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MEMORANDUM

TO: René Rogers, Kentucky Real Estate Authority, Staff Attorney

FROM: Emily Caudill, Regulations Compiler

RE: Amended After Comments – 201 KAR 011:121.

DATE: August 15, 2022

A copy of the Amended After Comments regulation listed above along with the required Statement of Consideration are enclosed for your files.

This administrative regulation will be reviewed by the Administrative Regulation Review Subcommittee at its **September 2022** meeting. Please notify the proper person(s) of this meeting.

If you have questions, please contact us at RegsCompiler@LRC.ky.gov or (502) 564-8100.

Enclosure

FILED WITH LRC
TIME: 11:45 am
AUG 15 2022
Emily B Caudill
REGULATIONS COMPILER

1 BOARDS AND COMMISSIONS

2 Real Estate Commission

3 (Amended After Comments)

4 201 KAR 11:121. Standards of professional conduct.

5 RELATES TO: KRS 324.010(3), 324.111, 324.112, 324.121, 324.160, 324.281(5),
6 324.310, 324.360, 381.9203(1), (3), 383.580, 24 C.F.R. 3500, 44 C.F.R. 64.3(b), 12 U.S.C.
7 2601-2617

8 STATUTORY AUTHORITY: KRS 324.121, 324.160(4)(e), 324.281(5), 324.282, 324.360

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 require

10 the Real Estate Commission, with the approval of the executive director of the Kentucky Real
11 Estate Authority, to promulgate administrative regulations necessary to carry out and enforce
12 the provisions of KRS Chapter 324. KRS 324.121 authorizes a principal broker to designate an
13 affiliated licensee to act as agent for a seller or lessor, buyer or lessee, or prospective buyer to
14 the exclusion of all other licensees associated with the principal broker. KRS 324.360(2) requires
15 the commission to promulgate an administrative regulation authorizing a seller's disclosure of
16 conditions form with content as set forth by KRS 324.360(3). KRS 324.160(4)(e) authorizes the
17 commission to take disciplinary action if a licensee acts for more than one (1) party in a
18 transaction without the knowledge of all parties. This administrative regulation establishes
19 requirements for designated agency; the required Seller's Disclosure of Property Condition form;
20 a specific process and form for disclosing prior relationships between parties in a residential
21 transaction; standards and requirements, to inform and set certain standards for licensees and
22 to protect the public, regarding delivery of signed documents, broker supervision, broker record

1 retention, sales associate affiliation and termination, and written agreements between licensees
2 and consumers to provide real estate brokerage services, including standards for listing and
3 purchase contracts; and behavior considered improper conduct.

4 Section 1. Improper Conduct.

5 (1) In addition to the obligations and prohibitions set forth in KRS 324.160, a licensee
6 shall not:

7 (a) Accept or agree to accept, or offer or agree to offer, anything of value to another
8 person in violation of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601 through
9 2617 ("RESPA").[-] This provision shall not affect paying or receiving referral fees between
10 principal brokers for brokerage services;

11 (b) Refuse or prohibit any prospective purchaser from viewing or inspecting real estate
12 listed for sale or lease with the real estate brokerage company with which the licensee is
13 affiliated, without the written and signed direction of the listing or leasing client. This provision
14 shall not be construed to permit otherwise unlawful discrimination;

15 (c) Offer real estate for sale or lease without written consent from the person or persons,
16 or entity or entities authorized to sell or lease the subject real estate;

17 (d) Fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's
18 client:

- 19 1. Loyalty;
- 20 2. Obedience to lawful instructions;
- 21 3. Disclosure;
- 22 4. Confidentiality;
- 23 5. Reasonable care and diligence; and
- 24 6. Accounting;

1 (e) Fail to satisfy one (1) or more of the following duties owed to the licensee's prospective
2 client:

- 3 1. Good faith;
- 4 2. Fair dealing; and
- 5 3. The duty of confidentiality;

6 (f) Fail to satisfy one (1) or more of the following duties owed to a consumer or to any
7 other party in a transaction:

- 8 1. Good faith; and
- 9 2. Fair dealing;

10 (g) Enter an ongoing team or group relationship with any other licensee at the same
11 brokerage company without the written consent of the principal broker;

12 (h) Induce any party to a contract for sale or lease to break the contract for the purpose
13 of substituting in lieu thereof a new contract for sale or lease with another **principal**
14 **broker**[client];

15 (i) If advertising real property at an absolute auction, sell the advertised property to
16 anyone other than the highest bona fide bidder on the day of the auction; and

17 (j) If dually licensed as an auctioneer and real estate licensee, before a real estate
18 licensee commences an auction, the licensee shall disclose his or her status as a real estate
19 licensee to potential purchasers and whether he or she intends to bid during the auction.

20 (2) The fiduciary duty of confidentiality, if owed, shall survive the termination of the Agency
21 Consent Agreement contemplated in Section 6 of this administrative regulation.

22 (3) It shall not be considered improper conduct for a licensee to advertise the fee or other
23 compensation the principal broker agrees to charge for his or her services.

1 (4) It shall not be considered improper conduct for a licensee to offer rebates, discounts,
2 or other inducements to consumers, prospective clients, or clients to use the licensee's services
3 or truthfully advertise the same.

4 (5) It shall not be considered improper conduct for a licensee to use his or her registered
5 nickname in place of the licensee's first name anytime the licensee shall identify himself or
6 herself on an official document or to the commission.

7 Section 2. Submission of Written Offers.

8 (1) If a principal broker has entered into a written listing agreement, or any other written
9 agreement, under the terms of which the principal broker agrees to provide real estate brokerage
10 services for a fee, compensation, or other valuable consideration for the client, the principal
11 broker shall provide, unless specifically waived or modified by the client in writing, for real estate
12 that is the subject of the written agreement, the following services:

13 (a) Accept delivery and submit to the client, without delay, all written offers to lease or
14 purchase;

15 (b) Accept all earnest money deposits that are presented to the principal broker or an
16 affiliated licensee of the principal broker;

17 (c) Until the completion of the transaction, assist the client in developing, communicating,
18 negotiating, and presenting offers, counteroffers, and notices that relate to offers and
19 counteroffers; and

20 (d) Answer the client's questions relating to offers, counteroffers, notices, and
21 contingencies involved in the lease or purchase.

22 (2)

23 (a) Each principal broker, or an affiliated licensee of the principal broker, who represents
24 a client shall, without delay, submit all written offers to lease or purchase real estate from the
25 principal broker's client to the person or legal entity authorized to sell or lease the property or to

1 the principal broker, or an affiliated licensee of the principal broker, who has entered into a written
2 agreement according to subsection (1) of this section. A licensee representing a seller shall
3 submit a notice in writing through electronic, text, or other media to the licensee representing a
4 buyer of the date and time when the offer was presented to the seller.

5 (b) If the principal broker is acting as a transactional broker, the principal broker shall
6 follow the lawful instructions of the parties and provide the brokerage services as outlined in the
7 transactional brokerage agreement.

8 (3) Failure to comply with this section shall constitute gross negligence in violation of KRS
9 324.160(4)(v).

10 Section 3. Listing and Purchase Contracts.

11 (1) A listing contract completed by or at the direction of a licensee shall include the:

12 (a) Listing price of the property, unless the sale is to be by auction;

13 (b) Date and time of the signing of the listing contract for all parties who sign;

14 (c) First and last name of the principal broker and the full name of the real estate
15 brokerage company;

16 (d) Effective date and time of listing and advertising, if different;

17 (e) Date of expiration of the listing contract;

18 (f) Fee, compensation, or other valuable consideration agreed upon between the principal
19 broker and the client;

20 (g) Address or a general description of the real estate sufficient to identify the parcel or
21 parcels;

22 (h) Signatures and printed names of all parties necessary to affect a sale of the property,
23 including any dower or curtesy~~[courtesy]~~ considerations or the official representative of a legal
24 entity, that is the subject of the listing agreement;

25 (i) Special directions of the client concerning limitations or restrictions on showings; and

- 1 (j) Date, time, and initials for all changes on the contract prior to acceptance.
- 2 (2) An offer to purchase completed by, or at the direction of, a licensee shall include the:
- 3 (a) Purchase price or a valid escalation clause with the maximum purchase price;
- 4 (b) Amount of contract deposit, if given, who is to hold the deposit, and the time period to
- 5 deliver the deposit;
- 6 (c) Date and time of signing of the offer for all parties who sign;
- 7 (d) Date and time when the offer expires;
- 8 (e) Address or a general description of the real estate sufficient to identify the parcel or
- 9 parcels;
- 10 (f) Signatures of all parties making the offer and the printed first and last name of the
- 11 licensee who completed or directed the completion of the offer;
- 12 (g) Date, time, and initials for all changes on the contract prior to acceptance;
- 13 (h) Provision setting forth the date by which, or the date range within, the closing shall
- 14 occur and when possession shall be given to the buyer; and
- 15 (i) Proposed payment terms.
- 16 (3) A counteroffer completed by, or at the direction of, a licensee shall include any
- 17 amendments to any term required by subsection (1) and (2) of this section and:
- 18 (a) Date and time of signing of the counteroffer for all parties who sign;
- 19 (b) Date and time when the counteroffer expires;
- 20 (c) Signatures of all parties making the counteroffer;
- 21 (d) The first and last name of the licensee who completed or directed the completion of
- 22 the offer, if not found on the original offer or a previous counteroffer; and
- 23 (e) Date, time, and initials for all changes on the contract prior to acceptance.
- 24 (4)

1 (a) If a licensee presents an offer to purchase real estate for which an executory contract
2 to sell the property is already in existence, the offer shall include language that indicates in
3 writing that the offer is contingent upon the nonperformance of the existing executory contract.

4 (b) The contingency language required by paragraph (a) of this subsection shall indicate
5 the disposition of any contract deposit and be:

6 1. Inserted by the licensee who completes or prepares the offer to purchase, if licensee
7 is aware of the existing contract; or

8 2. Made by the listing licensee as a counteroffer.

