

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amendment)**

201 KAR 11:121. Standards of professional~~[Improper]~~ conduct.

RELATES TO: KRS 324.010(3), 324.111, 324.121, 324.160, 324.310, 324.360, 324.281(5), 24 C.F.R. 3500, 44 C.F.R. 64.3(b)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282, 324.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 require~~[requires]~~ the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller or lessor, buyer or lessee, 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 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 process and form for disclosing prior relationships between parties in a residential transaction. Additionally, this administrative regulation establishes standards and 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.

Section 1. Improper Conduct. (1) In addition to the obligations and prohibitions set forth in KRS 324.160, a licensee shall not~~[Definition. "Guaranteed sales plan" means an offer or solicitation to guarantee the:~~

- ~~(1) Sale of an owner's real estate; or~~
- ~~(2) Purchase of the owner's real estate if the owner's real estate is not sold by the broker.~~

Section 2. ~~(1) It shall constitute improper conduct for a licensed agent to]:~~

~~(a) Accept or agree to accept, or offer or agree to offer, anything of value to another person in violation of the federal Real Estate Settlement Procedures Act, 12 U.S.C.S. 2601 through 2617 ("RESPA"). [Accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate.] This provision shall not affect paying or receiving referral fees between principal brokers~~~~[licensed agents] for brokerage services.~~~~[;]~~

~~(b) Refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the real estate brokerage company with which the licensee~~~~[the agent] is affiliated, [or with the agent's company] without the written and signed direction of the listing or~~

leasing client[owner]. This provision shall not be construed to permit otherwise unlawful discrimination;

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

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

1. Loyalty;
2. Obedience to lawful instructions;
3. Disclosure;
4. Confidentiality;
5. Reasonable care and diligence; and
6. Accounting;

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

1. Good faith;
2. Fair dealing; and
3. The fiduciary duty of confidentiality;

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

1. Good faith; and
2. Fair dealing.

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

(h) Induce any party to a contract for sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract for sale or lease with another client;

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

(j) If dually licensed as an auctioneer and real estate licensee, before a real estate licensee commences an auction, the licensee shall disclose his or her status as a real estate licensee to potential purchasers and whether he or she intends to bid during the auction.~~[(d) Advertise a guaranteed sales plan without:~~

~~1. Disclosing whether:~~

- ~~a. A fee is charged for participation;~~
- ~~b. The real estate shall meet qualifications for participation;~~
- ~~c. The purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and~~
- ~~d. The owner of the real estate shall purchase other real estate listed for sale by the licensee or his or her designee; and~~

~~2. Including, in:~~

- ~~a. Print advertising, letters that shall be at least twenty-five (25) percent the size of the largest letter in the advertisement;~~
- ~~b. Radio advertising, communication that shall be clearly understandable; or~~
- ~~c. Television advertising:~~

~~(i) Verbal communication that shall be clearly understandable;~~

~~(ii) Written communication that shall appear on the screen at least three (3) seconds for the first line of lettering and at least one (1) second for each additional line of lettering and in letters that shall be at least eighteen (18) video scan lines in size for uppercase letters or at least twenty-four (24) video scan lines for uppercase capital letters if uppercase capitals and lowercase letters are used; or~~

~~(iii) Any combination of verbal and written communication that shall comply with the requirements of this clause; or~~

~~(e) Violate a provision of KRS Chapter 324 or 201 KAR Chapter 11 governing brokers, sales associates, or real estate transactions.]~~

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

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

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

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

Section 2. Submission of Written Offers. (1) If a principal broker has entered into a written listing agreement, or any other written agreement, under the terms of which the principal broker agrees to provide real estate brokerage services for a fee, compensation or other valuable consideration for the client, the principal broker shall provide, unless otherwise agreed in writing with the client, for real estate that is the subject of the written agreement, the following services:

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

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

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

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

(2)(a) Each principal broker, or an affiliated licensee of the principal broker, who represents a client shall, without delay, submit all written offers to lease or purchase real estate from the principal broker's client to the person or legal entity authorized to sell or lease the property or to the principal broker, or an affiliated licensee of the principal broker, who has entered into a written agreement according to subsection (1) of this Section.

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

(3) Failure to comply with Section 2 of this administrative regulation shall constitute gross negligence in violation of KRS 324.160(4)(v).

