in my activities in the marketplace and frankly resent having to spend the kind of time it takes to write a letter of this nature trying to get government off my and my industries neck, time which could more productively be spent selling new homes, creating additional jobs, and putting more money into the State Treasury in the form of State Income Tax. I have found however, that the opponents of free enterprise often lie within our own system.

I would ask that your office look into this legislation and determine if it is Constitutional, if it is a Restraint of Trade, if it is vague, if it should be set aside while meaningful legislation can be worked up which protects the public interest and does not destroy the real estate industry.

Sincerely,


John R. Todd

Enclosures 2

To: The News Media

Date: March 7, 1997

Subject: The BRRETA BILL (House Bill 2264) which was passed by the Kansas House of Representatives by an overwhelming majority.

Dear News Media:

The lead editorial comments concerning LOB's in the Sunday, March 2, 1997 edition of The Wichita Eagle, "The most serious problem facing government today is not high taxes or meeting voter demand for services. It's the growing belief that government leaders don't look out for the interests of ordinary people--the people who aren't represented by lobbyists or special interests with fat campaign-contribution budgets. If the elected officials who run our government do nothing else, they need to demonstrate, with their every action, that this popular impression of government is untrue--that government does work to the good of ordinary people", is appropriate as it relates to another issue which is soon to be debated by the Kansas Senate; The Brokerage Relationships in Real Estate Transactions Act; The BRRETA BILL, House Bill 2264.

The BRRETA BILL has been touted by the Kansas Real Estate Commission and the Kansas Association of Realtors as **consumer legislation!** The BRRETA BILL, in my opinion, has *little* to do with protecting the public's interests! I believe the BRRETA BILL is really a *struggle* among real estate licensees (usually large companies vs. small companies) over **money or market share** with an attempt on the part of the real estate industry to secure *liability protection* for themselves, through provisions enumerated in this law, *from* their customers and clients, who are the **consumers**.

1. **Money or Market Share.** Buyer and seller agency (representation) was legal under the old law (prior to BRRETA) and has been practiced for many years. Historically, seller agency has been the primary market force in the real estate industry (and the only reason the real estate industry exists!) *because* sellers are willing to pay real estate agents commissions for their expertise and assistance in converting their real estate equities into cash. Historically, buyer representation has not been as widespread and market driven, *because* most buyers didn't want to pay a real estate agent a commission 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. 1. Real estate agents found out that they could list real estate buyers and essentially control half of the real estate transaction and get paid. 2. The Realtors Multiple Listing Service allowed the buyers agent to collect a portion of the real estate commission, being paid by the seller. The buyers agents' fee was deducted out of the sellers proceeds at closing because the sellers listing agreement usually authorizes the buyers fee to be paid by the seller in a co-op situation.

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 were needed, and

thus the BRRETA ACT was created. Language regarding real estate compensation was needed in the law to legitimize the Multiple Listing Service practice of allowing agents to split 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. The real estate agent could now get around the buyers *reluctance* to pay commissions for buying real 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 who attended church, the PTA, or visited with neighbors across the fence, could easily capture half of the real estate market with minimal amount of effort or expertise.

2. **Liability Protection for the Real Estate Licensee From the Public.** 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 Dual Agency problem for the broker who wants to represent both sides of the real estate transaction. Most brokers were uncomfortable with 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 may attorneys who will allow their clients with *adversarial* interests to be represented by their law firm; however, real estate brokers apparently know no fear in representing both sides of a transaction 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 regarding the condition of real properties, by shifting their liability for such disclosure to people outside the real estate transaction, who are unlicensed home inspectors, accountable to no one? The real estate licensees essentially remove themselves from liability for disclosure of property defects to their customers and clients, the consumer public. Please see page 49 of House Bill 2264 as marked in yellow regarding this issue. Is the transfer of liability from the real estate licensee to someone else in a real estate transaction really in the *consumers best interest*? Is the BRRETA ACT really *consumer legislation*?

Is the BRRETA ACT an *abuse* of the legislative process? Is it right to Substitute Statutory law for Common Law as it relates to Agency so that larger real estate companies can control a larger market share with minimal effort? Should state law determine who pays the real estate commission in a real estate transaction? Can a buyer or seller who wishes to be represented in a real estate transaction, under current law, hire a real estate agent allowed to do so? What is the difference in a buyer or seller of personal property (as opposed to real property) each paying their own attorney fees for drawing the contract and handling the transaction vs. one party in a real estate transaction (the seller) always paying the real estate fee in every transaction?

If the BRRETA ACT is consumer legislation, why wasn't the public invited to the BRRETA Task Force hearings held in Wichita, Lawrence, and Dodge City? Why is the legislature being asked to legislate market share and liability protection contrary to the public's interests?

In conclusion, I would ask you to reflect on the statement made by the editorial writer in Sundays edition of The Wichita Eagle. Is it true that "government does work to the good of ordinary people", or is it true that government works for "the people who are represented by lobbyists or special interests with fat campaign-contribution budgets"?

Sincerely,



John R. Todd

Enclosures

P. S. I am a licensed real estate broker in the state of Kansas. I own my own real estate company here in Wichita. The opinions expressed in this letter are my own. 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*. I appreciate anything your publication can do to make government more responsive to the people. Should not this issue be decided in the "court of public opinion" rather than dictated by "special interest groups"?

PEOPLE RESOURCE CONTACTS REGARDING BRRETA

John R. Todd, broker/owner
John Todd & Associates
805 South Main, Suite 103
Wichita, Kansas 67213
(316) 262-3681 office
(316) 264-6295 residence

Please review the enclosures in this packet for John's views.

Tim Holt, broker
Golden Inc., Realtors
9420 W. Central
Wichita, Kansas 67212
(316) 729-0900 office
(316) 794-2313 residence

Tim Holt served on the BRRETA Task force. He can tell you how the Task Force did not reach a unanimous decision regarding most issues in the final Task Force report to the Legislature. The report actually contained two minority reports which shows the varied views among Task Force members regarding various issues. He can also tell you how the Kansas Real Estate Commission allowed the Kansas Association of Realtors to add amendments to their recommendations to the Legislature, and how the final recommendations bore little resemblance to the work of the Task Force. At the *public hearings* held by the Task Force in Lawrence, Wichita, and Dodge City, there were no *public notices* of the hearings, and as a result only members of the real estate industry were present. Please give Tim a call regarding the work of the Task Force.

Susan Crockett-Spoon
a Real Estate Salesperson for a large Wichita area franchise company
1004 S. Gouverneur
Wichita, Kansas 67207
(316) 684-0526 office
(316) 683-7135 residence

Susan can give you the view of a career salesperson, employed by a large company, who deals one-on-one daily with the buying and selling public. From her point of view, being the daughter of an attorney, she has the sense of the difference of the adversarial role the BRRETA ACT creates (like the work of her Father), vs. the positive atmosphere needed between the buyer, seller, and salesperson in creating a real estate transaction which has benefits for all parties. Real estate needs to be a fun and positive endeavor for the buying and selling public rather than an event structured in an adversarial manner.

Larry Rickard, owner

Realty School of Kansas and
Continental Real Estate
3241 E. Douglas
Wichita, Kansas 67218
(316) 685-3652 office
(316) 687-5723 residence

Realty School of Kansas conducted the *only* survey of all real estate licensees in the state of Kansas asking for their opinion of the BRRETA ACT. Enclosed is a copy of that survey showing the results of those licensees who chose to respond. An interesting footnote, some people responded requesting assurance that their name not be released, fearing repercussion from the Kansas Association of Realtors and/or the Kansas Real Estate Commission. Please note that over 90% favored allowing BRRETA to sunset! Mr. Rickard teaches his real estate school from the viewpoint of a practicing real estates broker. He has been attending Real Estate Commission meetings for many years which provides him with a enhanced prospective concerning the operation and motivations of the real estate industrys' *regulatory agency*.

Gary A. Merritt
10301 Granada
Overland Park, Kansas 66207
(913) 341-5525

Former Kansas House of Representative member Gary Merritt is very knowledgable about BRRETA having presented a Position Paper and Analysis of BRRETA to the 1996 Legislature and to the Real Estate Commission (see enclosed copy). Mr. Merritt is a commercial real estate broker from the Kansas City area and has invaluable insight regarding this issue, from the viewpoint of a practicing commercial real estate broker and as a member of the 1996 Legislature who took an active role in this legislation. He advocates a solution to the BRRETA dilemma which deserves attention.

Representative Gwen Welshimer
6103 Castle
Wichita, Kansas 67218
(316) 685-1930 residence
(913) 296-7511 Topeka office

Representative Welshimer is a practicing real estate broker and appraiser. She is a valuable source for information regarding BRRETA.

Paul R. Brown, MAI, REALTOR EMERITUS
Paul R. Brown & Associates, Inc.
221 South Broadway, Suite 539
Wichita, Kansas 67202
(316) 264-0394 office

and
Betty Spingler
Paul R. Brown & Associates, Inc.
221 South Broadway, Suite 539
Wichita, Kansas 67202
(316) 264-0394 office
(316) 684-0806 residence

Please call Mr. Brown or Ms. Spingler of this respected firm for their views regarding BRRETA.

Ogle E. Harden, REALTOR EMERITUS
Midwest Real Estate
P. O. Box 757
Coffeyville, Kansas 67337
(316) 251-4140

Please call Mr. Harden for his views regarding BRRETA.

Matt Eck, Owner/Broker
Matt Eck Real Estate, Inc.
5512 W. Central
Wichita, Kansas 67212
(316) 942-7402

Matt owns and operates a real estate firm of approximately 25 sales associates. Enclosed is a copy of his letter to a legislator regarding his views on this matter. Please call Matt for the views of a practicing real estate broker/owner to find out the impact of the BRRETA ACT on his business.

Merrill F. Suter, Broker/Owner
Hearthside Realty, Inc.
4707 Surfboard Drive
Cheney, Kansas 67025
(316) 721-6501 office
(316) 794-8415

Mr. Suter's enclosed letter details his thinking on the BRRETA ACT.

Steve Miller
Home Real Estate
401 S. Keith
Wichita, Kansas 67209
(316) 729-6600

Mr. Miller's enclosed letter details the public confusion and unfairness to the seller created by this Act.

Cleve Smith and
Grant Delmar
Stoneborough Real Estate
103 E. 53rd St. Ct. South
Wichita, Kansas 67216
(316) 524-1606

Cleve and Grant market new homes. They can tell you the negative impact BRRETA has on their market.

Arthur A. Unruh, Auctioneer/Broker
Buy Now Realty & Auction Co.
501 Washington Road
Newton, Kansas 67114
(316) 283-4920

Art can give you insight from the perspective of a real estate auctioneer.

Lynn Hoyt, Broker/Owner
Real Estate Center
3219 E. Douglas
Wichita, Kansas 67218
(316) 682-0077

Lynn can give you insight from the viewpoint of a small real estate company with many years experience.

Steve Moore
The Second Regency, Inc.
113 E. Albert
Maize, Kansas 67101
(316) 729-0001

Please review his letter to the House Judiciary regarding Steve's views.

Jim Gordon
The Gordon Company
Box 382
Norton, Kansas 67654

Jim can give you great insight as to how this law impacts a small town, rural broker.

Attached is a copy of the **Disclosure of Alternative Agency Relationships Form**, 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.

Real estate agents are required by the BRRETA ACT to verbally disclose the information on the attached DAAR Form to prospective buyers "before the agent gets involved in *substantive discussion* with the prospective buyer regarding the purchase of real estate". What is substantive discussion? Is it everything which isn't substantive? As a buyer of real estate, do you want a 10 to 15 minute seminar regarding Alternative Agency Relationships simply because you asked the agent "What is the price of this property?"? If, through the use of this form, the agent runs the sellers prospective buyer away from the property, had not that agent just violated his *fiduciary* relationship with his seller? How would you like to go out to J. C. Penney to purchase a shirt and have the agent/clerk working for Penneys "read you your rights in a short seminar" before entering into *substantive discussion* regarding the purchase of a shirt. I don't think the sales clerk would last long at Penneys if he sent prospective customers to Wards or Dillards for *representation* like this form does.

This is probably the most abused, misunderstood, and ignored form the real estate industry has ever been required to use. Please see page 33 of House Bill No. 2264 to see the potential criminal penalties a real estate licensee could face for "willful violation" of the Law by his willful failure to use this mandated form.

I believe it would be interesting for you to go out to the real estate marketplace (via open houses or private property inspections) in your home district to find out how varied the use of the mandated DAAR Form is by real estate licensees. Mr. David Pierce with the Kansas Real Estate Commission Office indicated that his office had had calls from Buyers and Sellers of real estate complaining that the *first* time they had seen this mandated form was at the real estate closing table. Certainly, substantive discussion regarding the sale or purchase of the real estate had commenced prior to the closing of the transaction, and certainly, in my opinion, the licensees involved in the real estate transaction had not followed the intent of the law by their actions and had "willfully violated" the law as described on page 33 of House Bill 2264.

The problem with forms of this nature is the wide variety of usage among real estate licensees. A licensee who prides himself in following the letter of the law will present the form and the seminar before entering into substantive discussion with a prospective buyer, and risk losing this prospective buyer to another licensee who glosses over the form or does not present it until the closing of the transaction. IT SEEMS OBVIOUS THAT THOSE LICENSEES WHO METICULOUSLY FOLLOW THE INTENT OF THE LAW AND USE THIS MANDATED FORM AS THE LAW INTENDS, CLEARLY WORK AT DISADVANTAGE TO THOSE LICENSEES WHO GLOSS OVER, IGNORE, OR GET THE FORM SIGNED AT CLOSING! *Could one properly assume that the licensee who tends to be the "fast tracked artist" or the "unethical" or the "crook" clearly has the advantage in the real estate marketplace, and isn't it clear that this unfair advantage is becoming a part of the law of the state of Kansas?*

DISCLOSURE OF ALTERNATIVE AGENCY RELATIONSHIPS

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.

Please review the enclosed "**Exclusive Right To Sell Listing Agreement**" for sellers agents and the "**Exclusive Buyer Agency Agreement**" for buyers agents and then consider the following questions and comments.

If the seller of real estate is on an equal playing field with the buyer of real estate under the BRRETA ACT, why is par. 4 of the Exclusive Right To Sell Listing Agreement excluded from the Exclusive Buyer Agency Agreement? Does this mean that the buyer of real estate is precluded from Offering cooperation and compensation to sub-agents and cooperation and compensation to buyer's agents? Or does it mean that the buyers agent is looking to the seller of real estate for compensation? How does a buyers agent get paid for selling a non-listed "For Sale By Owner" property? How does an agent who is aware of a "For Sale By Owner" property which perfectly fits the needs of an exclusively listed buyer get paid acting as a sub-agent capacity if the buyer is not offering cooperation and compensation?

Why isn't the buyer broker client required to be listed in the Multiple Listing Service (see par. 23 of the Exclusive Right To Sell Listing Agreement) so that agents who act for sellers can "pair-up" prospective buyers with their listed properties? Doesn't this exclusion mean that the seller is not on an equal playing field with the buyer?

*There is nothing wrong with Buyer Brokerage if it is done properly. **Buyers agency has been available to the buying public for years**; however, it was done on a more professional basis with buyers and brokers spending up-front time in counseling sessions before the buyer agency agreement was signed. The buyer normally paid the real estate broker he hired for the services he received. Today's common buyer agency practice is much more casual and takes place over the back-fence, at PTA meetings, or at Church social hours when a real estate agents find out their friends or neighbors are looking for a home and in a lot of cases have already found the home they would like to buy. The casual signing of an Exclusive Buyer Agency agreement among friends and acquaintances for periods of six months to a year are common, and insures that the buyers "agent" will be paid a commission (usually from the proceeds of the sellers commission) for bringing about the consummation of a transaction. This practice of casual buyer agency is particularly beneficial to larger real estate companies with hundreds of agents. Many times, with little work, they can capture half of the real estate market with this effective marketing tool. In fairness to the buyer agency, you need to be aware that there are many buyer agent licensees who do an excellent and professional job for their clients. **However, if buyer agency is as market driven as we are told it is, why wouldn't buyers be willing to pay their agents for their services rather than insist that the commission come out of the sellers proceeds?** In the event you do not let the Brreta Act sunset, please change the compensation clause to read as follows: "A buyer or a seller of real estate can employ the services of a real estate licnesee to assist them in the purchase or sale of real property, provided that the prospective buyer or seller who desires those services, pays for those services.". This allows free maket forces to work.*

EXCLUSIVE BUYER AGENCY AGREEMENT

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.

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.

7. 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.

*Continued from above: Owner property owner to pay the compensation out of his proceeds? Perhaps the Buyer Agents client paid the compensation, his agent could actively advertise and look for "For Sale By Owner" properties for his

In the event, as is usually the case, the buyers agent expects to be paid by the seller through provisions in the Exclusive Seller Listing of another licensee, how does the buyers agent get paid when his client purchases a "For Sale By Owner" property? Does the "Compensation" mean the buyers Agent can force the "For Sale By Owner"?

BROKER DOES REPRESENT BOTH PARTIES: The BUYER and SELLER must sign a "Dual Agency Consent Agreement", which describes the duties and obligations of the disclosed dual agent. A disclosed dual agent will not disclose any confidential information that would place one party at an advantage over the other party unless 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 the 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.

BUYER consents to a disclosed dual agency, subject to both BUYER and SELLER signing a Dual Agency Consent Agreement (please initial):
_____ Yes _____ No

B. DESIGNATED AGENT RELATIONSHIP: 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. BUYER understands that the agent will act as agent of the SELLER only with respect to a transaction involving a property that the agent personally listed, unless the BUYER and SELLER consent in writing to the agent acting for both as a disclosed dual agent.

BUYER consents to designated agent relationship (please initial): _____ Yes _____ No

(Complete the following sentence if applicable.) The BROKER hereby designates _____
to act as a designated agent on BUYER'S behalf except for situations which require a disclosed dual agency.

9. Other potential buyers may consider, make offers on, or purchase through BROKER the same or similar properties as BUYER seeks. BUYER consents to BROKER'S representation of such potential Buyers during this Agreement and after its expiration. Broker shall not, however, disclose to BUYER material terms of any pending offer, nor shall Broker reveal, or discuss with other buyer clients, material terms of any offer made by BUYER.

10. BUYER agrees to indemnify and hold harmless BROKER on account of any loss or damage arising out of this Agreement, provided BROKER is not at fault, including but not limited to attorney's fees reasonably incurred by BROKER. BROKER is not responsible for accuracy or extent of information relative to any property and BUYER shall satisfy himself with respect thereto.

11. **NONASSIGNMENT OF CONTRACT:** BUYER and BROKER understand and agree that the relationship created by this Agreement is a personal one and that neither the BUYER nor the BROKER shall have the right to assign this Agency Agreement to third parties without the consent of the other.

12. **COSTS OF SERVICES OBTAINED FROM OUTSIDE SOURCES:** BROKER shall not obtain or order products or services from outside sources unless BUYER agrees in writing to pay for the same immediately when payment is due. Examples of such products or services would include, but are not limited to, surveys, soil tests, title reports, engineering studies, and inspections.

13. **PERSONAL AND FINANCIAL INFORMATION:** BUYER agrees to provide BROKER, upon request, with relevant personal and financial information relevant to BUYER'S ability to acquire property of the character and quality described above.

14. The parties shall not discriminate against any prospective Seller or Lessor because of the race, creed, color, sex, marital status, national origin, familial or handicap status of such person.

15. **ATTORNEY'S FEES:** In the event of litigation concerning the rights of BUYER and BROKER pursuant to this Agreement, the parties agree that the court shall award reasonable attorney's fees and court costs to whichever party shall prevail in such option, to the extent allowed by law.

16. BROKER advises BUYER to seek legal, tax and other professional advice relating to any proposed real estate transaction. BROKER does not make any representation or warranty with respect to the advisability of or the legal or tax effect of any transaction contemplated by BUYER and shall cooperate fully with any legal or tax counsel of BUYER'S choice. BROKER is not expert in matters relating to law, tax, financing, surveying, structural condition, hazardous materials, engineering or other highly specialized areas, and BUYER is encouraged to seek expert assistance in these areas.

17. This agreement constitutes the entire agreement between the parties and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this agreement. There shall be no modification of this agreement unless in writing and signed by both parties.

CAREFULLY READ THE TERMS AND INITIAL EACH PAGE HEREOF BEFORE SIGNING. WHEN SIGNED BY ALL PARTIES, THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING.

BUYER hereby certifies that he/she has received a copy of this Agreement.

BROKERAGE

BY Date

BROKER'S Address

BROKER'S Telephone Number

BUYER Date

BUYER Date

BUYER'S Address

Work Phone Home Phone

3-29

EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT

The 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

Seller Date

By Date

Seller Date

Broker's Address

Seller's Address

Broker's Phone Number

Work Phone Home Phone

Why would co-operation and compensation only be mentioned on the sellers Exclusive Agency Listing and not on the Exclusive Buyer Agency Agreement? Are the Buyers and Sellers being treated equally? Or is the real estate fee only being collected from the seller?

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 the seller 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.



Why is information regarding the seller and his property listed in the Multiple Listing Service Computer?
Is this fair to the sellers of real estate?

Kansas Real Estate Commission (KREC) Update

What's going on at the KREC that you need to know about?

A. Proposed legislation

At their December 19 meeting, the KREC will be reviewing a legislative package containing the following proposals:

1. Compensation of Licensed Personal Assistants

Permit licensees to pay licensed personal assistants directly, rather than requiring that their compensation come from the broker. The proposed legislation would make clear that supervisory responsibility would still remain with the employing broker and would not in any way be delegated away if a broker permitted salespersons or associate brokers to compensate their licensed personal assistants directly.

2. Ability of sales associates to incorporate as professional corporations/More favorable tax treatment under the limited liability company business affiliation.

The KREC is contemplating recommending an amendment to the professional corporations statute which would permit licensees to incorporate as professional corporations for the receipt of commissions. Over the years, sales associates and broker associates have been frustrated at their inability to take advantage of a corporate business structure for income tax purposes.

Additionally, beyond the KREC activity in this area, the Treasury Department has published a proposed regulation, which would permit a limited liability company to be taxed as a sole proprietorship, rather than as a corporation as it stands under current law. If that proposed regulation becomes final, the Kansas Bar Association and KAR is looking at legislation which would alter Kansas LLC law to permit an individual to create an LLC rather than requiring a minimum of two members.

3. Salespersons as officers of real estate corporations

The current license law prohibits salespersons from being an officer of a corporation. This proposal could permit corporations involved in real estate activities to have an officer who is only a salesperson, not a broker.

4. New timing for 30 hour post-license course

The commission is considering requiring newly licensed salespersons to take the 30 hour post license course within the first six months after licensure. They are contemplating creating a temporary license which expires after 6 months. After a new licensee takes the 30 hour course, they would receive a regular license. The concept presumes a salesperson with a temporary license is able to do everything a regular licensee would do. "Temporary" would only refer to how long the license is valid.

B. Fine schedule changes.

The KREC has changed their fine schedules as follows:

1. Failure to obtain a written agency agreement—changed from \$250 per violation, up to a \$500 maximum, to \$250 for the first violation and \$100 for each violation thereafter up to a maximum of \$5,000.
2. Failure to include a closing date in a contract and failure to include an expiration date in an agency agreement—changed from \$50 per occurrence to \$150 per occurrence.
3. Failure to deposit earnest money within the statutory time period, or for failure to deliver the contract and earnest money check to a 3rd party escrow agent within the statutory time period—\$50 per day for each day that the deposit was late, up to a maximum of \$250 per deposit.

MAKEUP OF THE KANSAS REAL ESTATE COMMISSION:

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

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*?

GARY A. MERRITT
REPRESENTATIVE TWENTY-TH DISTRICT
JOHNSON COUNTY
10301 GRANADA
OVERLAND PARK, KANSAS 66207

STATE CAPITOL ROOM 175-W
TOPEKA, KANSAS 66612-1504
913-296-7695



TOPEKA

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

ANALYSIS OF THE BROKERAGE RELATIONSHIPS IN REAL ESTATE TRANSACTION ACT

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

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

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

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

2.

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

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

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

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

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

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

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

GARY A. MERRITT
REPRESENTATIVE TWENTIETH DISTRICT
JOHNSON COUNTY
10301 GRANADA
OVERLAND PARK, KANSAS 66207

STATE CAPITOL, ROOM 175-W
TOPEKA, KANSAS 66612-1504
913-296-7695



TOPEKA

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

POSITION PAPER

Brokerage Relationships in Real Estate Transactions Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I am a member of the legislature and I know how the passage of this very poor legislation occurred. It was misrepresented as being legislation that the entire real estate industry wanted, when in fact it was for the interest of the few. **The question must be answered..... if this BRRETA legislation is so great, why is that very lobbyist who pushed it through , scared to death for it to undergo the scrutiny of a fair legislative hearing before the committees of both the House and Senate.**

When legislation must be passed by these means; and then those who shoved it past the legislature, are afraid for it to be revisited to have a really fair hearing, you can be pretty sure it is badly flawed and won't stand the test of those hearings.

THIS MESS WAS DONE IN THE LEGISLATURE, TO THE LEGISLATURE AND BY THE LEGISLATURE AND IT NEEDS TO BE REPEALED BY THAT SAME LEGISLATURE.

Perhaps if these methods are to be employed, it may be a good time to indicate that the make-up of the Kansas Real Estate Commission should also be scrutinized by the legislature and determined if more "public" representation is necessary to stop these things from happening again in the future. Also the influence of a lobbyist, together with a trade group, over the Real Estate Commission may need to be reviewed.

Most of these remarks are primarily from the perspective of the public's interest; the harm done to the honest hardworking licensees would take many more pages.

When any group begins to think that "their agenda", disguised as concern for the public, is more important than fairness in dealing with the very people they are supposed to be serving, it is time to take another look at the system.

BRRETA (Senate Bill 110) was represented to the legislature as being the legislation that the "real estate industry really wanted." That, in fact, was misrepresentation of the highest order. Most of the industry had absolutely no idea what was being perpetrated on the them at the prompting and promoting of either; their own trade organization or a trade group which doesn't represent their interest at all.

Will all of you folks endeavor to be fair and let this issue be heard in the legislature or are you bent on suffering the consequences? If average people in the real estate industry think it doesn't make good sense, it probably doesn't; no matter what others with vested interest in saving face, may have to say.

Just like a rotten apple..... waiting a year or two isn't going to make it any better, and it is believed by many that immeasurable harm will be done if we don't act now. Being willing to listen and make changes may save large numbers of law suits and much harm to the public and our profession.

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 Sellers 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: Pro. 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 standarization, 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 Ks. 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 of Anti-Private Prop?)

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 SUBJECTED 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?

THANK YOU for your membership and/or survey submission!