9 (5) If financing is involved, a contract providing for the purchase of property shall
10 specifically state:

11 (a) The manner in which the purchase shall be financed; and

12 (b) The amount of any encumbrance and whether it is to be underwritten by the seller or
13 a commercial institution or otherwise.

14 (6) Any agreement for compensation, including rebates and inducements, from a licensee
15 to his or her client shall be in writing.

16 (7)

17 (a) Prior to the expiration of a current listing agreement, another licensee shall not contact
18 the seller to obtain a subsequent listing agreement.

19 (b) Notwithstanding paragraph (a) of this subsection, a licensee may discuss newly listing
20 the seller's property that is currently listed if:

21 1. The seller initiates contact with the new licensee to obtain a new listing contract;

22 2. The proposed listing contract states that it shall not take effect until the expiration of
23 the seller's current listing contract with the original licensee; and

24 3. The licensee and seller properly complete and sign the Seller-Initiated Listing Form.

25 Nothing in this subsection shall prohibit a licensee from approaching a seller to list the seller's

1 property following the seller's cancellation of their current listing contract or expiration of the
2 current listing contract.

3 (8) If a licensee fails to comply with the requirements in this section, the licensee's conduct
4 and dealings shall be considered improper in violation of KRS 324.160(4)(u).

5 Section 4. Required Disclosures.

6 (1) A licensee shall direct the seller-client of a single family residential real estate dwelling,
7 duplex, triplex, fourplex, condominium, or townhouse to accurately complete and sign the
8 Seller's Disclosure of Property Condition form required by KRS 324.360, including all necessary
9 initials and signatures, unless the seller-client refuses and documents his or her refusal, or the
10 licensee documents the seller-client refusal, on the Seller's Disclosure of Property Condition
11 form.

12 (2) A licensee who is involved in the brokerage of a condominium transaction shall advise
13 the client in writing of the client's right to receive the Condominium Seller's Certificate required
14 by KRS 381.9203(1) and the purchasing client's right to void the sales contract consistent with
15 KRS 381.9203(3).

16 Section 5. Prospective Client Disclosures.

17 (1) A licensee shall complete, time and date, and deliver to the appropriate prospective
18 client the commission's Guide To Agency Relationships at the earliest of the following times:

19 (a) Prior to entering into a contemplated written agreement to provide real estate
20 brokerage services for compensation with a prospective client;

21 (b) Prior to entering into a contemplated oral agreement to provide real estate brokerage
22 services with a prospective client; or

23 (c) Prior to signing an agency consent agreement.

24 (2) The licensee shall solicit the signature of the prospective client on the Guide to Agency
25 Relationships as acknowledgement by the prospective client of his or her receipt. The licensee

1 shall maintain a record that the prospective client signed the Guide to Agency Relationships. If
2 the prospective client refuses to, or does not, sign the Guide to Agency Relationships upon
3 receipt, the licensee shall document the delivery, or attempted delivery, including a date and
4 time, to the appropriate prospective client[~~client~~].

5 (3) The completed Guide to Agency Relationships shall provide or include:

6 (a) The agency relationships available between the licensee and client or party in
7 Kentucky;

8 (b) The first and last name of the licensee completing the form, the first and last name of
9 the principal broker of the licensee, and the full name of the licensee's real estate company;

10 (c) The name of the prospective client; and

11 (d) The signature, time, and date of signing by the prospective client.

12 (4) The provisions of this section shall not apply to:

13 (a) The sale of real estate at auction; or

14 (b) A commercial transaction.

15 Section 6. Agency Consent Agreement.

16 (1) Prior to entering into a written agreement to provide real estate brokerage services or
17 completing, or directing the completion of, a contract, offer, or lease for a real estate transaction:

18 (a) The licensee shall complete and deliver the Agency Consent Agreement to the
19 prospective client; and

20 (b) Seek and obtain written consent to the Agency Consent Agreement from the
21 prospective client.

22 (2) The commission's Agency Consent Agreement shall provide:

23 (a) The first and last name of the client, the first and last name of the licensee or licensee's
24 and principal broker, and the full name of the real estate brokerage company;

1 (b) The specific agency relationship proposed between the principal broker of the real
2 estate brokerage company, and any affiliated licensee of the real estate brokerage company,
3 and the prospective client;

4 (c) If applicable, any known business, family, or personal relationship the licensee has
5 with another party to the contemplated transaction who is not a party to the Agency Consent
6 Agreement and an explanation of the nature of the relationship or relationships; and

7 (d) Whether the transaction involves an unrepresented party[~~;~~ ~~and~~]

8 ~~[(e)] [Disclosure of prior contact with a former prospective client who is involved in the~~
9 ~~presently contemplated real estate transaction.]~~

10 (3) The Agency Consent Agreement shall be updated, and written consent obtained, if
11 the agency relationship initially established later changes.

12 (4) The provisions of this section shall not apply to a:

13 (a) Sale of real estate at auction; or

14 (b) Commercial transaction.

15 (5) The form of agency identified in the most recent Agency Consent Agreement shall
16 terminate upon either:

17 (a) The provision of the agreed upon services; or

18 (b) At the closing of the contemplated real estate transaction.

19 Section 7. Affiliation.

20 (1) The principal broker shall be the owner of all written contracts for provision of real
21 estate brokerage services, including items such as listing contracts, purchase contracts, and
22 exclusive agency agreements.

23 (2) When a principal broker, or a licensee acting on behalf of the principal broker, enters
24 into a written agreement with a client, an agency relationship is formed, and the client is the
25 principal.

1 (3) Absent operating as a designated agency company, each licensee affiliated with the
2 real estate brokerage company shall have the same agency relationship with respect to a client,
3 prospective client, or party as the principal broker in an in-house transaction.

4 (4) If only one (1) broker is affiliated with a company, he or she shall be the principal
5 broker.

6 (5) If one (1) or more additional licensees is affiliated with the company, one (1) broker
7 shall be the principal broker registered with the commission.

8 (6)

9 (a) Unless there is a written contract stipulating otherwise, a licensee shall, upon
10 termination of his or her affiliation with his or her principal broker, immediately turn over to the
11 principal broker all records described in Section 9(1)(a)-(h) of this administrative regulation
12 obtained during his or her affiliation regardless of whether the information was originally received
13 from his or her principal broker, copied from the records of the principal broker, or acquired by
14 the licensee during his or her affiliation.

15 (b) Nothing in paragraph (a) of this subsection shall require an affiliated licensee to deliver
16 to the principal broker records which the principal broker is not under an obligation to retain
17 consistent with this administrative regulation or records which are already in the principal
18 broker's possession.

19 (7)

20 (a) A principal broker may be principal broker of more than one real estate brokerage
21 company.

22 (b) A principal broker shall not also be an affiliate broker at another real estate brokerage
23 company, except for as provided in KRS 324.112(5).

24 (8) A sales associate or broker affiliated with a principal broker shall only be affiliated with
25 one principal broker at one office, or branch office, location.

1 (9) A real estate brokerage company may have more than one (1) physical office location,
2 including branch offices.

3 Section 8. Facsimile and Digital Transmissions.

4 (1) A licensee may use facsimile (FAX) devices and digital transmissions to transmit and
5 receive documents according to the provisions of KRS Chapter 369 and 201 KAR Chapter 11.

6 (2) A document received by facsimile devices or digital transmissions shall be
7 immediately placed in the licensee's file and retained as required by this administrative
8 regulation.

9 Section 9. Principal Broker Duties and Prohibitions.

10 (1) A principal broker shall confidentially preserve, either in hard copy or digital format,
11 for five (5) years following its consummation or failure, records in one (1) file relating to any real
12 estate transaction, which shall include:

- 13 (a) Any written offers to lease or purchase the real estate;
- 14 (b) The acquisition and disbursement of any monies;
- 15 (c) Listing and sales contracts or leases;
- 16 (d) Closing sheets;
- 17 (e) Seller's Disclosure of Property Condition and Condominium Seller's Certificate forms;
- 18 (f) Agency Consent Agreement forms;
- 19 (g) Guide to Agency Relationships forms; and
- 20 (h) Timeshare records.

21 (2) A principal broker who engages in property management shall also confidentially
22 preserve, either in hard copy or digital format, for five (5) years:

- 23 (a) Property management agreements;
- 24 (b) Leases;
- 25 (c) Monthly owner statements and reports;

1 (d) Owner and unit ledgers; and

2 (e) Bank statements relating to property management.

3 (3) If the death or incapacity of the principal broker occurs, records required to be
4 maintained pursuant to this section shall be maintained by:

5 (a) A new principal broker or a designated manager, so designated previous to the time
6 of the death or incapacity of the principal broker to maintain the records;

7 (b) The real estate brokerage company of the principal broker at the time of the death or
8 incapacity of the principal broker, if the company continues to be an active company;

9 (c) A licensee designated by the commission to maintain the records and serve as the
10 principal custodian of the records, without any liability or obligation, other than to confidentially
11 maintain the records and to provide the records to a party as required by law or by demand of
12 the commission; or

13 (d) Any appointee of the commission who will agree to maintain the records and serve as
14 the principal custodian of the records, without any liability or obligation, other than to
15 confidentially maintain the records and to provide the records to a party as required by law or by
16 demand of the commission.

17 (4) At the time of signing all documents, the principal broker, or an affiliated licensee of
18 the principal broker, shall ensure that a copy of all documents are delivered to all parties
19 executing the documents if the document has been provided, prepared by, or at the direction of
20 the principal broker or an affiliated licensee of the principal broker.

21 (5) The principal broker, or an affiliated licensee of the principal broker, shall ensure that
22 a debit and credit type closing statement is furnished to a client upon closing a real estate
23 transaction unless the financial institution, title agency, the attorney involved, or other authorized
24 individuals, has prepared the closing statement.

