

PROPOSED

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Erik Wisner, Executive Director

Real Estate Commission

Sam Brownback, Governor

State of Kansas
Kansas Real Estate Commission
Notice of Public Hearing on Proposed Administrative Regulations

November 27, 2017

A public hearing will be conducted on Monday, February 19, 2018 at 9:00 a.m. at the Kansas Real Estate Commission, 700 SW Jackson, Suite 404, Topeka, KS 66603 to consider the adoption of proposed regulations of the Kansas Real Estate Commission, on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period to receive written public comments on the proposed regulations. All interested parties may submit written comments prior to the hearing to the Kansas Real Estate Commission, 700 SW Jackson, Suite 404, Topeka, KS 66603 or by email to erik.wisner@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. To provide all parties an opportunity to present their views, it may be necessary to request each participant limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Erik Wisner at (785) 296-3411.

Summaries of the proposed regulations and their economic impact follow. Copies of the proposed regulations and the Economic Impact Statement for the proposed regulations can be viewed at <http://www.krec.ks.gov>

K.A.R. 86-3-26 adopts by reference the commission's document titled "real estate brokerage relationships." A revision of this form was approved by the commission on October 10, 2017. The regulation also allows for a brokerage firm to produce their own version of this document if it contains the minimum disclosure requirements contained in the version adopted by the commission. The proposed regulation is necessary pursuant to K.S.A. 58-30,110.

K.A.R. 86-3-27 adopts by reference the commission's form titled "transaction broker addendum." A revision of this form was approved by the commission on October 10, 2017. The proposed regulation is necessary pursuant to K.S.A. 58-30,109.

K.A.R. 86-3-28 adopts by reference the commission's form titled "buyer's or tenant's consent to direct negotiation." A revision of this form was approved by the commission on April 18, 2017. The proposed regulation is necessary pursuant to K.S.A. 58-30,103.

The Commission sees no economic impact in adopting these regulations.

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86-3-26. Real estate brokerage relationships brochure. (a) The commission's document titled "real estate brokerage relationships," as approved by the commission on October 10, 2017, is hereby adopted by reference.

(b) As required by K.S.A. 58-30,110, and amendments thereto, each licensee shall give any prospective buyer or seller a brochure entitled titled "real estate brokerage relationships."
Each Any brokerage firm may either obtain a copy of this brochure from the commission for reproduction and use by its affiliated licensees use the commission document adopted by reference in subsection (a) or design a brochure that contains the minimum at least the same information contained in subsections (a), (b), (c), and (d) that document. If a brokerage firm designs its own "Real estate brokerage relationships" brochure, the brochure may be in a format determined by the brokerage firm and may include the company name, company logo, and an explanation of the firm's brokerage relationships policy. Each brochure shall also provide the name of the licensee providing the brochure, the name of the supervising or branch broker of the licensee if applicable, and the name of the brokerage firm as registered with the commission.

(a) Seller's agent. The seller's agent represents the seller only, so the buyer may be either unrepresented or represented by another agent.

(1) The seller's agent is responsible for performing the following duties:

- (A) Promoting the interests of the seller with the utmost good faith, loyalty and fidelity;
- (B) protecting the seller's confidences, unless disclosure is required;
- (C) presenting all offers in a timely manner;
- (D) advising the seller to obtain expert advice;
- (E) accounting for all money and property received;



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(F) disclosing to the seller all adverse material facts about the buyer that the agent knows;
and

(G) disclosing to the buyer all adverse material facts actually known by the agent,
including the following:

- (i) Environmental hazards affecting the property that are required to be disclosed;
- (ii) the physical condition of the property;
- (iii) any material defects in the property or in the title to the property; and
- (iv) any material limitation on the seller's ability to complete the contract.

(2) The seller's agent has no duty to perform the following:

- (A) Conduct an independent inspection of the property for the benefit of the buyer; or
- (B) independently verify the accuracy or completeness of any statement by the seller or

any qualified third party.

(b) Buyer's agent. The buyer's agent represents the buyer only, so the seller may be
either unrepresented or represented by another agent.