Section 3. Listing and Purchase Contracts. (1) A listing contract completed by or at the direction of a licensee shall include the:

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

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

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

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

- (e) Date of expiration of the listing contract;
- (f) The method and terms of cancellation of the listing contract;
- (g) Fee, compensation, or other valuable consideration agreed upon between the principal broker and the client;
- (h) Address or a general description of the real estate sufficient to identify the parcel(s);
- (i) Signatures of all parties necessary to affect a sale of the property, including any dower or courtesy considerations or the official representative of a corporate entity, that is the subject of the listing agreement;
- (j) Special directions of the client concerning limitations or restrictions on showings; and
- (k) Date, time and, initials for all changes on the contract prior to acceptance.
- (2) An offer to purchase completed by, or at the direction of, a licensee shall include the:
 - (a) Purchase price or a valid escalation clause with the maximum purchase price;
 - (b) Amount of contract deposit, if given, who is to hold the deposit, and the time period to deliver the deposit;
 - (b) Date and time of signing of the offer for all parties who sign;
 - (c) Date and time when the offer expires;
 - (d) Address or a general description of the real estate sufficient to identify the parcel(s);
 - (e) Signatures of all parties making the offer and the printed first and last name of the licensee who completed or directed the completion of the offer;
 - (f) Date, time, and initials for all changes on the contract prior to acceptance;
 - (g) Provision setting forth the date by which, or the date range within, the closing shall occur and when possession shall be given to the buyer; and
 - (h) Proposed payment terms.
- (3) A counteroffer completed by, or at the direction of, a licensee shall include any amendments to any term required by subsection (1) and (2) of this section and:
 - (a) Date and time of signing of the counteroffer for all parties who sign;
 - (b) Date and time when the counteroffer expires;
 - (c) Signatures of all parties making the counteroffer;
 - (d) The first and last name of the licensee who completed or directed the completion the offer, if not found on the original offer or a previous counteroffer; and
 - (e) Date, time, and initials for all changes on the contract prior to acceptance.
- (4)(a) If a licensee presents an offer to purchase real estate for which an executory contract to sell the property is already in existence, the offer shall include language that indicates in writing that the offer is contingent upon the nonperformance of the existing executory contract.
 - (b) The contingency language required by the previous subsection shall indicate the disposition of any contract deposit and be:
 1. Inserted by the licensee who completes or prepares the offer to purchase, if licensee is aware of the existing contract; or
 2. Made by the listing licensee as a counteroffer.
- (5) If financing is involved, a contract providing for the purchase of property shall specifically state:
 - (a) The manner in which the purchase shall be financed; and
 - (b) The amount of any encumbrance and whether it is to be underwritten by the seller or a commercial institution or otherwise.
- (6) Any agreement for compensation, including rebates and inducements, from a licensee to his or her client shall be in writing.
- (7) Prior to the expiration of a current listing agreement, another licensee shall not contact the seller to obtain a subsequent listing agreement.
 - (a) The seller may contact another licensee to obtain a subsequent listing agreement.

(b) A different principal broker may enter into a subsequent listing agreement with the seller if the new listing agreement will take effect upon the expiration or proper cancellation of the current listing agreement; and

(c) The licensee and seller properly complete and sign the Seller-Initiated Re-Listing Form.

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

Section 4. Required Disclosures. (1) A licensee shall direct the seller-client of a single family residential real estate dwelling to accurately complete and sign the Seller's Disclosure of Property Condition form required by KRS 324.360, including all necessary initials and signatures, unless the seller-client refuses and documents his or her refusal, or the licensee documents the seller-client refusal, on the Seller's Disclosure of Property Condition form.

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

Section 5. Prospective Client Disclosures. (1) A licensee shall complete, time and date, and deliver to the appropriate prospective client or party the "Guide To Agency Relationships" at the earliest of the following times:

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

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

(c) Prior to signing an agency consent agreement.

(2) The licensee shall solicit the signature of the prospective client or party on the Guide to Agency Relationships as acknowledgement by the prospective client or party of his or her receipt. The licensee shall maintain a record that the prospective client or party signed the Guide to Agency Relationships. If the prospective client or party refuses to, or does not, sign the Guide to Agency Relationships upon receipt, the licensee shall document the delivery, or attempted delivery, including a date and time, to the appropriate prospective client or party.

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

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

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

(c) The name of the prospective client or party; and

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

(4) The commission's Guide to Agency Relationships may be personalized by a principal broker to include the principal broker's company-specific information, including logos.

