

## HOUSE BILL No. 2775

By Representative McCreary

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9 AN ACT concerning real estate; relating to disclosure of a material fact;  
10 amending K.S.A. 2003 Supp. 58-30,106 and 58-30,113 and repealing  
11 the existing sections.

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13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) Any seller of real estate shall disclose to the buyer  
15 any actual knowledge such seller has concerning a person who has been  
16 charged with or convicted of unlawful manufacturing or attempting to  
17 unlawfully manufacture any controlled substance or controlled substance  
18 analog, in violation of K.S.A. 65-4159, and amendments thereto, and such  
19 manufacturing occurred on the real estate which is the subject of the sale.

20 (b) Any buyer shall have a civil cause of action against any seller who  
21 fails to disclose pursuant to subsection (a), and shall be entitled to recover  
22 from any such seller:

23 (1) Actual and punitive damages; and

24 (2) reasonable attorney fees and other litigation costs reasonably  
25 incurred.

26 (c) As used in this section:

27 (1) "Seller" shall include the real estate owner, broker or salesperson.

28 (2) "Broker," "real estate" and "salesperson" have the meanings as-  
29 cribed thereto in K.S.A. 58-3035, and amendments thereto.

30 Sec. 2. K.S.A. 2003 Supp. 58-30,106 is hereby amended to read as  
31 follows: 58-30,106. (a) A seller's agent or a landlord's agent shall be a  
32 statutory agent with the duty and obligation to:

33 (1) Perform the terms of the written agreement made with the client;

34 (2) promote the interests of the client with the utmost good faith,  
35 loyalty and fidelity, including:

36 (A) presenting in a timely manner all offers to and from the client,  
37 when such offer is received prior to the closing of the sale unless the  
38 seller instructs the broker in the agency agreement not to submit offers  
39 after an offer has been accepted by the seller;

40 (B) disclosing to the client all adverse material facts actually known  
41 by the licensee about the buyer or tenant; and

42 (C) advising the client to obtain expert advice as to material matters  
43 about which the licensee knows but the specifics of which are beyond the

1 expertise of the licensee;

2 (3) account in a timely manner for all money and property received;

3 (4) comply with all requirements of this act and rules and regulations  
4 adopted hereunder; and

5 (5) comply with any applicable federal, state and local laws, rules and  
6 regulations and ordinances, including fair housing and civil rights statutes  
7 and rules and regulations.

8 (b) If pursuant to subsection (a)(2)(C), the licensee advised the client  
9 to obtain expert advice as to material matters about which the licensee  
10 knows but the specifics of which are beyond the expertise of the licensee,  
11 no cause of action for any person shall arise against the licensee pertaining  
12 to such material matters.

13 (c) A seller's or landlord's agent shall not disclose any confidential  
14 information about the client unless disclosure is required by statute or  
15 rule and regulation or failure to disclose the information would constitute  
16 fraudulent misrepresentation. No cause of action for any person shall arise  
17 against a licensee acting as a seller's or landlord's agent for making any  
18 required or permitted disclosure.

19 (d) (1) A seller's or landlord's agent owes no duty or obligation to a  
20 customer, except that a licensee shall disclose to any customer all adverse  
21 material facts actually known by the licensee, including but not limited  
22 to:

23 (A) Any environmental hazards affecting the property which are re-  
24 quired by law to be disclosed;

25 (B) the physical condition of the property;

26 (C) any material defects in the property;

27 (D) any material defects in the title to the property; ~~or~~

28 (E) any material limitation on the client's ability to perform under  
29 the terms of the contract; or

30 (F) *the knowledge that a person has been charged with or convicted*  
31 *of unlawful manufacturing or attempting to unlawfully manufacture any*  
32 *controlled substance or controlled substance analog, in violation of K.S.A.*  
33 *65-4159, and amendments thereto, and such manufacturing occurred on*  
34 *the property.*

35 (2) A seller's or landlord's agent owes no duty to conduct an inde-  
36 pendent inspection of the property for the benefit of the customer and  
37 owes no duty to independently verify the accuracy or completeness of  
38 any statement made by the client or any qualified third party.

39 (3) Except as provided in subsection (d)(4), a seller's or landlord's  
40 agent is not required to disclose to a client or customer information re-  
41 lating to the physical condition of the property if a written report regard-  
42 ing the physical condition of the property has been prepared by a qualified  
43 third party and provided to the client or customer.

