

Approved: 4-8-10  
Date

## MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on March 16, 2010, in Room 144-S of the Capitol.

All members were present except:  
Senator Tim Owens- excused

Committee staff present:  
Jason Long, Office of the Revisor of Statutes  
Julian Efirid, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Connie Burns, Committee Assistant

Conferees appearing before the Committee:  
Senator Terrie Huntington  
Sherry Diel, Kansas Real Estate Commission  
Tim Holt, Kansas Real Estate Commission  
Luke Bell, Kansas Association of Realtors  
Larry Rickard, Wichita

Others attending:  
See attached list.

### **Introduction of bills:**

Senator Terrie Huntington requested a conceptional bill introduction concerning a lead base paint issue and the Lead Renovation, Repair and Painting (RRP) program; EPA requirements going into effect April 22, 2010.

Senator Abrams moved that this request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried.

Senator Roger Reitz requested a bill introduction concerning cigarette and tobacco products act; licensing of retail dealers; and administrative amendments.

Senator Reitz moved that this request should be introduced as a committee bill. Senator Morris seconded the motion. The motion carried.

### **HB 2560 - Real estate salespersons and brokers, amendments related to technical changes and restricted and conditioned licenses**

Chairman Brungardt opened the hearing on **HB 2560**.

Staff provided an overview of the bill.

Sherry Diel, Executive Director, Kansas Real Estate Commission, spoke in favor of the bill. (Attachment 1) The bill relates to licensure of real estate salespersons and brokers and the brokerage relationships between brokers and their clients and customers, which requires amendments to both the Kansas Real Estate Brokers' and Salespersons' License Act. The amendments are largely technical or clarifying in nature, and includes a technical amendment by a former State Representative in regards to an update of the language in numerous places in the statutes that do not properly identify the various corporate forms of organization available to a real estate company under Kansas statutes.

Tim Holt, Chairman, Kansas Real Estate Commission, appeared in favor of the bill. (Attachment 2) Mr. Holt stated that he believes that the proposed legislation will assist KREC in not only protecting the public, but also preserving limited staff resources and responding to the needs of the licensees.

Luke Bell, Vice President of Governmental Affairs, Kansas Association of Realtors, (KAR), appeared as a proponent of the bill. (Attachment 3) Mr. Bell stated that over the past several years, KAR has been actively

CONTINUATION SHEET

Minutes of the Senate Federal and State Affairs Committee at 10:30 a.m. on March 16, 2010, in Room 144-S of the Capitol.

working with the Kansas Real Estate Commission to review and modernize the statutes to bring them into conformity with current administrative procedures and business practices in the real estate industry. The bill is a major step forward in protecting consumers and ensuring the professional responsibility of real estate licensees.

Larry Rickard, Wichita, appeared in opposition of the bill. (Attachment 4) Mr. Rickard provided amended language and modifications to the bill.

Chairman Brungardt closed the hearing on **HB 2560**.

The next meeting is scheduled for March 17, 2010. The meeting was adjourned at 11:40 a.m.



# KANSAS

KANSAS REAL ESTATE COMMISSION  
SHERRY C. DIEL, EXECUTIVE DIRECTOR

MARK PARKINSON, GOVERNOR

Memo To: Chairperson Brungardt and Members of the Senate Federal & State Affairs  
Committee  
From: Sherry C. Diel, Executive Director, Kansas Real Estate Commission  
RE: HB 2560 Amendments to Real Estate Salespersons' and Brokers' Laws  
Date: March 16, 2010

## Background

HB 2560 was jointly requested by the Kansas Real Estate Commission and the Kansas Association of Realtors. The Commission drafted certain sections of the proposed legislation and the trade association drafted other sections. Former State Representative Jason Watkins also requested a technical amendment that was incorporated into the bill draft.

The amendments relate to licensure of real estate salespersons and brokers and the brokerage relationships between brokers and their clients and customers, which requires amendments to both the Kansas Real Estate Brokers' and Salespersons' License Act, K.S.A. 58-3034 et seq., and the Brokerage Relationships in Real Estate Transactions Act, K.S.A. 58-30,101 et seq. The amendments are largely technical or clarifying in nature.