(5) The provisions of this section of this administrative regulation shall not apply to:

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

(b) A commercial transaction.

Section 6. Agency Consent Agreement. (1) Prior to entering into a written agreement to provide real estate brokerage services or completing, or directing the completion of, a contract, offer, or lease for a real estate transaction:

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

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

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

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

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

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

(d) Whether the transaction involves an unrepresented party; and

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

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

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

(a) Sale of real estate at auction; or

(b) Commercial transaction.

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

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

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

Section 7. Affiliation. (1) The principal broker shall be the owner of all written contracts for provision of real estate brokerage services, including but not limited to listing contracts, purchase contracts, and exclusive agency agreements.

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

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

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

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

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

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

(7)(a) A principal broker may be principal broker of more than one (1) real estate brokerage company.

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

(8) A sales associate or broker affiliated with a principal broker shall only be affiliated with

one (1) principal broker at one (1) office, or branch office, location.

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

Section 8. Facsimile and Digital Transmissions. (1) A licensee may use facsimile (FAX) devices and digital transmissions to transmit and receive documents according to the provisions of KRS Chapter 324 and the administrative regulations promulgated thereunder.

(2) If a licensee uses facsimile devices or digital transmissions to transmit and receive documents, the time of delivery of a document shall be the time of transmission for the facsimile (FAX) device or the time that it is sent from the originator.

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

Section 9. Principal Broker Duties and Prohibitions. (1) A principal broker shall confidentially preserve, either in hard copy or digital format, for five (5) years following its consummation or failure, records in one (1) file relating to any real estate transaction, which shall include:

- (a) Any written offers to lease or purchase the real estate;
- (b) The acquisition and disbursement of any monies;
- (c) Listing and sales contracts or leases;
- (d) Closing sheets;
- (e) Seller's and condominium certificate disclosure forms;
- (f) Agency Consent Agreement forms;
- (g) Guide to Agency Relationships forms; and
- (h) Timeshare records.

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

- (a) Property management agreements;
- (b) Leases;
- (c) Monthly owner statements and reports;
- (d) Owner and unit ledgers; and
- (e) Bank statements relating to property management.

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

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

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

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

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

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

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

(6) No principal broker shall be a party to an exclusive listing contract which contains an automatic continuation of the period of such listing beyond the fixed termination date set forth therein.

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

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

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

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

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

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

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

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

(a) Notify licensees, management, employees, officer personnel, and clerical staff of company policy and procedures related to confidential information, including in-person interactions or discussions in the office environment;

(b) Prohibit the disclosure of confidential information by licensees, management, employees, office personnel and clerical staff; and

(c) Require notification to each client involved in a transaction, if the principal broker becomes aware of an unauthorized or inadvertent disclosure of confidential information relating to that transaction.

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

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

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

Section 10. Property Management. (1) A principal broker, or an affiliated licensee, shall not engage in property management without a current written property management agreement.

(2) A property management agreement shall contain, at a minimum:

(a) The full name and address of the principal broker's real estate brokerage company as registered with the commission;

(b) The name and address of the client for whom the property is being managed;

(c) The address of the real estate being managed and the number of units;

(d) The effective dates of the agreement, and a provision stating whether the client agrees to automatic annual renewal;

(e) A provision stating the method for early termination;

(f) The amount of, or the method for computing, the amount of compensation to the principal broker;

(g) The amount of, or the method of determining, the minimum security deposit to be collected from tenants for each unit managed;

(h) The name and address of the bank where the principal broker's escrow or management account is held, and, consistent with KRS 383.580(1), the account number. This information shall also be contained in the lease;

(i) A provision which is in accord with KRS 383.580 setting forth the procedures governing returning or retaining the security deposit. This provision shall also be contained in the lease;

(j) A provision setting forth the conditions under which the principal broker is authorized to pay expenses related to the real estate being managed;

(k) A statement setting forth the date when the principal broker shall send the client an accounting of the transactions related to the real estate being managed;

(l) A copy of the form of the lease document which the principal broker shall have the tenant sign shall be attached to the agreement;

(m) A provision whereby the client certifies that he has received a duplicate copy of the agreement and the attached lease form; and

(n) The signature and date of signature of the client and the principal broker.

(3) A principal broker shall maintain, in electronic or written form:

(a) An owner ledger for each client of real estate being managed.