Although the response (return) to surveys are normally very low, we have had a good response. The percentage breakdown is provided on the attached summary sheet. Likewise, it is important that we restate that our objectives or goals are to be a "POSITIVE FORCE" for input into all organizations or entities to provide some "COMMON SENSE" input into regulations, laws, etc., that are good for business and the protection of the public. Further, it is the intent of RSK to be a bi-partisan effort in that regard.

It is also important that we recognize that a small number or group of people have controlled the passage of most of our "red tape" via unnecessary Laws & regulations. Generally the public and the majority of all licensees have had no knowledge and little interest in the things that were passed under the "guise" of this is what the industry wants or needs, AND this is what the public wants or needs for their or the public's protection. Thus, our informal organization, RSK members & supporters, need to understand that we can provide input through RSK directly, as well as influence the THREE PRIMARY ORGANIZATIONS that have been used on a State and National basis by Staffers, Officers, and lobbyists to promulgate much of the "onerous" laws and regulations we are experiencing.

Three of the primary forces are:

1. ONE, is our own Realtors organization. Many members, if not a majority or most, have come to feel that their organization has become one that primarily represents the interest of the staff and officers vs. the membership at large. The BRRET Act's passage is a primary example of this. Even our Realtor/KAR News said the split was probably 50/50 among the membership. Given that only 50% of all licensees belong to our Realtor organization, that leaves a minimum of approximately 75% that opposed the new Law. SECONDLY, the public had no idea the law was being passed.
2. SECOND, the Staffs of Real Estate Commissions via ARELLO (Assoc. of Real Estate License Law Officials), has a National forum and organization to help one another develop more laws, regulations, mandatory forums, etc. If one State or group passes a law, then they help support other Commissions across the country to support the passage of their law or regulation(s).
NOTE: Certainly all laws or regulations are not "onerous", but by admission and experience of most small businesses, a majority of the regulation is overkill. The increased costs of more paperwork is merely passed on to the public. It either has or is being switched from WAS THE PUBLIC PROTECTED & SERVED-- to-- IF YOU FAILED TO CHECK THE FORM OR DOT THE "I", then let's levy a "fine" and raise some revenue! E. G. There have been "very serious" questions about, are licensee's using DAAR form #2 after approval vs. DAAR form #1, and that would be in violation of the law, etc., etc., THUS, WE ARE DEVELOPING A "SEPARATE BODY" of KNOWLEDGE that really has nothing to do with practicing real estate, BUT would require even the best of real estate practitioners to spend countless hours and dollars to become familiar with which form to use, which "red tape", is this the "current" mandated form, etc., before they could utilize their years of knowledge & experience accumulated serving the public without having had significant problems or lawsuits.
3. THIRD, some Real Estate Educators via Real Estate Educator Associations are helping foster more unnecessary Laws and Regulations through a national forum facilitated by such National Educators Associations via some real estate instructors. We even have "tax" supported public educational entities competing with private enterprise; despite the fact that it has been well established that public education is not adequately teaching our children to read and write. The public has not been "clamoring" to have more public funds via tax dollars and facilities diverted from educating our children to providing cont. education for real estate licensees. Some instructors have little, if any, successful experience in the market place. Certainly, any educator can cover the "academic" pre-license course presently required to obtain a real estate license; however, should there not be a requirement of having been active & successful in the market place and have teaching experience in order to teach cont. ed.? We have tax supported entities competing with private schools on the one hand, and a possible effort to monopolize real estate education by our trade association on the other hand, with "Career" government employees providing mutual support to one another for the permanent establishment of a non-productive bureaucracy via more laws, regulations, forms, & "red tape".

Given the above scenario, one may more fully understand how and why we have an environment of "growing" legislation and regulation that is not serving the public or the industry. The primary benefactors, consist mostly of the staffers and officers of these organizations, which profit via more control and revenues, while purporting to be working for the interest of the public or the real estate industry.

FOR EXAMPLE: If you have not noticed OR are not aware of it, all licensed brokers will be required to attend or take a "NEW" mandatory course (SIX HOURS) for all Brokers--PUBLIC HEARING 11/21/96 at Ks. R.E. Commission, Topeka. The outline has mostly fundamentals covered in principles of real estate, & appears to have been designed by educators with limited real estate experience. The results of this, as one example, THE TOPIC of "CLOSING" was not initially included in the outline, BUT such topics as "stigmatized" properties is a "must". NOW, consider the amount of time any licensed agent (salesperson or broker) actually expends pertaining to each closing, which has a direct affect on the public and the agent, VS. the # of times an agent will be required to work with a "stigmatized" property. YOU ARE ENCOURAGED TO REVIEW THE NEW REQUIREMENTS (MANDATORY COURSE-SIX HOURS) and PROVIDE YOUR INPUT by letter or by attending the public hearing 11/21/96 at KREC. AT MOST, we feel the mandatory COURSE SHOULD only include FOUR HOURS and pertain to license law update, AND things like closing process VS. many other items, that include "telling" you how to run your office. Is that the Commission's business? Or a function of private enterprise?

THUS, to repeat, many of us feel that we must have an organization in order to provide "positive" input, both through the three "primary" entities above, AND through RSK. If you have an occasion to attend a Commission meeting once, or a couple of times, you will find a friendly and cordial atmosphere; however, if you attend over a longer period of time you will find input is not well received, unless you represent one of the three primary providers of input, OR an organization. This circumstance is one of the primary reasons the three organizations above are able to control the communication and input for decisions, legislation, etc., even though they may not be representing the interest or views of the public or the membership. Given the admission in our Realtor article that the Realtor membership was split 50/50 on the BRRET issue, does anyone question that the passage of the BRRET Act WAS NOT IN THE INTEREST of the PUBLIC or the INDUSTRY? ONLY, approximately, 50% of all LICENSEES BELONG to the Realtors, AND only one half of those licensees support the law, THEN 25% or less of the industry supports it, as the other 50% (non-Realtors) do not support it. Certainly, personal and public "ego's" have played a major role with the BRRET issue, and we should all be cognizant, if not sensitive to the issue, BUT we SHOULD take or develop the opportunity to PROVIDE "positive" input into all organizations as RSK individuals, in addition to our collective RSK efforts. We have already seen some positive results and attitude changes from your efforts. Thanks for your response.

Larry D. Rickard, Coordinator
Realty School of Kansas (RSK)

Attached is a copy of:
HOUSE BILL NO. 2264,
The BRRETA BILL.

**BEFORE YOU VOTE *FOR* OR *AGAINST* THIS BILL, PLEASE
TAKE A FEW MINUTES TO REVIEW THE UNDERLINED
PORTIONS OF THE BILL, ALONG WITH THE QUESTIONS AND
COMMENTS DETAILED IN THE MARGINS ON PAGES 4, 29, 33,
34, 37, 40, 41, 42, 45, 47, 49, 50, 54, 61, 62, AND 63 OF THE BILL.**

HOUSE BILL No. 2264

By Committee on Judiciary

2-7

9 AN ACT concerning real estate; relating to the brokerage relationships
10 in real estate transactions act; amending K.S.A. 17-2707, 58-3045 and
11 58-3063 and K.S.A. 1996 Supp. 58-3036, 58-3037, 58-3039, 58-3042
12 and 58-3046a and repealing the existing sections; reviving K.S.A. 1996
13 Supp. 58-3035, 58-3050, 58-3062, 58-3064, 58-3065, 58-3068, 58-
14 30,101, 58-30,102, 58-30,103, 58-30,104, 58-30,105, 58-30,106, 58-
15 30,107, 58-30,108, 58-30,109, 58-30,110, 58-30,111, 58-30,112 and 74-
16 4202; amending K.S.A. 1996 Supp. 58-3035, as revived by section 3 of
17 this act, 58-3050, as revived by section 11 of this act, 58-3062, as re-
18 vived by section 13 of this act, 58-3064, as revived by section 16 of this
19 act, 58-3065, as revived by section 18 of this act, 58-3068, as revived
20 by section 20 of this act, 58-30,101, as revived and amended by section
21 22 of this act, 58-30,102, as revived by section 24 of this act, 58-30,103,
22 as revived by section 26 of this act, 58-30,104, as revived by section 28
23 of this act, 58-30,105, as revived by section 30 of this act, 58-30,106,
24 as revived by section 32 of this act, 58-30,107, as revived by section 34
25 of this act, 58-30,109, as revived by section 37 of this act, 58-30,110,
26 as revived by section 39 of this act, 58-30,111, as revived by section 41
27 of this act, 58-30,112, as revived by section 43 of this act, and 74-4202,
28 as revived by section 45 of this act, and repealing the existing sections;
29 also repealing K.S.A. 1995 Supp. 58-3035, as amended by section 20
30 of chapter 212 of the 1996 Session Laws of Kansas, 58-3050, as
31 amended by section 12 of chapter 212 of the 1996 Session Laws of
32 Kansas, 58-3062, as amended by section 13 of chapter 212 of the 1996
33 Session Laws of Kansas, 58-3064, as amended by section 14 of chapter
34 212 of the 1996 Session Laws of Kansas, 58-3065, as amended by
35 section 15 of chapter 212 of the 1996 Session Laws of Kansas, 58-3068,
36 as amended by section 16 of chapter 212 of the 1996 Session Laws of
37 Kansas, 74-4202, as amended by section 17 of chapter 212 of the 1996
38 Session Laws of Kansas and K.S.A. 1996 Supp. 58-30,108, as revived
39 by section 36 of this act and 74-4209.

41 *Be it enacted by the Legislature of the State of Kansas:*

42 New Section 1. On and after October 1, 1997:

43 (a) A broker engaged as a transaction broker is not an agent for either

23-
27
28

1 party.
2 (b) A transaction broker shall have the following obligations and
3 responsibilities:

4 (1) To perform the terms of any written or oral agreement made with
5 any party to the transaction;

6 (2) to exercise reasonable skill and care as a transaction broker, in-
7 cluding, but not limited to:

8 (A) Presenting all offers and counteroffers in a timely manner, even
9 when the property is subject to a contract of sale;

10 (B) advising the parties regarding the transaction and suggesting that
11 such parties obtain expert advice as to material matters about which the
12 transaction broker knows but the specifics of which are beyond the ex-
13 pertise of the licensee;

14 (C) accounting in a timely manner for all money and property re-
15 ceived;

16 (D) keeping the parties fully informed regarding the transaction;

17 (E) assisting the parties in complying with the terms and conditions
18 of any contract including closing the transaction;

19 (F) disclosing to all prospective buyers or tenants all adverse material
20 facts actually known by the transaction broker, including but not limited
21 to:

22 (i) Any environmental hazards affecting the property which are re-
23 quired by law to be disclosed;

24 (ii) the physical condition of the property;

25 (iii) any material defects in the property;

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

27 (v) any material limitation on the seller's or landlord's ability to per-
28 form under the terms of the contract; and

29 (G) disclosing to any prospective seller or landlord all adverse ma-
30 terial facts actually known by the transaction broker, including but not
31 limited to material facts concerning the buyer's or tenant's financial ability
32 to perform the terms of the transaction;

33 (3) comply with all requirements of this act and rules and regulations
34 adopted hereunder; and

35 (4) comply with any applicable federal, state and local laws, rules and
36 regulations and ordinances, including fair housing and civil rights and
37 rules and regulations.

38 (c) Except as provided in subsection (d), the transaction broker is not
39 required to disclose to any party to the transaction information relating
40 to the physical condition of the property if a written report regarding the
41 physical condition of the property has been prepared by a qualified third
42 party and provided to the party.

43 (d) A transaction broker shall disclose to the party any facts actually

Handwritten initials and numbers: "18" and "14" with a checkmark.

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

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

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

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

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

14 (3) what the motivating factors are for any party buying, selling, or
15 leasing the property;

16 (4) that a seller, buyer, landlord or tenant will agree to financing
17 terms other than those offered; or

18 (5) any information or personal confidences about a party to the
19 transaction which might place the other party at an advantage over the
20 party unless the disclosure is required by law or failure to disclose such
21 information would constitute fraudulent misrepresentation.

22 (g) A transaction broker has no duty to conduct an independent in-
23 spection of the property for the benefit of any party to the transaction
24 and has no duty to independently verify the accuracy or completeness of
25 statements made by the seller, landlord, buyer, tenant or qualified third
26 party inspectors.

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

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

32 (1) Show alternative properties not owned by the seller or landlord
33 to a prospective buyer or tenant;

34 (2) list competing properties for sale or lease;

35 (3) show properties in which the buyer or tenant is interested to other
36 prospective buyers or tenants; and

37 (4) serve as a single agent or subagent for the same or for different
38 parties in other real estate transactions.

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

42 (k) A transaction broker may cooperate with other brokers or coop-
43 erate and pay compensation to other brokers but shall not engage any

Should state law allow professionals to opt out of liability as detailed on page 49?

3-19
80

1 subagents.

2 Sec. 2. On and after October 1, 1997, K.S.A. 17-2707 is hereby
3 amended to read as follows: 17-2707. As used in this act, unless the con-
4 text clearly indicates that a different meaning is intended, the following
5 words mean:

6 (a) "Professional corporation," a corporation organized under this act.

7 (b) "Professional service," the type of personal service rendered by a
8 person duly licensed by this state as a member of any of the following
9 professions, each paragraph constituting one type:

- 10 (1) A certified public accountant;
- 11 (2) An architect;
- 12 (3) An attorney-at-law;
- 13 (4) A chiropractor;
- 14 (5) A dentist;
- 15 (6) An engineer;
- 16 (7) An optometrist;
- 17 (8) An osteopathic physician or surgeon;
- 18 (9) A physician, surgeon or doctor of medicine;
- 19 (10) A veterinarian;
- 20 (11) A podiatrist;
- 21 (12) A pharmacist;
- 22 (13) A land surveyor;
- 23 (14) A licensed psychologist;
- 24 (15) A specialist in clinical social work;
- 25 (16) A registered physical therapist;
- 26 (17) A landscape architect;
- 27 (18) A registered professional nurse;
- 28 (19) A real estate broker or salesperson.

29 (c) "Regulating board," the board or state agency which is charged
30 with the licensing and regulation of the practice of the profession which
31 the professional corporation is organized to render.

32 (d) "Qualified person":

- 33 (1) Any natural person licensed to practice the same type of profes-
34 sion which any professional corporation is authorized to practice;
- 35 (2) the trustee of a trust which is a qualified trust under subsection
36 (a) of section 401 of the internal revenue code of 1954, as amended, or
37 of a contribution plan which is a qualified employee stock ownership plan
38 under subsection (a) of section 409A of the internal revenue code of 1954,
39 as amended; or

40 (3) the trustee of a revocable living trust established by a natural
41 person who is licensed to practice the type of profession which any pro-
42 fessional corporation is authorized to practice, if the terms of such trust
43 provide that such natural person is the principal beneficiary and sole

1 trustee of such trust and such trust does not continue to hold title to
2 professional corporation stock following such natural person's death for
3 more than a reasonable period of time necessary to dispose of such stock.

4 Sec. 3. On and after July 1, 1997, K.S.A. 1996 Supp. 58-3035 is
5 hereby revived to read as follows: 58-3035. As used in this act, unless the
6 context otherwise requires:

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

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

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

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

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

27 (f) "Broker" means an individual, other than a salesperson, who ad-
28 vertises or represents that such individual engages in the business of buy-
29 ing, selling, exchanging or leasing real estate or who, for compensation,
30 engages in any of the following activities as an employee of, or on behalf
31 of, the owner, purchaser, lessor or lessee of real estate:

- 32 (1) Sells, exchanges, purchases or leases real estate.
- 33 (2) Offers to sell, exchange, purchase or lease real estate.
- 34 (3) Negotiates or offers, attempts or agrees to negotiate the sale,
35 exchange, purchase or leasing of real estate.
- 36 (4) Lists or offers, attempts or agrees to list real estate for sale, lease
37 or exchange.
- 38 (5) Auctions or offers, attempts or agrees to auction real estate or
39 assists an auctioneer by procuring bids at a real estate auction.
- 40 (6) Buys, sells, offers to buy or sell or otherwise deals in options o
41 real estate.
- 42 (7) Assists or directs in the procuring of prospects calculated to result
43 in the sale, exchange or lease of real estate.

- 1 (8) Assists in or directs the negotiation of any transaction calculated
- 2 or intended to result in the sale, exchange or lease of real estate.
- 3 (9) Engages in the business of charging an advance listing fee.
- 4 (10) Provides lists of real estate as being available for sale or lease,
- 5 other than lists provided for the sole purpose of promoting the sale or
- 6 lease of real estate wherein inquiries are directed to the owner of the real
- 7 estate or to real estate brokers and not to unlicensed persons who publish
- 8 the list.
- 9 (g) "Commercial or investment real estate property" means any real
- 10 estate for which the present or intended use is other than one to four
- 11 residential units.
- 12 (h) "Commission" means the Kansas real estate commission.
- 13 (i) "Lease" means rent or lease for nonresidential use.
- 14 (j) "Licensee" means any person licensed under this act as a broker
- 15 or salesperson.
- 16 (k) "Office" means a broker's place of business, where records may
- 17 be maintained and licenses displayed, whether or not it is the broker's
- 18 principal place of business.
- 19 (l) "Person" means any individual or any foreign or domestic corpo-
- 20 ration, partnership or association.
- 21 (m) "Real estate" means any interest or estate in land, including any
- 22 leasehold or condominium, whether corporeal, incorporeal, freehold or
- 23 nonfreehold and whether the real estate is situated in this state or else-
- 24 where, but does not include oil and gas leases, royalties and other mineral
- 25 interests, and rights of way and easements acquired for the purpose of
- 26 constructing roadways, pipelines, conduits, wires and facilities related to
- 27 these types of improvement projects for private and public utilities, mu-
- 28 nicipalities, federal and state governments, or any political subdivision.
- 29 For purpose of this act, any rights of redemption are considered to be an
- 30 interest in real estate.
- 31 (n) "Salesperson" means an individual, other than an associate bro-
- 32 ker, who is employed by a broker or is associated with a broker as an
- 33 independent contractor and participates in any activity described in sub-
- 34 section (f).
- 35 (o) "Supervising broker" means an individual, other than a branch
- 36 broker, who has a broker's license and who has been designated as the
- 37 broker who is responsible for the supervision of the primary office of a
- 38 broker and the activities of salespersons and associate brokers who are
- 39 assigned to such office and all of whom are licensed pursuant to subsec-
- 40 tion (b) of K.S.A. 58-3042 and amendments thereto. "Supervising broker"
- 41 also means a broker who operates a sole proprietorship and with whom
- 42 associate brokers or salespersons are affiliated as employees or independ-
- 43 ent contractors.

3-58
51

- 1 Sec. 4. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3035, as
- 2 revived by section 3 of this act, is hereby amended to read as follows: 58-
- 3 3035. As used in this act, unless the context otherwise requires:
- 4 (a) "Advance listing fee" means any fee charged for services related
- 5 to promoting the sale or lease of real estate and paid in advance of the
- 6 rendering of such services, including any fees charged for listing, adver-
- 7 tising or offering for sale or lease any real estate, but excluding any fees
- 8 paid solely for advertisement or for listing in a publication issued for the
- 9 sole purpose of promoting the sale or lease of real estate wherein inquiries
- 10 are directed to the owner of the real estate or to real estate brokers and
- 11 not to unlicensed persons who publish the listing.
- 12 (b) ~~"Agency agreement" means a written agreement between the~~
- 13 ~~principal and the licensee setting forth the terms and conditions of the~~
- 14 ~~relationship.~~
- 15 (c) "Associate broker" means an individual who has a broker's license
- 16 and who is employed by another broker or is associated with another
- 17 broker as an independent contractor and participates in any activity de-
- 18 scribed in subsection (f) (e).
- 19 (d) (c) "Branch broker" means an individual who has a broker's li-
- 20 cense and who has been designated to supervise a branch office and the
- 21 activities of salespersons and associate brokers assigned to the branch
- 22 office.
- 23 (e) (d) "Branch office" means a place of business other than the prin-
- 24 cipal place of business of a broker.
- 25 (f) (e) "Broker" means an individual, other than a salesperson, who
- 26 advertises or represents that such individual engages in the business of
- 27 buying, selling, exchanging or leasing real estate or who, for compensa-
- 28 tion, engages in any of the following activities as an employee of, or on
- 29 behalf of, the owner, purchaser, lessor or lessee of real estate:
- 30 (1) Sells, exchanges, purchases or leases real estate.
- 31 (2) Offers to sell, exchange, purchase or lease real estate.
- 32 (3) Negotiates or offers, attempts or agrees to negotiate the sale,
- 33 exchange, purchase or leasing of real estate.
- 34 (4) Lists or offers, attempts or agrees to list real estate for sale, lease
- 35 or exchange.
- 36 (5) Auctions or offers, attempts or agrees to auction real estate or
- 37 assists an auctioneer by procuring bids at a real estate auction.
- 38 (6) Buys, sells, offers to buy or sell or otherwise deals in options on
- 39 real estate.
- 40 (7) Assists or directs in the procuring of prospects calculated to result
- 41 in the sale, exchange or lease of real estate.
- 42 (8) Assists in or directs the negotiation of any transaction calculated
- 43 or intended to result in the sale, exchange or lease of real estate.

- 1 (9) Engages in the business of charging an advance listing fee.
- 2 (10) Provides lists of real estate as being available for sale or lease,
3 other than lists provided for the sole purpose of promoting the sale or
4 lease of real estate wherein inquiries are directed to the owner of the real
5 estate or to real estate brokers and not to unlicensed persons who publish
6 the list.
- 7 ~~(g)~~ "Commercial or investment real estate property" means any real
8 estate for which the present or intended use is other than one to four
9 residential units.
- 10 ~~(h)~~ (f) "Commission" means the Kansas real estate commission.
- 11 ~~(i)~~ (g) "Lease" means rent or lease for nonresidential use.
- 12 ~~(j)~~ (h) "Licensee" means any person licensed under this act as a bro-
13 ker or salesperson.
- 14 ~~(k)~~ (i) "Office" means a broker's place of business, where records may
15 be maintained and licenses displayed, whether or not it is the broker's
16 principal place of business.
- 17 ~~(l)~~ (j) "Person" means any individual or any foreign or domestic cor-
18 poration, partnership or association.
- 19 ~~(m)~~ (k) "Real estate" means any interest or estate in land, including
20 any leasehold or condominium, whether corporeal, incorporeal, freehold
21 or nonfreehold and whether the real estate is situated in this state or
22 elsewhere, but does not include oil and gas leases, royalties and other
23 mineral interests, and rights of way and easements acquired for the pur-
24 pose of constructing roadways, pipelines, conduits, wires and facilities
25 related to these types of improvement projects for private and public
26 utilities, municipalities, federal and state governments, or any political
27 subdivision. For purpose of this act, any rights of redemption are consid-
28 ered to be an interest in real estate.
- 29 ~~(n)~~ (l) "Salesperson" means an individual, other than an associate bro-
30 ker, who is employed by a broker or is associated with a broker as an
31 independent contractor and participates in any activity described in sub-
32 section ~~(f)~~ (e).
- 33 ~~(o)~~ (m) "Supervising broker" means an individual, other than a
34 branch broker, who has a broker's license and who has been designated
35 as the broker who is responsible for the supervision of the primary office
36 of a broker and the activities of salespersons and associate brokers who
37 are assigned to such office and all of whom are licensed pursuant to
38 subsection (b) of K.S.A. 58-3042 and amendments thereto. "Supervising
39 broker" also means a broker who operates a sole proprietorship and with
40 whom associate brokers or salespersons are affiliated as employees or
41 independent contractors.
- 42 Sec. 5. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3036 is
43 hereby amended to read as follows: 58-3036. Unless exempt from this act

- 1 under K.S.A. 58-3037 and amendments thereto, no person shall:
- 2 (a) Directly or indirectly engage in or conduct or represent that such
3 person engages in or conducts the business of a broker, associate broker
4 or salesperson within this state unless such person is licensed as such a
5 broker, associate broker or salesperson in accordance with this act.
- 6 (b) Directly or indirectly act or represent that such person acts as a
7 broker, associate broker or salesperson within this state unless such per-
8 son is licensed as such a broker, associate broker or salesperson in accor-
9 dance with this act.
- 10 (c) Perform or offer, attempt or agree to perform any act described
11 in subsection ~~(f)~~ (e) of K.S.A. 58-3035 and amendments thereto, whether
12 as a part of a transaction or as an entire transaction, unless such person
13 is licensed pursuant to this act.
- 14 Sec. 6. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3037 is
15 hereby amended to read as follows: 58-3037. The provisions of this act
16 shall not apply to:
- 17 (a) Any person, other than a person licensed under this act, who di-
18 rectly performs any of the acts within the scope of this act with reference
19 to such person's own property.
- 20 (b) Any person who directly performs any of the acts within the scope
21 of this act with reference to property that such person is authorized to
22 transfer in any way by a power of attorney from the owner, provided that
23 such person receives no commission or other compensation, direct or
24 indirect, for performing any such act.
- 25 (c) Services rendered by an attorney licensed to practice in this state
26 in performing such attorney's professional duties as an attorney.
- 27 (d) Any person acting as receiver, trustee in bankruptcy, administra-
28 tor, executor or guardian, or while acting under a court order or under
29 the authority of a will or a trust instrument or as a witness in any judicial
30 proceeding or other proceeding conducted by the state or any govern-
31 mental subdivision or agency.
- 32 (e) Any officer or employee of the federal or state government, or
33 any political subdivision or agency thereof, when performing the official
34 duties of the officer or employee.
- 35 (f) Any multiple listing service wholly owned by a nonprofit organi-
36 zation or association of brokers.
- 37 (g) Any nonprofit referral system or organization of brokers formed
38 for the purpose of referral of prospects for the sale or listing of real estate.
- 39 (h) Railroads or other public utilities regulated by the state of Kansas,
40 or their subsidiaries, affiliated corporations, officers or regular employees,
41 unless performance of any of the acts described in subsection ~~(f)~~ (e) of
42 K.S.A. 58-3035 and amendments thereto is in connection with the sale,
43 purchase, lease or other disposition of real estate or investment therein

1 unrelated to the principal business activity of such railroad or other public
2 utility or affiliated or subsidiary corporation thereof.

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

6 (j) The sale or lease of new homes by a person, partnership, associ-
7 ation or domestic corporation who constructed such homes, but the pro-
8 visions of this act shall apply to the sale or lease of any such homes by
9 any employee of such person, partnership or association or by any em-
10 ployee of such corporation who owns less than 5% of the stock of such
11 corporation.

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

13 Sec. 7. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3039 is
14 hereby amended to read as follows: 58-3039. (a) Any person desiring to
15 act as a broker or salesperson must file a written application for a license
16 with the commission or, if required by the commission, with the testing
17 service designated by the commission. The application shall be in such
18 form and detail as the commission shall prescribe and shall be accom-
19 panied by the appropriate application and license fees prescribed by
20 K.S.A. 58-3063, and amendments thereto.