## Proposed Amendments

The bill would provide the following amendments to existing law:

**Ensures equal treatment to all forms of business entities established by supervising brokers to function as a "broker" or "brokerage firm" under the law and to provide equal treatment under the law for the types of business entities that affiliated licensees may establish to conduct authorized activities.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 1	p. 2	58-3035(m)
Sec. 2	p. 4	58-3037(i) and (j)
Sec. 3	p. 4	58-3038(b)
Sec. 5	p. 8-9	58-3042(b) and (c)
Sec. 8	p. 12	58-3060(e)
Sec. 9	p. 13-14	58-3061(f)
Sec. 10	p. 17	58-3062(b)(1)(B)
Sec. 11	p. 23	58-3068(c)(2)
Sec. 13	p. 24-25	58-30,102(d) and (e)

Former State Representative Jason Watkins requested this technical amendment because one of his constituents, a builder of new homes, was not exempt from licensure because he was a member of a limited liability corporation instead of setting up his construction company as a

corporation. Under current law, corporations, associations, partnerships, limited liability corporations, professional corporations, and limited liability partnerships are not uniformly included in the various statutes throughout the licensure act that refer to business entities, which may result in unequal treatment. Although the reasons for the unequal treatment are not known, it may be possible that the Commission's statutes were not updated over the years as the Kansas business statutes were amended.

**Would amend current law to authorize restrictions to be imposed on a license after notice and an opportunity for a hearing is given rather than requiring that a hearing actually be held. Also, would put applicants and licensees on notice of the reasons for and types of conditions that can be imposed on a license under K.S.A. 58-3050 and restrictions imposed pursuant to K.S.A. 58-3041 and K.S.A. 58-3050.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 4	p. 5-8	58-3041

This section was requested by the Commission to preserve limited agency resources. The Kansas Administrative Procedures Act only requires that an applicant or licensee be given notice and an opportunity for a hearing for any adverse action to be taken on an application for licensure or for disciplinary action to be taken against a licensee. The current provisions of K.S.A. 58-3041 provide that before restrictions can be imposed on a license, a hearing must actually be held. To save limited agency resources, the Commission does offer applicants and licensees a Consent Agreement and Final Order to issue a license with restrictions. However, if the applicant or licensee does not respond or refuses to sign the agreed order, an application for licensure will be denied or disciplinary action will proceed, which requires staff resources to draft the agency orders and expenditures to hold the hearings.

The Commission also drafted amendments to give notice to applicants for original licenses and renewal, applicants for broker's licenses that lack the necessary experience, and licensees that are subject to disciplinary action the reasons for and types of restrictions that can be imposed on licenses. The Commission may impose other restrictions and conditions that the Commission deems is appropriate in the public interest. These are restrictions and conditions that the Commission generally imposes in practice if a license applicant has a criminal history that is not sufficient to warrant denial but bears monitoring, when an applicant for a broker's license lacks the necessary experience to supervise a brokerage, or when disciplinary action is imposed.

**Clarifies that an applicant for an original license or license renewal has the burden of proof to show the applicant is rehabilitated from any prior revocation or suspension of a license, any conduct deemed relevant by the Commission or plea of guilty or nolo contendere to or conviction of a misdemeanor by showing that the applicant now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate in a manner to safeguard the public interest.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 6	p. 9-10	58-3043(b)

This language was jointly requested by the Commission and the trade association to clarify existing law and would mirror the language that applies to felony applicants.

**Establishes a procedure for allowing an applicant to withdraw an incomplete application to avoid denial of an application for an original license or renewal. Also, provides that if a complete application is not filed, the applicant is not entitled to the rights provided by the Kansas Administrative Procedure Act, K.S.A. 77-501 et seq.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 7	p. 11-12	58-3044

The Commission requested this section to prevent denying an application because the applicant failed to file the necessary documentation, forms or fees to constitute a completed application if the applicant would be willing to withdraw the application. Current law appears to require a denial unless the appropriate form or fees are not filed. The Commission is concerned that a denial may need to be reported by the applicant on an application for a professional license or certification or on a job application. The Commission wanted to clarify that if an incomplete application is not filed, the applicant is not entitled to rights afforded by the Kansas Administrative Procedures Act.

**Establishes by statute that if the provisions of the Brokerage Relationships in Real Estate Transactions Act ("BRRETA"), K.S.A. 58-30,101 et seq., and common law conflict, BRRETA supersedes common law.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 12	p. 23	58-30,101(c)

The trade association requested this section because there have been a few district court opinions and Kansas court of appeals decisions that have addressed BRRETA, but there has not been a Kansas Supreme Court case decision yet that clearly states that when BRRETA and the common law conflict, that the statutory law supersedes common law.