1 (6) A principal broker shall not be a party to an exclusive listing contract which contains
2 an automatic continuation of the period of the listing beyond the fixed termination date set forth
3 therein.

4 (7) If a principal broker permits teams, a principal broker shall notify the commission in
5 writing of the alternate or assumed name used by the team and the name of the team leader
6 before permitting team advertising.

7 (8) If a principal broker authorizes team, group, or other business arrangements between
8 affiliated licensees, the principal broker shall:

9 (a) Offer, at a minimum, company procedures for advertising, agency relationships and
10 handling confidential information, management and operations specific to team, group, or other
11 business arrangements between affiliated licensees;

12 (b) Designate a licensee who shall be responsible, along with the principal broker and
13 designated manager, for the operations of the team, group, or other business arrangement. The
14 designated licensee shall be referred to as the "team leader" regardless of how the team, group,
15 or other business arrangement labels itself;

16 (c) Maintain a current list of all affiliated licensees, employees, office personnel, and
17 clerical staff who are a part of each individual team, group, or other business arrangement; and

18 (d) Notify the commission in writing of the first and last name and license number of the
19 team leader.

20 (9) A principal broker shall ensure any employee or unlicensed personal assistant,
21 salaried or independently contracted, employed by, retained by, or under the direction of the
22 principal broker or any affiliated licensee, are in compliance with the applicable provisions of
23 KRS Chapter 324 and 201 KAR Chapter 11.

24 (10) A principal broker shall implement and maintain an appropriate information security
25 system that shall:

1 (a)

2 1. Notify licensees, management, employees, officer personnel, and clerical staff of
3 company policy and procedures related to confidential information, including in-person
4 interactions or discussions in the office environment;

5 2. Prohibit the disclosure of confidential information by licensees, management,
6 employees, office personnel and clerical staff;

7 3. Require notification to each client involved in a transaction, if the principal broker
8 becomes aware of an unauthorized or inadvertent disclosure of confidential information relating
9 to that transaction; and

10 4. Prohibit an employee from assisting more than one (1) designated agent in the same
11 transaction if the designated agents represent different clients in that transaction.

12 (b) Nothing in this provision shall prohibit a licensee who is party to an Agency Consent
13 Agreement from maintaining a separate individual client file containing confidential information.

14 (11) A principal broker of a real estate brokerage company that practices designated
15 agency shall require that all documents that contain confidential information relating to a client
16 be kept in an individual file maintained by the principal broker and accessed only by the principal
17 broker, designated manager, or designated agent appointed by the principal broker to represent
18 the individual.

19 (12) A principal broker who appoints a designated manager of the real estate brokerage
20 company, a registered company branch, team, group, or other business arrangement shall notify
21 the commission in writing of the name of the designated manager within ten (10) days of the
22 appointment.

23 Section 10. Property Management.

24 (1) A principal broker, or an affiliated licensee, shall not engage in property management
25 without a current written property management agreement.

- 1 (2) A property management agreement shall contain, at a minimum:
- 2 (a) The full name and address of the principal broker's real estate brokerage company as
3 registered with the commission;
- 4 (b) The name and address of the client for whom the property is being managed;
- 5 (c) The address of the real estate being managed and the number of units;
- 6 (d) The effective dates of the agreement, and a provision stating whether the client agrees
7 to automatic annual renewal;
- 8 (e) A provision stating the method for early termination;
- 9 (f) The amount of, or the method for computing, the amount of compensation to the
10 principal broker;
- 11 (g) The amount of, or the method of determining, the minimum security deposit to be
12 collected from tenants for each unit managed;
- 13 (h) The name and address of the bank where the principal broker's escrow or
14 management account is held, and, consistent with KRS 383.580(1), the account number. This
15 information shall also be contained in the lease;
- 16 (i) A provision which is in accord with KRS 383.580 setting forth the procedures governing
17 returning or retaining the security deposit. This provision shall also be contained in the lease;
- 18 (j) A provision setting forth the conditions under which the principal broker may pay
19 expenses related to the real estate being managed;
- 20 (k) A statement setting forth the date when the principal broker shall send the client an
21 accounting of the transactions related to the real estate being managed;
- 22 (l) A copy of the form of the lease document which the principal broker shall have the
23 tenant sign shall be attached to the agreement;
- 24 (m) A provision whereby the client certifies that he or she has received a duplicate copy
25 of the agreement and the attached lease form; and

- 1 (n) The signature and date of signature of the client and the principal broker.
- 2 (3) A principal broker shall maintain, in electronic or written form:
- 3 (a) An owner ledger for each client of real estate being managed;
- 4 (b) A unit ledger for each unit in the real estate being managed; and
- 5 (c) Upon the written request of the client of the property being managed, the principal
- 6 broker shall provide a unit ledger by tenant.
- 7 (4) Money received shall be deposited into an escrow or management account of the
- 8 principal broker within three (3) business days of receipt.
- 9 (5) The amount of money received shall be entered into the owner and unit ledgers.
- 10 (6) A receipt shall be given for money received.
- 11 (7) Expenses paid by the principal broker shall be documented by invoice or receipt, by
- 12 unit, and retained with a principal broker's records.
- 13 (8) Adjustments to a security deposit shall be made in accordance with KRS 383.580.
- 14 Adjustments shall also be entered on the owner and unit ledgers.
- 15 (9) On the date determined by the parties, a principal broker shall send a monthly
- 16 accounting to a client of transactions related to the real estate being managed, by unit.
- 17 (10) Within sixty (60) days of the termination of a management agreement, a principal
- 18 broker shall send the client a final accounting that contains any transaction that occurred after
- 19 the last monthly accounting.
- 20 (11) A principal broker who has an ownership interest in the real estate being managed
- 21 shall:
- 22 (a) Maintain a unit ledger for each unit in the real estate being managed; and
- 23 (b) Comply with KRS 383.580 relating to receipt, deposit, and adjustment of tenant
- 24 security deposits.

25 Section 11. Incorporation by Reference.

- 1 (1) The following material is incorporated by reference:
- 2 (a) "Seller-Initiated Listing Form", KREC Form 403, 10/2019;
- 3 (b) "Seller's Disclosure of Property Condition", KREC Form 402,
4 **08/2022**~~[04/2022]~~~~[12/2019]~~;
- 5 (c) "Condominium Seller's Certificate", KREC Form 404, 10/2019;
- 6 (d) "Guide to Agency Relationships", KREC Form 400, **08/2022**~~[04/2022]~~~~[12/2019]~~;
- 7 (e) "Agency Consent Agreement - Buyer", KREC Form 401B, **08/2022**~~[04/2022]~~~~[12/2019]~~;
- 8 (f) "Agency Consent Agreement - Seller", KREC Form 401S, **08/2022**~~[04/2022]~~~~[12/2019]~~.
- 9 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
10 law, at the Kentucky Real Estate Commission, 500 Mero Street~~[656 Chamberlin Avenue, Suite~~
11 ~~B]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also
12 available from the commission's Web site: www.krec.ky.gov.

READ AND APPROVED:



Lois Ann Disponett
Chair, Kentucky Real Estate Commission

8/15/22

Date



Robert L. Astorino
Executive Director, Kentucky Real Estate Authority

8/15/22

Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 201 KAR 11:121

Contact Person: August L. Pozgay

Phone: 502-782-0714

Email: August.Pozgay@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the professional standards of conduct for real estate brokers and sales associates. It also outlines the required elements of listing contracts, purchasing contracts, counteroffers, and agency consent agreements.

(b) The necessity of this administrative regulation: KRS 324.281(5)(a) require the commission to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority. KRS 324.020 requires individuals to obtain a license to practice real estate brokerage within the state. KRS 324.160 and KRS 324.165 establish the actions that constitute improper conduct. KRS 324.360 requires the commission to promulgate an administrative regulation authorizing a seller's disclosure of property conditions form. KRS 324.121 allows sales associates and brokers to engage dual agency and designated agency. This administrative regulation helps licensees comply with the abovementioned statutes through the promulgation of agency disclosure forms, seller's disclosure of property conditions form, and

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller, buyer or prospective buyer to the exclusion of all other licensees associated with the principal broker. This administrative regulation establishes requirements for designated agency. KRS 324.360(2) requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form whose content is set forth by KRS 324.360(3). This administrative regulation establishes the required Seller's Disclosure of Property Condition form. KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation establishes a specific format for disclosing prior relationships between parties in a real estate transaction. Additionally, this administrative regulation establishes requirements, to inform and set certain standards for licensees and to protect the public, regarding delivery of signed documents, broker supervision, broker record retention, sales associate affiliation and termination, and written agreements between licensees and consumers to provide real estate brokerage services, including standards for listing and purchase contracts. This administrative regulation establishes behavior considered improper conduct.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the professional standards of conduct for real estate brokers and sales associates.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Amendments to this administrative regulation include changes to several promulgated forms as well as the removal of the requirement to disclose prior contact with a former perspective client involved in the contemplated transaction.