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

24 (c) In addition to the requirements of subsection (b), *except as pro-*
25 *vided in subsection (d)*, each applicant for an original license as a broker
26 shall have been:

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

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

39 (d) The commission may accept proof of experience in the real estate
40 or a related business or a combination of such experience and education
41 which the commission believes qualifies the applicant to act as a broker
42 as being equivalent to all or part of the experience required by subsection
43 (c).

2-58

1 ~~(d)~~ (e) Except as provided in K.S.A. 58-3040 and amendments
2 thereto, each applicant for an original license shall be required to pass a
3 written examination covering generally the matters confronting brokers
4 or salespersons, and no license shall be issued on the basis of such an
5 examination either or both sections of which were administered more
6 than four months prior to the date that the applicant's application is filed
7 with the commission. The examination may be given by the commission
8 or any person designated by the commission. Each person taking the
9 examination shall pay the examination fee prescribed pursuant to K.S.A.
10 58-3063 and amendments thereto, which fee the commission may require
11 to be paid to it or directly to the testing service designated by the com-
12 mission. The examination for a broker's license shall be different from or
13 in addition to that for a salesperson's license.

14 (f) (1) *On and after October 1, 1997, each applicant for an original*
15 *salesperson's license who meets the requirements of this act shall be issued*
16 *a temporary salesperson's license which shall expire six months after the*
17 *last calendar day of the month in which the license was issued, on the last*
18 *calendar day of that month.*

19 (2) *No later than 10 days prior to the expiration date of a temporary*
20 *salesperson's license, the salesperson shall file an application on a form*
21 *provided by the commission. The application shall be accompanied by the*
22 *license fee prescribed by K.S.A. 58-3063 and amendments thereto and*
23 *evidence of compliance with the requirements of subsection (f)(1) of K.S.A.*
24 *58-3046a, and amendments thereto. The commission shall issue a sales-*
25 *person's license to a person who complies with the provisions of this par-*
26 *agraph. The issuance date of the salesperson's license shall be the day*
27 *following the expiration date of the temporary license. The expiration date*
28 *of the license shall be determined in accordance with a schedule estab-*
29 *lished by rules and regulations of the commission.*

30 (3) *Failure to comply with the provisions of paragraph (2) shall au-*
31 *tomatically cancel the temporary license on its expiration date.*

32 (4) *A person whose temporary salesperson's license was canceled pur-*
33 *suant to paragraph (3) may apply for a salesperson's license provided*
34 *such application, the license fee prescribed by K.S.A. 58-3063 and amend-*
35 *ments thereto, and evidence of attendance of 30 hours of instruction re-*
36 *ceived after issuance of the temporary license pursuant to subsection (f)(1)*
37 *of K.S.A. 58-3046a, and amendments thereto are received by the com-*
38 *mission within three months after the expiration date of the temporary*
39 *license. The commission shall issue a salesperson's license to a person who*
40 *complies with the provisions of this paragraph. The expiration date of the*
41 *license shall be determined in accordance with a schedule established by*
42 *rules and regulations of the commission.*

43 ~~(e)~~ (g) The commission, prior to granting an original license, shall

1 require proof that the applicant has a good reputation for honesty, trust-
2 worthiness, integrity and competence to transact the business of broker
3 or salesperson in such manner as to safeguard the public interest.

4 (f) (h) An application for an original license as a salesperson shall be
5 accompanied by the recommendation of the broker with whom the sa-
6 lesperson is to be associated, or by whom the salesperson is to be em-
7 ployed, certifying that the applicant is honest, trustworthy and of good
8 reputation.

9 Sec. 8. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3042 is
10 hereby amended to read as follows: 58-3042. (a) No real estate license
11 shall give authority to any person other than the person to whom the
12 license is issued.

13 (b) No license shall be granted to a corporation, partnership, associ-
14 ation or limited liability company. Each person who is an officer of a
15 corporation or a member of a partnership, association or limited liability
16 company and who performs any act described in subsection (f) (e) of
17 K.S.A. 58-3035 and amendments thereto shall be a licensed broker, and
18 each person who is employed by or associated with a corporation, part-
19 nership, association or limited liability company and who performs any
20 act described in subsection (f) (e) of K.S.A. 58-3035 and amendments
21 thereto shall be a licensed broker or licensed salesperson.

22 Sec. 9. On and after October 1, 1997, K.S.A. 58-3045 is hereby
23 amended to read as follows: 58-3045. (a) Except for a temporary sales-
24 person's license issued pursuant to subsection (f) of K.S.A. 58-3039, and
25 amendments thereto, each license issued or renewed by the commission
26 shall expire on a date determined in accordance with a schedule estab-
27 lished by rules and regulations of the commission, which date shall be
28 not more than two years from the date of issuance or renewal. Except as
29 otherwise provided by this act, applicants for issuance or renewal of a
30 license must satisfy all applicable requirements prior to issuance or re-
31 newal of the license.

32 (b) (1) Except for a temporary salesperson's license issued pursuant
33 to subsection (f) of K.S.A. 58-3039, and amendments thereto, each license
34 shall be renewable upon the filing, not less than 30 days prior to the
35 expiration date of the license, of a renewal application on or before the
36 renewal date, which is the last calendar day of the month preceding the
37 license expiration date. Such application shall be made on a form provided
38 by the commission and accompanied by (A) the required renewal fee
39 prescribed by K.S.A. 58-3063, and amendments thereto, and (B) evidence
40 of compliance with the requirements of K.S.A. 58-3046a and amend-
41 ments thereto. In each case in which a license is issued or renewed for a
42 period of other than one year, the commission shall compute to the near-
43 est whole month the required fee, based on annual renewal fee provided

3-53

1 for by K.S.A. 58-3063 and amendments thereto, or the licensee's license
2 with the licensee's request that the license be deactivated on the renewal
3 date pursuant to K.S.A. 58-3049, and amendments thereto.

4 (2) Failure to remit the required fee when due comply with para-
5 graph (1) on or before the renewal date will automatically cancel the
6 license, except that any on the license expiration date unless the license is
7 renewed pursuant to subsection (c) prior to the expiration date.

8 (c) Any licensee who fails to pay the required renewal fee when due
9 failed to comply with the requirements of subsection (b)(1), may have the
10 licensee's license reinstated and renewed by the payment of the required
11 renewal fee prescribed by K.S.A. 58-3063, and amendments thereto, and
12 a late fee of \$50, if such fees are remitted to the commission not later
13 than six months following the expiration date of such license and accom-
14 panied by (1) an application for late renewal obtained from the commis-
15 sion, and (2) evidence of compliance with the requirements of K.S.A. 58-
16 3046a and amendments thereto or a written request that the licensee's
17 license be renewed on deactivated status pursuant to K.S.A. 58-3049 and
18 amendments thereto.

19 (e) (d) An application for renewal filed in compliance with the
20 requirements of subsection (b) shall entitle the applicant to continue op-
21 erating under the applicant's existing license after its specified expiration
22 date, unless such license has been suspended or revoked and has not been
23 reinstated or unless such license is restricted, until such time as the com-
24 mission determines whether the application fulfills such requirements.

25 Sec. 10. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3046a
26 is hereby amended to read as follows: 58-3046a. (a) Except as provided
27 in K.S.A. 58-3040 and amendments thereto, any person who applies for
28 an original license in this state as a salesperson shall submit evidence,
29 satisfactory to the commission, of attendance of a principles of real estate
30 course, of not less than 30 hours of instruction, approved by the com-
31 mission and received within the 12 months immediately preceding the
32 filing of application for salesperson's license. The commission may require
33 the evidence to be furnished to the commission with the original appli-
34 cation for license or it may require the applicant to furnish the evidence
35 to the testing service designated by the commission as a prerequisite to
36 taking the examination required by K.S.A. 58-3039 and amendments
37 thereto. If the evidence is furnished to the testing service, the instruction
38 shall have been received within 12 months immediately preceding the
39 date of the examination.

40 (b) Except as provided in K.S.A. 58-3040 and amendments thereto,
41 any person who applies for an original license in this state as a broker
42 shall submit evidence, satisfactory to the commission, of attendance of 24
43 hours of instruction, approved by the commission and received within the

1 12 months immediately preceding the filing of application for broker's
2 license. Such hours shall be in addition to any hours of instruction used
3 to meet the requirements of subsection (c), (d) or (e) or (f). The com-
4 mission may require the evidence to be furnished to the commission with
5 the original application for license, or it may require the applicant to
6 furnish the evidence to the testing service designated by the commission
7 as a prerequisite to taking the examination provided in K.S.A. 58-3039
8 and amendments thereto. If the evidence is furnished to the testing serv-
9 ice, the instruction shall have been received within 12 months immedi-
10 ately preceding the date of the examination.

11 (c) Except as provided in subsections (d) and (e) and (f), at or prior
12 to each renewal date established by the commission, any person who is
13 licensed in this state as a broker or as a salesperson shall submit evidence,
14 satisfactory to the commission, of attendance of not less than 12 hours of
15 additional instruction approved by the commission and received during
16 the renewal period.

17 (d) Any person who obtained an original license in this state as a
18 salesperson after July 1, 1988, and before July 1, 1991, shall submit evi-
19 dence, satisfactory to the commission, of attendance of courses of instruc-
20 tion approved by the commission at or prior to each renewal date estab-
21 lished by the commission as follows:

22 (1) At or prior to the first license renewal, 50 hours of instruction
23 received after the date of licensure. Such evidence shall not be required
24 until the second license renewal if the original license expires less than
25 six months after issuance.

26 (2) At or prior to each license renewal thereafter, 12 hours of addi-
27 tional instruction received during the renewal period.

28 Any salesperson who obtains a broker's license in this state prior to
29 completing the 50 hours of instruction required by this subsection shall
30 submit the same evidence to renew the broker's license that would have
31 been required to renew the salesperson's license.

32 (e) Any person who obtains an original license in this state as a sa-
33 lesperson on or after July 1, 1991 and before October 1, 1997, shall submit
34 evidence, satisfactory to the commission, of attendance of courses of in-
35 struction approved by the commission at or prior to each renewal date
36 established by the commission as follows:

37 (1) At or prior to the first license renewal, 30 hours of instruction
38 received after the date of licensure. Such evidence shall not be required
39 until the second license renewal if the original license expires less than
40 six months after issuance.

41 (2) At or prior to each license renewal thereafter, 12 hours of addi-
42 tional instruction received during the renewal period.

43 Any salesperson who obtains a broker's license in this state prior to

1 completing the 30 hours of instruction required by this subsection shall
2 submit the same evidence to renew the broker's license that would have
3 been required to renew the salesperson's license.

4 (f) ~~The hours on record with the commission of any person who ac-~~
5 ~~cumulated hours of instruction which were reported to the commission~~
6 ~~by January 1, 1983, and who, on July 1, 1993, has more than 12 hours on~~
7 ~~record shall be reduced by the commission to 12 hours. The 12 hours~~
8 ~~which remain on the licensee's record on July 1, 1993, shall be used to~~
9 ~~meet the requirement of subsection (e) at the licensee's next license re-~~
10 ~~newal. Any person who obtains a temporary license in this state as a~~
11 ~~salesperson on and after October 1, 1997, shall submit evidence, satisfac-~~
12 ~~tory to the commission, of attendance of courses of instruction approved~~
13 ~~by the commission as follows:~~

14 (1) *No later than ten days prior to the expiration date of the tempo-*
15 *rary license, 30 hours of instruction received after the date of licensure.*

16 (2) *At or prior to the first renewal of a license issued pursuant to*
17 *subsection (f)(2) or (4) of K.S.A. 58-3039, and amendments thereto, 12*
18 *hours of additional instruction received during the renewal period. Such*
19 *evidence shall not be required until the second license renewal if the li-*
20 *cence expires less than six months after issuance.*

21 (3) *At or prior to each license renewal thereafter, 12 hours of addi-*
22 *tional instruction received during the renewal period.*

23 (g) Except for courses reviewed pursuant to subsection (j), on and
24 after January 1, 1994, courses of instruction required by this section shall
25 be courses approved by the commission and offered by:

26 (1) An institution which is accredited by the north central association
27 of colleges and secondary schools accrediting agency;

28 (2) an area vocational or vocational-technical school as defined by
29 K.S.A. 72-4412 and amendments thereto;

30 (3) a proprietary school which has been issued a certificate of ap-
31 proval pursuant to the Kansas proprietary school act;

32 (4) any agency of the state of Kansas; or

33 (5) a similar institution, approved by the commission, in another state.

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

3-54
55

1 tors.

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

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

15 (k) The commission shall publish annually a list of educational insti-
 16 tutions and entities and the courses offered by them in this state which
 17 are approved by the commission.

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

20 Sec. 11. On and after July 1, 1997, K.S.A. 1996 Supp. 58-3050 is
 21 hereby revived to read as follows: 58-3050. (a) The license of any licensee
 22 may be revoked, suspended or restricted or a licensee may be censured,
 23 if:

24 (1) The commission finds that the license has been obtained by false
 25 or fraudulent representation or that the licensee has committed a viola-
 26 tion of this act or rules and regulations adopted hereunder, or the bro-
 27 kerage relationships in real estate transactions act or rules and regulations
 28 adopted thereunder as such act governs the sale or lease of real estate
 29 that is one to four residential units, whether the licensee acted as an agent
 30 or a principal in the real estate transaction;

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

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

39 (b) In addition to or in lieu of any other administrative, civil or crim-
 40 inal remedy provided by law, the commission, in accordance with the
 41 Kansas administrative procedure act and upon a finding that a licensee
 42 has violated a provision of this act or rules and regulations adopted here-
 43 under, or the brokerage relationships in real estate transactions act or

3-5-97
 MS

1 rules and regulations adopted thereunder as such act governs the sale or
 2 lease of real estate that is one to four residential units, may impose on
 3 such licensee a civil fine not exceeding \$500 for each violation.

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

7 (d) No complaint alleging violation of this act or rules and regulations
 8 adopted hereunder, or the brokerage relationships in real estate trans-
 9 actions act or rules and regulations adopted thereunder as such act gov-
 10 erns the sale or lease of real estate that is one to four residential units,
 11 shall be commenced more than three years from the date of the occur-
 12 rence which is the subject of the complaint.

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

15 (f) Notwithstanding any provision of this act or the brokerage rela-
 16 tionships in real estate transactions act, as such act governs the sale or
 17 lease of real estate that is one to four residential units, to the contrary,
 18 the commission may use emergency adjudicative proceedings, as provided
 19 by K.S.A. 77-536 and amendments thereto, to summarily suspend the
 20 license of any licensee if the commission has reasonable cause to believe
 21 that the licensee's trust account is in unsound condition or that the li-
 22 censee is misappropriating funds belonging to other persons.

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

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

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

36 Sec. 12. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3050,
 37 as revived by section 11 of this act, is hereby amended to read as follows:
 38 58-3050. (a) The license of any licensee may be revoked, suspended or
 39 restricted or a licensee may be censured, if:

40 (1) The commission finds that the license has been obtained by false
 41 or fraudulent representation or that the licensee has committed a viola-
 42 tion of this act or rules and regulations adopted hereunder, or the bro-
 43 kerage relationships in real estate transactions act or rules and regulations

1 adopted thereunder as such act governs the sale or lease of real estate
2 that is one to four residential units, whether the licensee acted as an agent
3 or a principal in the real estate transaction;

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

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

12 (b) In addition to or in lieu of any other administrative, civil or crim-
13 inal remedy provided by law, the commission, in accordance with the
14 Kansas administrative procedure act and upon a finding that a licensee
15 has violated a provision of this act or rules and regulations adopted here-
16 under, or the brokerage relationships in real estate transactions act or
17 rules and regulations adopted thereunder as such act governs the sale or
18 lease of real estate that is one to four residential units, may impose on
19 such licensee a civil fine not exceeding \$500 for each violation.

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

23 (d) No complaint alleging violation of this act or rules and regulations
24 adopted hereunder, or the brokerage relationships in real estate trans-
25 actions act or rules and regulations adopted thereunder as such act gov-
26 erns the sale or lease of real estate that is one to four residential units,
27 shall be commenced more than three years from the date of the occur-
28 rence which is the subject of the complaint.

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

31 (f) Notwithstanding any provision of this act or the brokerage rela-
32 tionships in real estate transactions act, as such act governs the sale or
33 lease of real estate that is one to four residential units, to the contrary,
34 the commission may use emergency adjudicative proceedings, as provided
35 by K.S.A. 77-536 and amendments thereto, to summarily suspend the
36 license of any licensee if the commission has reasonable cause to believe
37 that the licensee's trust account is in unsound condition or that the li-
38 censee is misappropriating funds belonging to other persons.

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

43 (h) When the real estate license of an individual is revoked and that

1 individual's name is included in the trade or business name of a real estate
2 brokerage business, the commission may deny continued use of the trade
3 or business name if, in the opinion of the commission, it would be con-
4 fusing or misleading to the public.

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

9 Sec. 13. On and after July 1, 1997, K.S.A. 1996 Supp. 58-3062 is
10 hereby revived to read as follows: 58-3062. (a) No licensee, whether acting
11 as an agent or a principal, shall:

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

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

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

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

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

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

35 (7) Act in a dual capacity of agent and undisclosed principal in any
36 transaction regarding the sale or lease of commercial or investment real
37 estate property.

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

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

42 (10) Offer real estate for sale or lease without the knowledge and
43 consent of the owner or the owner's authorized agent or on terms other

3-56
57

1 than those authorized by the owner or the owner's authorized agent.
 2 (11) Induce any party to break any agency agreement or contract of
 3 sale or lease.
 4 (12) Solicit a listing or negotiate a sale, exchange or lease of com-
 5 mercial or investment real estate property directly with an owner or lessor
 6 if the licensee knows that such owner or lessor has, with regard to the
 7 property, a written agency agreement granting an exclusive right to sell
 8 or lease to another broker.
 9 (13) Solicit an agency agreement or negotiate a sale, exchange or lease
 10 of commercial or investment real estate property directly with a buyer or
 11 lessee if the licensee knows that such buyer or lessee has a written agency
 12 agreement granting exclusive representation to another broker.
 13 (14) Except for a commercial or investment real estate property or
 14 any property owned by any agency of the federal government, fail to
 15 obtain a written agency agreement, including a fixed date of expiration,
 16 signed by the party to be represented and by the licensee or fail to furnish
 17 a copy of the agreement to the principal within a reasonable time. The
 18 licensee shall not assign, sell or otherwise transfer a written agency agree-
 19 ment to another broker without the express written consent of all parties
 20 to the original listing agreement.
 21 (15) In any transaction regarding the sale of commercial or invest-
 22 ment real estate property if the licensee represents the seller, fail to dis-
 23 close to a prospective buyer that: (A) The licensee is or will be acting as
 24 agent of the seller with the duty to represent the seller's interest; (B) the
 25 licensee will not be the agent of the prospective buyer; and (C) infor-
 26 mation given to the licensee will be disclosed to the seller. The disclosure
 27 shall be made orally or in writing when the licensee agrees to assist the
 28 prospective buyer to locate and inspect property and shall be made in any
 29 contract for sale and in any lot reservation agreement.
 30 (16) In any transaction regarding the sale of commercial or invest-
 31 ment real estate property if the licensee represents the buyer, fail to
 32 disclose to a prospective seller or seller's agent that: (A) The licensee is
 33 or will be acting as agent of the buyer with the duty to represent the
 34 buyer's interest; (B) the licensee will not be the agent of the seller; and
 35 (C) information given to the licensee will be disclosed to the buyer. The
 36 disclosure shall be made orally or in writing no later than the first showing
 37 of the property and shall be made in any contract for sale and in any lot
 38 reservation agreement.
 39 (17) In any transaction regarding the sale of (17) commercial or invest-
 40 ment real estate property if the licensee represents both the buyer and
 41 seller, the licensee shall immediately disclose in writing: (A) That the
 42 licensee is acting as agent for both buyer and seller; and (B) the com-
 43 pensation arrangement. The disclosure shall be signed by both the buyer

3-57
58

1 and the seller. If the exclusive right to sell agreement and the buyer's
 2 agency agreement include the disclosure of the possibility of dual agency,
 3 the written disclosure, for each specific transaction, shall be signed by the
 4 buyer no later than the first showing of the property and by the seller no
 5 later than the presentation of the offer to purchase. In addition, the dis-
 6 closure of the agency relationship between all licensees involved and the
 7 principals shall be included in any contract for sale and in any lot reser-
 8 vation agreement.
 9 (18) Offer or give prizes, gifts or gratuities which are contingent upon
 10 an agency agreement or the sale, purchase or lease of real estate.
 11 (19) Enter into a listing agreement on commercial or investment real
 12 estate property in which the broker's commission is based upon the dif-
 13 ference between the gross sales price and the net proceeds to the owner.
 14 (20) Fail to see that financial obligations and commitments between
 15 the parties to an agreement to sell, exchange or lease real estate are in
 16 writing, expressing the exact agreement of the parties or to provide, within
 17 a reasonable time, copies thereof to all parties involved.
 18 (21) Procure a signature to a purchase contract which has no definite
 19 purchase price, method of payment, description of property or method
 20 of determining the closing date.
 21 (22) Include in any agency agreement an authorization to sign or
 22 initial any document on behalf of the licensee's principal in a commercial
 23 or investment real estate property transaction or authorization to act as
 24 attorney-in-fact for the principal.
 25 (23) Engage in fraud or make any substantial misrepresentation.
 26 (24) Represent to any lender, guaranteeing agency or any other in-
 27 terested party, either verbally or through the preparation of false docu-
 28 ments, an amount in excess of the true and actual sale price of the real
 29 estate or terms differing from those actually agreed upon.
 30 (25) Fail to make known to any purchaser or lessee any interest the
 31 licensee has in the real estate the licensee is selling or leasing or to make
 32 known to any seller or lessor any interest the licensee will have in the real
 33 estate the licensee is purchasing or leasing.
 34 (26) Fail to inform both the buyer, at the time an offer is made, and
 35 the seller, at the time an offer is presented, that certain closing costs must
 36 be paid and the approximate amount of such costs.
 37 (27) Fail without just cause to surrender any document or instrument
 38 to the rightful owner.
 39 (28) Accept anything other than cash as earnest money unless that
 40 fact is communicated to the owner prior to the owner's acceptance of the
 41 offer to purchase, and such fact is shown in the purchase agreement.
 42 (29) Fail to deposit any check or cash received as an earnest money
 43 deposit or as a deposit on the purchase of a lot within five business days

1 after the purchase agreement or lot reservation agreement is signed by
2 all parties, unless otherwise specifically provided by written agreement of
3 all parties to the purchase agreement or lot reservation agreement, in
4 which case the licensee shall deposit the check or cash received on the
5 date provided by such written agreement.

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

10 (31) In any transaction regarding the sale of commercial or invest-
11 ment real estate property if the licensee represents the seller, fail to
12 promptly submit any written offer to the licensee's principal when such
13 offer is received prior to the closing of the sale or fail to promptly submit
14 to the prospective buyer or buyer's agent any counteroffer made by the
15 seller, including any back-up offers properly identified as such.

16 (32) In any transaction regarding the sale of commercial or invest-
17 ment real estate property if the licensee represents the buyer, fail to
18 promptly submit any written offer to the seller or seller's agent or fail to
19 promptly submit to the licensee's principal any counteroffer made by the
20 seller, including any back-up offers properly identified as such.

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

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

25 (35) In any transaction regarding the sale or lease of commercial or
26 investment real estate property fail to disclose, or ascertain and disclose,
27 to any person with whom the licensee is dealing, any material information
28 which relates to the property with which the licensee is dealing and which
29 such licensee knew or should have known.

30 (36) Knowingly receive or accept, directly or indirectly, any rebate,
31 reduction or abatement of any charge, or any special favor or advantage
32 or any monetary consideration or inducement, involving the issuance of
33 a title insurance policy or contract concerning which the licensee is di-
34 rectly or indirectly connected, from a title insurance company or title
35 insurance agent, or any officer, employee, attorney, agent or solicitor
36 thereof.

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

41 (A) (i) At the time of such purchase, the dwellings are subject to a
42 right of redemption pursuant to foreclosure of a mortgage on such dwell-
43 ings; (ii) the licensee fails to give written notice of the purchase, within

3-58
59

1 20 days thereafter, to the mortgage holder or judgment creditor who held
2 such mortgage; and (iii) the licensee, unless otherwise required by law or
3 court order, fails to apply any rent proceeds from the dwellings to the
4 judgment lien arising from the foreclosure of such mortgage, as payments
5 become due under the loan, regardless of whether the licensee is obli-
6 gated to do so;

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

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

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

22 (b) In any transaction regarding the sale or lease of commercial or
23 investment real estate property failure to comply with any requirement
24 of subsection (a)(14), (15), (16) or (17) or their corollary rules and regu-
25 lations shall not by itself render any agreement void or voidable nor shall
26 it constitute a defense to any action to enforce such agreement or any
27 action for breach of such agreement.

28 (c) The commission may provide suggested forms of agency disclo-
29 sure and agency agreements and, by rules and regulations, provide such
30 other prohibitions, limitations and conditions relating thereto as the com-
31 mission may prescribe for transactions regarding the sale or lease of com-
32 mercial or investment real estate property.

33 (d) No salesperson or associate broker shall:

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

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

41 (e) No broker shall:

42 (1) Pay a commission or compensation to any person for performing
43 the services of an associate broker or salesperson unless such person is

1 licensed under this act and employed by or associated with the broker,
2 except that nothing herein shall prohibit the payment of a referral fee to
3 a person who is properly licensed as a broker or salesperson in another
4 jurisdiction relating to a transaction regarding the sale or lease of com-
5 mercial or investment real estate property.

6 (2) Fail to deliver to the seller in every real estate transaction, at the
7 time the transaction is closed, a complete, detailed closing statement
8 showing all of the receipts and disbursements handled by the broker for
9 the seller, or fail to deliver to the buyer a complete statement showing
10 all money received in the transaction from such buyer and how and for
11 what the same was disbursed, or fail to retain true copies of such state-
12 ments in the broker's files, except that the furnishing of such statements
13 to the seller and buyer by an escrow agent shall relieve the broker's re-
14 sponsibility to the seller and the buyer.

15 (3) Fail to properly supervise the activities of an associated or em-
16 ployed salesperson or associate broker.