**Expands the same protections set forth in K.S.A. 58-30,103 to brokers and their customers that have entered into a written transaction brokerage agreement granting an exclusive right to sell with a seller or an exclusive brokerage relationship with a buyer that apply under current law to brokers and their clients that have entered into an exclusive agency agreement.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 13	p. 25-26	58-30,102(l), (m) and (v)
Sec. 14	p. 27-29	58-30,103(f), (i)-(p)

The trade association requested this section to ensure that a broker and customer that enter into an exclusive written transaction brokerage agreement enjoy the same protections under the law as a broker and client that enter into an exclusive agency agreement. This closes a gap in the law and would require written transaction brokerage agreements to set forth the terms and conditions of the relationship with the customer, including the duty of confidentiality, fixed date of expiration and compensation, require the agreement to be signed by the broker and the customer and a copy to be furnished to the customer. The amendment would protect customers by preventing net commissions or assignment of a written transaction brokerage agreement to another broker without consent of the customer. The amendment would prohibit a licensee from

“crossing” an exclusive written transaction brokerage agreement or inducing any party to break such an agreement with a customer. The amendment would also prohibit a licensee from contacting directly a buyer or seller who has entered into a written transaction brokerage agreement or attempting to negotiate a purchase, sale, lease or exchange directly with the buyer or seller without written consent of the customer. Under current law, these are protections only afforded a broker and a client who have entered into an exclusive agency agreement.

Thank you for your consideration of this important legislation. I would be happy to address any questions from the Committee.

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The logo for Realty Executives of Wichita features the words "REALTY EXECUTIVES" in a large, bold, red, serif font. Below this, the words "of Wichita" are written in a smaller, white, sans-serif font. The entire logo is set against a blue rectangular background.

Memo To: Members of the Senate Federal & State Affairs Committee  
From: Tim Holt  
RE: HB 2560 Amendments to Real Estate Salespersons' and Brokers' Laws  
Date: March 16, 2010

Chairperson Brungardt and members of the Senate Federal and State Affairs Committee, thank you for the opportunity to appear today for the purpose of testifying in support of passage of HB 2560.

I have been a practicing real estate agent for 38 years. I enjoy the unique position of wearing several hats. I am a practitioner, I am the current Chairperson of the Kansas Real Estate Commission, and I am the 2010 President of the Wichita Area Association of Realtors.

The Kansas Real Estate Commission (KREC) licenses and regulates real estate salespersons and brokers. The Kansas Association of Realtors (KAR) is a trade association that represents about 60% of KREC's licensees. Over the past several years, KREC and KAR have worked cooperatively to make several improvements to the Kansas Real Estate Brokers' and Salespersons' License Act and the Brokerage Relationships in Real Estate Transactions Act. KREC and KAR start discussions during the late summer regarding which legislation that both KREC and KAR can mutually support for the upcoming legislative session. Before any KREC/KAR legislation is proposed in the form of a bill draft, the language is revised over the course of several months. The revisions are discussed and revised at KREC's monthly Commission meetings. KREC and KAR may not always agree on legislation that comes before your Committee, but HB 2560 is a perfect example of KREC's and KAR's collaborative efforts. I believe that the proposed legislation will assist KREC in not only protecting the public, but also preserving limited staff resources and responding to the needs of the licensees.

I would be pleased to answer any questions from the Committee members.



Sn Fed & State  
Attachment 2

3-16-10





Luke Bell  
Vice President of Governmental Affairs  
3644 SW Burlingame Rd.  
Topeka, KS 66611  
785-267-3610 Ext. 2133 (Office)  
785-633-6649 (Cell)  
Email: [lbell@kansasrealtor.com](mailto:lbell@kansasrealtor.com)

To: Senate Federal and State Affairs Committee

Date: March 16, 2010

Subject: **HB 2560** -- Making Various Technical and Substantive Changes to the Kansas Real Estate Brokers' and Salespersons' License Act (KREBSLA) and the Brokerage Relationships in Real Estate Transactions Act (BRRETA)

Chairman Brungardt and members of the Senate Federal and State Affairs Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® to offer testimony in support of **HB 2560**. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR has faithfully represented the interests of the nearly 9,000 real estate professionals and over 700,000 homeowners in Kansas for the last 90 years. In conjunction with other organizations involved in the housing industry, the association seeks to increase housing opportunities in this state by increasing the availability of affordable and adequate housing for Kansas families.

Over the past several years, we have been actively working with the Kansas Real Estate Commission to review and modernize our statutes to bring them into conformity with current administrative procedures and business practices in the real estate industry. As a direct result of this extremely collaborative process, we believe that **HB 2560** would be a major step forward in protecting consumers and ensuring the professional responsibility of real estate licensees.

**HB 2560** would make several technical and substantive changes to the Kansas Real Estate Brokers' and Salespersons' License Act (KREBSLA) and the Brokerage Relationships in Real Estate Transactions Act (BRRETA). In order to clarify the intent behind the requested changes, I will briefly explain each of the major changes below.