(1) The buyer's agent is responsible for performing the following duties:

- (A) Promoting the interests of the buyer with the utmost good faith, loyalty, and fidelity;
- (B) protecting the buyer's confidences, unless disclosure is required;
- (C) presenting all offers in a timely manner;
- (D) advising the buyer to obtain expert advice;
- (E) accounting for all money and property received;
- (F) disclosing to the buyer all adverse material facts that the agent knows; and

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~~(G) disclosing to the seller all adverse material facts actually known by the agent, including all material facts concerning the buyer's financial ability to perform the terms of the transaction.~~

~~(2) The buyer's agent has no duty to perform the following:~~

~~(A) Conduct an independent investigation of the buyer's financial condition for the benefit of the seller; or~~

~~(B) independently verify the accuracy or completeness of statements made by the buyer or any qualified third party.~~

~~(c) Transaction broker. The transaction broker is not an agent for either party, so the transaction broker does not advocate the interests of either party.~~

~~(1) The transaction broker is responsible for performing the following duties:~~

~~(A) Protecting the confidences of both parties, including the following information:~~

~~(i) the fact that a buyer is willing to pay more;~~

~~(ii) the fact that a seller is willing to accept less;~~

~~(iii) the factors that are motivating any party;~~

~~(iv) the fact that a party will agree to different financing terms; and~~

~~(v) any information or personal confidences about a party that might place the other party at an advantage;~~

~~(B) exercising reasonable skill and care;~~

~~(C) presenting all offers in a timely manner;~~

~~(D) advising the parties regarding the transaction;~~

~~(E) suggesting that the parties obtain expert advice;~~

~~(F) accounting for all money and property received;~~

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~~(G) keeping the parties fully informed;~~

~~(H) assisting the parties in closing the transaction;~~

~~(I) disclosing to the buyer all adverse material facts actually known by the transaction~~

~~broker, including the following:~~

~~(i) environmental hazards affecting the property that are required to be disclosed;~~

~~(ii) the physical condition of the property;~~

~~(iii) any material defects in the property or in the title to the property; and~~

~~(iv) any material limitation on the seller's ability to complete the contract; and~~

~~(J) disclosing to the seller all adverse material facts actually known by the transaction~~

~~broker, including all material facts concerning the buyer's financial ability to perform the terms of the transaction.~~

~~(2) The transaction broker has no duty to perform any of the following:~~

~~(A) conduct an independent inspection of the property for the benefit of any party;~~

~~(B) conduct an independent investigation of the buyer's financial condition; or~~

~~(C) independently verify the accuracy or completeness of statements by the seller, buyer,~~

~~or any qualified third party.~~

~~(d) Statement of representation. The following statement, in bold-faced type, shall be included in the brochure. "Do not assume that an agent is acting on your behalf, unless you have signed a contract with the agent's firm to represent you. As a customer, you represent yourself. Any information that you, the customer, disclose to the agent representing another party will be disclosed to that other party. Even though licensees may be representing other parties, they are obligated to treat you honestly, give you accurate information, and disclose all known adverse material facts."~~

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~~(e) This regulation shall take effect on and after October 1, 1997. (Authorized by K.S.A.
58-30,110 and K.S.A. 1996 2017 Supp. 74-4202(b), as amended by 1997 H.B. 2264, Sec. 46;
implementing K.S.A. 1996 Supp. 58-30,110(a)(1), as amended by 1997 H.B. 2264, Sec. 40;
effective, T-86-10-1-97, Oct. 1, 1997; effective Oct. 24, 1997; amended P-_____.)~~

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86-3-27. Transaction broker addendum. (a) Each broker shall use a transaction broker addendum form (TBA-RES) approved by the commission on April 10, 1997, which is hereby adopted by reference, to obtain the informed consent of a seller client and a buyer client for the broker to act as a transaction broker, on a contemplated transaction between the buyer and the seller, for the sale of a residential property of four or fewer units.

(b) Each broker shall use a transaction broker addendum form (TBA-COMM) approved by the commission on April 10, 1997, which is hereby adopted by reference, to obtain the informed consent of a seller client and a buyer client for the broker to act as a transaction broker, on a contemplated transaction between the buyer and seller, for the sale or lease of commercial property or the sale of residential property of more than four units.

(c) Each broker shall use a transaction broker addendum form (TBA-AG) approved by the commission on August 14, 1997, which is hereby adopted by reference, to obtain the informed consent of a seller client and a buyer client for the broker to act as a transaction broker, on a contemplated transaction between the buyer and seller, for the sale of agricultural land.

(d) Each broker shall use a transaction broker addendum form (TBA-DA) approved by the commission on April 10, 1997, which is hereby adopted by reference, to obtain the informed consent of a seller client and a buyer client for a designated agent to act as a transaction broker, on a contemplated transaction between the buyer and seller. The commission's form titled "transaction broker addendum," as approved by the commission on October 10, 2017, is hereby adopted by reference. Each licensee shall ensure that this form is completed to obtain the informed consent of a seller client and a buyer client pursuant to K.S.A. 58-30,109, and amendments thereto.