1 (4) A seller's or landlord's agent shall disclose to the client or cus-  
2 tomer any facts actually known by the licensee that were omitted from  
3 or contradict any information included in a written report described in  
4 subsection (d)(3).

5 (5) In performing an investigation or inspection and in making a dis-  
6 closure in connection with a real estate transaction, a licensee shall ex-  
7 ercise the degree of care expected to be exercised by a reasonably prudent  
8 person who has the knowledge, skills and training required for licensure  
9 as a broker or salesperson.

10 (e) A seller's or landlord's agent may provide assistance to the cus-  
11 tomer by performing ministerial acts. Performing ministerial acts for the  
12 customer shall not be construed as violating the brokerage firm's agency  
13 with the seller or landlord and shall not be construed as forming an agency  
14 with the customer.

15 (f) A seller's or landlord's agent may show alternative properties not  
16 owned by the client to prospective buyers or tenants and may list com-  
17 peting properties for sale or lease without breaching any duty or obliga-  
18 tion to the client.

19 (g) A seller or landlord may agree in writing with a seller's or land-  
20 lord's agent that the broker may offer subagency and pay compensation  
21 to other brokers.

22 (h) A seller or landlord may agree in writing with a seller's or land-  
23 lord's agent that the broker may offer to cooperate with a buyer's or  
24 tenant's agent or to cooperate with and pay compensation to a buyer's or  
25 tenant's agent.

26 (i) A seller or landlord may agree in writing with a seller's or land-  
27 lord's agent that the broker may offer to cooperate with a transaction  
28 broker or to cooperate with and pay compensation to a transaction broker.

29 (j) If the seller or landlord has authorized the broker to offer coop-  
30 eration with other licensees pursuant to subsection (g), (h) or (i) the bro-  
31 ker shall not refuse permission to another licensee to show a listed prop-  
32 erty or refuse to receive and transmit to the seller or landlord a written  
33 offer or a listed property from another licensee specifically instructed by  
34 the seller in writing. The broker shall provide a copy of the written in-  
35 structions to another licensee upon request.

36 (k) A seller's or landlord's agent shall not be liable for punitive or  
37 exemplary damages for the licensee's failure to perform any of the duties  
38 set forth in this section, unless such failure is shown by clear and con-  
39 vincing evidence that the licensee acted toward the plaintiff with willful  
40 conduct, wanton conduct, fraud or malice.

41 Sec. 3. K.S.A. 2003 Supp. 58-30,113 is hereby amended to read as  
42 follows: 58-30,113. On and after October 1, 1997:

43 (a) A broker engaged as a transaction broker is not an agent for either

- 1 party.
- 2 (b) A transaction broker shall have the following obligations and  
3 responsibilities:
- 4 (1) To perform the terms of any written or oral agreement made with  
5 any party to the transaction;
- 6 (2) to exercise reasonable skill and care as a transaction broker, in-  
7 cluding, but not limited to:
- 8 (A) Presenting all offers and counteroffers in a timely manner, even  
9 when the property is subject to a contract of sale;
- 10 (B) advising the parties regarding the transaction and suggesting that  
11 such parties obtain expert advice as to material matters about which the  
12 transaction broker knows but the specifics of which are beyond the ex-  
13 pertise of the licensee;
- 14 (C) accounting in a timely manner for all money and property  
15 received;
- 16 (D) keeping the parties fully informed regarding the transaction;
- 17 (E) assisting the parties in complying with the terms and conditions  
18 of any contract including closing the transaction;
- 19 (F) disclosing to all prospective buyers or tenants all adverse material  
20 facts actually known by the transaction broker, including but not limited  
21 to:
- 22 (i) Any environmental hazards affecting the property which are re-  
23 quired by law to be disclosed;
- 24 (ii) the physical condition of the property;
- 25 (iii) any material defects in the property;
- 26 (iv) any material defects in the title to the property; ~~or~~
- 27 (v) any material limitation on the seller's or landlord's ability to per-  
28 form under the terms of the contract;
- 29 (vi) *the knowledge that a person has been charged with or convicted*  
30 *of unlawful manufacturing or attempting to unlawfully manufacture any*  
31 *controlled substance or controlled substance analog, in violation of K.S.A.*  
32 *65-4159, and amendments thereto, and such manufacturing occurred on*  
33 *the property; and*
- 34 (G) disclosing to any prospective seller or landlord all adverse ma-  
35 terial facts actually known by the transaction broker, including but not  
36 limited to material facts concerning the buyer's or tenant's financial ability  
37 to perform the terms of the transaction;
- 38 (3) comply with all requirements of this act and rules and regulations  
39 adopted hereunder; and
- 40 (4) comply with any applicable federal, state and local laws, rules and  
41 regulations and ordinances, including fair housing and civil rights and  
42 rules and regulations.
- 43 (c) Except as provided in subsection (d), the transaction broker is not