Technical Changes to Update the Language Regarding Associations, Corporations, Limited Liability Companies, Limited Liability Partnerships, Partnerships and Professional Corporations

Earlier this year, former Representative Jason Watkins (R – Wichita) contacted the Commission to inquire whether limited liability companies, limited liability partnerships and other similar forms of corporate organization were allowed under KREBSLA and BRRETA. In researching this issue, we identified numerous places in the statutes that do not properly identify the various corporate forms of organization available to a real estate company under Kansas statutes.

As a result, this legislation would propose that we amend various sections of KREBSLA and BRRETA to accurately reflect the various forms of corporate organization available under Kansas statutes. The following sections would be amended: K.S.A. 58-3035(m); 58-3037(i); 58-3037(j); 58-3038(b); 58-3042(b); 58-3060(e); 58-3061(f); 58-3062(b)(1)(B); 58-3068(c)(2); 58-30,102(d)(1) and (2); and 58-30,102(e).

Accordingly, each section listed above would be amended to identify the following permissible forms of corporate organization for the purposes of KREBSLA and BRRETA: associations, corporations, limited liability companies, limited liability partnerships, partnerships and professional corporations. This list includes all the forms of corporate organization currently available under Kansas statutes.

This change is purely technical in nature and would clarify that a real estate brokerage can choose any of the various corporate forms of organization available to a real estate company under Kansas statutes. This change is necessary in order to ensure our statutes are consistent with current business practices in the real estate industry and other Kansas statutes.

Clarifying and Expanding the Commission's Authority to Condition or Restrict the Licenses of Applicants and Licensees for Certain Conduct and Violations of KREBSLA and BRRETA

Under the existing K.S.A. 58-3041, the Commission has the authority to issue a conditioned or restricted license to applicants and licensees under a very narrow set of circumstances. The Commission must first hold a hearing (even if the applicant does not request a hearing, which means that the applicant will not show up in most cases) and can only issue a conditioned or restricted license under three very narrow circumstances.

As a result, the Commission has been unable to use this statute for the last several years to issue conditioned or restricted licenses to applicants and licensees. The Commission would like to make several amendments to the statute to allow it to use this statute for its intended purpose of providing the Commission with a system to appropriately restrict or supervise applicants or licensees in need of additional supervision to ensure that they do not harm the general public.

The absence of a feasible conditions and restrictions statute has forced the Commission to become increasingly reliant on an even more burdensome system to restrict or supervise the applicants or licensees who need additional requirements. Over the past few years, the Commission has issued many consent agreements (legally binding agreements between the applicant or licensee) where the Commission agrees to grant a license to an applicant or licensee if that individual abides by certain restrictions and conditions contained in the consent agreement.

Unfortunately, the process of drafting a consent agreement is a very expensive and time-consuming process that consumes the Commission's resources and forces them to rely on the expensive services of outside legal counsel. Factoring in the often lengthy negotiations that take place between the Commission and the applicants or licensees in question, the need to rely on consent agreements has become a problem that actually delays the issuance of a real estate license to an applicant.

Under the language found in Section 4 on pages 4 to 8 of the legislation, the Commission would be granted a more appropriate level of authority to condition or restrict the license of an applicant or licensee when a specified set of factors in the statute are satisfied. If this legislation is approved, this would again allow the Commission to make use of the statute to place conditions and restrictions on applicants and licensees who need additional requirements.

If the applicant or licensee disagreed with the proposed conditions and restrictions placed on the license by the Commission, this statute gives the applicant or licensee the opportunity to request a hearing in front of the Commission to dispute the findings and/or conditions imposed. In our opinion, the proposed changes would significantly reduce the Commission's use of consent agreements in these situations and increase the efficiency and fairness of this process.

### Clarifying and Strengthening the Commission's Authority to Deny the Granting or Renewal of Licenses to Individuals Convicted of Certain Serious Misdemeanor Crimes

In Section 6 on page 9 of the legislation, the Commission would like an amendment to K.S.A. 58-3043 to clarify and strengthen the Commission's authority to deny the granting or renewal of licenses to applicants and licensees convicted of misdemeanor crimes that reflect on the individual's honesty, trustworthiness, integrity and competence to transact the business of real estate. In our opinion, the language in Section 6(b) is extremely important to ensure the Commission has the necessary authority to deny licenses to individual with a history of serious misdemeanor convictions.

This language would require the applicant or licensee to produce evidence that they now bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate in such a manner as to safeguard the interest of the public when they apply for a real estate license under KREBSLA. This language is exactly identical to the language in K.S.A. 58-3043(f)(1) approved by the House Commerce and Labor Committee in **2007 HB 2295** concerning the Commission's authority to grant a license to an individual with a history of felony convictions.

