

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

December 7, 2020

A public hearing will be conducted at 9:00 a.m., Monday, February 15, 2021 to consider the adoption of proposed regulations of the Kansas Real Estate Commission, on a permanent basis. Due to continuing concerns over COVID-19, the hearing will be held virtually instead of in-person. To participate in the hearing, a participant can go to <https://zoom.us/j/2135172100> and use the Meeting ID: 213 517 2100 and Passcode: 4ZdneR .

This 60-day notice of the public hearing shall constitute a public comment period for receiving 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. In order 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 in order 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 or erik.wisner@ks.gov.

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 the following website: <https://www.krec.ks.gov/resources/legislative-regulatory-updates>.

The proposed regulations would amend requirements related to broker records, trust accounts and transaction identification numbering. K.A.R. 86-3-10 amendments clarify requirements for records to be retained by Kansas licensed brokers. K.A.R. 86-3-18 amendments clarify requirements for trust account records and include a section related to closing a trust account previously in K.A.R. 86-3-21. K.A.R. 86-3-21 is proposed for revocation due to obsolete language related to documentation requirements and a subsection being moved to K.A.R. 86-3-18 for consistency. K.A.R. 86-3-22 amendments simplify transaction identification numbering procedures related to broker records. Instead of requiring numbering based on contract date, the broker can assign any number if it is unique to the transaction.

The changes proposed in this regulation will have no economic impact on any regulated entities or the public.

Erik Wisner
Executive Director
for the Kansas Real Estate Commission

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86-3-10. Retention of records. Each broker shall retain, for at least three years, in the broker's paper or digital files ~~for a period of at least three years true copies~~ a copy of all records relating to the broker's real estate business, including the following:

(a) Real estate sales contracts, option agreements, and nonresidential lease agreements for which the broker acts as an employee of, or on behalf of, the owner, purchaser, lessor or lessee;

(b) closing statements;

(c) each receipt from an escrow agent required by K.S.A. 58-3062(d), and amendments thereto;

(d) correspondence; and

~~(d)~~ (e) the records required by K.A.R. 86-3-18. (Authorized by K.S.A. 2019 Supp. 74-4202(b); implementing K.S.A. ~~4990~~ 2019 Supp. 58-3061(e), as amended by 1991 SB 194, Sec. 4; effective Jan. 1, 1966; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended Nov. 18, 1991; amended P- _____.)

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86-3-18. Trust account records. (a) Each supervising broker, and each branch broker who maintains a separate trust account for a branch office ~~as provided by~~ pursuant to K.S.A. 58-3061 and amendments thereto, shall maintain in the broker's office a complete record of all monies received or escrowed on real estate transactions, including the following:

(1) Deposit slips showing the unique transaction number assigned pursuant to K.A.R. 86-3-22, the date of deposit, the amount, and where deposited;

(2) monthly trust account bank, savings and loan association, or credit union statements, including canceled checks and deposit slips;

(3) all voided trust account checks;

(4) a check register ~~which~~ that shows the chronological sequence in which funds are received and disbursed. For funds received, the check register shall include the date of deposit, the unique transaction number assigned pursuant to K.A.R. 86-3-22, and the amount. For disbursement, the check register shall include the date, the unique transaction number assigned pursuant to K.A.R. 86-3-22, the payee, and the amount. ~~The names of the principals may be included.~~ A balance shall be shown, and the balances shall be kept current;

(5) a ledger for each transaction. The ledger shall include the names of the principals, the property address, and the unique transaction number assigned pursuant to K.A.R. 86-3-22; the amount and date of deposit of all monies received; and the check number, the date, the payee, and the amount of each disbursement. The broker shall note any deposit recorded in the trust account before contract acceptance. If the offer is accepted, the broker shall note the contract acceptance date on the ledger. If the offer is rejected or withdrawn before contract acceptance, the broker shall record the disbursement, note the rejected or withdrawn offer, and return the

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earnest money to the prospective buyer. A balance shall be shown for each ledger account, and balances shall be kept current; and

(6) a ledger for broker's funds, if ~~such~~ those funds are deposited in the trust account pursuant to K.S.A. ~~58-3062(a)(3)~~ 58-3061, and amendments thereto. ~~The balance shall be kept current~~ A balance shall be shown for each ledger account, and balances shall be kept current.

(b) The trust account shall be reconciled monthly against bank, savings and loan association, or credit union records, unless there has been no activity during the month.

(c) Trust account liability, as established by ledger sheet balances, shall be compared to the reconciled trust account balance monthly, unless there has been no activity during the month.

(d) Each supervising broker or branch broker who closes a trust account shall notify the commission by filing a "report on closing trust account" with the commission on a form approved by the commission, accompanied by a copy of the bank, savings and loan association, or credit union statement showing that the trust account has been closed, within 10 days of the occurrence of any of the following:

(1) Closure of the trust account;

(2) closure of the primary office or branch office, unless an exemption not to maintain a trust account has been granted by the commission for each trust account that was in existence when the primary office or branch office closed; or

(3) a change in the account number for the trust account or a change in the bank, savings and loan association, or credit union in which the trust funds are held. (Authorized by K.S.A. 2019 Supp. 74-4202(b); ; implementing K.S.A. 1986 2019 Supp. 58-3061; ; effective May 1,

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Proposed

K.A.R. 86-3-18

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1975; amended, E-81-18, July 26, 1980; amended May 1, 1981; amended, T-88-32, Jan. 1, 1988;

amended May 1, 1988; amended P- _____.)

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86-3-21. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 2006 Supp. 58-3061;
effective, T-87-32, Nov. 19, 1986; effective May 1, 1987; amended Nov. 18, 1991; amended, T-
86-7-2-07, July 2, 2007; amended Nov. 16, 2007; revoked P-_____.)