1 required to disclose to any party to the transaction information relating  
2 to the physical condition of the property if a written report regarding the  
3 physical condition of the property has been prepared by a qualified third  
4 party and provided to the party.

5 (d) A transaction broker shall disclose to the party any facts actually  
6 known by the transaction broker that were omitted from or contradict  
7 any information included in a written report described in subsection (c).

8 (e) If pursuant to subsection (b)(2)(B), the transaction broker advised  
9 the parties to obtain expert advice as to material matters about which the  
10 transaction broker knows but the specifics of which are beyond the ex-  
11 pertise of the transaction broker, no cause of action for any person shall  
12 arise against the transaction broker pertaining to such material matters.

13 (f) In any transaction regarding the sale or lease of real estate other  
14 than commercial property or residential property of more than four units,  
15 the following information shall not be disclosed by a transaction broker  
16 without the consent of all parties:

17 (1) That a buyer or tenant is willing to pay more than the purchase  
18 price or lease rate offered for the property;

19 (2) that a seller or landlord is willing to accept less than the asking  
20 price or lease rate for the property;

21 (3) what the motivating factors are for any party buying, selling, or  
22 leasing the property;

23 (4) that a seller, buyer, landlord or tenant will agree to financing  
24 terms other than those offered; or

25 (5) any information or personal confidences about a party to the  
26 transaction which might place the other party at an advantage over the  
27 party unless the disclosure is required by law or failure to disclose such  
28 information would constitute fraudulent misrepresentation.

29 (g) (1) Except as provided in subsection (g)(2), in any transaction  
30 regarding the sale or lease of commercial property or residential property  
31 of more than four units, the following information may be disclosed by a  
32 transaction broker unless prohibited by the parties:

33 (A) That a buyer or tenant is willing to pay more than the purchase  
34 price or lease rate offered for the property;

35 (B) that a seller or landlord is willing to accept less than the asking  
36 price or lease rate for the property;

37 (C) what the motivating factors are for any party buying, selling or  
38 leasing the property; or

39 (D) that a seller, buyer, landlord or tenant will agree to financing  
40 terms other than those offered.

41 (2) Any information or personal confidences about a party to the  
42 transaction which might place the other party at an advantage over the  
43 party shall not be disclosed unless the disclosure is required by law or

1 failure to disclose such information would constitute fraudulent  
2 misrepresentation.

3 (h) A transaction broker has no duty to conduct an independent in-  
4 spection of the property for the benefit of any party to the transaction  
5 and has no duty to independently verify the accuracy or completeness of  
6 statements made by the seller, landlord, buyer, tenant or qualified third  
7 party inspectors.

8 (i) A transaction broker has no duty to conduct an independent in-  
9 vestigation of the buyer's or tenant's financial condition or to verify the  
10 accuracy or completeness of any statement made by the buyer or tenant.

11 (j) A transaction broker may do the following without breaching any  
12 obligation or responsibility:

13 (1) Show alternative properties not owned by the seller or landlord  
14 to a prospective buyer or tenant;

15 (2) list competing properties for sale or lease;

16 (3) show properties in which the buyer or tenant is interested to other  
17 prospective buyers or tenants; and

18 (4) serve as a single agent or subagent for the same or for different  
19 parties in other real estate transactions.

20 (k) Information known to a transaction broker shall not be imputed  
21 to any party to the transaction or to any licensee within the brokerage  
22 firm engaged as a transaction broker.

23 (l) A transaction broker may cooperate with other brokers or coop-  
24 erate and pay compensation to other brokers but shall not engage any  
25 subagents.

26 Sec. 4. K.S.A. 2003 Supp. 58-30,106 and 58-30,113 are hereby  
27 repealed.

28 Sec. 5. This act shall take effect and be in force from and after its  
29 publication in the statute book.