As in past years, we continue to believe that the Commission needs all the necessary authority to promote the professionalism of the real estate industry and protect consumers interacting with real estate professionals. On a daily basis, real estate licensees are provided with nearly unfettered access to the homes and personal and confidential financial information of consumers.

As a consequence, we are primarily concerned with providing the appropriate authority to the Commission to ensure that consumers are not harmed by the presence of unqualified and unprofessional individuals in the real estate industry. In order to protect consumers and uphold the professionalism of the real estate industry, we would strongly urge your support of the proposed language in Section 6(b) on page 9 of the legislation.

### Modifying and Streamlining the Commission's Procedures for Dealing with Incomplete Applications

In Section 7 on page 11 of the legislation, the Commission would like an amendment to K.S.A. 58-3044 to clarify the Commission's procedures for dealing with an incomplete application for a real estate license. Under the current language in K.S.A. 58-3044, the Commission is forced to deny an application for a real estate license when the application is incomplete or the proper fees are not paid in a timely manner by the applicant.

However, this practice can cause considerable harm to an applicant in the future because this action is considered a denial of the application and must be reported on all future license applications in this and other states. The proposed change would help avoid this unintended harm by allowing the Commission to consider the application incomplete instead of requiring an application denial.

### Clarifying that the Provisions of BRRETA Supersede the Common Law Rules Governing the Relationships Between Real Estate Brokers and Salespersons and Their Clients or Customers

In 1997, the Kansas Legislature passed the Brokerage Relationships in Real Estate Transactions Act (BRRETA) that was intended to completely govern the relationship between real estate brokers and salespersons and their clients and customers. As evidenced by the attached minutes from the Senate Judiciary Committee, the Kansas Legislature intended BRRETA to supersede the common law with respect to the issues governed by the statute.

However, the provisions of BRRETA do not explicitly state that BRRETA supersedes the common law rules regarding the relationship between real estate licensees and their clients and customers. Even though the legislative intent is clear through the minutes of the Senate Judiciary Committee, there have been no published appellate opinions in Kansas since the passage of BRRETA that have definitively stated for the record that BRRETA supersedes the common law.

Accordingly, we would like to insert the proposed language in Section 13 on pages 23 and 24 of the legislation to reinforce the original legislative intent and clarify once and for all that the provisions of BRRETA explicitly supersede the common law regarding the relationship between real estate licensees and their clients and customers. As an example on the misinformation that has resulted from this drafting oversight, a dissenting opinion in a recent appellate case questioned the ability of a transaction broker to serve as a neutral, disinterested capacity in a real estate transaction (which is clearly permissible under the plain language of BRRETA).

Nothing in the proposed language would eliminate or restrict the ability of an aggrieved consumer to bring an appropriate action when they have been harmed by the actions of a real estate broker or salesperson. In contrast, the proposed language would eliminate any regulatory uncertainty over the precise duties, protections and responsibilities a real estate broker or salesperson is required to provide to a consumer when they are operating as an agent or broker under BRRETA.

#### Defining the Terms “Exclusive Right to Sell Agreement” and “Exclusive Agency Agreement” for the Purposes of BRRETA

In Section 14(l) and (m) on page 25 of the legislation, the proposed language would define the terms “Exclusive Agency Agreement” and “Exclusive Right to Sell Agreement” for the purposes of BRRETA. As discussed in the next section of my testimony, these changes are necessary to ensure that we can add the term “written transaction brokerage agreement” to the provisions of K.S.A. 58-30,103 to ensure that written transaction brokerage agreements are governed by the same rules as agency agreements under BRRETA.

Unfortunately, the inclusion of the term “written transaction brokerage agreement” next to the term “exclusive agency agreement” can be confusing for some individuals since the word “agency” is included in that term and a transaction broker cannot act as an agent for either party in a real estate transaction. Even though the term “exclusive agency agreement” refers to compensation terms and does not create an agency relationship between the parties, the inclusion of the word “agency” in this term is nevertheless misleading in this context.

Accordingly, we would propose that we add a definition of “exclusive agency agreement” and “exclusive right to sell agreement” to the statute to ensure that there is no confusion when the term “written transaction brokerage agreement” is added to K.S.A. 58-30,103. This will ensure that no one confuses the distinction between compensation arrangements (such as exclusive agency and exclusive right to sell) and brokerage relationships and obligations (such as agency and transaction brokerage).