(e) This regulation shall take effect on and after October 1, 1997. (Authorized by K.S.A.



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58-30,109 and K.S.A. 1996 2017 Supp. 74-4202(b), as amended by 1997 H.B. 2264, Sec. 46;
implementing K.S.A. 1996 Supp. 58-30,109(a) and 58-30,109(b)(6), as amended by 1997 H.B.
2264, Sec. 38; effective, T-86-10-1-97, Oct. 1, 1997; effective Oct. 24, 1997; amended P-
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86-3-28. Buyer's or tenant's consent. (a) ~~Before negotiating directly with a buyer or tenant who has an agency agreement granting exclusive representation to another broker, any seller's or landlord's agent shall obtain the buyer's or tenant's signature on a "buyer's or tenant's consent to direct negotiation with seller's or landlord's agent" form approved by the commission on April 10, 1997, which is hereby adopted by reference.~~

(b) ~~Before initiating a contract with a buyer who has an agency agreement granting exclusive representation to another broker, any transaction broker shall obtain the buyer's signature on a "buyer's consent to initiate a contract with a transaction broker engaged by a seller" form approved by the commission on September 10, 1997, which is hereby adopted by reference.~~ The commission's form titled "buyer's or tenant's consent to direct negotiation," as approved by the commission on April 18, 2017, is hereby adopted by reference. Each seller's agent, landlord's agent, or transaction broker shall ensure that this form is completed and signed by the buyer or the tenant before engaging in direct negotiations with that buyer or tenant.

(c) ~~This regulation shall take effect on and after October 1, 1997. (Authorized by K.S.A. 1996 2017 Supp. 74-4202(b), as amended by 1997 H.B. 2264, Sec. 46; implementing K.S.A. 1996 2017 Supp. 58-30,103(e), as amended by H.B. 2264, Sec. 27; effective, T-86-10-1-97, Oct. 1, 1997; effective Oct. 24, 1997; amended P-_____.)~~

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**KANSAS REAL ESTATE COMMISSION
ECONOMIC IMPACT STATEMENT FOR
PERMANENT PROPOSED REGULATION
K.A.R. 86-3-26**

Date: November 27, 2017

I. Summary of Proposed Regulation, Including Their Purpose.

K.A.R. 86-3-26 adopts by reference the commission's document titled "real estate brokerage relationships." A revision of this form was approved by the commission on October 10, 2017. The regulation also allows for a brokerage firm to produce their own version of this document if it contains the minimum disclosure requirements contained in the version adopted by the commission.

II. Reasons the Proposed Regulation Is Required, Including Whether the Regulation Is Mandated by Federal Law.

The proposed regulation is necessary pursuant to K.S.A. 58-30,110. The proposed regulation is not mandated by federal law and there are no applicable requirements under federal law.

III. Anticipated Economic Impact upon the Kansas Real Estate Commission.

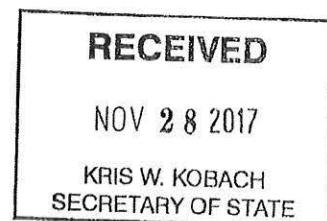
There is no economic impact to the Commission.

IV. Anticipated Financial Impact Upon Other Governmental Agencies and Upon Private Business or Individuals.

The Commission does not believe there will be any fiscal impact to other governmental agencies, private business or individuals.

V. Less Costly or Intrusive Methods That Were Considered

The Commission is not aware of any less costly or less intrusive methods.



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**KANSAS REAL ESTATE COMMISSION
ECONOMIC IMPACT STATEMENT FOR
PERMANENT PROPOSED REGULATION
K.A.R. 86-3-27**

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III. Anticipated Economic Impact upon the Kansas Real Estate Commission.

There is no economic impact to the Commission.

IV. Anticipated Financial Impact Upon Other Governmental Agencies and Upon Private Business or Individuals.

The Commission does not believe there will be any fiscal impact to other governmental agencies, private business or individuals.

V. Less Costly or Intrusive Methods That Were Considered

The Commission is not aware of any less costly or less intrusive methods.

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**KANSAS REAL ESTATE COMMISSION
ECONOMIC IMPACT STATEMENT FOR
PERMANENT PROPOSED REGULATION
K.A.R. 86-3-28**

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