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

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

22 (f) If a purchase agreement provides that the earnest money be held
23 by an escrow agent other than a real estate broker, unless otherwise spe-
24 cifically provided by written agreement of all parties to the purchase
25 agreement, no listing broker shall:

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

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

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

35 Sec. 14. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3062,
36 as revived by section 13 of this act, is hereby amended to read as follows:
37 58-3062. (a) No licensee, whether acting as an agent or a principal, shall:

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

3-59
60

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

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

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

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

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

18 (7) ~~Act in a dual capacity of agent and undisclosed principal in any~~
19 ~~transaction regarding the sale or lease of commercial or investment real~~
20 ~~estate property.~~

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

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

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

28 ~~(11) Induce any party to break any agency agreement or contract~~
29 ~~of sale or lease.~~

30 ~~(12) Solicit a listing or negotiate a sale, exchange or lease of com-~~
31 ~~mmercial or investment real estate property directly with an owner or lessor~~
32 ~~if the licensee knows that such owner or lessor has, with regard to the~~
33 ~~property, a written agency agreement granting an exclusive right to sell~~
34 ~~or lease to another broker.~~

35 ~~(13) Solicit an agency agreement or negotiate a sale, exchange or lease~~
36 ~~of commercial or investment real estate property directly with a buyer or~~
37 ~~lessee if the licensee knows that such buyer or lessee has a written agency~~
38 ~~agreement granting exclusive representation to another broker.~~

39 (14) Except for a commercial or investment real estate property or
40 any property owned by any agency of the federal government, fail to
41 obtain a written agency agreement, including a fixed date of expiration,
42 signed by the party to be represented and by the licensee or fail to furnish
43 a copy of the agreement to the principal within a reasonable time. The

1 licensee shall not assign, sell or otherwise transfer a written agency agree-
 2 ment to another broker without the express written consent of all parties
 3 to the original listing agreement.

4 (15) In any transaction regarding the sale of commercial or invest-
 5 ment real estate property if the licensee represents the seller, fail to dis-
 6 close to a prospective buyer that: (A) The licensee is or will be acting as
 7 agent of the seller with the duty to represent the seller's interest; (B) the
 8 licensee will not be the agent of the prospective buyer; and (C) infor-
 9 mation given to the licensee will be disclosed to the seller. The disclosure
 10 shall be made orally or in writing when the licensee agrees to assist the
 11 prospective buyer to locate and inspect property and shall be made in any
 12 contract for sale and in any lot reservation agreement.

13 (16) In any transaction regarding the sale of commercial or invest-
 14 ment real estate property if the licensee represents the buyer, fail to
 15 disclose to a prospective seller or seller's agent that: (A) The licensee is
 16 or will be acting as agent of the buyer with the duty to represent the
 17 buyer's interest; (B) the licensee will not be the agent of the seller; and
 18 (C) information given to the licensee will be disclosed to the buyer. The
 19 disclosure shall be made orally or in writing no later than the first showing
 20 of the property and shall be made in any contract for sale and in any lot
 21 reservation agreement.

22 (17) In any transaction regarding the sale of commercial or invest-
 23 ment real estate property if the licensee represents both the buyer and
 24 seller, the licensee shall immediately disclose in writing: (A) That the
 25 licensee is acting as agent for both buyer and seller; and (B) the com-
 26 pensation arrangement. The disclosure shall be signed by both the buyer
 27 and the seller. If the exclusive right to sell agreement and the buyer's
 28 agency agreement include the disclosure of the possibility of dual agency,
 29 the written disclosure, for each specific transaction, shall be signed by the
 30 buyer no later than the first showing of the property and by the seller no
 31 later than the presentation of the offer to purchase. In addition, the dis-
 32 closure of the agency relationship between all licensees involved and the
 33 principals shall be included in any contract for sale and in any lot reser-
 34 vation agreement.

35 (18) (11) Offer or give prizes, gifts or gratuities which are contingent
 36 upon an agency agreement or the sale, purchase or lease of real estate.

37 (19) Enter into a listing agreement on commercial or investment real
 38 estate property in which the broker's commission is based upon the dif-
 39 ference between the gross sales price and the net proceeds to the owner.

40 (20) (12) Fail to see that financial obligations and commitments be-
 41 tween the parties to an agreement to sell, exchange or lease real estate
 42 are in writing, expressing the exact agreement of the parties or to provide,
 43 within a reasonable time, copies thereof to all parties involved.

1 (21) (13) Procure a signature to a purchase contract which has no
 2 definite purchase price, method of payment, description of property or
 3 method of determining the closing date.

4 (22) Include in any agency agreement an authorization to sign or
 5 initial any document on behalf of the licensee's principal in a commercial
 6 or investment real estate property transaction or authorization to act as
 7 attorney-in-fact for the principal.

8 (23) (14) Engage in fraud or make any substantial misrepresentation.

9 (24) (15) Represent to any lender, guaranteeing agency or any other
 10 interested party, either verbally or through the preparation of false doc-
 11 uments, an amount in excess of the true and actual sale price of the real
 12 estate or terms differing from those actually agreed upon.

13 (25) (16) Fail to make known to any purchaser or lessee any interest
 14 the licensee has in the real estate the licensee is selling or leasing or to
 15 make known to any seller or lessor any interest the licensee will have in
 16 the real estate the licensee is purchasing or leasing.

17 (26) (17) Fail to inform both the buyer, at the time an offer is made,
 18 and the seller, at the time an offer is presented, that certain closing costs
 19 must be paid and the approximate amount of such costs.

20 (27) (18) Fail without just cause to surrender any document or in-
 21 strument to the rightful owner.

22 (28) (19) Accept anything other than cash as earnest money unless
 23 that fact is communicated to the owner prior to the owner's acceptance
 24 of the offer to purchase, and such fact is shown in the purchase agree-
 25 ment.

26 (29) (20) Fail to deposit any check or cash received as an earnest
 27 money deposit or as a deposit on the purchase of a lot within five business
 28 days after the purchase agreement or lot reservation agreement is signed
 29 by all parties, unless otherwise specifically provided by written agreement
 30 of all parties to the purchase agreement or lot reservation agreement, in
 31 which case the licensee shall deposit the check or cash received on the
 32 date provided by such written agreement.

33 (30) (21) Fail in response to a request by the commission or the di-
 34 rector to produce any document, book or record in the licensee's posses-
 35 sion or under the licensee's control that concerns, directly or indirectly,
 36 any real estate transaction or the licensee's real estate business.

37 (31) In any transaction regarding the sale of commercial or invest-
 38 ment real estate property if the licensee represents the seller, fail to
 39 promptly submit any written offer to the licensee's principal when such
 40 offer is received prior to the closing of the sale or fail to promptly submit
 41 to the prospective buyer or buyer's agent any counteroffer made by the
 42 seller, including any back-up offers properly identified as such.

43 (32) In any transaction regarding the sale of commercial or invest-

3-6-17

1 ment real estate property if the licensee represents the buyer, fail to
2 promptly submit any written offer to the seller or seller's agent or fail to
3 promptly submit to the licensee's principal any counteroffer made by the
4 seller, including any back-up offers properly identified as such.

5 ~~(33)~~ (22) Refuse to appear or testify under oath at any hearing held
6 by the commission.

7 ~~(34)~~ (23) Demonstrate incompetency to act as a broker, associate bro-
8 ker or salesperson.

9 ~~(35)~~ In any transaction regarding the sale or lease of commercial or
10 investment real estate property fail to disclose, or ascertain and disclose,
11 to any person with whom the licensee is dealing, any material information
12 which relates to the property with which the licensee is dealing and which
13 such licensee knew or should have known.

14 ~~(36)~~ (24) Knowingly receive or accept, directly or indirectly, any re-
15 bate, reduction or abatement of any charge, or any special favor or ad-
16 vantage or any monetary consideration or inducement, involving the is-
17 suance of a title insurance policy or contract concerning which the
18 licensee is directly or indirectly connected, from a title insurance company
19 or title insurance agent, or any officer, employee, attorney, agent or so-
20 licitor thereof.

21 ~~(37)~~ (25) Engage in the purchase of one-, two-, three- or four-family
22 dwellings, including condominiums and cooperatives, or the acquisition
23 of any right, title or interest therein, including any equity or redemption
24 interests, if:

25 (A) (i) At the time of such purchase, the dwellings are subject to a
26 right of redemption pursuant to foreclosure of a mortgage on such dwell-
27 ings; (ii) the licensee fails to give written notice of the purchase, within
28 20 days thereafter, to the mortgage holder or judgment creditor who held
29 such mortgage; and (iii) the licensee, unless otherwise required by law or
30 court order, fails to apply any rent proceeds from the dwellings to the
31 judgment lien arising from the foreclosure of such mortgage, as payments
32 become due under the loan, regardless of whether the licensee is obli-
33 gated to do so;

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

42 (C) the licensee fails to notify, at the time of rental, any person rent-
43 ing any such dwelling of the extent and nature of the licensee's interest

3-67
67

1 in such dwelling and the probable time until possession will be taken by
2 the mortgage holder or judgment creditor.

3 ~~(38)~~ (26) Commit forgery or, unless authorized to do so by a duly
4 executed power of attorney, sign or initial any contractual agreement on
5 behalf of another person in a real estate transaction.

6 (b) In any transaction regarding the sale or lease of commercial or
7 investment real estate property failure to comply with any requirement
8 of subsection ~~(a)(14), (15), (16)~~ or (17) or their corollary rules and regu-
9 lations shall not by itself render any agreement void or voidable nor shall
10 it constitute a defense to any action to enforce such agreement or any
11 action for breach of such agreement.

12 (c) The commission may provide suggested forms of agency disclo-
13 sure and agency agreements and, by rules and regulations, provide such
14 other prohibitions, limitations and conditions relating thereto as the com-
15 mission may prescribe for transactions regarding the sale or lease of com-
16 mercial or investment real estate property.

17 (d) No salesperson or associate broker shall:

18 (1) *Except as provided in paragraph (A) or (B), accept a commission*
19 *or other valuable consideration from anyone other than the salesperson's*
20 *or associate broker's employing broker or the broker with whom the sa-*
21 *lesperson or associate broker is associated. broker by whom the licensee*
22 *is employed or with whom the licensee is associated as an independent*
23 *contractor.*

24 (A) A salesperson or associate broker may accept a commission or
25 other valuable consideration from a licensee who employs the salesperson
26 or associate broker as a personal assistant provided that: (i) the licensee
27 and the salesperson or associate broker who is employed as a personal
28 assistant are licensed under the supervision of the same broker, and (ii)
29 the supervising broker agrees in writing that the personal assistant may
30 be paid by the licensee.

31 (B) *If a salesperson or associate broker has (i) organized as a profes-*
32 *sional corporation pursuant to K.S.A. 17-2706 et seq., and amendments*
33 *thereto, (ii) incorporated under the Kansas general corporation code con-*
34 *tained in K.S.A. 17-6001 et seq., and amendments thereto, (iii) organized*
35 *under the Kansas limited liability company act contained in K.S.A. 17-*
36 *7601 et seq., and amendments thereto, or (iv) has organized as a registered*
37 *limited liability partnership as defined in K.S.A. 56-302 and amendments*
38 *thereto, the commission or other valuable consideration may be paid by*
39 *the licensee's broker to such professional corporation, corporation, limited*
40 *liability company or limited liability partnership. This provision shall not*
41 *alter any other provisions of this act.*

42 (2) Fail to place, as soon after receipt as practicable, any deposit
43 money or other funds entrusted to the salesperson or associate broker in

Does this increase the "lack" of supervision by real estate brokers?
Is this actually contrary to the normal position of the Kansas Real
Estate Commission? Is this thus, special interest legislation?

1 the custody of the broker whom the salesperson or associate broker rep-
2 represents.

3 ~~(e)~~ (c) No broker shall:

4 (1) Pay a commission or compensation to any person for performing
5 the services of an associate broker or salesperson unless such person is
6 licensed under this act and employed by or associated with the broker;
7 except that nothing herein shall prohibit the payment of a referral fee to
8 a person who is properly licensed as a broker or salesperson in another
9 jurisdiction relating to a transaction regarding the sale or lease of com-
10 mercial or investment real estate property.

11 (2) Fail to deliver to the seller in every real estate transaction, at the
12 time the transaction is closed, a complete, detailed closing statement
13 showing all of the receipts and disbursements handled by the broker for
14 the seller, or fail to deliver to the buyer a complete statement showing
15 all money received in the transaction from such buyer and how and for
16 what the same was disbursed, or fail to retain true copies of such state-
17 ments in the broker's files, except that the furnishing of such statements
18 to the seller and buyer by an escrow agent shall relieve the broker's re-
19 sponsibility to the seller and the buyer.

20 (3) Fail to properly supervise the activities of an associated or em-
21 ployed salesperson or associate broker.

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

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

27 ~~(f)~~ (d) (1) If a purchase agreement provides that the earnest money
28 be held by an escrow agent other than a real estate broker, unless oth-
29 erwise specifically provided by written agreement of all parties to the
30 purchase agreement, no listing broker shall:

31 ~~(1)~~ (A) Fail to deliver the purchase agreement and earnest money
32 deposit to the escrow agent named in the purchase agreement within five
33 business days after the purchase agreement is signed by all parties unless
34 otherwise specifically provided by written agreement of all parties to the
35 purchase agreement, in which case the broker shall deliver the purchase
36 agreement and earnest money deposit to the escrow agent named in the
37 purchase agreement on the date provided by such written agreement; or

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

41 (2) If a purchase agreement provides that the earnest money be held
42 by an escrow agent other than a real estate broker and the property was
43 not listed with a broker, no broker for the buyer shall:

1 (A) Fail to deliver the purchase agreement and earnest money deposit
2 to the escrow agent named in the purchase agreement within five business
3 days after the purchase agreement is signed by all parties unless otherwise
4 specifically provided by written agreement of all parties to the purchase
5 agreement, in which case the broker shall deliver the purchase agreement
6 and earnest money deposit to the escrow agent named in the purchase
7 agreement on the date provided by such written agreement; or

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

11 (3) If a purchase agreement provides that the earnest money be held
12 by an escrow agent other than a real estate broker and neither the seller
13 nor buyer is represented by a broker, no transaction broker shall.

14 (A) Fail to deliver the purchase agreement and earnest money deposit
15 to the escrow agent named in the purchase agreement within five business
16 days after the purchase agreement is signed by all parties unless otherwise
17 specifically provided by written agreement of all parties to the purchase
18 agreement, in which case the broker shall deliver the purchase agreement
19 and earnest money deposit to the escrow agent named in the purchase
20 agreement on the date provided by such written agreement; or

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

24 The commission may adopt rules and regulations to require that any
25 purchase agreement which provides that the earnest money be held by
26 an escrow agent other than a real estate broker include: (1) notification
27 of whether or not the escrow agent named in the purchase agreement
28 maintains a surety bond, and (2) notification that rules and regulations
29 governing the disbursement of earnest money held in trust accounts of
30 real estate brokers do not apply to earnest money deposited with the
31 escrow agent named in the purchase agreement.

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

35 Sec. 15. On and after October 1, 1997, K.S.A. 58-3063 is hereby
36 amended to read as follows: 58-3063. (a) The commission shall adopt rules
37 and regulations fixing the amounts of the fees provided for by this act,
38 subject to the following:

39 (1) For any examination required for licensure, a fee in an amount
40 equal to the actual cost of the examination and the administration thereof.

41 (2) For submission of an application for an original salesperson's li-
42 cense, an amount not exceeding \$25.

43 (3) for submission of an application for an original broker's license,

362

1 an amount not exceeding \$50.

2 (4) For an original salesperson's license, a *prorated* fee based on ~~an~~
3 ~~annual~~ a two-year amount not exceeding ~~\$50~~ \$100.

4 (5) For an original broker's license, a *prorated* fee based on ~~an annual~~
5 a two-year amount not exceeding ~~\$75~~ \$150.

6 (6) For renewal of a salesperson's license, a fee based on an annual
7 amount not exceeding ~~\$50~~ \$100.

8 (7) For renewal of a broker's license, a fee based on ~~an annual~~ a two-
9 year amount not exceeding ~~\$75~~ \$150.

10 (8) For reinstatement of a license which has been deactivated or
11 which has been canceled pursuant to subsection (d) of K.S.A. 58-3047
12 and amendments thereto, or by reason of termination of a salesperson,
13 an amount not exceeding \$15.

14 (9) For reinstatement of all licenses canceled pursuant to subsection
15 (e) of K.S.A. 58-3047 and amendments thereto, an amount not exceeding
16 \$7.50 for each license canceled.

17 (10) For issuance of a duplicate license, an amount not exceeding
18 \$10.

19 (11) For certification of licensure to another jurisdiction, an amount
20 not exceeding \$10.

21 (12) For approval of a course of instruction submitted by a course
22 provider pursuant to K.S.A. 58-3046a and amendments thereto, an
23 amount not exceeding \$75.

24 (13) For renewal of an approved course of instruction pursuant to
25 K.S.A. 58-3046a and amendments thereto, an amount not exceeding \$15.

26 (14) For approval of a course of instruction submitted by any licensee
27 for credit toward the 12 hours of additional instruction required by K.S.A.
28 58-3046a and amendments thereto, an amount not less than \$10 nor more
29 than \$20, as determined by the commission.

30 (15) For a temporary salesperson's license, an amount not exceeding
31 \$25.

32 (b) For each prorated fee, the commission shall establish a monthly
33 amount, rounded off to the nearest dollar, and shall compute the fee from
34 the last calendar day of the month in which the license is issued to the
35 expiration date of the license.

36 (b)(c) Subject to the limitations of this section, the commission shall
37 fix the fees provided for by this section in the amounts necessary to ad-
38 minister and enforce this act.

39 (e)(d) The fees provided for by this section shall be applicable re-
40 gardless of the type of license.

41 Sec. 16. On and after July 1, 1997, K.S.A. 1996 Supp. 58-3064 is
42 hereby revived to read as follows: 58-3064. Whenever any person has
43 engaged in any act or practice that constitutes a violation of this act or

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.

These criminal penalties were part of the old law. Are they perhaps a bit
stringent for people who fail to dot an "i" or cross a "t"? The BRRETA portic
added to the old law provides more opportunity for law violation.

3-63
14

1 Sec. 19. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3065,
 2 as revived by section 18 of this act, is hereby amended to read as follows:
 3 58-3065. (a) Willful violation of any provision of this act or the brokerage
 4 relationships in real estate transactions act; as such act governs the sale
 5 or lease of real estate that is one to four residential units, is a misdemeanor
 6 punishable by imprisonment for not more than 12 months or a fine of
 7 not less than \$100 or more than \$1,000, or both, for the first offense and
 8 imprisonment for not more than 12 months or a fine of not less than
 9 \$1,000 or more than \$10,000, or both, for a second or subsequent offense.

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

16 Sec. 20. On and after July 1, 1997, K.S.A. 1996 Supp. 58-3068 is
 17 hereby revived to read as follows: 58-3068. (a) Moneys in the real estate
 18 recovery revolving fund shall be used in the manner provided by this act
 19 to reimburse persons who suffer monetary damages by reason of any of
 20 the following acts committed in connection with any transaction involving
 21 the sale of real estate in this state by any broker or salesperson who was
 22 licensed under the laws of this state at the time the act was committed
 23 or by any unlicensed employee of such broker or salesperson:

- 24 (1) Violation of any of the following provisions of this act:
- 25 (A) K.S.A. 58-3061 and amendments thereto; or
- 26 (B) subsection (a)(2), (3), (23), (28) or (29) or subsection (d)(2) of
- 27 K.S.A. 58-3062 and amendments thereto; or
- 28 (2) violation of any provision of the brokerage relationships in real
- 29 estate transactions act, as such act governs the sale or lease of real estate
- 30 that is one to four residential units; or
- 31 (3) obtaining money or property by any act which would constitute
- 32 any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3706, 21-
- 33 3707, 21-3710, 21-3711 or 21-3712, and amendments thereto.

34 (b) Any person may seek recovery from the real estate recovery re-
 35 volving fund under the following conditions:

- 36 (1) Such person has received final judgment in a court of competent
- 37 jurisdiction of this state in any action wherein the cause of action was
- 38 based on any of the acts described in subsection (a);
- 39 (2) the claim is made within two years after the date that final judg-
- 40 ment is entered;
- 41 (3) such person has caused to be issued a writ of execution upon such
- 42 judgment, and the officer executing the same has made a return showing
- 43 that no personal or real property of the judgment debtor liable to be

W
 10
 15

1 levied upon in satisfaction of the judgment could be found, or that the
 2 amount realized on the sale of the judgment debtor's property pursuant
 3 to such execution was insufficient to satisfy the judgment;

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

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

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

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

- 19 (1) The person is the spouse of the judgment debtor or a personal
- 20 representative of such spouse;
- 21 (2) the person acted as principal or agent in the real estate transaction
- 22 which is the subject of the claim and is a licensed broker or salesperson
- 23 or is a partnership, association, limited liability company or corporation
- 24 whose partners, members, officers and employees are licensed as pro-
- 25 vided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or
- 26 (3) such person's claim is based upon a real estate transaction in
- 27 which the licensed broker or salesperson was acting on the broker's or
- 28 salesperson's own behalf with respect to property owned or controlled by
- 29 such broker or salesperson.

30 Sec. 21. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3068,
 31 as revived by section 20 of this act, is hereby amended to read as follows:
 32 58-3068. (a) Moneys in the real estate recovery revolving fund shall be
 33 used in the manner provided by this act to reimburse persons who suffer
 34 monetary damages by reason of any of the following acts committed in
 35 connection with any transaction involving the sale of real estate in this
 36 state by any broker or salesperson who was licensed under the laws of
 37 this state at the time the act was committed or by any unlicensed em-
 38 ployee of such broker or salesperson:

- 39 (1) Violation of any of the following provisions of this act:
- 40 (A) K.S.A. 58-3061 and amendments thereto; or
- 41 (B) subsection (a)(2), (3), ~~(23)~~, ~~(28)~~ or ~~(29)~~ (14), (19) or (20) or sub-
- 42 section ~~(d)(2)~~ (b)(2) of K.S.A. 58-3062 and amendments thereto; or
- 43 (2) violation of any provision of the brokerage relationships in real

1 estate transactions act; ~~as such act governs the sale or lease of real estate~~
2 ~~that is one to four residential units~~; or

3 (3) obtaining money or property by any act which would constitute
4 any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3706, 21-
5 3707, 21-3710, 21-3711 or 21-3712, and amendments thereto.

6 (b) Any person may seek recovery from the real estate recovery re-
7 volving fund under the following conditions:

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

11 (2) the claim is made within two years after the date that final judg-
12 ment is entered;

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

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

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

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

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

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

36 (2) the person acted as principal or agent in the real estate transaction
37 which is the subject of the claim and is a licensed broker or salesperson
38 or is a partnership, association, limited liability company or corporation
39 whose partners, members, officers and employees are licensed as pro-
40 vided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or

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

3-65
lib

1 such broker or salesperson.

2 Sec. 22. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,101 is
3 hereby revived and amended to read as follows: 58-30,101. (a) K.S.A.
4 1996 Supp. 58-30,101 through 58-30,112 shall be known and may be cited
5 as the brokerage relationships in real estate transactions act.

6 (b) Any application of this act to transactions regarding the sale or
7 lease of commercial or investment real estate property shall be suspended
8 and shall not be enforceable on and after the effective date of this act.
9 Commercial or investment real estate property means any real estate for
10 which the present or intended use is other than one to four residential
11 units.

12 ~~(c) The provisions of K.S.A. 1996 Supp. 58-30,101 through 58-30,112~~
13 ~~shall be and hereby are abolished on July 1, 1997.~~

14 Sec. 23. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,101,
15 as revived and amended by section 22 of this act, is hereby amended to
16 read as follows: 58-30,101. (a) ~~K.S.A. 1996 Supp. 58-30,101 through 58-~~
17 ~~30,112~~ This act shall be known and may be cited as the brokerage rela-
18 tionships in real estate transactions act.

19 ~~(b) Any application of this act to transactions regarding the sale or~~
20 ~~lease of commercial or investment real estate property shall be suspended~~
21 ~~and shall not be enforceable on and after the effective date of this act.~~
22 ~~Commercial or investment real estate property means any real estate for~~
23 ~~which the present or intended use is other than one to four residential~~
24 ~~units. The provisions of the brokerage relationships in real estate trans-~~
25 ~~actions act shall supersede the duties and responsibilities of the parties~~
26 ~~under the common law, including fiduciary responsibilities of an agent to~~
27 ~~a principal.~~

28 ~~(c) Failure to comply with any requirement of K.S.A. 58-30,103 or~~
29 ~~K.S.A. 58-30,110, and amendments thereto, or rules and regulations~~
30 ~~adopted thereunder, shall not by itself render any agreement void or void-~~
31 ~~able nor shall it constitute a defense to any action to enforce such agree-~~
32 ~~ment or any action for breach of such agreement.~~

33 Sec. 24. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,102 is
34 hereby revived to read as follows: 58-30,102. As used in the brokerage
35 relationships in real estate transactions act, unless the context otherwise
36 requires:

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

41 (b) "Agency" means every relationship in which a broker acts for or
42 represents another, by the latter's express written authority, in a real es-
43 tate transaction. "Agency" also means the relationship in which a broker,

How does narrowing the fiduciary responsibilities of an agent
by substituting the narrow statutory law for the broad common la
really protect the public's interests?

1 by verbal authorization pursuant to subsection (d)(2) of K.S.A. 1996 Supp.
2 58-30,103, acts for or represents any agency of the federal government
3 in the sale of property owned by the federal agency.

4 (c) "Agency agreement" means a written agreement setting forth the
5 terms and conditions of the relationship between a broker and the brok-
6 er's client.

7 (d) "Broker" means: (1) An individual who is licensed as a broker
8 under the Kansas real estate brokers' and salespersons' license act and
9 who has an agency with a seller, buyer, landlord or tenant; or (2) a cor-
10 poration, partnership, association or limited liability company, of which
11 the officers and members, or persons employed by or associated with the
12 corporation, partnership, association or limited liability company, are li-
13 censed pursuant to K.S.A. 58-3042 and amendments thereto and which
14 has an agency with a seller, buyer, landlord or tenant. The term "broker"
15 includes the broker's affiliated licensees except where the context would
16 otherwise indicate. If an individual broker is indicated by the context, the
17 term "broker" means the supervising broker as defined by K.S.A. 58-
18 3035 and amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Sec. 25. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,102,
14 as revived by section 24 of this act, is hereby amended to read as follows:
15 58-30,102. As used in the brokerage relationships in real estate transac-
16 tions act, unless the context otherwise requires:

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

21 (b) "Agency" means every relationship in which a broker acts for or
22 represents another, by the latter's express written authority, in a real es-
23 tate transaction. "Agency" also means the relationship in which a broker,
24 by verbal authorization pursuant to subsection (d)(2) of K.S.A. 1996 Supp.
25 58-30,103, and amendments thereto, acts for or represents any agency of
26 the federal government in the sale of property owned by the federal
27 agency.

28 (c) "Agency agreement" means a written agreement setting forth the
29 terms and conditions of the relationship between a broker and the brok-
30 er's client.