In our research on this issue, we have lifted the definitions of “exclusive agency agreement” and “exclusive right to sell agreement” from similar statutes that are currently in effect in the states of , Nevada, Ohio and Oregon. According to my research, these definitions are also consistent with the current definitions of these terms in Kansas case law.

Clarifying the Language in BRRETA to Ensure that the Statute Applies Equally to Agency Agreements and Written Transaction Brokerage Agreements

Finally, a drafting oversight in the provisions of BRRETA passed by the Kansas Legislature in 1997 has resulted in a situation where we believe the provisions of BRRETA do not uniformly govern and apply the same rules to agency agreements and written transaction brokerage agreements. Accordingly, we would propose technical amendments to K.S.A. 58-30,103(i) through (p) in Section 15 on pages 26 through 29 of this legislation to correct this drafting oversight.

The proposed change would clarify the statute to ensure that the same BRRETA provisions and rules uniformly apply to agency agreements and written transaction brokerage agreements. This change would provide greater protection to consumers by ensuring that the important consumer protections contained in K.S.A. 58-30,103 apply to both of these real estate brokerage relationships.

The proposed change would also prohibit competing real estate brokerages from soliciting listing or agency agreements from the customer of another real estate broker who has signed an exclusive written listing agreement with a real estate broker acting as a transaction broker. Due to the drafting oversight, there is a loophole currently in the statute that does not allow the Commission to discipline a real estate licensee who crosses the listing of a transaction broker who has entered into a written transaction brokerage agreement with a customer.

Unfortunately, several unethical and unscrupulous real estate licensees are currently exploiting this loophole to solicit property listings away from real estate brokerages who have accepted listings as a transaction broker under a written transaction brokerage agreement. If approved, the proposed language will end this detrimental practice and protect the legitimate business interests of these real estate brokerages.

Conclusion

For all the foregoing reasons, we would urge the Senate Federal and State Affairs Committee to strongly support the provisions of **HB 2560**. Once again, thank you for the opportunity to provide comments on **HB 2560** and I would be happy to respond to any questions at the appropriate time.

C.R.E., Inc

**From: (✓) Realty School of Kansas**

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**Ph: 316-685-3652 Fax 316-682-4152**

**( ) Larry D. Rickard, Broker**

**Licensed Broker: Ks-Ok-Mo-Tx**

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**TO: SENATORS & COMMITTEE MEMBERS Fax # 785-296-6718**

**FEDERAL & STATE AFFAIRS**

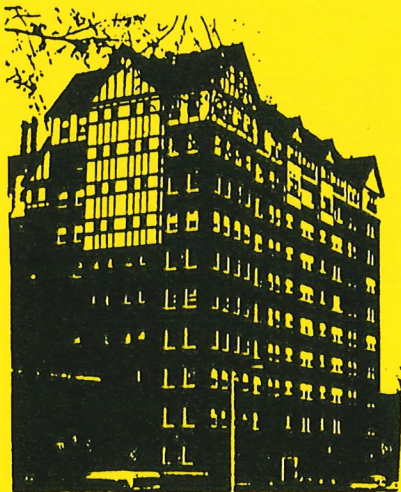
**Re: HOUSE BILL 2560**

Bill addresses issues created by the BRRETA act passed in 1996 which was to "SUNSET", and was re-passed by Realbor Lobbyists in 1997

→ OVER

**(xx) Info or (x) Please Respond**

**# of pages, including this page TOTAL 4 pages**



**Douglas Street Entry**

**3241 East Douglas  
Wichita, Kansas 67218**

**PH (316) 685-3652**

*Thank You!*

**FROM: Larry Rickard, Owner**

**Sn Fed & State  
Attachment 4**

**3-16-10**

SUMMARY of MODIFICATIONS for H.B 2560

ITEM #1 p. 25, LINE 34 (c)

Replace "agency Agreement" with LISTING AGREEMENT  
Listing contract or agreement can be taken with Agency or  
Non-Agency (TRANSACTION BROKER)

ITEM #2 P. 26, Line 42 (s)

STATUTORY LAW shall govern the duties and responsibilities of all real estate licensees without regard to their Brokerage relationship; given, there current Minimum duties are the same in the existing law

ITEM #3, P 27, LINE 24 ( c )

Strike the word "ORAL" All brokerage relationships should be written for protection of the public. Discourages abuse of agency by agents utilizing T.B. (Verbal or Oral) to avoid written agency. Thus, all brokerage relationships will be written

ITEM # 4, P. 28, Line 2 ( f )

Replace the term/word "agency agreement" with listing agreement or contract  
Wherever applicable in bill as the term listing contract/agreement includes both Agency and Transaction Broker. The title or terms identify which type, as was originally provided via. KREC in 1997; although, the use of T.B. and applicable forms was systematically not presented and/or provided.