(b) The necessity of the amendment to this administrative regulation: There are several errors in the current versions of the forms promulgated in this regulation. The proposed

amendment corrects those errors to bring the forms into compliance with the regulation and KRS Chapter 324.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the professional standards of conduct for real estate brokers and sales associates. The amendment brings this administrative regulation into compliance with current versions of binding regulatory guidance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will amend the Guide to Agency Relationships, Agency Consent Agreement – Buyer, and Agency Consent Agreement – Seller to make them more straightforward and easier to use for licensees and consumers. In addition, it will amend these forms to ensure they include all elements and sections required by statute and this administrative regulation. This amendment will amend the Seller's Disclosure of Property Condition form to make it clearer and easier to use, and to ensure more complete and detailed disclosure of issues with real property to be sold. It also clarifies the rules that will govern the practice as a licensed real estate professional in Kentucky and removes one disclosure rule that is unfeasible in practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 16,000 active real estate sales associates and brokers as well as numerous real estate educators and trade organizations.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities, and specifically active real estate sales associates and brokers, will have to use the amended promulgated forms to conduct real estate business. Likewise, they will have to ask seller clients to complete the amended seller's disclosure form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation should not cost regulated entities anything.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will benefit from clearly written forms while engaging in real estate brokerage activities.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increases in fees or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies similarly to all similarly situated persons.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 201 KAR 11:121

Contact Person: August L. Pozgay

Phone: 502-782-0714

Email: August.Pozgay@ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.281(5)(a), KRS 324.360(2).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The “Seller’s Disclosure of Property Condition”, Form 402, is the five-page form that a seller of real property is required to complete before entering into an agreement with a real estate licensee to market the property. KRS 324.360 requires a real estate licensee to present the form to a seller of real property before advertising the property for sale or lease.

“A Guide to Agency Relationships”, Form 400, is the two-page form that serves as a brief overview of real estate brokerage in Kentucky and identifies the different agency relationships that may develop between a real estate licensee and a consumer, prospective client, or client. 201 KAR 11:121 requires real estate licensees to present this form to a prospective client prior to entering a written or contemplated oral agreement to provide real estate brokerage services.

The “Agency Consent Agreement – Buyer”, Form 401B, is the three-page form real estate licensees are required to provide to buyer clients before entering into a written agreement to provide real estate brokerage services. 201 KAR 11:121 requires real estate licensees to complete and deliver the form to the client before they can perform real estate brokerage services for a fee.

The “Agency Consent Agreement – Seller”, Form 401S, is the three-page form real estate licensees are required to provide to seller clients before entering into a written agreement to provide real estate brokerage services. 201 KAR 11:121 requires real estate licensees to complete and deliver the form to the client before they can perform real estate brokerage services for a fee.

SUMMARY OF CHANGES TO MATERIAL INCORPORATED BY REFERENCE

The “Seller’s Disclosure of Property Condition”, Form 402, is the five-page form that a seller of real property is required to complete before entering into an agreement with a real estate licensee to market the property. Property Address was included to the page including a space for the seller to identify the property address on the form. A footer was added to each page to include, seller initial spaces, buyer initial spaces, the document name and page numbers. The word “explain” was emboldened on all pages. Page 1 was amended to emphasize that the individual(s) completing the form must answer to the best of their knowledge. Amendments to page 1 also included the addition of the commission’s website to the header and the seals for both the Commonwealth of Kentucky and the Kentucky Real Estate Commission. Page 1 was amended to add the length of time the individual completing the form lived in the house. Page 1.d. was changed to include “If yes, please indicate the length of time rented.” The phrase, “to the best of your knowledge,” was removed from items 1(d)-(f). Page 2 was amended to include the disclosure of corrections and/or repairs to the building structure and house systems sections. Section 4.a. on Page 2 was amended to remove the boxes for N/A, yes and no. Page 3 was amended to include the disclosure of corrections and/or repairs to the roof

and land sections. Section 3.b.2. was amended to include "If so, when did the basement last leak?" Page 4 was amended to include the disclosure of corrections and/or repairs to the sewer section. Section 11.e.2. was amended to remove the boxes for N/A, yes and no. Page 5 was amended to re-phrase the question regarding transferrable warranties and included a "." at the end of "Property form" on the fourth line from bottom

"A Guide to Agency Relationships", Form 400, is the two-page form that serves as a brief overview of real estate brokerage in Kentucky and identifies the different agency relationships that may develop between a real estate licensee and a consumer, prospective client, or client. Page 1 was amended to emphasize to the prospective client that this form is not a contract and language that the form is for informational purposes only. Amendments to page 1 also include instructional verbiage to identify the type of information each blank should include. An additional blank was added to include the name of the principal broker, the brokerage firm and the firm phone number. "As an alternate to Single Agency," was removed from the paragraph regarding designated agent. Similarly, "as an alternate to Dual Agency," was removed from the paragraph regarding designated agency. Page 2 was amended to add "time" to the signature block to indicate the specific time the form was signed by the prospective client.

The "Agency Consent Agreement – Buyer", Form 401B, is the three-page form real estate licensees are required to provide to buyer clients before entering into a written agreement to provide real estate brokerage services. The amendment contemplated the inclusion of lessee(s). Page 1 was amended to separate the form into Part A and Part B. Part A is to be completed prior to entering into a written agreement and must be signed by the buyer(s) or lessee(s). Part B is to be completed at the time the licensee prepares and/or submits an offer to purchase, contract, or lease to the buyer(s) or lessee(s). Page 1 inserted the name of the principal broker, the name of the brokerage firm and the affiliated agent. Page 2 was amended to relocate the section pertaining to the disclosure of a personal, family, or business relationship between the real estate licensee and the other party to the transaction. A third signature line was removed on both page 1 and page 3. A footer was added to include page numbers.

The "Agency Consent Agreement – Seller", Form 401S, is the three-page form real estate licensees are required to provide to seller clients before entering into a written agreement to provide real estate brokerage services. The amendment contemplated the inclusion of lessor(s). Page 1 was amended to separate the form into Part A and Part B. Part A is to be completed prior to entering into a written agreement and must be signed by the seller(s) or lessor(s). Part B is to be completed at the time the licensee presents an offer to purchase, contract, or lease to the seller(s) or lessor(s). Page 1 inserted the name of the principal broker, the name of the brokerage firm and the affiliated agent. Page 2 was amended to relocate the section pertaining to the disclosure of a personal, family, or business relationship between the real estate licensee and the other party to the transaction. A third signature line was removed on both page 1 and page 3. A footer was added to include page numbers.

STATEMENT OF CONSIDERATION
Relating to 201 KAR 011:121

Kentucky Real Estate Authority
(Amended After Comments)

I. The public hearing on 201 KAR 011:121 was held on June 22, 2022, at 10:00 a.m. EDT, at the PPC Conference Room 127CW, 500 Mero Street, 2NE09, Frankfort, Kentucky 40601. The Board received public comments at the public hearing. Written comments were also received during the public comment period.

II. The following person(s) attended the public hearing or submitted a written comment:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Al Blevins	
Angi Cline, Association President	REALTOR Assoc. of Southern KY
Ashley Pugh	
Ben Schreber	
Brenda Goslin	
Brittany Jackson	
Charles Hinkley, Previous President	Kentucky REALTORS
Cinda Hatfield	
Cori Zaring	Schuler Bauer Real Estate Services
David Chandler	
David Conner	
David Earls	
Dennis Stigler, Attorney	
Doug Myers	Greater Louisville Assoc. of REALTORS
Earlene Woods	
Jan Marie Kennedy	Semonin Realtors
Janette DeWitt	
Janie Wilson	
Jason Vaughn, General Counsel	Kentucky REALTORS
Jeff Smith	
Jen Swendiman	
Jessica Hubbard	RE/MAX Integrity
Jim DeMaio, CEO	REALTOR Assoc. of Southern KY
Jocelyn Graddock	
John Huggins, MLS President	REALTOR Assoc. of Southern KY
John Smither	
John Summers	
Julie Sizemore	
Katelyn Allen	RE/MAX Integrity
Ken Warden	

Kim Sickles	
Kim Whalen, President	Northern KY Assoc. of REALTORS
Linda Cecil	
Linda Wiley	
Lisa Hawk	RE/MAX Integrity
Lynda Fernandez, Chief Executive Officer	Greater Louisville Assoc. of REALTORS
Marie Estep	
Mark Gatewood	
Melissa Gatewood	RE/MAX Integrity
Mike Inman, President	Kentucky REALTORS
Nancy Hubert	Gold City Realty
Nicole Knudtson	
Norman Armstrong	
Norman Jones	
Pam Featherstone	
Paul Del Rio	
Regina Parker	
Richard Wilson, Director of Gov't Affairs	Kentucky REALTORS
Ron Bossart	
Ron Sickles	
Sandy Newell	
Sarah Amburgey	
Steve Cline	
Sue Ann Collins	
Tara Wilson	
Theresa Reekers	Save 4 U Realty
Tim Corrigan	
Tom Cox	RE/MAX Real Estate Center
Valencia Claycomb	Schuler Bauer Real Estate Services
Virginia Lawson, Attorney	
William G. Marnhout, Consumer	

III. The following people attended the hearing or responded to the oral and written comments on behalf of the Kentucky Real Estate Authority:

Name and Title

Robert Astorino, Executive Director
Molly Cassady, General Counsel
René Rogers, Staff Attorney
Brian Travis, Investigator
Terri Hulette, KREC Executive Administrative Secretary
Angie Reynolds, Administrative Specialist III
Aaliyah Boller, KREA Intern
Lois Ann Disponett, KREC Chair

Larry Disney, Commissioner
James Simpson, Commissioner
Jennifer Brown-Day, Commissioner
Anthony Sickles, Commissioner

IV. Summary of Comments and Responses

- (1) **Subject matter:** This administrative regulation establishes the professional standards of conduct for real estate brokers and sales associates. It also outlines the required elements of listing contracts, purchasing contracts, counteroffers, Sellers Disclosure of Property Conditions, the Kentucky Real Estate Commission's A Guide to Agency Relationship, Agency Consent Agreement-Buyer and Agency Consent Agreement-Seller. Amendments to this administrative regulation include changes to several promulgated forms as well as the removal of the requirement to disclose prior contact with a former perspective client involved in the contemplated transaction.

(a) Commenter(s):

Dennis Stigler

Comment:

- Page 3 line 13 the last word should be "broker" not "client"
- Page 5 line 21 the correct spelling of the legal term is "curtesy" not "courtesy"

(b) Response:

The Commission agrees to adopt the commenter's request to change the word "client" to "principal broker" and change the spelling of "courtesy" to "curtesy" on the proposed forms. The Commission will therefore amend the proposed forms incorporated by reference in 201 KAR 11:121 Section 11 to include the following changes: change the work "client" to "principal broker" and change the spelling of "courtesy" to "curtesy". The Commission will amend the administrative regulation accordingly.

