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MEMORANDUM

TO: Molly B. Cassady, General Counsel, Kentucky Real Estate Authority

FROM: Emily Caudill, Regulations Compiler

RE: Proposed Amendment or New Regulation – 201 KAR 011:121

DATE: April 13, 2022

A copy of the administrative regulation listed above is enclosed for your files. This regulation is **tentatively** scheduled for review by the Administrative Regulation Review Subcommittee at its **July 2022** meeting. We will notify you of the date and time of this meeting once it has been scheduled.

Pursuant to KRS 13A.280, **if** comments are received during the public comment period, a Statement of Consideration or a one-month extension request for this regulation is due **by noon on July 15, 2022**. Please reference KRS 13A.270 and 13A.280 for other requirements relating to the public hearing and public comment period and Statements of Consideration.

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

Enclosures

FILED WITH LRC
TIME: 2:45 pm
APR 13 2022
Emily B Caudill
REGULATIONS COMPILER

1 BOARDS AND COMMISSISONS

2 Real Estate Commission

3 (Amendment)

4 201 KAR 011:121. Standards of professional conduct.

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

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

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

9 Real Estate Commission, with the approval of the executive director of the Kentucky Real

10 Estate Authority, to promulgate administrative regulations necessary to carry out and enforce

11 the provisions of KRS Chapter 324. KRS 324.121 authorizes a principal broker to designate

12 an affiliated licensee to act as agent for a seller or lessor, buyer or lessee, or prospective buyer

13 to the exclusion of all other licensees associated with the principal broker. KRS 324.360(2)

14 requires the commission to promulgate an administrative regulation authorizing a seller's

15 disclosure of conditions form with content as set forth by KRS 324.360(3). KRS 324.160(4)(e)

16 authorizes the commission to take disciplinary action if a licensee acts for more than one (1)

17 party in a transaction without the knowledge of all parties. This administrative regulation

18 establishes requirements for designated agency; the required Seller's Disclosure of Property

19 Condition form; a specific process and form for disclosing prior relationships between parties

20 in a residential transaction; standards and requirements, to inform and set certain standards

21 for licensees and to protect the public, regarding delivery of signed documents, broker

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

5
6 Section 1. Improper Conduct.

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

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

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

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

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

20 1. Loyalty;

21 2. Obedience to lawful instructions;

22 3. Disclosure;

23 4. Confidentiality;

24 5. Reasonable care and diligence; and

25 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 other
7 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 of
13 substituting in lieu thereof a new contract for sale or lease with another client;

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

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

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

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

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

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

5 Section 2. Submission of Written Offers.

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

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

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

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

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

20 (2)(a) Each principal broker, or an affiliated licensee of the principal broker, who represents
21 a client shall, without delay, submit all written offers to lease or purchase real estate from the
22 principal broker's client to the person or legal entity authorized to sell or lease the property or to
23 the principal broker, or an affiliated licensee of the principal broker, who has entered into a written
24 agreement according to subsection (1) of this section. A licensee representing a seller shall
25 submit a notice in writing through electronic, text, or other media to the licensee representing a

1 buyer of the date and time when the offer was presented to the seller.

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

5 (3) Failure to comply with this section shall constitute gross negligence in violation of KRS
6 324.160(4)(v).

7

8 Section 3. Listing and Purchase Contracts.

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

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

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

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

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

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

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

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

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

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

24 (j) Date, time, and initials for all changes on the contract prior to acceptance.

25 (2) An offer to purchase completed by, or at the direction of, a licensee shall include the:

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

1 disposition of any contract deposit and be:

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

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

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

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

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

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

12 (7)(a) Prior to the expiration of a current listing agreement, another licensee shall not con-
13 tact the seller to obtain a subsequent listing agreement.

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

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

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

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

20 Nothing in this subsection shall prohibit a licensee from approaching a seller to list the seller's
21 property following the seller's cancellation of their current listing contract or expiration of the
22 current listing contract.

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

25

1 Section 4. Required Disclosures.

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

8 (2) A licensee who is involved in the brokerage of a condominium transaction shall advise the
9 client in writing of the client's right to receive the Condominium Seller's Certificate required by
10 KRS 381.9203(1) and the purchasing client's right to void the sales contract consistent with KRS
11 381.9203(3).

12
13 Section 5. Prospective Client Disclosures.

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

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

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

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

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

1 time, to the appropriate prospective client.

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

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

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

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

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

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

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

10 (b) A commercial transaction.