ITEM #5, P. 14, Line 39 of Sec.10. ( a )

Strike "No licensee whether acting as agent, T.B., or principal TO "No licensee, in any brokerage relationship, including as a principal with their own property, shall":  
Thus, it would include all licensees without regard to how they are working. Further, it helps to reduce the "false" impression that can be elicited where the licensee may feel that the are not under the same "statutory law" for different brokerage relationships or that "agency" representation can move into or permit the limited "practice of law".  
duties"

**HOUSE BILL 2560 (for Kansas Senate)**

**The BILL may have SOME GOOD & laudable goals/ ITEMS, but NEEDS TO BE CORRECTED to solve a COUPLE OTHER EGREGIOUS ITEMS in order to better serve the industry and the public!**

**Note: as usual the devil is in the details & history of BRRETA!**

**From: Larry Rickard, Owner/Broker**

**-Since 1973-**

**Realty School of Kansas and Continental R.E (thirty seven (37) years in Kansas). Hold or have held Broker License in Ks-Ok-Mo-Tx-N.M.**

**3241 East Douglas**

**Wichita, Kansas 67218**

**Education and background:**

**B.S., M.S—Business Administration**

**Military, Lt. through Captain (4 years 1968-1972) served as**

**1) Personnel Office 2) Education Officer 3) Data Automation Officer**

**Past Business Experience: College Instructor: Business (B.S. & Master) 1968-72**

**Served for Small Fed. Credit Union (loan officer, ch. credit committee, then Board of Directors)**

**Licensed Real Estate Broker— 37 Years**

**Industry contributions:**

**1) acknowledgement textbooks:**

1. Real Estate Law by Coit
2. Principles of Real Estate by Palmer
3. Guide to Passing Broker & Salesperson Exam by Person View (Currently 8<sup>th</sup> Edition)
4. TASA (Technical Advisory Service for Attorneys) Registered Rep.
5. CRB (Not a Realtor (trade Assoc.), but completed Realtor courses for Certified Real Estate Broker designation)

**>>Item #1: P25, Line 34, (c) "Agency Agreement"**

**>Problem/concern: This does not reflect the two legal options a broker has to work with the public of either 1) with Agency(as an Agent) OR with 2) Non-agency (as a Transaction Broker)**

**>Action Needed:**

**Change the words from "Agency Agreement" to LISTING AGREEMENT**

**>Definition:**

**"Listing agreement or contract" means a written agreement setting forth the terms and conditions of the relationship between a broker and the broker's client for a Listing Agreement taken with Agency and between a broker and the broker's customer for a listing taken as a Transaction Broker**



> Results achieved:

1) **Solves Realtors problem where one Realtor "disrespects" the Transaction Broker's listing agreement with a customer that has resulted from only prohibiting interference with agency agreements, and 2) more properly reflects the Brokerage relationships available to a Broker working with the public for the sale or purchase of real estate, as the relationship is established by the listing agreement/contract! It further permits the "public" and "broker" to better understand that there are two major brokerage relationships. The public has heard and knows what a listing agreement is for real estate and does not relate or understand as well the term "agency".**

>> Item #2, p.26, Line 42 (s)

**Problem/Concern: A Transaction Broker or T.B. (as a licensee may take a listing/work with the public either as an Agent with Agency OR as a Transaction Broker with Non-Agency) which currently has the same minimum duties as an Agent should also be ruled by Statutory law, not common law. NOTE: 58-30,106, 107, 113 State that Seller & Buyer Agents AND Transaction Brokers minimum duty and obligations include:**

**"comply with any applicable federal, state and local laws, rules and regulations and ordinance, including fair housing and civil right statutes and rules and regulations"**

**Action needed:**

**Change to "Statutory Law" shall govern the legal duties and responsibilities off licensed Brokers, and their affiliates in Kansas whether working as an Agent with agency OR as a Transaction Broker with non-agency**

**Results achieved:**

**Places all Brokers under the same law and treats all brokers equitably**

>> Item #3 , p.27, Line 24 (c)

**Problem/Concern:**

**For protection of the Public AND all parties involved in a real estate transaction, all understandings and agreements should be completed in writing.**

**Action needed:**

**Strike the word "oral" to require that agreements with the public be reduced to writing to avoid problems for all parties concerned and discourage industry abuses. (Note) It is not uncommon for "purported agents" to work without the required written Listing Agreement**

**Results Achieved**

**Help to reduce public misunderstandings, discourage industry abuses, and established a consistent standard of reducing brokerage relationships with public to writing.**

