

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

July 11, 2016

A public hearing will be conducted on Wednesday, October 12, 2016 at 9:00 a.m. at the Wichita Marriott, 9100 E Corporate Hills Dr., Wichita, KS 67207 to consider the adoption of proposed rules and 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 for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Kansas Real Estate Commission, Three Townsite Plaza, 120 SE 6th Ave., Suite 200, 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 that 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.

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: <http://www.krec.ks.gov>

K.A.R. 86-3-19 amendments clarify that a licensee has to disclose the interest an immediate family member has in a real estate transaction if the family member is the party purchasing or leasing real estate in the transaction. All of the proposed amendments to this regulation are language changes for the purposes of clarity and do not make any substantive changes to current policy and will therefore have no economic impact.

K.A.R. 86-3-26a amendments clarify that the brokerage relationship disclosure required in K.S.A. 58-30,110(c) has to be accurate and complete. The statute only addresses that this disclosure is included in an agency agreement. The Commission feels this addition clarifies legislative intent. All of the proposed amendments to this regulation are language changes for the purposes of clarity and do not make any substantive changes to current policy and will therefore have no economic impact.

K.A.R. 86-3-31 is a new regulation that defines specific requirements for brokers who supervise a primary or branch office. The regulation sets out defined standards and mitigating and aggravating factors the Commission would consider if they found the broker had failed to supervise their office. Since this regulation simply clarifies expectations for adequate supervision by a broker of their primary or branch office, it will have no economic impact.

K.A.R. 86-1-2, 86-1-4, K.A.R. 86-2-8 and 86-3-30 are proposed for repeal due to outdated or ambiguous language that is no longer required. Repealing these regulations will have no economic impact.

86-1-2. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 2006 Supp. 58-3039, as amended by L. 2007, ch. 88, sec. 1; effective Jan. 1, 1966; amended Jan. 1, 1974; amended, E-74-50, Sept. 13, 1974; amended May 1, 1975; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; revoked P-

_____.)

ATTORNEY GENERAL

APR 21 2016

APPROVED BY



APPROVED

MAR 17 2016

DEPT. OF ADMINISTRATION

86-1-4. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 1990 Supp. 58-3045; effective Jan. 1, 1986; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended Nov. 18, 1991; revoked P-_____.)

ATTORNEY GENERAL

APR 21 2016

APPROVED BY



APPROVED

MAR 17 2016

DEPT. OF ADMINISTRATION

86-2-8. (Authorized by K.S.A. 1996 Supp. 74-4202(b), as amended by 1997 H.B. 2264, Sec. 46; implementing K.S.A. 58-3061 and K.S.A. 1996 Supp. 74-4202(b), as amended by 1997 H.B. 2264, Sec. 46; effective Sept. 12, 1994; amended, T-86-10-1-97, Oct. 1, 1997; amended Oct. 24, 1997; revoked P-_____.)

ATTORNEY GENERAL

APPROVED

APR 21 2016

MAR 17 2016

APPROVED BY


DEPT. OF ADMINISTRATION

86-3-30. (Authorized by K.S.A. 74-4202(b), as amended by L. 2008, ch. 155, sec. 9;
implementing L. 2008, ch. 155, sec. 6; effective, T-86-6-25-08, July 1, 2008; effective Oct. 24,
2008; revoked P-_____.)

ATTORNEY GENERAL

APR 21 2016

APPROVED BY



APPROVED

MAR 17 2016

DEPT. OF ADMINISTRATION

86-3-19. Disclosure of interest in property purchased, sold, or leased, or exchanged. (a) ~~A~~ Each licensee shall not buy, sell, lease, or exchange real estate in which the licensee, an immediate family member of the licensee, or both the licensee and an immediate family member of the licensee have an interest without disclosing the following in the real estate contract or lease:

- ~~(1) The licensee's licensure status;~~
- ~~(2) specification of whether the licensee has an interest in the property or transaction; and~~
- ~~(3) specification of whether the licensee's immediate family member has an interest in~~

~~the property or transaction.~~ disclose in the real estate contract or lease any interest that the licensee or the licensee's immediate family member has or will have in the following, as applicable:

- (1) The real estate being sold or leased by the seller or lessor; and
- (2) the real estate being purchased or leased by the buyer or lessee.

~~(b) For purposes of subsection (a) this regulation,~~ "interest" shall have the meaning specified in K.S.A. 58-3035, and amendments thereto.

~~(c) For purposes of subsection (a), "exchange"~~ shall have the meaning specified in K.S.A. 58-3035, and amendments thereto.