31 (d) "Broker" means: (1) An individual who is licensed as a broker
32 under the Kansas real estate brokers' and salespersons' license act and
33 who has an agency with a seller, buyer, landlord or tenant; or (2) a cor-
34 poration, partnership, association or limited liability company, of which
35 the officers and members, or persons employed by or associated with the
36 corporation, partnership, association or limited liability company, are li-
37 censed pursuant to K.S.A. 58-3042 and amendments thereto and which
38 has an agency with a seller, buyer, landlord or tenant. The term "broker"
39 includes the broker's affiliated licensees except where the context would
40 otherwise indicate. If an individual broker is indicated by the context, the
41 term "broker" means the supervising broker as defined by K.S.A. 58-
42 3035 and amendments thereto.

43 (e) "Brokerage firm" means the business entity of a broker, whether

3-76
67

Is the Designated Agent concept really an attempt on the part of larger companies to work "both sides of the street"? How does this concept fit in with the fiduciary responsibilities of agency?

89-2

a proprietorship, partnership, corporation, association or limited liability company.

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

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

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

(i) "Confidential information" means information made confidential by statute, rule, regulation or instructions from the client or personal information about the client which might place the other party at an advantage over the client unless the information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee.

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

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

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

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

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

(o) "Ministerial acts" means those acts that a licensee may perform for a person that are informative in nature and do not rise to the level of active representation on behalf of a person. Examples of these acts include, but are not limited to:

- (1) Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;
- (2) responding to telephone inquiries from a person concerning the price or location of property;
- (3) attending an open house and responding to questions about the property from a consumer;
- (4) setting an appointment to view property;
- (5) responding to questions of consumers walking into a licensee's office concerning brokerage services offered on particular properties;
- (6) accompanying an appraiser, inspector, contractor or similar third

party on a visit to a property;

(7) describing a property or the property's condition in response to a person's inquiry; or

(8) referral to another broker or service provider.

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

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

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

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

(s) "Transaction broker" means a broker who assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to such transaction. The term includes the broker's affiliated licensees.

Sec. 26. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,103 is hereby revived to read as follows: 58-30,103. (a) A broker shall act only as a statutory agent in any real estate transaction. A licensee may act as a disclosed dual agent but shall not act as an undisclosed dual agent or in a dual capacity of agent and undisclosed principal in any transaction.

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

(c) Before an agency agreement is signed, the broker or an affiliated licensee shall advise the prospective buyer or seller of alternative agency relationships pursuant to K.S.A. 1996 Supp. 58-30,110.

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

(2) If the real estate which is to be offered for sale is owned by any agency of the federal government, a broker may, on behalf of the owner, engage in activities enumerated in subsection (e) of K.S.A. 58-3035 58-

Would agency under the "common law" give the public more protection than the proposed statutory law? What is the motivation of the real estate industry to opt out of common law for statutory law?

If an agents Mother wanted to look at real estate, do you suppose it is really necessary for Mon to sign an agency agreement before looking at property?

27-3
69

1 3035a and amendments thereto after obtaining verbal authorization from
2 the federal agency for which services are to be performed.

3 (e) An agency agreement with a buyer or tenant shall be signed at or
4 prior to the first showing of a property if the licensee is acting in the
5 capacity of a buyer's agent. If the first showing is an open house and the
6 buyer seeks representation from the licensee holding the open house:

7 (1) The licensee may obtain a written agency agreement with the
8 buyer and act as a disclosed dual agent pursuant to K.S.A. 1996 Supp.
9 58-30,108; or

10 (2) if the property was not listed by the licensee holding the open
11 house, the licensee may obtain a written agency agreement with the buyer
12 and act as a designated agent pursuant to K.S.A. 1996 Supp. 58-30,109.

13 (f) An agency agreement shall set forth the terms and conditions of
14 the relationship, including a fixed date of expiration, and shall specify the
15 duties and obligations pursuant to K.S.A. 1996 Supp. 58-30,106 or 58-
16 30,107, including, but not limited to, any duty of confidentiality and the
17 terms of compensation. The agreement shall be signed by the party to be
18 represented and by the broker or a licensee affiliated with the broker. A
19 copy of the agreement shall be furnished to the client at the time the
20 client signs the agreement. If, at the time the client signs the agreement,
21 the agreement is not signed by the broker or a licensee affiliated with the
22 broker, the broker or a licensee affiliated with the broker shall furnish a
23 copy of the agreement to the client within a reasonable time after the
24 agreement is signed by the broker or a licensee affiliated with the broker.

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

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

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

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

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

41 (l) A licensee shall not solicit an agency agreement from a seller or
42 landlord if the licensee knows that the seller or landlord has, with regard
43 to the property, an agency agreement granting an exclusive right to sell

1 or exclusive agency to another broker.

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

5 (n) A licensee shall not induce any party to break any agency agree-
6 ment.

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

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

15 Sec. 27. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,103,
16 as revived by section 26 of this act, is hereby amended to read as follows:
17 58-30,103. (a) *Except when acting as a transaction broker or solely as a*
18 *seller, buyer, landlord or tenant,* a broker shall act only as a statutory
19 agent in any real estate transaction. A licensee ~~may act as a disclosed dual~~
20 ~~agent but~~ shall not act as an undisclosed dual agent or in a dual capacity
21 of agent and undisclosed principal in any transaction.

22 (b) A broker may work with a single party in separate transactions
23 pursuant to different relationships, including, but not limited to, selling
24 one property as a seller's agent and working with that seller in buying
25 another property as a buyer's agent if the broker complies with this act
26 in establishing the relationships for each transaction. *A broker who has*
27 *been working with a seller, landlord, buyer or tenant as a transaction*
28 *broker may act as an agent for the seller, landlord, buyer or tenant if the*
29 *broker complies with this act in establishing the agency relationship.*

30 (c) ~~Before an agency agreement is signed, the broker or an affiliated~~
31 ~~licensee shall advise the prospective buyer or seller of alternative agency~~
32 ~~relationships pursuant to K.S.A. 1996 Supp. 58-30,110. A broker may be~~
33 ~~engaged as a transaction broker by oral or written agreement with the~~
34 ~~seller, landlord, buyer or tenant. A broker shall be considered a transac-~~
35 ~~tion broker unless:~~

36 (1) *An agency relationship between the broker and the party to be*
37 *represented is established pursuant to this section; or*

38 (2) *a broker works with a buyer or tenant as a subagent of the seller*
39 *or landlord by accepting an offer of subagency.*

40 (d) (1) ~~Except as provided in subsection (d)(2), an agency agreement~~
41 ~~with a seller or landlord shall be signed a broker intending to establish~~
42 ~~an agency relationship with a seller or landlord shall enter into a written~~
43 ~~agency agreement with the party to be represented prior to the licensee's~~

1 engaging in any of the activities enumerated in subsection (e) of K.S.A.
2 58-3035 and amendments thereto as an employee of, or on behalf of, the
3 seller or landlord.

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

9 (e) ~~An agency agreement with a buyer or tenant shall be signed at or~~
10 ~~prior to the first showing of a property if the licensee is acting in the~~
11 ~~capacity of a buyer's agent. If the first showing is an open house and the~~
12 ~~buyer seeks representation from the licensee holding the open house.~~

13 (1) ~~The licensee may obtain a written agency agreement with the~~
14 ~~buyer and act as a disclosed dual agent pursuant to K.S.A. 1996 Supp.~~
15 ~~58-30,108; or~~

16 (2) ~~if the property was not listed by the licensee holding the open~~
17 ~~house, the licensee may obtain a written agency agreement with the buyer~~
18 ~~and act as a designated agent pursuant to K.S.A. 1996 Supp. 58-30,109.~~
19 ~~To establish an agency relationship with a buyer or tenant, a broker shall~~
20 ~~enter into a written agency agreement with the party to be represented~~
21 ~~no later than the signing of an offer to purchase or lease.~~

22 (f) An agency agreement shall set forth the terms and conditions of
23 the relationship, including a fixed date of expiration, *any limitation on the*
24 *duty of confidentiality and the terms of compensation*, and shall ~~specify~~
25 ~~refer to the duties and obligations pursuant to K.S.A. 1996 Supp. 58-~~
26 ~~30,106 or 58-30,107, including, but not limited to, any duty of confiden-~~
27 ~~tiality and the terms of compensation and amendments thereto.~~ The
28 agreement shall be signed by the party to be represented and by the
29 broker or a licensee affiliated with the broker. A copy of the agreement
30 shall be furnished to the client at the time the client signs the agreement.
31 If, at the time the client signs the agreement, the agreement is not signed
32 by the broker or a licensee affiliated with the broker, the broker or a
33 licensee affiliated with the broker shall furnish a copy of the agreement
34 to the client within a reasonable time after the agreement is signed by
35 the broker or a licensee affiliated with the broker.

36 (g) An agency agreement with a seller or landlord shall include any
37 potential:

38 (1) for the seller's agent or landlord's agent to act as a ~~disclosed dual~~
39 ~~agent transaction broker;~~

40 (2) for an affiliated licensee to act as a designated agent for the buyer
41 and the designated agent's supervising broker or branch broker, and an
42 affiliated licensee if applicable, to act as a transaction broker; or

43 (3) for the broker to designate an affiliated licensee to act as the des-

3-6-97

1 *ignated agent for the seller on the broker's personal listing pursuant to*
2 *subsection (b)(2) of K.S.A. 58-30,109 and amendments thereto.*

3 (h) An agency agreement with a buyer or tenant shall include any
4 potential:

5 (1) For the buyer's agent or tenant's agent to act as a ~~disclosed dual~~
6 ~~agent transaction broker;~~ or

7 (2) For an affiliated licensee to act as a designated agent *for the seller*
8 *and the designated agent's supervising broker or branch broker, and an*
9 *affiliated licensee if applicable, to act as a transaction broker.*

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

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

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

20 (l) A licensee shall not solicit an agency agreement from a seller or
21 landlord if the licensee knows that the seller or landlord has, with regard
22 to the property, an agency agreement granting an exclusive right to sell
23 or exclusive agency to another broker.

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

27 (n) A licensee shall not induce any party to break any agency agree-
28 ment.

29 (o) ~~A licensee shall not negotiate a sale, exchange or lease of real~~
30 ~~estate directly with a buyer or tenant if the licensee knows that the buyer~~
31 ~~or tenant has an agency agreement granting exclusive representation to~~
32 ~~another broker. If a licensee knows that a buyer or tenant has an agency~~
33 ~~agreement granting exclusive representation to another broker, the li-~~
34 ~~cencee shall not contact the buyer or tenant and shall not initiate nego-~~
35 ~~tiations for the sale, exchange or lease of real estate with the buyer or~~
36 ~~tenant. The licensee may negotiate the sale, exchange or lease of real estate~~
37 ~~directly with the buyer or tenant with the informed consent of the buyer~~
38 ~~or tenant. The informed consent shall be evidenced by a consent agree-~~
39 ~~ment signed by the buyer or tenant prior to any such direct negotiation.~~

40 *The consent agreement shall acknowledge the buyer or tenant agency*
41 *agreement and that the buyer or tenant may be liable for compensation*
42 *under the terms of the agency agreement. The commission, by rules and*
43 *regulations, shall adopt a consent agreement to be used by licensees pur-*

As a prospective new home buyer visiting a new home subdivision, what do you do when you want to purchase a new home and can't locate your agent, and you have to catch a plane back home in a couple of hours? Is it OK to violate the law?

1 *suant to this subsection.*

2 (p) A licensee shall not negotiate a sale, exchange or lease of real
3 estate directly with a seller or landlord if the licensee knows that the seller
4 or landlord has an agency agreement granting an exclusive right to sell or
5 exclusive agency to another broker. *A buyer's or tenant's agent or a sub-*
6 *agent may present an offer to the seller or landlord if the seller's or lan-*
7 *lord's agent is present.*

8 Sec. 28. On or after July 1, 1997, K.S.A. 1996 Supp. 58-30,104 is
9 hereby revived to read as follows: 58-30,104. (a) The relationships set
10 forth in K.S.A. 1996 Supp. 58-30,103 shall commence at the time that
11 the client engages the broker, and shall continue until:

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

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

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

18 (B) any authorized termination of the relationship.

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

22 (1) To account for all moneys and property relating to the engage-
23 ment; and

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

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

28 (B) such disclosure is required by law; or

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

31 Sec. 29. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,104,
32 as revived by section 28 of this act, is hereby amended to read as follows:
33 58-30,104. (a) (1) The *agency* relationships set forth in K.S.A. 1996 Supp.
34 58-30,103, *and amendments thereto*, shall commence at the time that the
35 client engages the broker, and shall continue until:

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

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

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

42 (B) (ii) any authorized termination of the relationship.

43 (b) (2) Except as otherwise agreed in writing, a broker owes no fur-

3-28
71

1 ther duties to the client after termination, expiration, or the closing of a
2 transaction according to the agreement of the parties, except:

3 (1) (A) To account for all moneys and property relating to the en-
4 gagement; and

5 (2) (B) to keep confidential all *confidential* information received dur-
6 ing the course of the engagement ~~which was made confidential by request~~
7 ~~or instructions from the client~~, unless:

8 (A) (i) The client permits the disclosure by subsequent word or con-
9 duct;

10 (B) (ii) such disclosure is required by law; or

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

13 (b) (1) *The relationship between a transaction broker and a seller,*
14 *landlord, buyer or tenant shall terminate when:*

15 (A) *A transaction is closed according to the agreement of the parties;*
16 *or*

17 (B) *if a transaction is not closed according to the agreement of the*
18 *parties, the earlier of:*

19 (i) *Any date of expiration agreed upon by the parties; or*

20 (ii) *any authorized termination of the relationship.*

21 (2) *Except as otherwise agreed in writing, a transaction broker owes*
22 *no further duties to any party to the transaction after termination, expi-*
23 *ration or the closing of a transaction according to the agreement of the*
24 *parties, except:*

25 (A) *To account for all moneys and property relating to the engage-*
26 *ment; and*

27 (B) *to keep confidential all information received during the course of*
28 *the engagement which was made confidential by request of any party to*
29 *the transaction, unless:*

30 (i) *The party permits the disclosure by subsequent word or conduct;*

31 (ii) *such disclosure is required by law; or*

32 (iii) *the information becomes public from a source other than the*
33 *transaction broker.*

34 Sec. 30. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,105 is
35 hereby revived to read as follows: 58-30,105. (a) Compensation is pre-
36 sumed to come from the transaction and shall be determined by agency
37 agreements entered into pursuant to K.S.A. 1996 Supp. 58-30,103.

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

41 (c) In any transaction, the broker's compensation may be paid by the
42 seller, the landlord, the buyer or the tenant. A broker may be compen-
43 sated by more than one party for services in a transaction if the parties

Why would the real estate industry want this type of language if there wasn't special interes
tion? Why not let free market forces dictate compensation by changing the law tr
m A lawyer or a seller of real estate can employ the services of a real estate licensee to
them in the purchase or sale of real property, provided that the prospective buyer or seller
who desires those services, pays for those services."

1 consent in writing to the multiple payments at or before the time of
2 entering into a contract to buy, sell or lease.

3 (d) A broker may:

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

6 (2) with the written agreement of the seller or landlord, share a com-
7 mission with another broker who acted as subagent of the seller or land-
8 lord;

9 (3) with the written agreement of the seller or landlord, share a com-
10 mission with a buyer's broker or a tenant's broker; and

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

16 Sec. 31. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,105,
17 as revived by section 30 of this act, is hereby amended to read as follows:
18 58-30,105. (a) Compensation is presumed to come from the transaction
19 and shall be determined by agency or transaction broker agreements en-
20 tered into pursuant to K.S.A. 1996 Supp. 58-30,103, and amendments
21 thereto.

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

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

30 (d) A broker may:

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

33 (2) with the written agreement of the seller or landlord, buyer or
34 tenant share a commission with another broker who acted as ~~subagent of~~
35 ~~the seller or landlord;~~ a transaction broker, a subagent or an agent of the
36 other party; and

37 (3) ~~with the written agreement of the seller or landlord, share a com-~~
38 ~~mission with a buyer's broker or a tenant's broker; and~~

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

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:

Does this look like consumer driven legislation? What benefits does this provide for the public?

3-74

Is the legislature trying to protect the public's interests here?

- 1 (A) Any environmental hazards affecting the property which are re-
- 2 quired by law to be disclosed;
- 3 (B) the physical condition of the property;
- 4 (C) any material defects in the property;
- 5 (D) any material defects in the title to the property; or
- 6 (E) any material limitation on the client's ability to perform under
- 7 the terms of the contract.

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

12 (3) Except as provided in subsection (d)(4), a seller's or landlord's
 13 agent is not required to disclose to a client or customer information re-
 14 lating to the physical condition of the property if a written report regard-
 15 ing the physical condition of the property has been prepared by a qualified
 16 third party and provided to the client or customer.

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

20 (5) In performing an investigation or inspection and in making a dis-
 21 closure in connection with a real estate transaction, a licensee shall ex-
 22 ercise the degree of care expected to be exercised by a reasonably prudent
 23 person who has the knowledge, skills and training required for licensure
 24 as a broker or salesperson.

25 For purpose of this subsection, "qualified third party" means a federal,
 26 state or local governmental agency or any person whom the broker, af-
 27 filiated licensee or a party to the real estate transaction reasonably be-
 28 lieves has the expertise necessary to meet the industry standards of prac-
 29 tice for the type of inspection or investigation that has been conducted
 30 by the third party in order to prepare the written report.

31 (e) A seller's or landlord's agent may show alternative properties not
 32 owned by the client to prospective buyers or tenants and may list com-
 33 peting properties for sale or lease without breaching any duty or obliga-
 34 tion to the client.

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

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

42 (h) If the seller or landlord has authorized the broker to offer coop-
 43 eration with other licensees pursuant to subsection (f) or (g), the broker

1 shall not refuse permission to another licensee to show, or to present an
 2 offer to purchase, a listed property unless specifically instructed by the
 3 seller in writing. The broker shall provide a copy of the written instruc-
 4 tions to another licensee upon request.

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

10 Sec. 33. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,106,
 11 as revived by section 32 of this act, is hereby amended to read as follows:
 12 58-30,106. (a) A seller's agent or a landlord's agent shall be a statutory
 13 agent with the duty and obligation to:

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

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

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

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

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

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

29 ~~(D) (C) advising the client to obtain expert advice as to material mat-~~
 30 ters about which the licensee knows but the specifics of which are beyond
 31 the expertise of the licensee;

32 ~~(4) (3) account in a timely manner for all money and property re-~~
 33 ceived;

34 ~~(5) (4) comply with all requirements of this act and rules and regu-~~
 35 lations adopted hereunder; and

36 ~~(6) (5) comply with any applicable federal, state and local laws, rules~~
 37 and regulations and ordinances, including fair housing and civil rights
 38 statutes and rules and regulations.

39 (b) If pursuant to subsection ~~(a)(3)(D)~~ ~~(a)(2)(C)~~, the licensee advised
 40 the client to obtain expert advice as to material matters about which the
 41 licensee knows but the specifics of which are beyond the expertise of the
 42 licensee, no cause of action for any person shall arise against the licensee
 43 pertaining to such material matters.

3-2

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

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

- 11 (A) Any environmental hazards affecting the property which are re-
- 12 quired by law to be disclosed;
- 13 (B) the physical condition of the property;
- 14 (C) any material defects in the property;
- 15 (D) any material defects in the title to the property; or
- 16 (E) any material limitation on the client's ability to perform under
17 the terms of the contract.

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

22 (3) Except as provided in subsection (d)(4), a seller's or landlord's
23 agent is not required to disclose to a client or customer information re-
24 lating to the physical condition of the property if a written report regard-
25 ing the physical condition of the property has been prepared by a qualified
26 third party and provided to the client or customer.

27 (4) A licensee seller's or landlord's agent shall disclose to the client
28 or customer any facts *actually* known by the licensee that *were omitted*
29 *from or* contradict any information included in a written report described
30 in subsection (d)(3).

31 (5) In performing an investigation or inspection and in making a dis-
32 closure in connection with a real estate transaction, a licensee shall ex-
33 ercise the degree of care expected to be exercised by a reasonably prudent
34 person who has the knowledge, skills and training required for licensure
35 as a broker or salesperson.

36 For purpose of this subsection, "qualified third party" means a federal,
37 state or local governmental agency or any person whom the broker, af-
38 filiated licensee or a party to the real estate transaction reasonably be-
39 lieves has the expertise necessary to meet the industry standards of prac-
40 tice for the type of inspection or investigation that has been conducted
41 by the third party in order to prepare the written report.

42 (e) A seller's or landlord's agent may provide assistance to the cus-
43 tomer by performing ministerial acts. Performing ministerial acts for the

1 customer shall not be construed as violating the brokerage firm's agency
2 with the seller or landlord and shall not be construed as forming an agency
3 with the customer.

4 (f) A seller's or landlord's agent may show alternative properties not
5 owned by the client to prospective buyers or tenants and may list com-
6 peting properties for sale or lease without breaching any duty or obliga-
7 tion to the client.

8 (f) (g) A seller or landlord may agree in writing with a seller's or
9 landlord's agent that the broker may offer subagency and pay compen-
10 sation to other brokers.

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

15 (i) A seller or landlord may agree in writing with a seller's or lan-
16 dlord's agent that the broker may offer to cooperate with a transaction
17 broker or to cooperate with and pay compensation to a transaction broker.

18 (h) (j) If the seller or landlord has authorized the broker to offer
19 cooperation with other licensees pursuant to subsection (f) or (g), (h) or
20 (i) the broker shall not refuse permission to another licensee to show, or
21 to present an offer to purchase, a listed property unless a listed property
22 or refuse to receive and transmit to the seller or landlord a written offer
23 or a listed property from another licensee specifically instructed by the
24 seller in writing. The broker shall provide a copy of the written instruc-
25 tions to another licensee upon request.

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

31 Sec. 34. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,107 is
32 hereby revived to read as follows: 58-30,107. (a) A buyer's or a tenant's
33 agent shall be a statutory agent with the following duty and obligation to:

- 34 (1) Perform the terms of the written agreement made with the client;
- 35 (2) exercise reasonable skill and care for the client;
- 36 (3) promote the interests of the client with the utmost good faith,
37 loyalty and fidelity, including:

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

42 (B) presenting, in a timely manner, all written offers, counteroffers
43 and back-up offers to and from the client when such offer is received

3-73
74

Why would the real estate commission need to have the right to enforce Federal or Local Laws unless they want to fine licensees?

1 prior to the closing of the sale unless the buyer instructs the broker in
2 the agency agreement not to submit offers after the client enters into a
3 purchase contract;

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

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

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

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

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

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

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

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

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

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

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

Is this really a source of revenue for the state?

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

6 For purpose of this subsection, "qualified third party" means a federal,
7 state or local governmental agency or any person whom the broker, the
8 affiliated licensee or a party to the real estate transaction reasonably be-
9 lieves has the expertise necessary to meet the industry standards of prac-
10 tice for the type of inspection or investigation that has been conducted
11 by the third party in order to prepare the written report.

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

18 (f) Except as provided in subsection (e) of K.S.A. 1996 Supp. 58-
19 30,103, a licensee may not act as a buyer's agent on any property shown
20 to the buyer while the licensee was acting as an agent or subagent of the
21 seller without the written agreement of the seller. If the licensee has
22 knowledge that another licensee affiliated with the broker showed the
23 property to the buyer while acting as an agent or subagent of the seller,
24 the licensee shall obtain the written agreement of the seller before acting
25 as the buyer's agent.

26 (g) A buyer or tenant may agree in writing with a buyer's or tenant's
27 agent that the agent may receive compensation from a seller's or lan-
28 dlord's agent.

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

34 Sec. 35. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,107,
35 as revived by section 34 of this act, is hereby amended to read as follows:
36 58-30,107. (a) A buyer's or a tenant's agent shall be a statutory agent with
37 the following duty and obligation to:

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

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

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

42 (A) ~~Seeking a price and terms which are acceptable to the client,~~
43 ~~except that an agency agreement may provide that the licensee shall not~~

3-94
75

1 be obligated to seek other properties after the client enters into a purchase contract;

2
3 ~~(B)~~ Presenting, in a timely manner, all written offers, counteroffers and back-up offers to and from the client when such offer is received prior to the closing of the sale unless the buyer instructs the broker in the agency agreement not to submit offers after the client enters into a purchase contract;

4
5
6
7 ~~(C)~~ (B) disclosing to the client all adverse material facts actually known by the licensee; and

8
9
10 ~~(D)~~ (C) advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

11
12
13 (4) (3) account in a timely manner for all money and property received;

14
15 (5) (4) comply with all requirements of this act and rules and regulations adopted hereunder; and

16
17 (6) (5) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes or rules and regulations.

18
19
20 (b) If pursuant to subsection ~~(a)(3)(D)~~ (a)(2)(C), the licensee advised the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters.

21
22
23
24
25 (c) A buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute or rule and regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

26
27
28
29
30
31 (d) (1) A buyer's or tenant's agent owes no duty or obligation to a customer, except that the licensee shall disclose to any customer all adverse material facts actually known by the licensee, including but not limited to material facts concerning the client's financial ability to perform the terms of the transaction.

32
33
34
35
36 (2) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any qualified third party.

37
38
39
40
41 (3) Except as provided in subsection (d)(4), a buyer's or tenant's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the

1 physical condition of the property has been prepared by a qualified third party and provided to the client or customer.

2
3 (4) A licensee *buyer's or tenant's agent* shall disclose to the client or customer any facts *actually* known by the licensee that *were omitted from* or contradict any information included in a written report described in subsection (d)(3).

4
5
6
7 (5) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a licensee shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson.

8
9
10
11
12 For purpose of this subsection, "qualified third party" means a federal, state or local governmental agency or any person whom the broker, the affiliated licensee or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare the written report.

13
14
15
16
17
18 (e) A buyer's or tenant's agent may provide assistance to the seller or landlord by performing ministerial acts. Performing ministerial acts for the seller or landlord shall not be construed as violating the brokerage firm's agency with the buyer or tenant and shall not be construed as forming an agency with the seller or landlord.

19
20
21
22
23 (f) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This subsection is intended to allow a buyer's or tenant's agent to show competing buyers or tenants the same property and to assist competing buyers or tenants in attempting to purchase or lease a particular property.

24
25
26
27
28
29 (f) Except as provided in subsection (e) of K.S.A. 1006 Supp. 58-30,103, a licensee may not act as a buyer's agent on any property shown to the buyer while the licensee was acting as an agent or subagent of the seller without the written agreement of the seller. If the licensee has knowledge that another licensee affiliated with the broker showed the property to the buyer while acting as an agent or subagent of the seller, the licensee shall obtain the written agreement of the seller before acting as the buyer's agent.

30
31
32
33
34
35
36
37 (g) A buyer or tenant may agree in writing with a buyer's or tenant's agent that the agent may receive compensation from a seller's or landlord's agent or from a transaction broker.