(a) Commenter(s):

Tom Cox

Comment:

- Page 5, Line 12. (c) First and last name of the principal broker and or the full name...
- Page 13, Line 17. (5) The principal broker, _? _ an affiliated licensee...

(b) Response:

The Commission declines to adopt the commenter's request to change page 5, line 12 to state "First and last name of the principal broker and or the full name..." in the Kentucky Administrative Regulation. The Commission will therefore not amend the proposed Kentucky Administrative Regulation 201 KAR 11:121 Section 11 at page 5, line 12. The Commission declines to amend the administrative regulation accordingly.

The Commission agrees to adopt the commenter's request to change page 13, line 17 to state, "The principal broker, or an affiliated licensee..." in the Kentucky Administrative Regulation. The Commission will therefore amend the Kentucky Administrative Regulation 201 KAR 11:121 Section 11 at page 13, line 17 to state "The principal broker, or an affiliated licensee..." The Commission will amend the administrative regulation accordingly.

(a) Commenter(s):

Regina Parker

Comment:

- Loves all changes

(b) Response:

The commission appreciates the commenter's recognition of the changes and the approval of the regulatory revisions and is equally grateful for the high quality of comments and participation throughout the year-long process of meeting to review and revise the commission's administrative regulation scheme.

(a) Commenter(s):

Lynda Fernandez; Doug Myers

Comment:

- 201 KAR 11:121 Section 6 (2)(e)
 - o Don't strike section.

Response:

The Commission declines to adopt the commenter's request to keep 201 KAR 011:121 Section 6(2)(e) of the Kentucky Administrative Regulations. The Commission will therefore not amend the proposed administrative regulation change to 201 KAR 11:121 Section 6(2)(e) and will strike the old language contained in 201 KAR 011:121 Section 6(2)(e) from the Kentucky Administrative Regulations. The Commission declines to amend the administrative regulation accordingly.

(a) Commenter(s):

William Marnhout

Comment:

- 201 KAR 11:121
 - o Add to fiduciary duties, disclaimer requiring disclosure of any potential property defect regardless of agent's personal views of whether the disclosure is important.
- Appreciate leaving out the unknown.

(b) Response:

The Commission declines to adopt the commenter's request to add to fiduciary duties, disclaimer requiring disclosure of any potential property defect and to remove the unknown box on the "Sellers Disclosure of Property Condition" Form 402. The Commission will therefore not amend the proposed administrative regulation nor the form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Sellers Disclosure of Property Condition" Form 402. The Commission

declines to amend the administrative regulation and the proposed "Sellers Disclosure of Property Condition" Form 402 accordingly.

- (2) **Subject matter:** The "Seller's Disclosure of Property Condition", Form 402, is the five-page form that a seller of real property is required to complete before entering into an agreement with a real estate licensee to market the property. Throughout the form, the "unknown" column was removed, and a space was added to indicate the property address. A second line for the seller initials and buyer initials was added to the footer of each page. Page 1 was amended to emphasize that the individual(s) completing the form must answer to the best of their knowledge. Amendments to page 1 also included the addition of the commission's website to the header and the seals for both the Commonwealth of Kentucky and the Kentucky Real Estate Commission. Page 1 was amended to add the length of time the individual completing the form lived in the house. The phrase, "to the best of your knowledge," was removed from items l(d)-(f). Page 2 was amended to include the disclosure of corrections and/or repairs to the building structure and house systems sections. Page 3 was amended to include the disclosure of corrections and/or repairs to the roof and land sections. Page 4 was amended to include the disclosure of corrections and/or repairs to the sewer section. Page 5 was amended to re-phrase the question regarding transferrable warranties.

(a) Commenter(s):

David Earls; Valencia Claycomb; Jessica Hubbard; Melissa Gatewood; Lisa Hawk; Katelyn Allen; Mark Gatewood; Cori Zaring; Marcie Estepp; Kim Whalen; Lynda Fernandez; Mike Inman; Doug Myers; Angi Cline; John Huggins; John Vaughn; Brittany Jackson & Janette DeWitt.

Comment:

- Don't remove unknown box.

(b) Response:

The Commission agrees to adopt the commenters' request and will not remove the "Unknown Box" from the "Seller's Disclosure of Property Conditions" Form 402. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to include the "Unknown Box" as an option for the seller to select. The Commission will amend the administrative regulation and the "Seller's Disclosure of Property Condition" KREC Form 402 accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Theresa Reekers

Comment:

- Add darker boxes where it asks for explanations.

- 1b, 1c, 1f, 2j, 2k, 2l (two places), 3b2, 3b4, 3b5, under 3f3, 4a, 4d, 4f, under 4h, 5b, under 5c, 7a, 8a7, 8b (three spots), under 8c, 10a2, 10a3 (three spots), 10e, 11e2, 11g2, 12d, 12e, 12g, and under 13.

(b) Response:

The Commission declines to adopt the commenter's request and will not include darker boxes for explanations in the suggested locations on the "Seller's Disclosure of Property Conditions" Form 402. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to include the darker boxes for explanation. The Commission declines to amend the administrative regulation and the proposed "Seller's Disclosure of Property Condition" KREC Form 402 accordingly.

(a) Commenter(s):

Theresa Reekers; Dennis Stigler

Comment:

- Section 4a & 11e2 – Remove n/a, yes, no

(b) Response:

The Commission agrees to adopt the commenters' request and will remove the N/A, YES, or NO boxes in 201 KAR 11:121 Section 4a and 11e2. from the "Seller's Disclosure of Property Conditions" Form 402. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) of the "Seller's Disclosure of Property Condition" KREC Form 402 to remove the N/A, YES, or NO boxes in Sections 4a and 11e2. The Commission will amend the administrative regulation and the "Seller's Disclosure of Property Condition" KREC Form 402 accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Norman Armstrong, Theresa Reekers

Comment:

- Make "explain" bold.
- Section 4 (Roof): delete question e and f

(b) Response:

The Commission declines to adopt the commenter's request and will not delete questions in Section 4e. and 4f. on the "Seller's Disclosure of Property Conditions" Form 402. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to delete questions in Section 4e. and 4f. as commented. The Commission declines to amend the administrative regulation and the proposed "Seller's Disclosure of Property Condition" KREC Form 402 accordingly.

The Commission agrees to adopt the commenter's request and will embolden the word "explain" on the "Seller's Disclosure of Property Conditions" Form 402. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to embolden the word "explain" on the "Seller's Disclosure of Property Condition" Form 402. The Commission will amend the administrative regulation and the "Seller's Disclosure of Property Condition" KREC Form 402 accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Sarah Amburgey

Comment:

- Page 5, fourth line from bottom, a period "." is missing at the end of "Property form" sentence.

(b) Response:

The Commission agrees to adopt the commenter's request and will include a "." on page 5, fourth line from the bottom of the "Seller's Disclosure of Property Conditions" Form 402. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to include a "." on page 5 fourth, fourth line from the bottom. The Commission will amend the administrative regulation and the "Seller's Disclosure of Property Condition" KREC Form 402 accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Doug Myers

Comment:

- Consumers don't like the refusal to sign section that would allow them to get out of answering questions, they would prefer to answer.

(b) Response:

The Commission declines to adopt the commenter's request to remove the refusal to sign section of the "Seller's Disclosure of Property Condition" Form 402. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to remove the refusal to sign section. The Commission declines to amend the administrative regulation and the proposed "Seller's Disclosure of Property Condition" KREC Form 402 accordingly.

(a) Commenter(s):

William Marnhout

Comment:

- Would like to see added: preliminary disclosure, miscellaneous or disinformation – are there human remains of any form buried on property being sold.
- Appreciate leaving out the unknown

(b) Response:

The Commission declines to adopt the commenter's request. The burial and disinterment of dead bodies in Kentucky is regulated under KRS § 213 and 901 KAR 5:090. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to include preliminary disclosure, miscellaneous or disinformation related to the burial of human remains on the subject property. The Commission declines to amend the administrative regulation and the proposed "Seller's Disclosure of Property Condition" KREC Form 402 accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: 1.a. Maybe include an "if No" option? Seller Could then put how they came to sell the property (like estate sale) or what it was used for (flip, rental, etc.).

(b) Response:

The Commission declines to adopt the commenter's request to include the "if No" option to line 1.a. of the "Seller's Disclosure of Property Condition" Form 402. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form to include the "if No" option on line 1.a. The Commission declines to amend the administrative regulation and the proposed "Seller's Disclosure of Property Condition" KREC Form 402 accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: 1.c. There are a few inconsistencies with how this form is laid out. I think it might be better to have an "explain at the bottom of each section and in this case have an "if yes, please indicate which applies."

(b) Response:

The Commission declines to adopt the commenter's request to include "explain at the bottom of each section and in this case have an "if yes, please indicate which applies"" to line 1.c. of the "Seller's Disclosure of Property Condition" Form 402. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to include "if yes, please indicate which applies" to line 1.c. The Commission declines to amend the administrative regulation and the proposed "Seller's Disclosure of Property Condition" KREC Form 402 accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: 1.d. If yes, length of time rented.

(b) Response:

The Commission agrees to adopt the commenter's request. The Commission will include "if yes, please indicate length of time" to line 1.d. of the "Seller's Disclosure of Property Condition" Form 402. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to include "if yes, please indicate length of time" to line 1.d. The Commission will amend the administrative regulation and the "Seller's Disclosure of Property Condition" KREC Form 402 accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Brittany Jackson

Comment: Footer: Most documents show page number on the righthand side or directly in the middle. I would move initial to the lefthand side in order to accommodate changes to page number and version locations. In most other documents, the version information is provided on the bottom of the lefthand corner. Might be good to move this just to be consistent.