(b) A unit ledger for each unit in the real estate being managed.

(c) Upon the written request of the client of the property being managed, the principal broker shall provide a unit ledger by tenant.

(4) Money received shall be deposited into an escrow or management account of the principal broker within three (3) business days of receipt.

(5) The amount of money received shall be entered into the owner and unit ledgers.

(6) A receipt shall be given for money received.

(7) Expenses paid by the principal broker shall be documented by invoice or receipt, by unit, and retained with a principal broker's records.

(8) Adjustments to a security deposit shall be made in accordance with KRS 383.580. Adjustments shall also be entered on the owner and unit ledgers.

(9) On the date determined by the parties, a principal broker shall send a monthly accounting to a client of transactions related to the real estate being managed, by unit.

(10) Within sixty (60) days of the termination of a management agreement, a principal broker shall send the client a final accounting that contains any transaction that occurred after the last monthly accounting.

(11) A principal broker who has an ownership interest in the real estate being managed shall:

(a) Maintain a unit ledger for each unit in the real estate being managed; and

(b) Comply with KRS 383.580 relating to receipt, deposit, and adjustment of tenant security deposits.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Seller-Initiated Re-Listing Form", 7/2019;
- (b) "Seller's Disclosure of Property Condition", 7/2019;
- (c) "Condominium Seller's Certificate", 7/2019;
- (d) "Guide to Agency Relationships", 7/2019; and
- (e) "Agency Consent Agreement", 7/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov.

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alex D. Gaddis, Deputy General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Alex.Gaddis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alex D. Gaddis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards of conduct for all licensed real estate professionals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to discharge the commission's duty set forth in KRS 324.281 to promulgate administrative regulations concerning the proper conduct of licensees. This administrative regulation is also necessary to modernize and consolidate into one administrative regulation the professional standards of conduct expected for all licensees of the Kentucky Real Estate Commission.

(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 will assist in the effective administration of the statutes within the commission's jurisdiction because it puts all licensees on notice of the expected standards of conduct for licensed real estate professionals in Kentucky. With modernized and streamlined standards of professional conduct, the commission will be better equipped to discharge its duty to protect the public and maintain the integrity of the profession.

(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: This administrative regulation amendment consolidates into one regulation all standards of conduct applicable to licensed real estate professionals. The proposed amendments modernize standards relating to record retention and transmittal of documents to clients. Also, the proposed amendments, simultaneous with the proposed administrative regulation repealer, reduce burdens on licensees who engage in the promotion of out-of-state properties and property management.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to establish uniform and modern standards of conduct for licensed real estate professionals.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.281 requires the Kentucky Real Estate Commission to promulgate administrative regulations concerning the proper conduct of licensees. 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 residential transaction. Additionally, this administrative regulation establishes standards and 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. Overall, this administrative regulation establishes behavior considered improper conduct.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation consolidates and clarifies the rules that will govern practice as a licensed real estate professional in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. Additionally, this administrative regulation will affect all of the Real Estate Commission's current prelicensing, post licensing, and continuing education providers. Lastly, this administrative regulation will affect the general public to the extent they interact with licensed real estate professionals.

(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: Prospective licensees and members of the general public are not required to take any action to be in compliance with this administrative regulation. Current licensees may have to modify some business practices to comply with modernized standards of conduct. Education providers will be required to amend their instruction materials to comply with the new licensing law requirements contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with compliance with this administrative regulation for prospective licensees and members of the public. Current licensees may incur minor costs in compliance with modernized professional standards of conduct. Education providers may experience incidental expenses in updating instruction materials.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, licensees will be held to consistent, modern standards of professional conduct. The public will benefit from licensed real estate professionals held to consistent, modern, and high standards of professional conduct.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

(b) On a continuing basis: There is 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: There is no funding necessary to implement 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: The implementation of this administrative regulation requires no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation neither directly nor indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(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) and KRS 324.282 require the Real Estate Commission to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority to fulfill the duties and functions outlined in KRS Chapter 324. KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller or lessor, buyer or lessee, or prospective buyer to the exclusion of all other licensees associated with the principal broker. 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). 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. KRS 324.160 requires the commission to sanction a licensee for improper conduct, and this administrative regulation establishes behavior considered improper.

(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.

(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 any revenue for 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 any revenue for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative regulation 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: This administrative regulation is not expected to have a fiscal impact.