38
39
40
41 (h) A buyer's or tenant's agent shall not be liable for punitive or exemplary damages for the licensee's failure to perform any of the duties set forth in this section, unless such failure is shown by clear and convincing evidence that the licensee acted toward the plaintiff with willful

1 conduct, wanton conduct, fraud or malice.
 2 Sec. 36. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,108 is
 3 hereby revived to read as follows: 58-30,108. (a) (1) A licensee may act
 4 as a dual agent only with the informed consent of all parties to the trans-
 5 action. The informed consent shall be evidenced by a dual agency consent
 6 agreement which shall include, at a minimum, the duties and obligations
 7 included in this section.

8 (2) If, pursuant to subsections (g) and (h) of K.S.A. 1996 Supp. 58-
 9 30,103, the agency agreements include a potential for the seller's or lan-
 10 dlord's agent and the buyer's or tenant's agent to act as a disclosed dual
 11 agent, the dual agency consent agreement shall be signed by the buyer
 12 or the tenant no later than the first showing of the property and by the
 13 seller or the landlord no later than the presentation of the offer to pur-
 14 chase or lease. If the agency agreements did not include a potential for
 15 the seller's or landlord's agent and the buyer's or tenant's agent to act as
 16 a disclosed dual agent, the dual agency consent agreement shall be signed
 17 by the buyer and seller or the tenant and landlord prior to the first show-
 18 ing of the property.

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

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

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

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

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

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

37 (D) that a client will agree to financing terms other than those of-
 38 fered.

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

3-76
 77

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

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

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

8 (i) In any transaction, a broker may without liability withdraw from
 9 representing a client if either client does not consent to a disclosed dual
 10 agency. Such withdrawal shall not prejudice the ability of the broker to
 11 continue to represent the other client in the transaction, nor limit the
 12 broker from representing the client in other transactions not involving a
 13 dual agency. Such withdrawal shall not limit the ability of the broker to
 14 receive a referral fee for referring a client to a broker of a different bro-
 15 kerage firm.

16 Sec. 37. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,109 is
 17 hereby revived to read as follows: 58-30,109. (a) A broker may personally,
 18 or through the broker's duly authorized licensed representative, specifi-
 19 cally designate, in a written buyer agency agreement obtained pursuant
 20 to K.S.A. 1996 Supp. 58-30,103, an affiliated licensee who will be acting
 21 as legal agent of the buyer client to the exclusion of all other affiliated
 22 licensees. After verbal notice has been given to the buyer client, another
 23 affiliated licensee may be temporarily appointed as a designated agent.

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

27 (c) If a designated agent also acts as agent of the seller of property
 28 listed by the designated agent, the agent and the broker shall be disclosed
 29 dual agents pursuant to K.S.A. 1996 Supp. 58-30,108.

30 (d) If the broker performs any duty or obligation set forth in subsec-
 31 tion (a)(3) of K.S.A. 1996 Supp. 58-30,106, the broker and the designated
 32 agent or agents shall be disclosed dual agents pursuant to K.S.A. 1996
 33 Supp. 58-30,108.

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

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

42 Sec. 38. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,109,
 43 as revived by section 37 of this act, is hereby amended to read as follows:

1 58-30,109. (a) *In the absence of designated agents appointed pursuant to*
2 *subsection (b), a brokerage firm may act as a transaction broker pursuant*
3 *to section 1, and amendments thereto, on an in-house transaction with*
4 *the informed consent of the seller client and the buyer client. The informed*
5 *consent shall be evidenced by a transaction broker addendum to the*
6 *agency agreements and shall be signed by the buyer prior to writing the*
7 *offer and by the seller prior to signing the contract.*

8 (b) (1) A broker may personally, or through the broker's duly au-
9 thorized licensed representative, specifically designate, in a written buyer
10 agency agreement obtained pursuant to K.S.A. 1996 Supp. 58-30,103, an
11 affiliated licensee and amendments thereto, one or more affiliated licens-
12 ees who will be acting as legal agent of the buyer client or seller client to
13 the exclusion of all other affiliated licensees. After verbal notice has been
14 given to the buyer client, another affiliated licensee may be temporarily
15 appointed as a designated agent.

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

19 (c) If a designated agent also acts as agent of the seller of property
20 listed by the designated agent, the agent and the broker shall be disclosed
21 dual agents pursuant to K.S.A. 1996 Supp. 58-30,108.

22 (d) If the broker performs any duty or obligation set forth in subsec-
23 tion (a)(3) of K.S.A. 1996 Supp. 58-30,106, the broker and the designated
24 agent or agents shall be disclosed dual agents pursuant to K.S.A. 1996
25 Supp. 58-30,108.

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

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

34 (2) *If a buyer client of a designated agent wants to see a property*
35 *which was personally listed by the broker, the broker, with the written*
36 *consent of the seller, may specifically designate an affiliated licensee who*
37 *will act as legal agent of the seller client to the exclusion of all other*
38 *affiliated licensees. The written consent of the seller shall contain the name*
39 *of the prospective buyer and shall acknowledge that the broker shall act*
40 *as a transaction broker regarding any transaction with the buyer. The*
41 *written consent of the seller shall be signed prior to presentation of any*
42 *offer.*

43 (3) A designated agent of a seller client shall have the duties and

1 obligations set forth in K.S.A. 58-30,106, and amendments thereto. A des-
2 ignated agent of a buyer client shall have the duties and obligations set
3 forth in K.S.A. 58-30,107, and amendments thereto.

4 (4) In any transaction involving a designated agent, the supervising
5 broker of the designated agent shall act as a transaction broker pursuant
6 to section 1, and amendments thereto, unless both buyer and seller are
7 represented by designated agents and the designated agents are super-
8 vised by the same branch broker. In that case, the branch broker shall
9 act as a transaction broker pursuant to section 1, and amendments
10 thereto. The supervising broker, or branch broker if applicable, may ap-
11 point an affiliated licensee to act in the transaction as a transaction broke-
12 pursuant to section 1, and amendments thereto.

13 (5) A designated agent may disclose to the designated agent's super-
14 vising broker, or branch broker if applicable, and to an affiliated licensee
15 appointed as a transaction broker pursuant to paragraph (4), confidential
16 information of a client for the purpose of seeking advice or assistance for
17 the benefit of the client in regard to a transaction.

18 (6) If a buyer client of a designated agent wants to see a property
19 owned by a seller client of the designated agent, the designated agent may
20 act as a transaction broker pursuant to section 1, and amendments
21 thereto, with the informed consent of the seller client and buyer client.
22 The informed consent shall be evidenced by a transaction broker adden-
23 dum to the agency agreements and shall be signed by the buyer prior to
24 writing the offer and by the seller prior to signing the contract.

25 (c) The commission, by rules and regulations, shall adopt a transac-
26 tion broker addendum form to be used by licensees pursuant to this sec-
27 tion.

28 Sec. 39. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,110 is
29 hereby revived to read as follows: 58-30,110. (a) (1) The commission shall
30 adopt a rule and regulation prescribing the language which shall be in-
31 cluded in a form entitled "Disclosure of alternative agency relationships".

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

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

- 39 (A) A face-to-face meeting with the prospective buyer or seller; or
- 40 (B) a written communication from the licensee.

41 The licensee shall note the furnishing of a copy of the disclosure or
42 the contract.

43 (4) A licensee is not required to provide a copy of the form to a

Designated Agent work for the small real estate firms which are common even
is this an attempt to protect the buying and selling public's interests or
is this really an attempt to protect the broker's market share? How does

3-78

1 prospective buyer or seller in the following instances:
 2 (A) The licensee is acting solely as a principal and not as an agent for
 3 another;
 4 (B) the written communication from the licensee is a solicitation of
 5 business;
 6 (C) the face-to-face meeting occurs at an open house and there is no
 7 substantive discussion regarding a transaction; or
 8 (D) the face-to-face meeting is a mere solicitation of business and
 9 there is no substantive discussion regarding a transaction.
 10 (b) (1) Except for instances when a licensee is providing information
 11 through an advertisement or other form of public notice of the licensee's
 12 representation of a client, a licensee representing a client in a proposed
 13 real estate transaction shall disclose the representation at the time of
 14 every contact with another licensee representing the other party. The
 15 disclosure may be made orally or in writing.
 16 (2) Each time a licensee is contacted by another licensee who re-
 17 quests permission to show property to a prospective buyer, the licensee
 18 shall inquire whether or not the licensee represents the buyer.
 19 (c) The disclosure of the agency relationship between all licensees
 20 involved and the seller and buyer shall be included in any contract for
 21 sale and in any lot reservation agreement.
 22 Sec. 40. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,110,
 23 as revived by section 39 of this act, is hereby amended to read as follows:
 24 58-30,110. (a) (1) The commission shall adopt a rule and regulation pre-
 25 scribing the language which shall be included in a form entitled "Disco-
 26 sure of alternative agency relationships" describes a seller's agent, a buy-
 27 er's agent and a transaction broker for inclusion in a brochure entitled
 28 "real estate brokerage relationships".
 29 (2) ~~At the discretion of the broker, the disclosure of alternative~~
 30 ~~agency relationships form may be either a separate document or may be~~
 31 ~~contained in the agency agreement with the client.~~
 32 (3) Except as provided in subsection (a)(4) (a)(3), a licensee shall
 33 furnish a prospective buyer or seller with a copy of the disclosure of
 34 alternative agency relationships form at the first occurrence of either of
 35 the following events regarding real estate transactions:
 36 (A) A face-to-face meeting with the prospective buyer or seller, or
 37 (B) a written communication from the licensee.
 38 The licensee shall note the furnishing of a copy of the disclosure on
 39 the contract the brochure at the first practical opportunity.
 40 (4) (3) A licensee is not required to provide a copy of the form bro-
 41 chure to a prospective buyer or seller in the following instances:
 42 (A) The licensee is acting solely as a principal and not as an agent for
 43 another;

1 (B) the ~~written~~ communication from the licensee is a solicitation of
 2 business;
 3 (C) the ~~face-to-face meeting occurs at an open house and there is no~~
 4 ~~substantive discussion regarding a transaction; or transaction is regarding~~
 5 the sale or lease of commercial property or the sale of residential property
 6 of more than four units;
 7 (D) the ~~face-to-face meeting is a mere solicitation of business and~~
 8 ~~there is no substantive discussion regarding a transaction. transaction is~~
 9 regarding the sale of property by public auction;
 10 (E) the licensee is only performing ministerial acts; or
 11 (F) the customer or client has already received the brochure from the
 12 licensee's brokerage firm.
 13 (4) Acknowledgment of receipt of the brochure by the seller and buyer
 14 shall be included in any contract for sale.
 15 (b) (1) Except for instances when a licensee is providing information
 16 through an advertisement or other form of public notice of the licensee's
 17 representation of a client, a licensee representing a client in a proposed
 18 real estate transaction shall disclose the representation at the time of
 19 every the initial contact with another licensee representing the other
 20 party. The disclosure may be made orally or in writing.
 21 (2) Each time a licensee is contacted by another licensee who re-
 22 quests permission to show property to a prospective buyer, the licensee
 23 shall inquire whether or not the licensee represents the buyer.
 24 (c) The disclosure of the ~~agency brokerage~~ relationship between all
 25 licensees involved and the seller and buyer shall be included in any con-
 26 tract for sale and in any lot reservation agreement.
 27 Sec. 41. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,111 is
 28 hereby revived to read as follows: 58-30,111. (a) A client shall not be
 29 liable for a misrepresentation of the client's statutory agent arising out of
 30 the agency agreement unless the client knew of the misrepresentation.
 31 (b) A statutory agent shall not be liable for a misrepresentation of the
 32 agent's client arising out of the agency agreement unless the licensee
 33 knew of the misrepresentation.
 34 (c) A statutory agent shall not be liable for an innocent misrepresenta-
 35 tion in information provided to the seller or landlord or to the buyer or
 36 tenant if the licensee does not have personal knowledge of the error,
 37 inaccuracy or omission that is the basis for the misrepresentation.
 38 Sec. 42. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,111,
 39 as revived by section 41 of this act, is hereby amended to read as follows:
 40 58-30,111. (a) A client or customer shall not be liable for a misrepresenta-
 41 tion of or omission by the client's statutory agent or the transaction
 42 broker arising out of the agency or transaction broker agreement unless
 43 the client or customer knew of the misrepresentation or omission.

This language neatly exempts commercial licensees and auctioneers from disclosure. Disci-
 osure was primary reason given the 1995 Legislature for the need of the BRRETA Act
 Shouldn't people who sometimes deal in larger dollar properties be required to di-
 more disclosure than those involved in small residential transactions?

3-28
 79

1 prospective buyer or seller in the following instances:

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

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

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

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

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

16 (2) Each time a licensee is contacted by another licensee who re-
17 quests permission to show property to a prospective buyer, the licensee
18 shall inquire whether or not the licensee represents the buyer.

19 (c) The disclosure of the agency relationship between all licensees
20 involved and the seller and buyer shall be included in any contract for
21 sale and in any lot reservation agreement.

22 Sec. 40. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,110,
23 as revived by section 39 of this act, is hereby amended to read as follows:

24 58-30,110. (a) (1) The commission shall adopt a rule and regulation pre-
25 scribing the language which shall be included in a form entitled "Discl-
26 sure of alternative agency relationships" describes a seller's agent, a buy-
27 er's agent and a transaction broker for inclusion in a brochure entitled
28 "real estate brokerage relationships".

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

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

- 36 (A) A face-to-face meeting with the prospective buyer or seller, or
- 37 (B) a written communication from the licensee.

38 The licensee shall note the furnishing of a copy of the disclosure on
39 the contract the brochure at the first practical opportunity.

40 (4) (3) A licensee is not required to provide a copy of the form bro-
41 chure to a prospective buyer or seller in the following instances:

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

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

3 (C) the face-to-face meeting occurs at an open house and there is no
4 substantive discussion regarding a transaction; or transaction is regarding
5 the sale or lease of commercial property or the sale of residential property
6 of more than four units;

7 (D) the face-to-face meeting is a mere solicitation of business and
8 there is no substantive discussion regarding a transaction; transaction is
9 regarding the sale of property by public auction;

10 (E) the licensee is only performing ministerial acts; or

11 (F) the customer or client has already received the brochure from the
12 licensee's brokerage firm.

13 (4) Acknowledgment of receipt of the brochure by the seller and buyer
14 shall be included in any contract for sale.

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

21 (2) Each time a licensee is contacted by another licensee who re-
22 quests permission to show property to a prospective buyer, the licensee
23 shall inquire whether or not the licensee represents the buyer.

24 (c) The disclosure of the agency brokerage relationship between all
25 licensees involved and the seller and buyer shall be included in any con-
26 tract for sale and in any lot reservation agreement.

27 Sec. 41. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,111 is
28 hereby revived to read as follows: 58-30,111. (a) A client shall not be
29 liable for a misrepresentation of the client's statutory agent arising out of
30 the agency agreement unless the client knew of the misrepresentation.

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

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

38 Sec. 42. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,111,
39 as revived by section 41 of this act, is hereby amended to read as follows:

40 58-30,111. (a) A client or customer shall not be liable for a misrepresen-
41 tation of or omission by the client's statutory agent or the transaction
42 broker arising out of the agency or transaction broker agreement unless
43 the client or customer knew of the misrepresentation or omission.

Is the classification of licensees really in the public interests?
Language discriminate against some classes of licensees?

This language neatly exempts commercial licensees and auctioneers from disclosure. Disclosure was primary reason given the 1995 legislature for the need of the BRRETA Act. Shouldn't people who sometimes deal in larger dollar properties be required to disclose more disclosure than those involved in small residential transactions?

3-99
80

1 (b) A statutory agent or transmission broker shall not be liable for a
 2 misrepresentation of or omission by the agent's client or the transaction
 3 broker's customer arising out of the agency or transaction broker agree-
 4 ment unless the licensee knew of the misrepresentation or omission.

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

10 Sec. 43. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,112 is
 11 hereby revived to read as follows: 58-30,112. The commission shall pro-
 12 vide suggested forms of agency agreements and, by rules and regulations,
 13 provide such other prohibitions, limitations and conditions relating
 14 thereto as the commission may prescribe.

15 Sec. 44. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,112,
 16 as revived by section 43 of this act, is hereby amended to read as follows:
 17 58-30,112. The commission shall provide suggested sample forms of
 18 agency agreements and, by rules and regulations, provide such other pro-
 19 hibitions, limitations and conditions relating thereto as the commission
 20 may prescribe.

21 Sec. 45. On and after July 1, 1997, K.S.A. 1996 Supp. 74-4202 is
 22 hereby revived to read as follows: 74-4202. (a) Within 30 days after the
 23 appointment of the members to be regularly appointed within any year,
 24 the commission shall meet in the city of Topeka for the purpose of or-
 25 ganizing by selecting from its membership a chairperson and such other
 26 officers as the commission may deem necessary and appropriate. A ma-
 27 jority of the members of the commission shall constitute a quorum for
 28 the exercise of the powers or authority conferred upon it.

29 (b) The commission shall receive applications for, and issue licenses
 30 to, brokers and salespersons, as provided in this act and shall administer
 31 the provisions of this act and the brokerage relationships in real estate
 32 transactions act, as such act governs the sale or lease of real estate that is
 33 one to four residential units. The commission may do all things necessary
 34 and convenient for carrying into effect the provisions of the acts and may
 35 adopt rules and regulations not inconsistent with the acts. For the purpose
 36 of the acts, the commission shall make all necessary investigations, and
 37 every licensee shall furnish to the commission such evidence as the li-
 38 censee may have as to any violation the acts or any rules and regulations
 39 adopted under the acts. The commission may enforce any order by an
 40 action in the district court of the county where the alleged violator resides
 41 or where the violation allegedly occurred.

42 (c) Each member of the commission shall be paid compensation, sub-
 43 sistence allowances, mileage and other expenses as provided in K.S.A. 75-

1 3223 and amendments thereto.

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

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

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

14 Sec. 46. On and after October 1, 1997, K.S.A. 1996 Supp. 74-4202,
 15 as revived by section 45 of this act, is hereby amended to read as follows:
 16 74-4202. (a) Within 30 days after the appointment of the members to be
 17 regularly appointed within any year, the commission shall meet in the city
 18 of Topeka for the purpose of organizing by selecting from its membership
 19 a chairperson and such other officers as the commission may deem nec-
 20 essary and appropriate. A majority of the members of the commission
 21 shall constitute a quorum for the exercise of the powers or authority
 22 conferred upon it.

23 (b) The commission shall receive applications for, and issue licenses
 24 to, brokers and salespersons, as provided in this act and shall administer
 25 the provisions of this act and the brokerage relationships in real estate
 26 transactions act, as such act governs the sale or lease of real estate that is
 27 one to four residential units. The commission may do all things necessary
 28 and convenient for carrying into effect the provisions of the acts and may
 29 adopt rules and regulations not inconsistent with the acts. For the purpose
 30 of the acts, the commission shall make all necessary investigations, and
 31 every licensee shall furnish to the commission such evidence as the li-
 32 censee may have as to any violation the acts or any rules and regulations
 33 adopted under the acts. The commission may enforce any order by an
 34 action in the district court of the county where the alleged violator resides
 35 or where the violation allegedly occurred.

36 (c) Each member of the commission shall be paid compensation, sub-
 37 sistence allowances, mileage and other expenses as provided in K.S.A. 75-
 38 3223 and amendments thereto.

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

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

3-8-81

1 and remain therein.

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

8 Sec. 47. On and after July 1, 1997, K.S.A. 1995 Supp. 58-3035, as
9 amended by section 20 of chapter 212 of the 1996 Session Laws of Kansas,
10 58-3050, as amended by section 12 of chapter 212 of the 1996 Session
11 Laws of Kansas, 58-3062, as amended by section 13 of chapter 212 of the
12 1996 Session Laws of Kansas, 58-3064, as amended by section 14 of chap-
13 ter 212 of the 1996 Session Laws of Kansas, 58-3065, as amended by
14 section 15 of chapter 212 of the 1996 Session Laws of Kansas, 58-3068,
15 as amended by section 16 of chapter 212 of the 1996 Session Laws of
16 Kansas, 74-4202, as amended by section 17 of chapter 212 of the 1996
17 Session Laws of Kansas, and K.S.A. 1996 Supp. 74-4209 are hereby re-
18 pealed.

19 Sec. 48. On and after October 1, 1997, K.S.A. 17-2707, 58-3045 and
20 58-3063 and K.S.A. 1996 Supp. 58-3035, as revived by section 3 of this
21 act, 58-3036, 58-3037, 58-3039, 58-3042, 58-3046a, 58-3050, as revived
22 by section 11 of this act, 58-3062, as revived by section 13 of this act, 58-
23 3064, as revived by section 16 of this act, 58-3065, as revived by section
24 18 of this act, 58-3068, as revived by section 20 of this act, 58-30,101, as
25 revived by section 22 of this act, 58-30,102, as revived by section 24 of
26 this act, 58-30,103, as revived by section 26 of this act, 58-30,104, as
27 revived by section 28 of this act, 58-30,105, as revived by section 30 of
28 this act, 58-30,106, as revived by section 32 of this act, 58-30,107, as
29 revived by section 34 of this act, 58-30,108, as revived by section 36 of
30 this act, 58-30,109, as revived by section 37 of this act, 58-30,110, as
31 revived by section 39 of this act, 58-30,111, as revived by section 41 of
32 this act, 58-30,112, as revived by section 43 of this act, and 74-4202, as
33 revived by section 45 of this act, are hereby repealed.

34 Sec. 49. This act shall take effect and be in force from and after its
35 publication in the statute book.

3-87

March 18, 1997

RE: House Bill No. 2264
The BRRETA Bill

My name is Matt Eck and I have been a broker in Kansas for over 30 years. I have 25 agents in my office.

I am going to ask that you either defeat this Bill, because I feel it is totally anti-consumer and pro-Realtor, or change 3 things in the Bill:

I have absolutely no problem with disclosure; in fact, we were the first office in Wichita to put Agency Disclosure in our contracts BEFORE it became law. The very people who are pushing this Bill now, fought me 10 years ago because I put in all of our contracts who we represented.

I am a member of the Board of Realtors but they DO NOT REPRESENT MY VIEWS and if they would survey their membership, they would find that they don't represent the views of 90% of the agents in Kansas. In fact, I would estimate that their membership would be about 50% less if it wasn't mandatory in Kansas that we belong to the Board of Realtors in order to belong to the Multiple Listing Service, and if a Broker is a Board member, it is mandatory that all of the Broker's agents pay dues and belong. With this mandatory membership, it APPEARS that they represent all licensees but that most certainly is not the case.

(1) Now, they want to put into law that the seller should pay the buyer broker's commission (See Page 47, Line 35: "The compensation is presumed to come from the transaction.") Where is the equality here? It nowhere addresses the BUYER PAYING the listing agent's fee. In fact, as the law is written, it opens up "For Sale By Owners" to paying a Buyer Broker a fee because it states "The compensation is presumed to come from the transaction". This clause alone is enough to defeat this legislation or insist that this clause be deleted from the Bill.

(2) The next issue is the practice of dual agency, transaction broker or designated agency, all of which I do not allow in my office because all of these entail the use of buyer brokerage. Buyer and seller brokerage under the same roof and practiced by the same agents is unethical, immoral and I feel, illegal, because you cannot serve two "masters". If it is not all of these things, then why are the Realtors wanting to change the law? The Realtors want to do what the legal profession has refused to do for years: represent both sides in a transaction. The solution? Single agency offices. If the Realtors are really concerned about the Buyer as a consumer, just open a Buyer Brokerage office & do strictly Buyer Brokerage! The free market will dictate whether the demand is there and the consumers are willing to pay for that service. It is impossible to do both Buyer and Seller Agency under the same roof and to "change hats" at each phone call. I have personally had Buyer agents call to set up a showing on one of our listings as a Buyer Agent and during the conversation say "Oh, I'll switch and represent the seller on this showing." How can they do that? Is it right for us to place our Buyer or Seller clients in a position of an agent being an adversary or a client on the same property?

Senate Judiciary
Attachment 4
3-18-97

Page 2

Why should we exempt all commercial, farm and multi-family (more than 4 units) brokers from this act? Contrary to what you might be told, most of these commercial & farm transactions consist of small businesses and small family farms. We are basically saying that residential buyers are not smart enough to protect themselves from unscrupulous Realtors, but the guy on the farm is "on his own". I never felt that, in America, we would have a Trade Association such as the Kansas Association of Realtors introduce "class" legislation. Why are we segregating these "classes"?

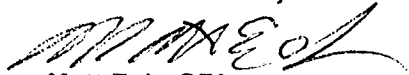
In regard to fines and imprisonment (Page 33, Line 29), I feel it would be sad for a "small town" Kansas real estate broker to be fined \$10,000.00 and 12 months in jail for a "paper violation" of the BRRETA Bill, even though there was never a consumer complaint and no harm done to anyone. But, more important, is the Kansas Real Estate Commission's right to fine a broker \$200 for EACH FILE up to \$5,000.00 for failure to have in the file a written agency agreement.

In summary, I am asking you to either vote "NO" on this bill and allow it to sunset, or:

1. Delete the compensation clause on Page 47, Lines 35 & 36. (Remember, the seller is a consumer, too, and why should the seller be forced to pay the Buyer's agent's commission?)
2. Do not allow an agent to represent both parties to a transaction (Buyer agent and Seller agent) in the same office and do not allow Buyer brokerage and Seller brokerage to be practiced under the same roof.
3. Do not exempt commercial, farm and multi-family of more than 4 units from this Bill.

By this Bill, you are being asked to legislate market share by putting the large real estate companies at an advantage over the small and medium-sized offices and also legislating that sellers are to pay for the buyer's representation (compensation clause) and to legislate that commercial brokers don't have to disclose but residential brokers do; and to legalize the representation of the principal and the adversary by the same person in the same transaction. All of this under the guise of "this is consumer legislation". Then by this Bill, you are asked to legislate and protect the Realtor from liability under the narrowly defined statutory law, instead of common law. This is the most anti-consumer legislation I have come across in the 30+ years I have been in the real estate business. Remember, buyers AND sellers are BOTH consumers and Buyers have always had the ability to be represented in any transaction. This legislation does not change this but it does give the large real estate companies an immediate increase in market share. Buyers would actually have better protection without this legislation and still get good customer service for FREE.

I feel the same standards as applied in a court of law should prevail in making a new law: That is, if you have any "reasonable doubt" you have no choice but to change it or vote "NO". Thanks for your time and consideration in this matter.


Matt Eck, GRI
Broker

4-2

To: Senate Judiciary Committee Hearing
Date: March 18, 1997

Subject: House Bill No. 2264, The BRRETA BILL

Dear Committee Member:

My name is Cleve Smith. I am a licensed real estate broker and I sell new homes in the Wichita area. I have been practicing real estate for 25 years.