(b) Response:

The Commission agrees to adopt the commenter's request. The Commission will include formatting and stylistic changes to the footer of the "Seller's Disclosure of Property Condition" Form 402. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to locate page numbers on the footer of each page and adjust the initial line locations on the "Seller's Disclosure of Property Conditions" Form 402. The Commission will amend the administrative regulation and the "Seller's Disclosure of Property Condition" KREC Form 402 accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Brittany Jackson

Comment: 3.b.2) Here is another example of inconsistent language (could be "if so, when did the basement last leak")

(b) Response:

The Commission agrees to adopt the commenter's request. The Commission will include "if so, when did the basement last leak" to line 3.b.2) of the "Seller's Disclosure of Property Condition" Form 402. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to include "if so, when did the basement last leak" to line 3.b.2) on the "Seller's Disclosure of Property Conditions" Form 402. The Commission will amend the administrative regulation and the "Seller's Disclosure of Property Condition" KREC Form 402 accordingly.

However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Brittany Jackson

Comment: 4.a. Inconsistent with other areas in the form asking age (like 2.j-2.l). I would suggest "age of roof"

(b) Response:

The Commission declines to adopt the commenter's request to include "age of roof" on line 4.a. of the "Seller's Disclosure of Property Condition" Form 402. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to include "age of roof" on the "Seller's Disclosure of Property Conditions" Form 402. The Commission declines to amend the administrative regulation and the proposed "Seller's Disclosure of Property Condition" KREC Form 402 accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: 4.f. I would try to find a way to have this on the same page as it's parent question.

(b) Response:

The Commission agrees to adopt the commenter's request to locate the entire paragraph of 4.f. on the same page. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to locate the entire paragraph of 4.f. on the same page. The Commission will amend the administrative regulation and the "Seller's Disclosure of Property Condition" KREC Form 402 accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Brittany Jackson

Comment: 6.d. this question seems redundant to 6.c.

(b) Response:

The Commission declines to adopt the commenter's request to remove line 6.d. of the "Seller's Disclosure of Property Condition" Form 402. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to remove the line 6.d. The Commission declines to amend the administrative regulation and the proposed "Seller's Disclosure of Property Condition" KREC Form 402 accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: 7. It might be nice to have a “utilities” section and then list all of the different types of utilities and request the utility company for each service. I think this piece is great! But with how it is laid out, it’s easy to miss. I don’t think that I have ever seen this piece filled in, I think it may be for that reason.

(b) Response:

The Commission declines to adopt the commenter’s request to include a section titled “Utilities” of the “Seller’s Disclosure of Property Condition” Form 402. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) “Seller’s Disclosure of Property Condition” KREC Form 402 to include a section titled “Utilities.” The Commission declines to amend the administrative regulation and the proposed “Seller’s Disclosure of Property Condition” KREC Form 402 accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: 11.a. the verbiage may need to include something along the lines of “this does not include current functional propane and/or septic tanks”

(b) Response:

The Commission declines to adopt the commenter’s request to include language in section 11.a. stating “this does not include current functional propane and/or septic tanks” on the “Seller’s Disclosure of Property Condition” Form 402. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) “Seller’s Disclosure of Property Condition” KREC Form 402 to include language in section 11.a. stating “this does not include current functional propane and/or septic tanks.” The Commission declines to amend the administrative regulation and the proposed “Seller’s Disclosure of Property Condition” KREC Form 402 accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: 11.e.2. This is more of a “write a description question” vs the typical checkbox answers. Or you could maybe provide option like 1.c. (above normal range, at normal range or below normal range)

(b) Response:

The Commission declines to adopt the commenter’s request for a language change in section 11.e.2. on the “Seller’s Disclosure of Property Condition” Form 402. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) “Seller’s Disclosure of Property Condition” KREC Form 402 to include a language change in section 11.e.2. The Commission declines to amend the administrative regulation and the proposed “Seller’s Disclosure of Property Condition” KREC Form 402 accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: 2. "Please Explain"-I LOVE how this is underlined and drawn out – it makes it easier to spot so sellers won't unintentionally miss giving critical information.

(b) Response:

The commission appreciates the commenter's recognition of the changes and the approval of the regulatory revisions and is equally grateful for the high quality of comments and participation throughout the year-long process of meeting to review and revise the commission's administrative regulation scheme and forms.

(a) Commenter(s):

Brittany Jackson

Comment: The first version layout is much better – I don't think we should have this signature block on separate page. Maybe they can have checkbox option to select how the form was completed to save room?

(b) Response:

The Commission declines to adopt the commenter's request for a stylistic change to include a check box instead of a signature block on the "Seller's Disclosure of Property Condition" Form 402. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to change the signature block and add a check box. The Commission declines to amend the administrative regulation and the proposed "Seller's Disclosure of Property Condition" KREC Form 402 accordingly.

(a) Commenter(s):

Kentucky Real Estate Commission

Comment: Remove the underline on line 12.c of the "Seller's Disclosure of Property Condition" Form 402.

(b) Response:

The Commission agrees to adopt the commenter's request to remove the underline on line 12.c. of the "Seller's Disclosure of Property Condition" Form 402. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(b) "Seller's Disclosure of Property Condition" KREC Form 402 to remove the underline on line 12.c. The Commission will amend the administrative regulation and the "Seller's Disclosure of Property Condition" KREC Form 402 accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

- (3) **Subject matter:** "A Guide to Agency Relationships", Form 400, is the two-page form that serves as a brief overview of real estate brokerage in Kentucky and identifies the different agency relationships that may develop between a real estate licensee and a consumer, prospective client, or client. Page 1 was amended to emphasize to the prospective client that this form is not a contract. Amendments to page 1 also include instructional verbiage to identify the type of information each blank should include. An additional blank was added to include the name of the licensee. "As an alternate to Single Agency," was removed from the paragraph regarding designated agent. Similarly, "as an alternate to Dual Agency," was removed from the paragraph regarding designated agency. Page 2 was amended to add "time" to the signature block to indicate the specific time the form was signed by the prospective client.

(a) Commenter(s):

David Earls

Comment:

- Need enough room to fill in the Company Name where it requests a Company Name.

(b) Response:

The Commission agrees to adopt the commenter's request and will increase the space for filling in the company name on page 1 of 3 on the "Guide to Agency Relationships" Form 400. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(d) "Guide to Agency Relationships" KREC Form 400 to increase the space for filling in the company name on page 1 of 3. The Commission will amend the administrative regulation and the "Guide to Agency Relationships" KREC Form 400 accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Nancy Hubert

Comment:

- Where it says Seller, change to Seller/Landlord.
- Where it says Buyer, change to Buyer/Tenant.

(b) Response:

The Commission declines to adopt the commenter's request and will not change the language from Seller to Seller/Landlord nor Buyer to Buyer/Tenant on the "Guide to Agency Relationships" Form 400. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(d) "Guide to Agency Relationships" KREC Form 400 to change the language from Seller to Seller/Landlord nor Buyer to Buyer/Tenant. The Commission declines to amend the administrative regulation and the proposed "Guide to Agency Relationships" KREC Form 400 accordingly.

(a) Commenter(s):

Kim Whalen

Comment:

- Don't want to change.

(b) Response:

The Commission declines to adopt the commenter's request to discard the proposed changes to the "Guide to Agency Relationships" KREC Form 400. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(d) "Guide to Agency Relationships" KREC Form 400. The Commission declines to amend the administrative regulation and the proposed "Guide to Agency Relationships" KREC Form 400 accordingly.

(a) Commenter(s):

Mike Inman & Janette DeWitt

Comment:

- Want shorter form
- Delete "this is not a contract" (second time)
- Does not state purpose of the form which is to provide information

(b) Response:

The Commission declines to adopt the commenter's request to make a shorter form and to delete the second "this is not a contract" on the "Guide to Agency Relationships" Form 400. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(d) "Guide to Agency Relationships" KREC Form 400 to make a shorter form nor delete the second "this is not a contract." The Commission declines to amend the administrative regulation and the proposed "Guide to Agency Relationships" KREC Form 400 accordingly.

The Commission agrees to adopt the commenter's request to state the purpose of the form "is for informational purposes only" on the "Guide to Agency Relationships" Form 400. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(d) "Guide to Agency Relationships" KREC Form 400 to state the purpose of the form "is for informational purposes only." The Commission will amend the administrative regulation and the "Guide to Agency Relationships" KREC Form 400 accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Angi Cline

Comment:

- Want to keep current form

(b) Response:

The Commission declines to adopt the commenter's request to discard the proposed changes and keep the current form to the "Guide to Agency Relationships" KREC Form 400. The Commission will therefore not amend the

proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(d) "Guide to Agency Relationships" KREC Form 400. The Commission declines to amend the administrative regulation and the proposed "Guide to Agency Relationships" KREC Form 400 accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: Paragraph 2: LOVE the intent here and the attention to the eye (and the description of what information needs to go in the blanks) it would be nice if the parentheses detail was placed properly next to the blank line though

(b) Response:

The Commission declines to adopt the commenter's request and will not change the location of the parenthetical detail in paragraph 2 on the "Guide to Agency Relationships" Form 400. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(d) "Guide to Agency Relationships" KREC Form 400 by changing the location of the parenthetical detail in paragraph 2. The Commission declines to amend the administrative regulation and the proposed "Guide to Agency Relationships" KREC Form 400 accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: Paragraph 5: See recommendation as in paragraph 2

(b) Response:

The Commission declines to adopt the commenter's request and will not change the location of the parenthetical detail in paragraph 5 on the "Guide to Agency Relationships" Form 400. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(d) "Guide to Agency Relationships" KREC Form 400 by changing the location of the parenthetical detail in paragraph 5. The Commission declines to amend the administrative regulation and the proposed "Guide to Agency Relationships" KREC Form 400 accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: Paragraph 8: This paragraph seems a little odd to me. Every other description only has "_____ agency" – this is the only description that has "_____ agent." I think that the description of the agent relationship for designated agency is portrayed well enough in its description below. I feel it should be one way or the other (1) Each agency description should be accompanied by an agent description OR (2) leave the agency description only since the agent relationship is described within it

(b) Response:

The Commission declines to adopt the commenter's request and will not change the language in paragraph 8 on the "Guide to Agency Relationships" Form 400. The Commission will therefore not amend the proposed form incorporated by

reference in 201 KAR 11:121 Section 11(1)(d) "Guide to Agency Relationships" KREC Form 400. The Commission declines to amend the administrative regulation and the proposed "Guide to Agency Relationships" KREC Form 400 accordingly.