~~(d) For purposes of subsection (a), and~~ "immediate family member" shall mean spouse, parent, child, or sibling. (Authorized by K.S.A. 2015 Supp. 74-4202**(b)**, as amended by L. 2008, ch. 155, sec. 9; implementing K.S.A. 2007 2015 Supp. 58-3035, as amended by L. 2008, ch. 155, sec. 1, and K.S.A. 2007 Supp. 58-3062, as amended by L. 2008, ch. 155, sec. 5; effective May 1, 1982; amended, T-86-6-25-08, July 1, 2008; amended Oct. 24, 2008; amended P-

_____.)

ATTORNEY GENERAL

APR 21 2016

APPROVED BY

APPROVED

MAR 29 2016

DEPT. OF ADMINISTRATION

86-3-26a. Designated agents; disclosure of brokerage relationships. (a) If a supervising broker or branch broker designates in a written agency agreement one or more designated agents to represent the interests of a buyer, seller, tenant, or landlord client, any other salespersons or associate brokers that are employed by or associated with the supervising broker or branch broker who are not specifically designated in the written agency agreement to represent the interests of the client shall not be deemed to have a brokerage relationship with the client.

(b) If a designated agent has been appointed to represent a buyer, seller, tenant, or landlord in a transaction, the brokerage relationship disclosure in the contract or lot reservation agreement shall specify that a designated agent was appointed to represent the interests of the client.

(c) Each licensee involved in a transaction as a statutory agent or a transaction broker shall ensure the completeness and accuracy of the disclosure required by K.S.A. 58-30,110(c), and amendments thereto. (Authorized by K.S.A. 2015 Supp. 74-4202(b); implementing K.S.A. 58-30,109 and 58-30,110; effective Nov. 16, 2007; amended P- _____.)

ATTORNEY GENERAL

APR 21 2016

APPROVED BY

APPROVED

MAR 29 2016

DEPT. OF ADMINISTRATION

86-3-31. Broker supervision. (a) Failure of a supervising broker or branch broker to properly supervise the activities of an associated or employed salesperson or associate broker shall include the following:

(1) Allowing a person not licensed by the commission to engage in activities requiring a license on behalf of the broker or brokerage firm, unless the person is exempt from licensure pursuant to K.S.A. 58-3037, and amendments thereto;

(2) allowing an associated or employed salesperson or associate broker to engage in dual agency or activities requiring an active real estate license while that salesperson's or associate broker's license is expired, inactive, pending transfer, suspended, or revoked;

(3) failure to take action to ensure that an associated or employed salesperson or associate broker complies with any restrictions or conditions placed upon that salesperson's or associate broker's license;

(4) directing or instructing an associated or employed salesperson or associate broker to take any action in violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations;

(5) failing to take action to prevent an associated or employed salesperson or associate broker from taking any action in violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations, if the supervising broker or branch broker has actual knowledge of the impending violation;

(6) failing to timely take action to correct or mitigate a violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations by an associated or employed salesperson or associate broker, if the supervising broker or branch broker has actual knowledge of the violation;

ATTORNEY GENERAL

APPROVED

APR 21 2016

MAR 25 2016

APPROVED BY

DEPT. OF ADMINISTRATION

(7) failing to ensure that all contracts and forms used by an associated or employed salesperson or associate broker are reviewed for accuracy and compliance with applicable statutes, regulations, and office policies;

(8) failing to ensure that all advertising by associated or employed salespersons or associate brokers complies with applicable statutes, regulations, and office policies; and

(9) failing to ensure that all associated or employed salespersons and associate brokers are able to maintain reasonable and timely communication with the supervising broker, branch broker, or a competent designee.

(b) Any of the following may be considered mitigating factors regarding an alleged violation of subsection (a):

(1) The supervising broker or branch broker has implemented policies and procedures to prevent an associated or employed salesperson or associate broker from violating a restriction or condition placed upon the license or from committing a violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations, as demonstrated by both of the following:

(A) The supervising broker or branch broker has written policies and procedures in place to provide guidance in real estate practice law to the associated or employed salesperson or associate broker.

(B) The supervising broker or branch broker demonstrates that the associated or employed salesperson or associate broker received training on the written policies and procedures specified in paragraph (b)(1)(A).

(2) The supervising broker or branch broker provides access to either of the following:

(A) Ongoing training or education sessions for associated or employed salespersons or

ATTORNEY GENERAL

APPROVED

APR 21 2016

MAR 25 2016

APPROVED BY

DEPT. OF ADMINISTRATION

associate brokers; or

(B) experienced personnel to review the accuracy of documents and discuss real estate practice law with associated or employed salespersons or associate brokers.