I am opposed to the BRRETA BILL and ask that you take a few minutes to consider portions of the Bill which concern me. You have a copy of the pages of the Bill with the items in question underlined and marked with yellow marking pen. I will not take time to discuss all of them here and would ask that you go through this packet and "answer" the questions to your satisfaction before you decide to vote "for" or "against" the passage of this Bill.

Page 33 of your handout details the Criminal Penalties which concern me. Section 18 says: "Willful violation of any provision of this act or the brokerage relationships in real estate transaction act, is a misdemeanor punishable by imprisonment for not more than 12 months or a fine of not less than \$100 or more than \$1,000, or both, for the first offense and imprisonment for not more than 12 months or a fine of not less than \$1,000 or more than \$10,000, or both, for a second or subsequent offense." I would ask you to consider: Does "willful violation" of the Real Estate License Law really warrant Criminal Penalties of the severity enumerated in the Law? Or, are they perhaps a bit stringent for people who fail to dot an "I" or cross a "T", or fail to present a mandatory form?

See Section 30, on page 47 of the Bill for the language regarding compensation: "Compensation (in a real estate transaction) is presumed to come from the transaction..." Why would the real estate industry want this type of language if there wasn't special interest motivation? Why not let free market forces dictate compensation by changing

*Senate Judiciary
attachment 5
3-18-97*

the law to read: "A buyer or a seller of real estate can employ the services of a real estate licensee to assist them in the purchase or sale of real property, provided that the prospective buyer or seller who describes those services, pays for those services.?"

See Section 32(D)(6)(b) regarding liability protection for the licensee. "If pursuant to subsection (a)(3)(D), the licensee advised the client to obtain expert advise as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters." Does this look like consumer driven legislation? What benefits does this provide for the public?

Another issue which concerns me is the doubling and tripling of fines by the Kansas Real Estate Commission concerns me. Please take a look at the enclosed flyer which notates the fine schedule changes which are now in effect from the Kansas Real Estate Commission.

B. Fine schedule changes.

The KREC has changed their fine schedules as follows:

1. Failure to obtain a written agency agreement—changed from \$250 per violation, up to a \$500 maximum, to \$250 for the first violation and \$100 for each violation thereafter up to a maximum of \$5,000.
2. Failure to include a closing date in a contract and failure to include an expiration date in an agency agreement—changed from \$50 per occurrence to \$150 per occurrence.
3. Failure to deposit earnest money within the statutory time period, or for failure to deliver the contract and earnest money check to a 3rd party escrow agent within the statutory time period—\$50 per day for each day that the deposit was late, up to a maximum of \$250 per deposit.

I am concerned about government intervention into my life. I believe that the BRRETA ACT is not consumer legislation nor do I think it has much for the real estate licensee, particularly with the penalties and fines I have discussed, Please let this BILL die in committee and thus allow the BRRETA ACT to Sunset!

Sincerely,

Cleve Smith, Broker/Associate
Stoneborough Real Estate
12007 Hickory
Wichita, Kansas 67235

5-2

Kansas Real Estate Commission (KREC) Update

What's going on at the KREC that you need to know about?

A. Proposed legislation

At their December 19 meeting, the KREC will be reviewing a legislative package containing the following proposals:

1. Compensation of Licensed Personal Assistants

Permit licensees to pay licensed personal assistants directly, rather than requiring that their compensation come from the broker. The proposed legislation would make clear that supervisory responsibility would still remain with the employing broker and would not in any way be delegated away if a broker permitted salespersons or associate brokers to compensate their licensed personal assistants directly.

2. Ability of sales associates to incorporate as professional corporations/More favorable tax treatment under the limited liability company business affiliation.

The KREC is contemplating recommending an amendment to the professional corporations statute which would permit licensees to incorporate as professional corporations for the receipt of commissions. Over the years, sales associates and broker associates have been frustrated at their inability to take advantage of a corporate business structure for income tax purposes.

Additionally, beyond the KREC activity in this area, the Treasury Department has published a proposed regulation, which would permit a limited liability company to be taxed as a sole proprietorship, rather than as a corporation as it stands under current law. If that proposed regulation becomes final, the Kansas Bar Association and KAR is looking at legislation which would alter Kansas LLC law to permit an individual to create an LLC rather than requiring a minimum of two members.

3. Salespersons as officers of real estate corporations

The current license law prohibits salespersons from being an officer of a corporation. This proposal could permit corporations involved in real estate activities to have an officer who is only a salesperson, not a broker.

4. New timing for 30 hour post-license course

The commission is considering requiring newly licensed salespersons to take the 30 hour post license course within the first six months after licensure. They are contemplating creating a temporary license which expires after 6 months. After a new licensee takes the 30 hour course, they would receive a regular license. The concept presumes a salesperson with a temporary license is able to do everything a regular licensee would do. "Temporary" would only refer to how long the license is valid.

B. Fine schedule changes.

The KREC has changed their fine schedules as follows:

1. Failure to obtain a written agency agreement—changed from \$250 per violation, up to a \$500 maximum, to \$250 for the first violation and \$100 for each violation thereafter up to a maximum of \$5,000.
2. Failure to include a closing date in a contract and failure to include an expiration date in an agency agreement—changed from \$50 per occurrence to \$150 per occurrence.
3. Failure to deposit earnest money within the statutory time period, or for failure to deliver the contract and earnest money check to a 3rd party escrow agent within the statutory time period—\$50 per day for each day that the deposit was late, up to a maximum of \$250 per deposit.

1 subagents.

2 Sec. 2. On and after October 1, 1997, K.S.A. 17-2707 is hereby
3 amended to read as follows: 17-2707. As used in this act, unless the con-
4 text clearly indicates that a different meaning is intended, the following
5 words mean:

6 (a) "Professional corporation," a corporation organized under this act.

7 (b) "Professional service," the type of personal service rendered by a
8 person duly licensed by this state as a member of any of the following
9 professions, each paragraph constituting one type:

- 10 (1) A certified public accountant;
- 11 (2) An architect;
- 12 (3) An attorney-at-law;
- 13 (4) A chiropractor;
- 14 (5) A dentist;
- 15 (6) An engineer;
- 16 (7) An optometrist;
- 17 (8) An osteopathic physician or surgeon;
- 18 (9) A physician, surgeon or doctor of medicine;
- 19 (10) A veterinarian;
- 20 (11) A podiatrist;
- 21 (12) A pharmacist;
- 22 (13) A land surveyor;
- 23 (14) A licensed psychologist;
- 24 (15) A specialist in clinical social work;
- 25 (16) A registered physical therapist;
- 26 (17) A landscape architect;
- 27 (18) A registered professional nurse;
- 28 (19) A real estate broker or salesperson.

29 (c) "Regulating board," the board or state agency which is charged
30 with the licensing and regulation of the practice of the profession which
31 the professional corporation is organized to render.

32 (d) "Qualified person":

- 33 (1) Any natural person licensed to practice the same type of profes-
34 sion which any professional corporation is authorized to practice;
- 35 (2) the trustee of a trust which is a qualified trust under subsection
36 (a) of section 401 of the internal revenue code of 1954, as amended, or
37 of a contribution plan which is a qualified employee stock ownership plan
38 under subsection (a) of section 409A of the internal revenue code of 1954,
39 as amended; or
- 40 (3) the trustee of a revocable living trust established by a natural
41 person who is licensed to practice the type of profession which any pro-
42 fessional corporation is authorized to practice, if the terms of such trust
43 provide that such natural person is the principal beneficiary and sole

1 trustee of such trust and such trust does not continue to hold title to
2 professional corporation stock following such natural person's death for
3 more than a reasonable period of time necessary to dispose of such stock.

4 Sec. 3. On and after July 1, 1997, K.S.A. 1996 Supp. 58-3035 is
5 hereby revived to read as follows: 58-3035. As used in this act, unless the
6 context otherwise requires:

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

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

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

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

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

27 (f) "Broker" means an individual, other than a salesperson, who ad-
28 vertises or represents that such individual engages in the business of buy-
29 ing, selling, exchanging or leasing real estate or who, for compensation,
30 engages in any of the following activities as an employee of, or on behalf
31 of, the owner, purchaser, lessor or lessee of real estate:

- 32 (1) Sells, exchanges, purchases or leases real estate.
- 33 (2) Offers to sell, exchange, purchase or lease real estate.
- 34 (3) Negotiates or offers, attempts or agrees to negotiate the sale,
35 exchange, purchase or leasing of real estate.
- 36 (4) Lists or offers, attempts or agrees to list real estate for sale, lease
37 or exchange.
- 38 (5) Auctions or offers, attempts or agrees to auction real estate or
39 assists an auctioneer by procuring bids at a real estate auction.
- 40 (6) Buys, sells, offers to buy or sell or otherwise deals in optior
41 real estate.
- 42 (7) Assists or directs in the procuring of prospects calculated to result
43 in the sale, exchange or lease of real estate.

Should state law allow professionals to opt out of liability as detailed on page 49?

h-s

49?

1 ment real estate property if the licensee represents the buyer, fail to
2 promptly submit any written offer to the seller or seller's agent or fail to
3 promptly submit to the licensee's principal any counteroffer made by the
4 seller, including any back-up offers properly identified as such.

5 (33) (22) Refuse to appear or testify under oath at any hearing held
6 by the commission.

7 (34) (23) Demonstrate incompetency to act as a broker, associate bro-
8 ker or salesperson.

9 (35) In any transaction regarding the sale or lease of commercial or
10 investment real estate property fail to disclose, or ascertain and disclose,
11 to any person with whom the licensee is dealing, any material information
12 which relates to the property with which the licensee is dealing and which
13 such licensee knew or should have known.

14 (36) (24) Knowingly receive or accept, directly or indirectly, any re-
15 bate, reduction or abatement of any charge, or any special favor or ad-
16 vantage or any monetary consideration or inducement, involving the is-
17 suance of a title insurance policy or contract concerning which the
18 licensee is directly or indirectly connected, from a title insurance company
19 or title insurance agent, or any officer, employee, attorney, agent or so-
20 licitor thereof.

21 (37) (25) Engage in the purchase of one-, two-, three- or four-family
22 dwellings, including condominiums and cooperatives, or the acquisition
23 of any right, title or interest therein, including any equity or redemption
24 interests, if:

25 (A) (i) At the time of such purchase, the dwellings are subject to a
26 right of redemption pursuant to foreclosure of a mortgage on such dwell-
27 ings; (ii) the licensee fails to give written notice of the purchase, within
28 20 days thereafter, to the mortgage holder or judgment creditor who held
29 such mortgage; and (iii) the licensee, unless otherwise required by law or
30 court order, fails to apply any rent proceeds from the dwellings to the
31 judgment lien arising from the foreclosure of such mortgage, as payments
32 become due under the loan, regardless of whether the licensee is obli-
33 gated to do so;

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

42 (C) the licensee fails to notify, at the time of rental, any person rent-
43 ing any such dwelling of the extent and nature of the licensee's interest

1 in such dwelling and the probable time until possession will be taken by
2 the mortgage holder or judgment creditor.

3 (38) (26) Commit forgery or, unless authorized to do so by a duly
4 executed power of attorney, sign or initial any contractual agreement on
5 behalf of another person in a real estate transaction.

6 (b) In any transaction regarding the sale or lease of commercial or
7 investment real estate property failure to comply with any requirement
8 of subsection (a)(14), (15), (16) or (17) or their corollary rules and regu-
9 lations shall not by itself render any agreement void or voidable nor shall
10 it constitute a defense to any action to enforce such agreement or any
11 action for breach of such agreement.

12 (c) The commission may provide suggested forms of agency disclo-
13 sure and agency agreements and, by rules and regulations, provide such
14 other prohibitions, limitations and conditions relating thereto as the com-
15 mission may prescribe for transactions regarding the sale or lease of com-
16 mercial or investment real estate property.

17 (d) No salesperson or associate broker shall:

18 (1) Except as provided in paragraph (A) or (B), accept a commission
19 or other valuable consideration from anyone other than the salesperson's
20 or associate broker's employing broker or the broker with whom the sa-
21 lesperson or associate broker is associated: broker by whom the licensee
22 is employed or with whom the licensee is associated as an independent
23 contractor.

24 (A) A salesperson or associate broker may accept a commission or
25 other valuable consideration from a licensee who employs the salesperson
26 or associate broker as a personal assistant provided that: (i) the licensee
27 and the salesperson or associate broker who is employed as a personal
28 assistant are licensed under the supervision of the same broker, and (ii)
29 the supervising broker agrees in writing that the personal assistant may
30 be paid by the licensee.

31 (B) If a salesperson or associate broker has (i) organized as a profes-
32 sional corporation pursuant to K.S.A. 17-2706 et seq., and amendments
33 thereto, (ii) incorporated under the Kansas general corporation code con-
34 tained in K.S.A. 17-6001 et seq., and amendments thereto, (iii) organized
35 under the Kansas limited liability company act contained in K.S.A. 17-
36 7601 et seq., and amendments thereto, or (iv) has organized as a registered
37 limited liability partnership as defined in K.S.A. 56-302 and amendments
38 thereto, the commission or other valuable consideration may be paid by
39 the licensee's broker to such professional corporation, corporation, limited
40 liability company or limited liability partnership. This provision shall not
41 alter any other provisions of this act.

42 (2) Fail to place, as soon after receipt as practicable, any deposit
43 money or other funds entrusted to the salesperson or associate broker in

Does this increase the "lack" of supervision by real estate brokers?
Is this actually contrary to the normal position of the Kansas Real
Estate Commission? Is this thus, special interest legislation?

5-5

1 an amount not exceeding \$50.

2 (4) For an original salesperson's license, a *prorated fee* based on ~~an~~
3 ~~annual~~ a two-year amount not exceeding ~~\$50~~ \$100.

4 (5) For an original broker's license, a *prorated fee* based on ~~an annual~~
5 a two-year amount not exceeding ~~\$75~~ \$150.

6 (6) For renewal of a salesperson's license, a fee based on an annual
7 amount not exceeding ~~\$50~~ \$100.

8 (7) For renewal of a broker's license, a fee based on ~~an annual~~ a two-
9 year amount not exceeding ~~\$75~~ \$150.

10 (8) For reinstatement of a license which has been deactivated or
11 which has been canceled pursuant to subsection (d) of K.S.A. 58-3047
12 and amendments thereto, or by reason of termination of a salesperson,
13 an amount not exceeding \$15.

14 (9) For reinstatement of all licenses canceled pursuant to subsection
15 (e) of K.S.A. 58-3047 and amendments thereto, an amount not exceeding
16 \$7.50 for each license canceled.

17 (10) For issuance of a duplicate license, an amount not exceeding
18 \$10.

19 (11) For certification of licensure to another jurisdiction, an amount
20 not exceeding \$10.

21 (12) For approval of a course of instruction submitted by a course
22 provider pursuant to K.S.A. 58-3046a and amendments thereto, an
23 amount not exceeding \$75.

24 (13) For renewal of an approved course of instruction pursuant to
25 K.S.A. 58-3046a and amendments thereto, an amount not exceeding \$15.

26 (14) For approval of a course of instruction submitted by any licensee
27 for credit toward the 12 hours of additional instruction required by K.S.A.
28 58-3046a and amendments thereto, an amount not less than \$10 nor more
29 than \$20, as determined by the commission.

30 (15) For a temporary salesperson's license, an amount not exceeding
31 \$25.

32 (b) For each prorated fee, the commission shall establish a monthly
33 amount, rounded off to the nearest dollar, and shall compute the fee from
34 the last calendar day of the month in which the license is issued to the
35 expiration date of the license.

36 (c) Subject to the limitations of this section, the commission shall
37 fix the fees provided for by this section in the amounts necessary to ad-
38 minister and enforce this act.

39 (d) The fees provided for by this section shall be applicable re-
40 gardless of the type of license.

41 Sec. 16. On and after July 1, 1997, K.S.A. 1996 Supp. 58-3064 is
42 hereby revived to read as follows: 58-3064. Whenever any person has
43 engaged in any act or practice that constitutes a violation of this act or

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.

These criminal penalties were part of the old law. Are they perhaps a bit
stringent for people who fail to dot an "i" or cross a "t"? The BRRETA portio
added to the old law provides more opportunity for law violation.

9-5

1 Sec. 19. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3065,
 2 as revived by section 18 of this act, is hereby amended to read as follows:
 3 58-3065. (a) Willful violation of any provision of this act or the brokerage
 4 relationships in real estate transactions act; as such act governs the sale
 5 or lease of real estate that is one to four residential units; is a misdemeanor
 6 punishable by imprisonment for not more than 12 months or a fine of
 7 not less than \$100 or more than \$1,000, or both, for the first offense and
 8 imprisonment for not more than 12 months or a fine of not less than
 9 \$1,000 or more than \$10,000, or both, for a second or subsequent offense.

10 (b) Nothing in this act or the brokerage relationships in real estate
 11 transactions act; as such act governs the sale or lease of real estate that is
 12 ~~one to four residential units~~; shall be construed as requiring the commis-
 13 sion or the director to report minor violations of the acts for criminal
 14 prosecution whenever the commission or the director believes that the
 15 public interest will be adequately served by other administrative action.

16 Sec. 20. On and after July 1, 1997, K.S.A. 1996 Supp. 58-3068 is
 17 hereby revived to read as follows: 58-3068. (a) Moneys in the real estate
 18 recovery revolving fund shall be used in the manner provided by this act
 19 to reimburse persons who suffer monetary damages by reason of any of
 20 the following acts committed in connection with any transaction involving
 21 the sale of real estate in this state by any broker or salesperson who was
 22 licensed under the laws of this state at the time the act was committed
 23 or by any unlicensed employee of such broker or salesperson:

- 24 (1) Violation of any of the following provisions of this act:
- 25 (A) K.S.A. 58-3061 and amendments thereto; or
- 26 (B) subsection (a)(2), (3), (23), (28) or (29) or subsection (d)(2) of
- 27 K.S.A. 58-3062 and amendments thereto; or
- 28 (2) violation of any provision of the brokerage relationships in real
- 29 estate transactions act, as such act governs the sale or lease of real estate
- 30 that is one to four residential units; or
- 31 (3) obtaining money or property by any act which would constitute
- 32 any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3706, 21-
- 33 3707, 21-3710, 21-3711 or 21-3712, and amendments thereto.

34 (b) Any person may seek recovery from the real estate recovery re-
 35 volving fund under the following conditions:

- 36 (1) Such person has received final judgment in a court of competent
- 37 jurisdiction of this state in any action wherein the cause of action was
- 38 based on any of the acts described in subsection (a);
- 39 (2) the claim is made within two years after the date that final judg-
- 40 ment is entered;
- 41 (3) such person has caused to be issued a writ of execution upon such
- 42 judgment, and the officer executing the same has made a return showing
- 43 that no personal or real property of the judgment debtor liable to be

6-5

1 levied upon in satisfaction of the judgment could be found, or that the
 2 amount realized on the sale of the judgment debtor's property pursuant
 3 to such execution was insufficient to satisfy the judgment;

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

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

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

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

- 19 (1) The person is the spouse of the judgment debtor or a personal
- 20 representative of such spouse;
- 21 (2) the person acted as principal or agent in the real estate transaction
- 22 which is the subject of the claim and is a licensed broker or salesperson
- 23 or is a partnership, association, limited liability company or corporation
- 24 whose partners, members, officers and employees are licensed as pro-
- 25 vided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or
- 26 (3) such person's claim is based upon a real estate transaction in
- 27 which the licensed broker or salesperson was acting on the broker's or
- 28 salesperson's own behalf with respect to property owned or controlled by
- 29 such broker or salesperson.

30 Sec. 21. On and after October 1, 1997, K.S.A. 1996 Supp. 58-3068,
 31 as revived by section 20 of this act, is hereby amended to read as follows:
 32 58-3068. (a) Moneys in the real estate recovery revolving fund shall be
 33 used in the manner provided by this act to reimburse persons who suffer
 34 monetary damages by reason of any of the following acts committed in
 35 connection with any transaction involving the sale of real estate in this
 36 state by any broker or salesperson who was licensed under the laws of
 37 this state at the time the act was committed or by any unlicensed em-
 38 ployee of such broker or salesperson:

- 39 (1) Violation of any of the following provisions of this act:
- 40 (A) K.S.A. 58-3061 and amendments thereto; or
- 41 (B) subsection (a)(2), (3), ~~(23), (28) or (29)~~ (14), (19) or (20) or sub-
- 42 section ~~(d)(2)~~ (b)(2) of K.S.A. 58-3062 and amendments thereto; or
- 43 (2) violation of any provision of the brokerage relationships in real

1 estate transactions act; ~~as such act governs the sale or lease of real estate~~
2 ~~that is one to four residential units~~; or

3 (3) obtaining money or property by any act which would constitute
4 any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3706, 21-
5 3707, 21-3710, 21-3711 or 21-3712, and amendments thereto.

6 (b) Any person may seek recovery from the real estate recovery re-
7 volving fund under the following conditions:

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

11 (2) the claim is made within two years after the date that final judg-
12 ment is entered;

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

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

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

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

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

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

36 (2) the person acted as principal or agent in the real estate transaction
37 which is the subject of the claim and is a licensed broker or salesperson
38 or is a partnership, association, limited liability company or corporation
39 whose partners, members, officers and employees are licensed as pro-
40 vided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or

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

5-8

1 such broker or salesperson.

2 Sec. 22. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30.101 is
3 hereby revived and amended to read as follows: 58-30.101. (a) K.S.A.
4 1996 Supp. 58-30.101 through 58-30.112 shall be known and may be cited
5 as the brokerage relationships in real estate transactions act.

6 (b) Any application of this act to transactions regarding the sale or
7 lease of commercial or investment real estate property shall be suspended
8 and shall not be enforceable on and after the effective date of this act.
9 Commercial or investment real estate property means any real estate for
10 which the present or intended use is other than one to four residential
11 units.

12 ~~(c) The provisions of K.S.A. 1996 Supp. 58-30.101 through 58-30.112~~
13 ~~shall be and hereby are abolished on July 1, 1997.~~

14 Sec. 23. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30.101,
15 as revived and amended by section 22 of this act, is hereby amended to
16 read as follows: 58-30.101. (a) ~~K.S.A. 1996 Supp. 58-30.101 through 58-~~
17 ~~30.112~~ This act shall be known and may be cited as the brokerage rela-
18 tionships in real estate transactions act.

19 (b) ~~Any application of this act to transactions regarding the sale or~~
20 ~~lease of commercial or investment real estate property shall be suspended~~
21 ~~and shall not be enforceable on and after the effective date of this act.~~
22 ~~Commercial or investment real estate property means any real estate for~~
23 ~~which the present or intended use is other than one to four residential~~
24 ~~units. The provisions of the brokerage relationships in real estate trans-~~
25 ~~actions act shall supersede the duties and responsibilities of the parties~~
26 ~~under the common law, including fiduciary responsibilities of an agent to~~
27 ~~a principal.~~

28 (c) ~~Failure to comply with any requirement of K.S.A. 58-30.103 or~~
29 ~~K.S.A. 58-30.110, and amendments thereto, or rules and regulations~~
30 ~~adopted thereunder, shall not by itself render any agreement void or void-~~
31 ~~able nor shall it constitute a defense to any action to enforce such agree-~~
32 ~~ment or any action for breach of such agreement.~~

33 Sec. 24. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30.102 is
34 hereby revived to read as follows: 58-30.102. As used in the brokerage
35 relationships in real estate transactions act, unless the context otherwise
36 requires:

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

41 (b) "Agency" means every relationship in which a broker acts for or
42 represents another, by the latter's express written authority, in a real es-
43 tate transaction. "Agency" also means the relationship in which a broker,

How does narrowing the fiduciary responsibilities of an agent
by substituting the narrow statutory law for the broad common law
really protect the public's interests?



a proprietorship, partnership, corporation, association or limited liability company.

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

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

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

(i) "Confidential information" means information made confidential by statute, rule, regulation or instructions from the client or personal information about the client which might place the other party at an advantage over the client unless the information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee.

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

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

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

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

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

(o) "Ministerial acts" means those acts that a licensee may perform for a person that are informative in nature and do not rise to the level of active representation on behalf of a person. Examples of these acts include, but are not limited to:

- (1) Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;
- (2) responding to telephone inquiries from a person concerning the price or location of property;
- (3) attending an open house and responding to questions about the property from a consumer;
- (4) setting an appointment to view property;
- (5) responding to questions of consumers walking into a licensee's office concerning brokerage services offered on particular properties;
- (6) accompanying an appraiser, inspector, contractor or similar third

Is the Designated Agent concept really an attempt on the part of larger companies to work both sides of the street? How does this concept fit in with the fiduciary responsibilities of agency?

b-s

party on a visit to a property;

(7) describing a property or the property's condition in response to a person's inquiry; or

(8) referral to another broker or service provider.

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

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

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

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

(s) "Transaction broker" means a broker who assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to such transaction. The term includes the broker's affiliated licensees.

Sec. 26. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,103 is hereby revived to read as follows: 58-30,103. (a) A broker shall act only as a statutory agent in any real estate transaction. A licensee may act as a disclosed dual agent but shall not act as an undisclosed dual agent or in a dual capacity of agent and undisclosed principal in any transaction.

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

(c) Before an agency agreement is signed, the broker or an affiliated licensee shall advise the prospective buyer or seller of alternative agency relationships pursuant to K.S.A. 1996 Supp. 58-30,110.

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

(2) If the real estate which is to be offered for sale is owned by any agency of the federal government, a broker may, on behalf of the owner, engage in activities enumerated in subsection (e) of K.S.A. 58-3035 58-

Would agency under the "common law" give the public more protection than the proposed statutory law? What is the motivation of the real estate industry to opt out of common law for statutory law?

If an agents Mother wanted to look at real estate, do you suppose it is really necessary for Mon to sign an agency agreement before looking at property?

pl-s ↑

3035a and amendments thereto after obtaining verbal authorization from the federal agency for which services are to be performed.

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

(1) The licensee may obtain a written agency agreement with the buyer and act as a disclosed dual agent pursuant to K.S.A. 1996 Supp. 58-30,108; or

(2) if the property was not listed by the licensee holding the open house, the licensee may obtain a written agency agreement with the buyer and act as a designated agent pursuant to K.S.A. 1996 Supp. 58-30,109.

(f) An agency agreement shall set forth the terms and conditions of the relationship, including a fixed date of expiration, and shall specify the duties and obligations pursuant to K.S.A. 1996 Supp. 58-30,106 or 58-30,107, including, but not limited to, any duty of confidentiality and the terms of compensation. The agreement shall be signed by the party to be represented and by the broker or a licensee affiliated with the broker. A copy of the agreement shall be furnished to the client at the time the client signs the agreement. If, at the time the client signs the agreement, the agreement is not signed by the broker or a licensee affiliated with the broker, the broker or a licensee affiliated with the broker shall furnish a copy of the agreement to the client within a reasonable time after the agreement is signed by the broker or a licensee affiliated with the broker.