- (4) **Subject matter:** The "Agency Consent Agreement – Buyer" Form 401B, is the three-page form real estate licensees are required to provide to buyer clients before entering into a written agreement to provide real estate brokerage services. The amendment contemplated the inclusion of lessee(s). Page 1 was amended to separate the form into Part A and Part B. Part A is to be completed prior to entering into a written agreement and must be signed by the buyer(s) or lessee(s). Part B is to be completed at the time the licensee prepares and/or submits an offer to purchase, contract, or lease to the buyer(s) or lessee(s). Page 2 was amended to relocate the section pertaining to the disclosure of a personal, family, or business relationship between the real estate licensee and the other party to the transaction.

(a) Commenter(s):

David Earls

Comment:

- Need enough room to fill in the Company Name where it requests a Company Name.

(b) Response:

The Commission agrees to adopt the commenter's request and will increase the space for filling in the company name on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" KREC Form 401B to increase the space for filling in the company name. The Commission will amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Kim Whalen

Comment:

- Don't want to change.

(b) Response:

The Commission declines to adopt the commenter's request and discard the proposed changes to the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" Form 401B. Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly.

(a) Commenter(s):

Lynda Fernandez

Comment:

- Add option to disclose prior contact with a former prospective client who is involved in the presently contemplated real estate transaction (as stated in 201 KAR 011:121 Section 6 (2)(e))

(b) Response:

The Commission declines to adopt the commenter's request to add option to disclose prior contact with a former prospective client who is involved in the presently contemplated real estate transaction (as stated in 201 KAR 011:121 Section 6(2)) on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" Form 401B to add option to disclose prior contact with a former prospective client who is involved in the presently contemplated real estate transaction (as stated in 201 KAR 011:121 Section 6(2)). The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly.

(a) Commenter(s):

Lynda Fernandez; Doug Myers

Comment:

- Part A – delete "check one"

(b) Response:

The Commission declines to adopt the commenters' request and will not delete the "check one" in Part A on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" Form 401B to delete the "check one" in Part A. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly.

(a) Commenter(s):

Sarah Amburgey

Comment:

- Page 1, line 14, "/ lessor(s)" should probably be "/ lessee(s)"
- Page 1, line 19, "LESSE" should be "LESSEE"
- Page 1, line 20, "LESSE" should be "LESSEE"
- Page 1, line 27, there should be a space between "AND" and "PRINCIPAL"
- Page 2, line 1, there should be a space between "and" and "they"
- Page 2, line 4, there should be blank lines between "Agent(s)" and "and" and between "and" and "will"
- Page 2, line 14, there should be a space between "The" and "other"
- Page 2, line 15, there should be a space between "information" and "provided"
- Page 2, line 20, there should be a space between "the" and "duties"
- Page 2, line 21, there should be a space between "so" and "directed"
- Page 3, line 1, there should be a space between "carefully" and "read"
- Page 3, line 6, there should be a space between "agency" and "or"

(b) Response:

The Commission agrees to adopt the commenter's request for stylistic and punctuation changes on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" KREC Form 401B to incorporate the stylistic and punctuation changes. The Commission will amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Mike Inman & Janette DeWhitt

Comment:

- Part A difficult to implement
- Need somewhere to show change of agency
- Two different forms saying seller is retaining an agent – should be retaining a broker
- Should be clear that services are being provided by agent but retained by broker
- Add transactional brokerage and underrepresented party to all sections of form.

(b) Response:

The Commission declines to adopt the commenter's request to add language to show a change in agency relationship on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" Form 401B to add language to show a change in agency relationship. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly.

The Commission agrees to adopt the commenter's request to change retained agent to retained Principal Broker and add additional language for transactional brokerage and underrepresented party on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" KREC Form 401B to change retained agent to retained Principal Broker and add additional language for transactional brokerage and underrepresented party on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Doug Myers

Comment:

- Add option to disclose prior contact with former prospective client

(b) Response:

The Commission declines to adopt the commenters' request to add option to disclose prior contact with former prospective client on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" Form 401B to add option to disclose prior contact with former prospective client. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly.

(a) Commenter(s):

Jan Marie Kennedy, Brittany Jackson

Comment:

- Page number all pages
- Title each page
- Initial each page

(b) Response:

The Commission declines to adopt the commenter's request for stylistic changes by adding title to each page and to add initial lines on each page of the proposed forms. The Commission will therefore not amend the proposed forms incorporated by reference in 201 KAR 11:121 Section 11 to include stylistic changes by adding title to each page and to add initial lines on each page of the proposed forms. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement- Buyer" Form 40IB accordingly.

The Commission agrees to adopt the commenter's request for stylistic change to add page numbers to all pages of the proposed forms. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" KREC Form 401B to include the stylistic change to add page numbers to all pages of the proposed forms. The Commission will amend the administrative regulation and the "Agency Consent Agreement - Buyer" Form 40IB accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Brittany Jackson

Comment: Due to the description listed above next to "Part A" these two options don't make sense. There is not an offer at this point, therefor there is only the agent and the buyer/lessee. In order for either of these two options to take

place, there would need to be another represented party and at this point there wouldn't be.

(b) Response:

The Commission declines to adopt the commenter's request to change the language in Part A on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" Form 401B to change the language in Part A. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: Most other forms only have two signature lines – it seems odd to have a third signature line on this form. Some parts of the form are separated on different pages when they should be listed together, so this may be one way to condense the form.

(b) Response:

The Commission agrees to adopt the commenter's request and will remove the third signature line on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" KREC Form 401B to remove the third signature line. The Commission will amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Brittany Jackson

Comment: I LOVE that this [LICENSEE'S RELATIONSHIP TO OTHER PARTIES IN THE TRANSACTION] has its own separate section; however, with it being close to the end it might be easily missed unintentionally. I might suggest moving it under the property address under part B, or at least somewhere near the beginning of that section

(b) Response:

The Commission declines to adopt the commenter's request to move the LICENSEE'S RELATIONSHIP TO OTHER PARTIES IN THE TRANSACTION section to another location on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" Form 401B to move the LICENSEE'S RELATIONSHIP TO OTHER PARTIES IN THE TRANSACTION section to another location. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: DISCLAIMER: I think it's necessary to have this on the same page as the rest of the paragraph below

(b) Response:

The Commission agrees to adopt the commenter's request and will move the disclaimer language to the same page as the heading DISCLAIMER on the "Agency Consent Agreement -- Buyer" Form 401B. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(e) "Agency Consent Agreement -- Buyer" KREC Form 401B and move the disclaimer language to the same page as the heading DISCLAIMER. The Commission will amend the administrative regulation and the proposed "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Virginia Lawson

Comment:

- The licensee being retained is (name of licensee- should be name of Principal Broker) of the (name of company) brokerage firm. Affiliate will be working directly with you as an agent of the Principal Broker.
- Have forms for buyers/sellers/landlords/tenants

(b) Response:

The Commission declines to adopt the commenter's request to have forms for buyers/sellers/landlords/tenants. The Commission will therefore not amend the proposed forms incorporated by reference in 201 KAR 11:121 Section 11 to have forms for buyers/sellers/landlords/tenants. The Commission declines to amend the administrative regulation and the forms accordingly.

The Commission agrees to adopt the commenter's request to change name of "licensee" to name of "Principal Broker" and to change name of "company" to "brokerage firm" on the Agency Consent Agreement – Buyer Form KREC 401B. The Commission will therefore amend the proposed forms incorporated by reference in 201 KAR 11:121 Section 11 to change name of "licensee" to name of "Principal Broker" and change name of "company" to "Brokerage Firm" on the proposed form. The Commission will amend the "Agency Consent Agreement -- Buyer" Form KREC 401B accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

- (5) **Subject matter:** The "Agency Consent Agreement- Seller" Form 40IS, is the three-page form real estate licensees are required to provide to seller clients before entering into a written agreement to provide real estate brokerage services. The amendment contemplated the inclusion of lessor(s). Page 1 was amended to separate the form into Part A and Part B. Part A is to be completed prior to entering into a written agreement and must be signed by the seller(s) or lessor(s). Part B is to be completed at the time the licensee presents an offer to purchase, contract, or lease to the seller(s) or lessor(s). Page 2 was amended to relocate the section pertaining to the disclosure of a personal, family, or business relationship between the real estate licensee and the other party to the transaction.

Commenter(s):

David Earls

Comment:

- Need enough room to fill in the Company Name where it requests a Company Name.

(b) Response:

The Commission agrees to adopt the commenter's request and will increase the space for filling in the company name on the "Agency Consent Agreement - Seller" Form 40IS. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(f) the "Agency Consent Agreement - Seller" Form 40IS to increase the space for filling in the company name. The Commission will amend the administrative regulation and the "Agency Consent Agreement - Seller" Form 40IS accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

Commenter(s):

Kim Whalen

Comment:

- Don't want to change.

(b) Response:

The Commission declines to adopt the commenter's request and discard the proposed changes on the "Agency Consent Agreement - Seller" Form 40IS. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(f) "Agency Consent Agreement - Seller" Form 40IS. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement- Seller" Form 40IS accordingly.