11

12 Section 6. Agency Consent Agreement.

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

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

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

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

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

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

25 (c) If applicable, any known business, family, or personal relationship the licensee has with

1 another party to the contemplated transaction who is not a party to the Agency Consent
2 Agreement and an explanation of the nature of the relationship or relationships; and

3 (d) Whether the transaction involves an unrepresented party. ~~and~~

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

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

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

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

10 (b) Commercial transaction.

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

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

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

15
16 Section 7. Affiliation.

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

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

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

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

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

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

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

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

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

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

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

22
23 Section 8. Facsimile and Digital Transmissions.

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

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

3
4 Section 9. Principal Broker Duties and Prohibitions.

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

8 (a) Any written offers to lease or purchase the real estate;

9 (b) The acquisition and disbursement of any monies;

10 (c) Listing and sales contracts or leases;

11 (d) Closing sheets;

12 (e) Seller's Disclosure of Property Condition and Condominium Seller's Certificate forms;

13 (f) Agency Consent Agreement forms;

14 (g) Guide to Agency Relationships forms; and

15 (h) Timeshare records.

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

18 (a) Property management agreements;

19 (b) Leases;

20 (c) Monthly owner statements and reports;

21 (d) Owner and unit ledgers; and

22 (e) Bank statements relating to property management.

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

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

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

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

9 (d) Any appointee of the commission who will agree 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.

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

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

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

24 (7) If a principal broker permits teams, a principal broker shall notify the commission in writing
25 of the alternate or assumed name used by the team and the name of the team leader before

1 permitting team advertising.

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

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

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

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

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

15 (9) A principal broker shall ensure any employee or unlicensed personal assistant, salaried
16 or independently contracted, employed by, retained by, or under the direction of the principal
17 broker or any affiliated licensee, are in compliance with the applicable provisions of KRS Chapter
18 324 and 201 KAR Chapter 11.

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

21 (a) 1. Notify licensees, management, employees, officer personnel, and clerical staff of
22 company policy and procedures related to confidential information, including in-person
23 interactions or discussions in the office environment;

24 2. Prohibit the disclosure of confidential information by licensees, management, employees,

1 office personnel and clerical staff;

2 3. Require notification to each client involved in a transaction, if the principal broker be-
3 comes aware of an unauthorized or inadvertent disclosure of confidential information relating
4 to that transaction; and

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

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

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

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

18

19 Section 10. Property Management.

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

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

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

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

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

1 (b) A unit ledger for each unit in the real estate being managed; and

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

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

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

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

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

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

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

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

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

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

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

21
22 Section 11. Incorporation by Reference.

23 (1) The following material is incorporated by reference:

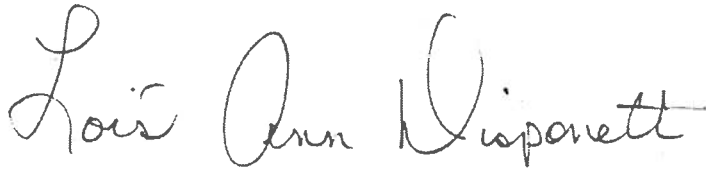
24 (a) "Seller-Initiated Listing Form", KREC Form 403, 10/2019;

25 (b) "Seller's Disclosure of Property Condition", KREC Form 402, 04/2022 [~~12/2019~~];

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

201 KAR 11:121

READ AND APPROVED:



4/13/22

Lois Ann Disponett
Chair, Kentucky Real Estate Commission

Date



4/13/22

Robert Astorino
Executive Director, Kentucky Real Estate Authority

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 10:00 A.M. EST on June 22, 2022 at 500 Mero Street, Room 127CW, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays 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 cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 administrative regulation. Written comments shall be accepted through 11:59 PM on June 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

Contact Person: Molly B. Cassady
Title: General Counsel, Kentucky Real Estate Authority
Address: 500 Mero Street, 2 NE 09, Frankfort, KY 40601
Phone: 502-782-5448
Email: Molly.Cassady@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

201 KAR 11:121

Contact person: Molly B. Cassady, phone 502-782-5448, email Molly.Cassady@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 the previous question 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 each of the regulated entities have to take to comply with this 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:

Compliance with this administrative regulation should not cost regulated entities anything.

(c) As a result of compliance, what benefits will accrue to the entities:

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 established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Explain why or why not.

No. Tiering is not applied because this administrative regulation applies similarly to all similarly situated persons.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

201 KAR 11:121

Contact person: Molly B. Cassady, phone 502-782-5448, email Molly.Cassady@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. 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 Authority. 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 1(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 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.

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.

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 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.