>> Item # 4, p.28, Line 2 (f) and (g) through (p) and other as applicable

**Problem/Concern:**

**The use of both the terms: Agency Agreement and written Transaction Broker agreement is "redundant", "wordy, and less inclusive VS the term LISTING AGREEMENT; given a Broker may establish their brokerage relationships with a Seller or Buyer as an Agent with agency OR as a Transaction Broker (T.B.) with non-agency**

Action needed: Use/insert the term Listing Agreement VS. Agency Agreement AND Written Transaction Broker Agreement as both are Listing Contracts. Note: The KREC provided suggested Listing Agreements for Both Agency and Non-Agency when the BRRETA law was passed in 1997. FURTHER NOTE: There has been an inadvertent if not intentional systematic effort/problem with this not being taught through real estate education AND in some cases possibly discouraged by a "bias" of KREC "officials" and/or "educators" that do not fully understand the law and how the industry often works; thus, they did not teach the law that was finalized in 1997.

(Note: the original BRRETA law was passed in 1996 and almost immediately "sunset", then passed again by "Lobbyists" in 1997)

Results achieved:

Encourages consistency in the industry, clear for the public as they understand the word Listing Agreement/Contract. FURTHER: As pertains to real estate history, current and future real estate law reference Listing Contract or agreement is understood AND

Includes terms as expiration date, how working, commission rate, etc., etc

>>item #5, page 14, Line 39 of Sec. 10. (a)

Problem/concern: 58-3062 Indicates "No licensee whether acting as agent, transaction broker, OR principal, shall:

Action needed: STRIKE the words "whether working as an agent, transaction broker"

And state: "No licensee, whether acting with the public or as a principal....."

Results achieved: Makes it clear that all licensees has this duty, regardless of their Relationship with the public. Note: Section goes on to list required items a licensees shall have as responsibilities.

Finally, an often overlooked & significant point is: The use of Transaction Broker Serves to reduce the potential of "vicarious liability" for the Public and the real estate broker VS. agency. FURTHER: T.B. further notes that the licensee does not represent the public (only an attorney can actually represent them); despite the public's often false assumption they are being represented. Thus, in an ideal brokerage environment with NO AGENCY, honest/ethical brokers would handle the public's business in their normal honest fashion, and the public would have had legal notice of non-agency/ and this would discourage "purported agency" and cases where the public thought they had representation. Note: A very large percentage of licensees have not received adequate understanding of the BRRETA law and therefore have been deprived of the opportunity to make an informed decision as to brokerage, which in turn as deprived the public of adequate notice about potential "vicarious liability" associated with agency.

Agency is an Attorney system/ Real Estate Licnsees are not Attorneys

1. Attorney has hourly \$ rate
2. " make take deposition (extract truth) & by paid \$
3. Attorney (both) can go on to court and by paid \$

None of these advantages are typical benefits received by real estate brokers

Sincerely,

Larry Rickard

# Guide to Passing the Pearson VUE

## AGENCY

An *agency* is a personal relationship freely entered into whereby the **agent** acts for another, the **principal**. To appoint an agent, the principal must have contractual capacity (mental and legal capacity).

While a *client* is the principal that employs an agent to whom the agent has agency duties, the *customer* is a buyer or seller not represented by the agent.

The principal is liable for the acts of his or her agent within the scope of the agency (vicarious liability). Vicarious liability is being liable for actions of another even when not directly responsible for the harmful act because of the relationship of the parties. Similarly an employing broker could be held liable for the wrongful act of his or her salesperson while acting on the broker's behalf. Vicarious liability for actions of others is the reason that owners and brokers often elect to contract with one another as facilitators or transaction brokers rather than as an agency arrangement. It does not matter whether an agent receives compensation. An agent who acts without compensation has the same duties to the parties as an agent who is paid by the principal.

A real estate broker acts as agent of an owner or buyer, or the broker may, in some states, even act as a dual agent. The salesperson would be a subagent of the broker's principal. The listing broker would be the agent of the principal. While real estate salespersons are generally regarded as agents of their employing broker and subagents of the broker's principal, in some states, real estate salespersons are considered agents rather than subagents.

### Seller and Buyer Agency

Historically, real estate agents had been seller agents with fiduciary duties to the seller and a duty to the buyer of fair play and to disclose negative information that they were aware of regarding the property.

There has been a significant growth of buyer agency where the broker is the agent of the buyer, regardless of who is paying the commission, and has a duty to fulfill the needs of the buyer in as advantageous a manner to the buyer as possible. Where an agent represents either a buyer or seller it is known as a **single agency**.

### Dual Agency

It is possible for a broker to elect to be a dual agent. A dual agency