(a) Commenter(s):

Lynda Fernandez

Comment:

- Add option to disclose prior contact with a former prospective client who is involved in the presently contemplated real estate transaction (as stated in 201 KAR 011:121 Section 6 (2)(e))

(b) Response:

The Commission declines to adopt the commenter's request and add the option to disclose prior contact with a former prospective client who is involved in the presently contemplated real estate transaction (as stated in 201 KAR 011:121 Section 6 (2)(e)) on the "Agency Consent Agreement - Seller" Form 40IS. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(f) "Agency Consent Agreement - Seller" Form 40IS and add option to disclose prior contact with a former prospective client who is involved in the presently contemplated real estate transaction (as stated in 201 KAR 011:121 Section 6 (2)(e)). The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement- Seller" Form 40IS accordingly.

(a) Commenter(s):

Lynda Fernandez; Doug Myers

Comment:

- Part A – delete "check one"

(b) Response:

The Commission declines to adopt the commenter's request and delete the "check one" in Part A on the "Agency Consent Agreement - Seller" Form 40IS. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(f) "Agency Consent Agreement - Seller" Form 40IS and delete the "check one" in Part A. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement- Seller" Form 40IS accordingly.

(a) Commenter(s):

Sarah Amburgey

Comment:

- Page 1, line 15, "buyer(s)" should probably be "seller(s)"
- Page 1, line 17, there should be a space between "agency" and "or"
- Page 1, line 26, there should be a space between "AND" and "PRINCIPAL"
- Page 2, line 16, the first box has a line through it
- Page 2, line 21, there should be a space between "provided" and "the"
- *Page 2, line 31, under Section IV, re: "the Unrepresented Party" boxed line, is NOT also on KREC Form 401B. This may be intentional or an oversight.

(b) Response:

The Commission agrees to adopt the commenter's request for stylistic and punctuational changes on the "Agency Consent Agreement - Seller" Form 40IS. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(f) the "Agency Consent Agreement - Seller" Form 40IS to include the stylistic and punctuational changes. The Commission will amend the administrative regulation and the "Agency Consent Agreement - Seller" Form 40IS accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make

these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Mike Inman & Janette DeWitt

Comment:

- Part A difficult to implement
- Need somewhere to show change of agency
- 2 different forms saying seller is retaining an agent – should be retaining a broker
- Should be clear that services are being provided by agent but retained by broker
- Add transactional brokerage and underrepresented party to all sections of form.

(b) Response:

The Commission declines to adopt the commenter's request to add language to show a change in agency relationship on the "Agency Consent Agreement - Seller" Form 40IS. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(f) "Agency Consent Agreement - Seller" Form 40IS to add language to show a change in agency relationship. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement- Seller" Form 40IS accordingly.

The Commission agrees to adopt the commenter's request to change retained "agent" to retained "Principal Broker" and additional language for transactional brokerage and underrepresented party on the "Agency Consent Agreement - Seller" Form 40IS. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(f) the "Agency Consent Agreement - Seller" Form 40IS to change retained agent to retained Principal Broker, and additional language for transactional brokerage and underrepresented party. The Commission will amend the administrative regulation and the "Agency Consent Agreement - Seller" Form 40IS accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Doug Myers

Comment:

- Add option to disclose prior contact with former prospective client

(b) Response:

The Commission declines to adopt the commenter's request to add option to disclose prior contact with former prospective client to the "Agency Consent Agreement - Seller" Form 40IS. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(f) "Agency Consent Agreement - Seller" Form 40IS request to add option to disclose

prior contact with former prospective client. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement-Seller" Form 40IS accordingly.

(a) Commenter(s):

Jan Marie Kennedy, Brittany Jackson

Comment:

- Page number all pages
- Title each page
- Initial each page

(b) Response:

The Commission declines to adopt the commenter's request for stylistic changes by adding title to each page and to add initial lines on each page of the proposed form. The Commission will therefore not amend the proposed forms incorporated by reference in 201 KAR 11:121 Section 11 to include stylistic changes by adding title to each page and to add initial lines on each page of the proposed form. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement- Seller" Form 40IS accordingly.

The Commission agrees to adopt the commenter's request for stylistic change to add page numbers to all pages of the proposed form. The Commission will therefore amend the proposed forms incorporated by reference in 201 KAR 11:121 Section 11 to include the stylistic change to add page numbers to all pages of the proposed form. The Commission will amend the administrative regulation and the "Agency Consent Agreement - Seller" Form 40IS accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Brittany Jackson

Comment: Due to the description listed above next to "Part A" these two options don't make sense. There is not an offer at this point, therefor there is only the agent and the buyer/lessee. In order for either of these two options to take place, there would need to be another represented party and at this point there wouldn't be.

(b) Response:

The Commission declines to adopt the commenter's request and will not change the language in Part A on the "Agency Consent Agreement - Seller" Form 40IS. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(f) "Agency Consent Agreement - Seller" Form 40IS to change the language in Part A. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement- Seller" Form 40IS accordingly.

(a) Commenter(s):

Brittany Jackson

Comment: Most other forms only have two signature lines – it seems odd to have a third signature line on this form. Some parts of the form are separated on different pages when they should be listed together, so this may be one way to condense the form.

(b) Response:

The Commission agrees to adopt the commenter's request and will remove the third signature line on the "Agency Consent Agreement - Seller" Form 40IS. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(f) the "Agency Consent Agreement - Seller" Form 40IS and will remove the third signature line. The Commission will amend the administrative regulation and the "Agency Consent Agreement - Seller" Form 40IS accordingly. However, more time is needed to develop the revised form. The commission will file a later amendment to make these requested changes before the Administrative Regulation Review Subcommittee meeting.

(a) Commenter(s):

Brittany Jackson

Comment: I LOVE that this [LICENSEE'S RELATIONSHIP TO OTHER PARTIES IN THE TRANSACTION] has its own separate section; however, with it being close to the end it might be easily missed unintentionally. I might suggest moving it under the property address under part B, or at least somewhere near the beginning of that section

(b) Response:

The Commission declines to adopt the commenter's request and will not change the location of the section, LICENSEE'S RELATIONSHIP TO OTHER PARTIES IN THE TRANSACTION, on the "Agency Consent Agreement - Seller" Form 40IS. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11(1)(f) "Agency Consent Agreement - Seller" Form 40IS to change the location of the section, LICENSEE'S RELATIONSHIP TO OTHER PARTIES IN THE TRANSACTION. The Commission declines to amend the administrative regulation and the proposed "Agency Consent Agreement- Seller" Form 40IS accordingly.

(a) Commenter(s):

Virginia Lawson

Comment:

- The licensee being retained is (name of licensee- should be name of Principal Broker) of the (name of company) brokerage firm. Affiliate will be working directly with you as an agent of the Principal Broker.
- Have forms for buyers/sellers/landlords/tenants

(b) Response:

The Commission declines to adopt the commenter's request to have forms for buyers/sellers/landlords/tenants. The Commission will therefore not amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11 to have form for buyers/sellers/landlords/tenants. The Commission declines to amend the administrative regulation and the form accordingly.

The Commission agrees to adopt the commenter's request to change name of "licensee" to name of "Principal Broker" and to change name of "company" to "brokerage firm" on the Agency Consent Agreement – Seller Form KREC 401S. The Commission will therefore amend the proposed form incorporated by reference in 201 KAR 11:121 Section 11 to change name of "licensee" to name of "Principal Broker" and change name of "company" to "Brokerage Firm" on the proposed form. The Commission will amend the "Agency Consent Agreement -- Seller" Form KREC 401S accordingly.

Miscellaneous Comments:

(a) Commenter(s):

John Huggins

Comment:

- Transactional agent

(b) Response:

The Commission declines to adopt the commenter's request to include transactional agent to all of the forms. The Commission will therefore not amend the proposed forms incorporated by reference in 201 KAR 11:121 Section 11. The Commission declines to amend the administrative regulation and the forms accordingly.

(a) Commenter(s):

Jim DeMaio, John Huggins

Comment:

- Want shorter versions of documents

(b) Response:

The Commission declines to adopt the commenter's request for shorter versions of the forms. The Commission will therefore not amend the proposed forms incorporated by reference in 201 KAR 11:121 Section 11. The Commission declines to amend the administrative regulation and the proposed forms accordingly.

V. Summary of action taken by the Kentucky Real Estate Commission.

The Kentucky Real Estate Commission will amend the administrative regulation based upon the comments submitted.

Page 2

Section 1

Line 11

After "(RESPA).", delete ".".

Page 3

Section 1

Line 13

After "another", delete "client".

After "another", insert "**principal broker**".

Page 5

Section 3

Line 21

After "or", delete "courtesy".

After "or", insert "**curtesy**".

Page 10

Section 6

Line 2

After "relationships;", insert "**and**".

Page 10

Section 6

Line 3

After "party.", delete ";and".

Page 10

Section 6

Line 4

Delete "Disclosure of prior contact with a former prospective client who is involved in the presently".

Page 10

Section 6

Line 5

Delete "contemplated real estate transaction."

Page 13

Section 9

Lines 17

After "broker", insert "**or**".

Page 17

Section 11

Line 25

After "KREC Form 402,", delete "12/2019".

After "KREC Form 402,", insert "08/2022".

Page 18

Section 11

Line 2

After "KREC Form 400,", delete "10/2019".

After "KREC Form 400,", insert "08/2022".

Page 18

Section 11

Line 3

After "KREC Form 401B,", delete "10/2019".

After "KREC Form 401B,", insert "08/2022".

Page 18

Section 11

Line 4

After "KREC Form 401S,", delete "10/2019".

After "KREC Form 401S,", insert "08/2022".

Page 18

Section 11

Line 6

After "Commission,", delete "656 Chamberlin Avenue, Suite B".

After "Commission,", insert "500 Mero Street".