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

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

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

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

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

(l) A licensee shall not solicit an agency agreement from a seller or landlord if the licensee knows that the seller or landlord has, with regard to the property, an agency agreement granting an exclusive right to sell

or exclusive agency to another broker.

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

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

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

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

Sec. 27. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,103, as revived by section 26 of this act, is hereby amended to read as follows: 58-30,103. (a) Except when acting as a transaction broker or solely as a seller, buyer, landlord or tenant, a broker shall act only as a statutory agent in any real estate transaction. A licensee may act as a disclosed dual agent but shall not act as an undisclosed dual agent or in a dual capacity of agent and undisclosed principal in any transaction.

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

(c) Before an agency agreement is signed, the broker or an affiliated licensee shall advise the prospective buyer or seller of alternative agency relationships pursuant to K.S.A. 1996 Supp. 58-30,110. A broker may be engaged as a transaction broker by oral or written agreement with the seller, landlord, buyer or tenant. A broker shall be considered a transaction broker unless:

(1) An agency relationship between the broker and the party to be represented is established pursuant to this section; or

(2) a broker works with a buyer or tenant as a subagent of the seller or landlord by accepting an offer of subagency.

(d) (1) Except as provided in subsection (d)(2), an agency agreement with a seller or landlord shall be signed a broker intending to establish an agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented prior to the licensee's

1 engaging in any of the activities enumerated in subsection (e) of K.S.A.
2 58-3035 and amendments thereto as an employee of, or on behalf of, the
3 seller or landlord.

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

9 (e) An agency agreement with a buyer or tenant shall be signed at or
10 prior to the first showing of a property if the licensee is acting in the
11 capacity of a buyer's agent. If the first showing is an open house and the
12 buyer seeks representation from the licensee holding the open house:

13 (1) The licensee may obtain a written agency agreement with the
14 buyer and act as a disclosed dual agent pursuant to K.S.A. 1006 Supp.
15 58-30,108, or

16 (2) if the property was not listed by the licensee holding the open
17 house, the licensee may obtain a written agency agreement with the buyer
18 and act as a designated agent pursuant to K.S.A. 1006 Supp. 58-30,100.
19 To establish an agency relationship with a buyer or tenant, a broker shall
20 enter into a written agency agreement with the party to be represented
21 no later than the signing of an offer to purchase or lease.

22 (f) An agency agreement shall set forth the terms and conditions of
23 the relationship, including a fixed date of expiration, any limitation on the
24 duty of confidentiality and the terms of compensation, and shall specify
25 refer to the duties and obligations pursuant to K.S.A. 1996 Supp. 58-
26 30,106 or 58-30,107, including, but not limited to, any duty of confiden-
27 tiality and the terms of compensation and amendments thereto. The
28 agreement shall be signed by the party to be represented and by the
29 broker or a licensee affiliated with the broker. A copy of the agreement
30 shall be furnished to the client at the time the client signs the agreement.
31 If, at the time the client signs the agreement, the agreement is not signed
32 by the broker or a licensee affiliated with the broker, the broker or a
33 licensee affiliated with the broker shall furnish a copy of the agreement
34 to the client within a reasonable time after the agreement is signed by
35 the broker or a licensee affiliated with the broker.

36 (g) An agency agreement with a seller or landlord shall include any
37 potential:

38 (1) for the seller's agent or landlord's agent to act as a disclosed dual
39 agent transaction broker;

40 (2) for an affiliated licensee to act as a designated agent for the buyer
41 and the designated agent's supervising broker or branch broker, and an
42 affiliated licensee if applicable, to act as a transaction broker; or

43 (3) for the broker to designate an affiliated licensee to act as the des-

1 igned agent for the seller on the broker's personal listing pursuant to
2 subsection (b)(2) of K.S.A. 58-30,109 and amendments thereto.

3 (h) An agency agreement with a buyer or tenant shall include any
4 potential:

5 (1) For the buyer's agent or tenant's agent to act as a disclosed dual
6 agent transaction broker; or

7 (2) For an affiliated licensee to act as a designated agent for the seller
8 and the designated agent's supervising broker or branch broker, and an
9 affiliated licensee if applicable, to act as a transaction broker.

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

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

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

20 (l) A licensee shall not solicit an agency agreement from a seller or
21 landlord if the licensee knows that the seller or landlord has, with regard
22 to the property, an agency agreement granting an exclusive right to sell
23 or exclusive agency to another broker.

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

27 (n) A licensee shall not induce any party to break any agency agree-
28 ment.

29 (o) A licensee shall not negotiate a sale, exchange or lease of real
30 estate directly with a buyer or tenant if the licensee knows that the buyer
31 or tenant has an agency agreement granting exclusive representation to
32 another broker. If a licensee knows that a buyer or tenant has an agency
33 agreement granting exclusive representation to another broker, the li-
34 censee shall not contact the buyer or tenant and shall not initiate nego-
35 tiations for the sale, exchange or lease of real estate with the buyer or
36 tenant. The licensee may negotiate the sale, exchange or lease of real estate
37 directly with the buyer or tenant with the informed consent of the buyer
38 or tenant. The informed consent shall be evidenced by a consent agree-
39 ment signed by the buyer or tenant prior to any such direct negotiation.

40 The consent agreement shall acknowledge the buyer or tenant agency
41 agreement and that the buyer or tenant may be liable for compensation
42 under the terms of the agency agreement. The commission, by rules and
43 regulations, shall adopt a consent agreement to be used by licensees pur-

As a prospective new home buyer visiting a new home subdivision, what do you do when you want to purchase a new home and can't locate your agent, and you have to catch a plane back home in a couple of hours? Is it OK to violate the law?

5-11

1 *suant to this subsection.*

2 (p) A licensee shall not negotiate a sale, exchange or lease of real
3 estate directly with a seller or landlord if the licensee knows that the seller
4 or landlord has an agency agreement granting an exclusive right to sell or
5 exclusive agency to another broker. *A buyer's or tenant's agent or a sub-*
6 *agent may present an offer to the seller or landlord if the seller's or lan-*
7 *dlord's agent is present.*

8 Sec. 28. On or after July 1, 1997, K.S.A. 1996 Supp. 58-30,104 is
9 hereby revived to read as follows: 58-30,104. (a) The relationships set
10 forth in K.S.A. 1996 Supp. 58-30,103 shall commence at the time that
11 the client engages the broker, and shall continue until:

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

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

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

18 (B) any authorized termination of the relationship.

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

22 (1) To account for all moneys and property relating to the engage-
23 ment; and

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

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

28 (B) such disclosure is required by law; or

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

31 Sec. 29. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,104,
32 as revived by section 28 of this act, is hereby amended to read as follows:
33 58-30,104. (a) (1) *The agency relationships set forth in K.S.A. 1996 Supp.*
34 *58-30,103, and amendments thereto, shall commence at the time that the*
35 *client engages the broker, and shall continue until:*

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

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

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

42 (ii) any authorized termination of the relationship.

43 (b) (2) Except as otherwise agreed in writing, a broker owes no fur-

1 ther duties to the client after termination, expiration, or the closing of a
2 transaction according to the agreement of the parties, except:

3 (A) To account for all moneys and property relating to the en-
4 gagement; and

5 (B) to keep confidential all confidential information received dur-
6 ing the course of the engagement which was made confidential by request
7 or instructions from the client, unless:

8 (i) The client permits the disclosure by subsequent word or con-
9 duct;

10 (ii) such disclosure is required by law; or

11 (iii) the information becomes public from a source other than the
12 broker.

13 (b) (1) *The relationship between a transaction broker and a seller,*
14 *landlord, buyer or tenant shall terminate when:*

15 (A) *A transaction is closed according to the agreement of the parties;*
16 *or*

17 (B) *if a transaction is not closed according to the agreement of the*
18 *parties, the earlier of:*

19 (i) *Any date of expiration agreed upon by the parties; or*

20 (ii) *any authorized termination of the relationship.*

21 (2) *Except as otherwise agreed in writing, a transaction broker owes*
22 *no further duties to any party to the transaction after termination, expi-*
23 *ration or the closing of a transaction according to the agreement of the*
24 *parties, except:*

25 (A) *To account for all moneys and property relating to the engage-*
26 *ment; and*

27 (B) *to keep confidential all information received during the course of*
28 *the engagement which was made confidential by request of any party to*
29 *the transaction, unless:*

30 (i) *The party permits the disclosure by subsequent word or conduct;*

31 (ii) *such disclosure is required by law; or*

32 (iii) *the information becomes public from a source other than the*
33 *transaction broker.*

34 Sec. 30. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,105 is
35 hereby revived to read as follows: 58-30,105. (a) Compensation is pre-
36 sumed to come from the transaction and shall be determined by agency
37 agreements entered into pursuant to K.S.A. 1996 Supp. 58-30,103.

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

41 (c) In any transaction, the broker's compensation may be paid by the
42 seller, the landlord, the buyer or the tenant. A broker may be compen-
43 sated by more than one party for services in a transaction if the parties

Who desires those services, pays for those services. If?
motivation? Why not let free market forces dictate compensation by changing the law to read:
ever or a seller of real estate can employ the services of a real estate licensee
in the purchase or sale of real property, provided that the prospective buyer or
seller who desires those services, pays for those services. If?

21+5

1 consent in writing to the multiple payments at or before the time of
2 entering into a contract to buy, sell or lease.

3 (d) A broker may:

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

6 (2) with the written agreement of the seller or landlord, share a com-
7 mission with another broker who acted as subagent of the seller or land-
8 lord;

9 (3) with the written agreement of the seller or landlord, share a com-
10 mission with a buyer's broker or a tenant's broker; and

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

16 Sec. 31. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,105,
17 as revived by section 30 of this act, is hereby amended to read as follows:
18 58-30,105. (a) Compensation is presumed to come from the transaction
19 and shall be determined by agency or transaction broker agreements enter-
20 ed into pursuant to K.S.A. 1996 Supp. 58-30,103, and amendments
21 thereto.

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

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

30 (d) A broker may:

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

33 (2) with the written agreement of the seller or landlord, buyer or
34 tenant share a commission with another broker who acted as subagent of
35 the seller or landlord, a transaction broker, a subagent or an agent of the
36 other party; and

37 (3) with the written agreement of the seller or landlord, share a com-
38 mission with a buyer's broker or a tenant's broker; and

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

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 to
43 to:

Does this look like consumer driven legislation? provide for the public?

What benefits does this

5-13

Is the legislature trying to protect the public's interests here?



h-5

1 (A) Any environmental hazards affecting the property which are re-
2 quired by law to be disclosed;

3 (B) the physical condition of the property;

4 (C) any material defects in the property;

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

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

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

12 (3) Except as provided in subsection (d)(4), a seller's or landlord's
13 agent is not required to disclose to a client or customer information re-
14 lating to the physical condition of the property if a written report regard-
15 ing the physical condition of the property has been prepared by a qualified
16 third party and provided to the client or customer.

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

20 (5) In performing an investigation or inspection and in making a dis-
21 closure in connection with a real estate transaction, a licensee shall ex-
22 ercise the degree of care expected to be exercised by a reasonably prudent
23 person who has the knowledge, skills and training required for licensure
24 as a broker or salesperson.

25 For purpose of this subsection, "qualified third party" means a federal,
26 state or local governmental agency or any person whom the broker, af-
27 filiated licensee or a party to the real estate transaction reasonably be-
28 lieves has the expertise necessary to meet the industry standards of prac-
29 tice for the type of inspection or investigation that has been conducted
30 by the third party in order to prepare the written report.

31 (e) A seller's or landlord's agent may show alternative properties not
32 owned by the client to prospective buyers or tenants and may list com-
33 peting properties for sale or lease without breaching any duty or obliga-
34 tion to the client.

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

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

42 (h) If the seller or landlord has authorized the broker to offer coop-
43 eration with other licensees pursuant to subsection (f) or (g), the broker

1 shall not refuse permission to another licensee to show, or to present an
2 offer to purchase, a listed property unless specifically instructed by the
3 seller in writing. The broker shall provide a copy of the written instruc-
4 tions to another licensee upon request.

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

10 Sec. 33. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,106,
11 as revived by section 32 of this act, is hereby amended to read as follows:
12 58-30,106. (a) A seller's agent or a landlord's agent shall be a statutory
13 agent with the duty and obligation to:

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

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

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

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

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

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

29 (D) (C) advising the client to obtain expert advice as to material mat-
30 ters about which the licensee knows but the specifics of which are beyond
31 the expertise of the licensee;

32 (4) (3) account in a timely manner for all money and property re-
33 ceived;

34 (5) (4) comply with all requirements of this act and rules and regu-
35 lations adopted hereunder; and

36 (6) (5) comply with any applicable federal, state and local laws, rules
37 and regulations and ordinances, including fair housing and civil rights
38 statutes and rules and regulations.

39 (b) If pursuant to subsection ~~(a)(3)(D)~~ (a)(2)(C), the licensee advised
40 the client to obtain expert advice as to material matters about which the
41 licensee knows but the specifics of which are beyond the expertise of the
42 licensee, no cause of action for any person shall arise against the licensee
43 pertaining to such material matters.

1 prior to the closing of the sale unless the buyer instructs the broker in
2 the agency agreement not to submit offers after the client enters into a
3 purchase contract;

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

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

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

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

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

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

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

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

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

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

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

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

6 For purpose of this subsection, "qualified third party" means a federal,
7 state or local governmental agency or any person whom the broker, the
8 affiliated licensee or a party to the real estate transaction reasonably be-
9 lieves has the expertise necessary to meet the industry standards of prac-
10 tice for the type of inspection or investigation that has been conducted
11 by the third party in order to prepare the written report.

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

18 (f) Except as provided in subsection (e) of K.S.A. 1996 Supp. 58-
19 30,103, a licensee may not act as a buyer's agent on any property shown
20 to the buyer while the licensee was acting as an agent or subagent of the
21 seller without the written agreement of the seller. If the licensee has
22 knowledge that another licensee affiliated with the broker showed the
23 property to the buyer while acting as an agent or subagent of the seller,
24 the licensee shall obtain the written agreement of the seller before acting
25 as the buyer's agent.

26 (g) A buyer or tenant may agree in writing with a buyer's or tenant's
27 agent that the agent may receive compensation from a seller's or lan-
28 dlord's agent.

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

34 Sec. 35. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,107,
35 as revived by section 34 of this act, is hereby amended to read as follows:
36 58-30,107. (a) A buyer's or a tenant's agent shall be a statutory agent with
37 the following duty and obligation to:

- 38 (1) Perform the terms of the written agreement made with the client;
- 39 (2) ~~exercise reasonable skill and care for the client;~~
- 40 (3) promote the interests of the client with the utmost good faith,
41 loyalty and fidelity, including:

42 (A) ~~Seeking a price and terms which are acceptable to the client,~~
43 ~~except that an agency agreement may provide that the licensee shall not~~

Why would the real estate commission need to have the right
to enforce Federal or Local Laws unless they want to fine licensees?

S-S

Is this really a source of revenue
for the state?

1 58-30,109. (a) In the absence of designated agents appointed pursuant to
2 subsection (b), a brokerage firm may act as a transaction broker pursuant
3 to section 1, and amendments thereto, on an in-house transaction with
4 the informed consent of the seller client and the buyer client. The informed
5 consent shall be evidenced by a transaction broker addendum to the
6 agency agreements and shall be signed by the buyer prior to writing the
7 offer and by the seller prior to signing the contract

8 (b) (1) A broker may personally, or through the broker's duly au-
9 thorized licensed representative, specifically designate, in a written buyer
10 agency agreement obtained pursuant to K.S.A. 1996 Supp. 58-30,103, an
11 affiliated licensee and amendments thereto, one or more affiliated licens-
12 ees who will be acting as legal agent of the buyer client or seller client to
13 the exclusion of all other affiliated licensees. After verbal notice has been
14 given to the buyer client, another affiliated licensee may be temporarily
15 appointed as a designated agent.

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

19 (c) If a designated agent also acts as agent of the seller of property
20 listed by the designated agent, the agent and the broker shall be disclosed
21 dual agents pursuant to K.S.A. 1996 Supp. 58-30,108.

22 (d) If the broker performs any duty or obligation set forth in subsec-
23 tion (a)(3) of K.S.A. 1996 Supp. 58-30,106, the broker and the designated
24 agent or agents shall be disclosed dual agents pursuant to K.S.A. 1996
25 Supp. 58-30,108.

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

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

34 (2) If a buyer client of a designated agent wants to see a property
35 which was personally listed by the broker, the broker, with the written
36 consent of the seller, may specifically designate an affiliated licensee who
37 will act as legal agent of the seller client to the exclusion of all other
38 affiliated licensees. The written consent of the seller shall contain the name
39 of the prospective buyer and shall acknowledge that the broker shall act
40 as a transaction broker regarding any transaction with the buyer. The
41 written consent of the seller shall be signed prior to presentation of any
42 offer.

43 (3) A designated agent of a seller client shall have the duties and

1 obligations set forth in K.S.A. 58-30,106, and amendments thereto. A des-
2 ignated agent of a buyer client shall have the duties and obligations set
3 forth in K.S.A. 58-30,107, and amendments thereto.

4 (4) In any transaction involving a designated agent, the supervising
5 broker of the designated agent shall act as a transaction broker pursuant
6 to section 1, and amendments thereto, unless both buyer and seller are
7 represented by designated agents and the designated agents are super-
8 vised by the same branch broker. In that case, the branch broker shall
9 act as a transaction broker pursuant to section 1, and amendment
10 thereto. The supervising broker, or branch broker if applicable, may ap-
11 point an affiliated licensee to act in the transaction as a transaction broker
12 pursuant to section 1, and amendments thereto.

13 (5) A designated agent may disclose to the designated agent's super-
14 vising broker, or branch broker if applicable, and to an affiliated licensee
15 appointed as a transaction broker pursuant to paragraph (4), confidential
16 information of a client for the purpose of seeking advice or assistance for
17 the benefit of the client in regard to a transaction. ,

18 (6) If a buyer client of a designated agent wants to see a property
19 owned by a seller client of the designated agent, the designated agent may
20 act as a transaction broker pursuant to section 1, and amendments
21 thereto, with the informed consent of the seller client and buyer client.
22 The informed consent shall be evidenced by a transaction broker adden-
23 dum to the agency agreements and shall be signed by the buyer prior to
24 writing the offer and by the seller prior to signing the contract.

25 (c) The commission, by rules and regulations, shall adopt a transac-
26 tion broker addendum form to be used by licensees pursuant to this sec-
27 tion.

28 Sec. 39. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,110 is
29 hereby revived to read as follows: 58-30,110. (a) (1) The commission shall
30 adopt a rule and regulation prescribing the language which shall be in-
31 cluded in a form entitled "Disclosure of alternative agency relationships".

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

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

- 39 (A) A face-to-face meeting with the prospective buyer or seller; or
- 40 (B) a written communication from the licensee.

41 The licensee shall note the furnishing of a copy of the disclosure on
42 the contract.

43 (4) A licensee is not required to provide a copy of the form to a

Designated Agent work for the small real estate firms which are common even
is this really an attempt to protect the broker's market share? How does
this an attempt to protect the buying and selling public's interests or

5-16

1 prospective buyer or seller in the following instances:
 2 (A) The licensee is acting solely as a principal and not as an agent for
 3 another;
 4 (B) the written communication from the licensee is a solicitation of
 5 business;
 6 (C) the face-to-face meeting occurs at an open house and there is no
 7 substantive discussion regarding a transaction; or
 8 (D) the face-to-face meeting is a mere solicitation of business and
 9 there is no substantive discussion regarding a transaction.
 10 (b) (1) Except for instances when a licensee is providing information
 11 through an advertisement or other form of public notice of the licensee's
 12 representation of a client, a licensee representing a client in a proposed
 13 real estate transaction shall disclose the representation at the time of
 14 every contact with another licensee representing the other party. The
 15 disclosure may be made orally or in writing.
 16 (2) Each time a licensee is contacted by another licensee who re-
 17 quests permission to show property to a prospective buyer, the licensee
 18 shall inquire whether or not the licensee represents the buyer.
 19 (c) The disclosure of the agency relationship between all licensees
 20 involved and the seller and buyer shall be included in any contract for
 21 sale and in any lot reservation agreement.
 22 Sec. 40. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,110,
 23 as revived by section 39 of this act, is hereby amended to read as follows:
 24 58-30,110. (a) (1) The commission shall adopt a rule and regulation pre-
 25 scribing the language which shall be included in a form entitled "Disclo-
 26 sure of alternative agency relationships" describes a seller's agent, a buy-
 27 er's agent and a transaction broker for inclusion in a brochure entitled
 28 "real estate brokerage relationships".
 29 (2) At the discretion of the broker, the disclosure of alternative
 30 agency relationships form may be either a separate document or may be
 31 contained in the agency agreement with the client.
 32 ~~(3)~~ Except as provided in subsection ~~(a)(4)~~ (a)(3), a licensee shall
 33 furnish a prospective buyer or seller with a copy of the disclosure of
 34 alternative agency relationships form at the first occurrence of either of
 35 the following events regarding real estate transactions:
 36 (A) A face-to-face meeting with the prospective buyer or seller, or
 37 (B) a written communication from the licensee.
 38 The licensee shall note the furnishing of a copy of the disclosure on
 39 the contract the brochure at the first practical opportunity.
 40 (4) (3) A licensee is not required to provide a copy of the form bro-
 41 chure to a prospective buyer or seller in the following instances:
 42 (A) The licensee is acting solely as a principal and not as an agent for
 43 another;

Is the classification of licensees really in the public interests? Does this language discriminate against some classes of licensees?

1 (B) the ~~written~~ communication from the licensee is a solicitation of
 2 business;
 3 (C) the face-to-face meeting occurs at an open house and there is no
 4 substantive discussion regarding a transaction, or transaction is regarding
 5 the sale or lease of commercial property or the sale of residential property
 6 of more than four units;
 7 (D) the face-to-face meeting is a mere solicitation of business and
 8 there is no substantive discussion regarding a transaction, transaction is
 9 regarding the sale of property by public auction;
 10 (E) the licensee is only performing ministerial acts; or
 11 (F) the customer or client has already received the brochure from the
 12 licensee's brokerage firm.
 13 (4) Acknowledgment of receipt of the brochure by the seller and buyer
 14 shall be included in any contract for sale.
 15 (b) (1) Except for instances when a licensee is providing information
 16 through an advertisement or other form of public notice of the licensee's
 17 representation of a client, a licensee representing a client in a proposed
 18 real estate transaction shall disclose the representation at the time of
 19 every the initial contact with another licensee representing the other
 20 party. The disclosure may be made orally or in writing.
 21 (2) Each time a licensee is contacted by another licensee who re-
 22 quests permission to show property to a prospective buyer, the licensee
 23 shall inquire whether or not the licensee represents the buyer.
 24 (c) The disclosure of the ~~agency brokerage~~ relationship between all
 25 licensees involved and the seller and buyer shall be included in any con-
 26 tract for sale and in any lot reservation agreement.
 27 Sec. 41. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,111 is
 28 hereby revived to read as follows: 58-30,111. (a) A client shall not be
 29 liable for a misrepresentation of the client's statutory agent arising out of
 30 the agency agreement unless the client knew of the misrepresentation.
 31 (b) A statutory agent shall not be liable for a misrepresentation of the
 32 agent's client arising out of the agency agreement unless the licensee
 33 knew of the misrepresentation.
 34 (c) A statutory agent shall not be liable for an innocent misrepresenta-
 35 tion in information provided to the seller or landlord or to the buyer or
 36 tenant if the licensee does not have personal knowledge of the error,
 37 inaccuracy or omission that is the basis for the misrepresentation.
 38 Sec. 42. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,111,
 39 as revived by section 41 of this act, is hereby amended to read as follows:
 40 58-30,111. (a) A client or customer shall not be liable for a misrepresenta-
 41 tion of or omission by the client's statutory agent or the transaction
 42 broker arising out of the agency or transaction broker agreement unless
 43 the client or customer knew of the misrepresentation or omission.

Is this language really exempts commercial licensees and auctioneers from disclosure. Disclosure was primary reason given the 1995 legislation for the need of the BRRFA Act. Shouldn't people who sometimes deal in larger dollar properties be required to disclose more disclosure than those involved in small residential transactions?

5-17

53 31,8 all 6
1

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

TO: The Senate Judiciary Committee

DATE: March 18, 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 department. We are members of the National Association of Realtors, the Kansas Association of Realtors and the Wichita Area Board of Realtors.

REASON FOR OPPOSITION TO THE BRETТА ACT

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 - ethics, responsibility and accountability.

The BRRETA ACT - is not necessary unless

1. There are statistics presented that I have not been privileged to learn.
2. There are statistics presented that the consumer is supporting this Act and is taking an active part. How many constituents have you heard from; and, if so, do they understand.
3. There have been a great number of lawsuits, which I understand is not the case.

If the prior law was adequate for the public's interest, and Agency was Disclosed as the law required - the old saying "if it ain't broke - don't fix it!" should apply.



Insurance...

Senate Judiciary
Management — Appraisals — Real Estate
Attachment 6
3-18-97

In my early years in the business, the Kansas Real Estate Commission was very active in the licensing of individuals, educating the licensees, monitoring trust accounts and responding to the consumer's needs. The commission earned a position of respect. Why are we burdening the commission? If the large firms are concerned for the consumer and see a need in their organization for policing the licensees, they can take personal responsibility and accountability for their licensees and place the needed language in their company policy, thus lightening the load of KREC.

KAR should not conclude that everyone in their membership approves the BRRETA Act, since all licensees were not notified of informational meetings, did not receive the literature, were not surveyed by mail. The proponents have the benefit of the lobbyist, which both proponents and opponents help fund the position.

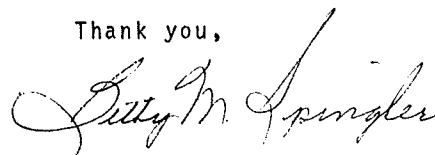
The Association provides for the public - a Professional Standards Hearing Panel - at no cost - if the public cares to file a complaint.

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

We believe, BRRETA is creating a wound between licensees when a buyer's agent (in an adversarial position to the seller) should receive compensation from the seller (this compensation should be from buyer). Believe only 50% of the consumers in a transaction is being treated fairly.

PLEASE LET BRRETA SUNSET - Let the old law of agency and disclosure prevail - let the KREC monitor the licensees under the Realtor's Code of Ethics - have a rest period from all the confusion of BRRETA - then modify what is really needed.

Thank you,



Paul R. Brown & associates, inc.

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

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

February 3, 1997

Senator Pat Ranson
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



Insurance...

Management -- Appraisals -- Real Estate



6-3