(3) The supervising broker has systems in place to ensure proper management and control of documents and records relating to licensing requirements and transactions.

(c) Any of the following may be considered aggravating factors with respect to an alleged violation of subsection (a):

(1) The commission has previously disciplined the supervising broker or branch broker for failure to properly supervise associated or employed salespersons or associate brokers.

(2) The supervising broker or branch broker did not have policies and procedures in place as described in paragraph (b)(1)(A) at the time of the violation.

(3) The supervising broker or branch broker is unable to demonstrate that the associated or employed salesperson or associate broker who committed the violation received adequate training on applicable statutory, regulatory, and office policy requirements.

(d) Nothing in this regulation shall prohibit a broker from delegating supervisory duties to competent personnel or affiliated licensees. The supervising broker or branch broker shall be responsible for ensuring compliance with commission statutes and regulations by all personnel and affiliated licensees under the supervising broker's or branch broker's supervision.

(Authorized by K.S.A. 2015 Supp. 74-4202; implementing K.S.A. 2015 Supp. 58-3062; effective P-_____.)

ATTORNEY GENERAL

APR 21 2016

APPROVED BY

APPROVED

MAR 25 2016

DEPT. OF ADMINISTRATION

**KANSAS REAL ESTATE COMMISSION
ECONOMIC IMPACT STATEMENT FOR
PERMANENT PROPOSED REGULATIONS
K.A.R. 86-3-19**

Date: May 24, 2016

I. Summary of Proposed Regulations, Including Their Purpose.

K.A.R. 86-3-19 amendments clarify that a licensee has to disclose the interest an immediate family member has in a real estate transaction if the family member is the party purchasing or leasing real estate in the transaction.

II. Reasons the Proposed Regulations Are Required, Including Whether the Regulations Are Mandated by Federal Law.

The proposed regulation is necessary in order to clarify statutory requirements related to real estate licensure and compliance requirements in Kansas. The proposed regulations are 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.

There will be no economic impact to real estate licensees.

V. Less Costly or Intrusive Methods That Were Considered

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

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

Date: May 24, 2016

VI. Summary of Proposed Regulations, Including Their Purpose.

K.A.R. 86-3-26a amendments clarify that the brokerage relationship disclosure required in K.S.A. 58-30,110(c) has to be accurate and complete. The statute only addresses that this disclosure is included in an agency agreement. The Commission feels this addition clarifies legislative intent.

VII. Reasons the Proposed Regulations Are Required, Including Whether the Regulations Are Mandated by Federal Law.

The proposed regulation is necessary in order to clarify statutory requirements related to real estate licensure and compliance requirements in Kansas. The proposed regulations are not mandated by federal law and there are no applicable requirements under federal law.

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

There is no economic impact to the Commission.

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

There will be no economic impact to real estate licensees.

X. Less Costly or Intrusive Methods That Were Considered

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

**KANSAS REAL ESTATE COMMISSION
ECONOMIC IMPACT STATEMENT FOR
PERMANENT PROPOSED REGULATIONS
K.A.R. 86-3-31**

Date: May 24, 2016

XI. Summary of Proposed Regulations, Including Their Purpose.

K.A.R. 86-3-31 is a new regulation that defines specific requirements for brokers who supervise a primary or branch office. The regulation sets out defined standards and mitigating and aggravating factors the Commission would consider if they found the broker had failed to supervise their office.

XII. Reasons the Proposed Regulations Are Required, Including Whether the Regulations Are Mandated by Federal Law.

The proposed regulation is necessary in order to clarify statutory requirements related to real estate licensure and compliance requirements in Kansas. The proposed regulations are not mandated by federal law and there are no applicable requirements under federal law.

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

There is no economic impact to the Commission.

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

There will be no economic impact to real estate licensees.

XV. Less Costly or Intrusive Methods That Were Considered

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

**KANSAS REAL ESTATE COMMISSION
ECONOMIC IMPACT STATEMENT FOR
PERMANENT PROPOSED REGULATIONS
K.A.R. 86-1-2, 86-1-4, 86-2-8 and 86-3-30**

Date: May 24, 2016

XVI. Summary of Proposed Regulations, Including Their Purpose.

K.A.R. 86-1-2, 86-1-4, K.A.R. 86-2-8 and 86-3-30 are proposed for repeal due to outdated or ambiguous language that is no longer required.

XVII. Reasons the Proposed Regulations Are Required, Including Whether the Regulations Are Mandated by Federal Law.

The proposed regulations are not mandated by federal law and there are no applicable requirements under federal law.

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

There is no economic impact to the Commission.

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

There will be no economic impact to real estate licensees.

XX. Less Costly or Intrusive Methods That Were Considered

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