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86-3-22. Transaction identification. (a) Each supervising broker or branch broker shall assign a unique transaction number to each real estate sales contract, option agreement, and nonresidential lease agreement for which the broker acts as an employee of, or on behalf of, the owner, purchaser, lessor, or lessee. ~~If a separate trust account is maintained for a branch office as provided by K.S.A. 58-3061 and amendments thereto, the transaction number shall be assigned by the branch broker.~~

~~(b)(1) Sales contracts and option agreements shall be numbered in consecutive order by contract date within each calendar year, as specified in this paragraph. Each sales contract or option agreement shall be assigned a two-part number, with the parts separated by a hyphen. The first part, which shall consist of two digits, shall be the last two digits of the calendar year. The second part shall designate the numerical order of the contract or agreement within that calendar year, beginning with the number "1" and always preceded by one or more zeros.~~

~~(2) Lease agreements shall be numbered in consecutive order by contract date within each calendar year, as specified in this paragraph. Each lease agreement shall be assigned a two-part number, with the parts separated by a hyphen. The first part shall consist of the capital letter "L" followed by the last two digits of the calendar year. The second part shall designate the numerical order of the lease agreement within that calendar year, beginning with the number "1" and always preceded by one or more zeros.~~

~~(e)(1) If a broker deposits earnest money in the broker's trust account before contract acceptance, the broker shall assign a unique transaction number to the offer. The date of the deposit shall be used as the contract date for the sole purpose of assigning numbers in~~

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~~consecutive order pursuant to subsection (b). If the offer subsequently becomes a contract, the transaction number assigned to the offer shall be used throughout the transaction.~~

~~(2) The broker shall record the deposit on a ledger pursuant to K.A.R. 86-3-18(a)(5) with a notation on the ledger that the earnest money was deposited before contract acceptance. If the offer is rejected or withdrawn before contract acceptance, the broker shall return the earnest money to the prospective buyer and shall record the disbursement on the ledger sheet with a notation that the offer was rejected or withdrawn. If the offer is accepted, the broker shall note the contract acceptance date on the ledger.~~

~~(d) The transaction number shall be shown on the transaction file and shall be included on any of the following applicable records:~~

- ~~(1) The trust account check register to identify funds deposited or disbursed;~~
- ~~(2) each trust account deposit slip, with the amount of the deposit related to each transaction designated;~~
- ~~(3) each check drawn on the trust account;~~
- ~~(4) each transaction ledger maintained in accordance with K.A.R. 86-3-18(a)(5); and~~
- ~~(5) each receipt from an escrow agent required by subsection (d) of K.S.A. 58-3062 and amendments thereto.~~

~~(e) (c) If the broker's records are computerized, the transaction number shall be shown on all applicable computerized real estate transaction records. Each record required to be maintained pursuant to K.A.R. 86-3-10 and 86-3-18 shall include the unique transaction number.~~

~~(f) A transaction numbering system requested by a broker that is different from the system required by this regulation may be approved by the commission. (Authorized by K.S.A.~~

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2019 Supp. 74-4202(b); implementing K.S.A. 2019 Supp. 58-3061 and ~~K.S.A. 2006 Supp. 58-~~
3062; effective, T-88-32, Jan. 1, 1988; effective May 1, 1988; amended Dec. 20, 1993; amended,
T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended P- _____.)

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**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Kansas Real Estate Commission
Agency

Erik Wisner
Agency Contact

785.296.6951
Contact Phone Number

86-3-10, 86-3-18, 86-3-21 and 86-3-22
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

The proposed regulations would amend requirements related to broker records, trust accounts and transaction identification numbering. K.A.R. 86-3-10 amendments clarify requirements for records to be retained by Kansas licensed brokers. K.A.R. 86-3-18 amendments clarify requirements for trust account records and move a section related to closing a trust account previously in K.A.R. 86-3-21. K.A.R. 86-3-21 is proposed for revocation due to obsolete language related to documentation requirements and a subsection being moved to K.A.R. 86-3-18 for consistency. K.A.R. 86-3-22 amendments simplify transaction identification numbering procedures related to broker records.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)*

The proposed regulations are not mandated by federal law and there are no applicable requirements under federal law. The federal government does not regulate Kansas real estate licensing law.

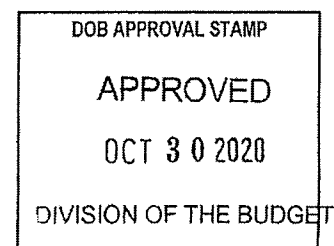
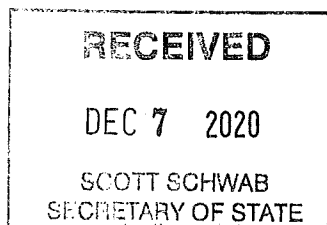
III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed regulations clarify recordkeeping and trust account requirements and simplify transaction identification numbering procedures.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

There should be no economic impact.



C. **Businesses that would be directly affected by the proposed rule and regulation;**
Kansas licensed real estate brokers.

D. **Benefits of the proposed rule(s) and regulation(s) compared to the costs;**
These regulations simplify and clarify recordkeeping, trust account and transaction identification numbering requirements so they should be a benefit to Kansas licensed real estate brokers.

E. **Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

These regulations simplify and clarify recordkeeping, trust account and transaction identification numbering requirements so they should be a benefit to Kansas licensed real estate brokers.

F. **An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$0

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

These regulations simplify and clarify recordkeeping, trust account and transaction identification numbering requirements so they will not have a fiscal impact to Kansas licensed real estate brokers.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

G. **If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas**

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Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

N/A

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

These changes were reviewed by several Kansas licensed brokers to provide input to the Commission. The Commission received favorable input due the simplification and clarification of existing requirements.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

N/A.

