

What changed in the new KREC Regulations?

201 KAR 11:105. Advertising Administrative Regulation:

Section 1. A licensee shall not:

- a. Promote or advertise a specific property listed by another principal broker unless the licensee has requested and obtained written consent from the listing principal broker.

Section 2. Content Required:

- a. The principal broker, or his/her designee, shall establish written standards for advertising activity to ensure compliance.
- b. The principal broker shall be held liable for repeated violations
- c. Advertisements must include:
 - a. The full name of the real estate brokerage company registered with the KREC;
OR
 - b. The full name of the principal broker registered with the KREC, with clear designation of principal broker status.
- d. The advertisement may include:
 - a. The affiliated licensee's name as long as it is registered with the KREC.
 - b. Affiliated licensee can use one (1) alternate or assumed name, must register with KREC.

Section 3. Display of Content:

- a. The brokerage name or principal broker name shall be displayed in written text and must:
 - a. Be clear and visible
 - b. Not be false, misleading, or deceptive.
- b. The affiliated licensee's name shall not appear larger than the brokerage name or principal broker.
 - a. **The requirements of the above subsection shall not apply to the following promotional materials that advertise a licensee: hats, pens, notepads, apparel, name tags, and the sponsorship of charitable and community events.**
 - b. **The commission may waive the requirements of subsection (b) for specific promotional materials not stated in subsection (a) upon finding the proposed promotional material would not constitute false, misleading, or deceptive advertising.**
- c. Every individual viewable page or post shall constitute a separate advertisement.
- d. Each advertisement shall include the brokerage name or principal broker's name at the header, or viewable on the page without the observer scrolling or navigating the page or post to view required content.

- e. If the advertisement cannot contain the content in (d), the page must include a clickable direct link to a page or post or user account profile that contains the required content.
- f. Ads that include audiovisual presentation shall include an audible **or written** announcement of the brokerage name or principal broker's name.
- g. Any online form of advertising that was true and accurate at the time it was made shall not be a violation.
- h. A logo that does not contain written text of the brokerage name or principal broker shall not constitute as a substitute for the content required.
- i. If licensee's principal broker is located outside Kentucky, the ad shall:
 - a. Indicate that the licensee holds a KY license to broker real estate; and
 - b. Include the regulatory jurisdiction of the licensee's principal business location.
- j. **The requirements established by this administrative regulation shall not apply to logos, brands, or directional and open house signs so long as the logo, brand, directional, and open house signs do not contain the name of a sales associate.**

Section 4. Use of Alternate or Assumed Name.

- a. More than one licensee, whether a team, group, other business arrangement, or real estate brokerage company, may collectively use an alternate or assumed name for advertising with the written approval of the principal broker.
- b. The principal broker shall:
 - a. Register, or ensure the registration of, the alternate/assumed name with the KREC
 - b. Ensure the alternate/assumed name is in the licensee's online services portal.
- c. Alternate/assumed name shall not:
 - a. Contain terms that could lead the public to believe the licensee(s) approved to use the alternate/assumed name is offering real estate brokerage services independent of the principal broker, unless the alternate/assumed name is for the real estate brokerage company;
 - b. Be used more than once by licensees within the principal broker's brokerage company;
- d. An alternate/assumed name may include reference to a name or person, so long as the name or person has not lost the ability to engage in real estate brokerage through administrative discipline or by operation of law.
- e. If the alternate/assumed name applies to a team or group, the name shall **end with** "team" or "group".

Section 5. False, Misleading, or Deceptive Advertising

- a. False, misleading, or deceptive advertising is prohibited.
- b. An ad is false, misleading, or deceptive if the ad:
 - i. Is known or should have been known to be false at the time of placement of the ad.
 - ii. Misleads or misinforms the general public in any manner

Section 6. Guaranteed Sales Plans

- a. For print or electronic display advertising, the letters that shall be at least twenty-five (25) percent the size of the largest letter in the advertisement
- b. For television advertising, written communication 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 lower case letters are used. **(This language was originally in the Standards of Professional Conduct Regulation. It was moved into this Regulation.)**

Section 8. Effective Dates.

- a. The KREC shall begin enforcement of the advertising regulation **six (6) months** after the effective date of this administrative regulation. **Tentative Effective date is June 16, 2020.**

201 KAR 11:011. Definitions Administrative Regulation:

These are the 32 new definitions:

1. Advertising – any manner, method, or activity by which a licensee of the commission makes known a specific property for sale or lease or any services for which a real estate license is required. Does not include:
 - a. **Directional or pointer signs whose sole purpose is to provide directions to a listed property and includes no identifying licensee or brokerage information.**
2. Agency
3. Agency consent agreement
4. Branch office
5. Broker- affiliated training program
6. Business relationship
7. Client
8. Commercial transaction
9. Company
10. Confidential information
11. Condominium
12. Consumer
13. Continuing education course
14. Delivery
15. Designated agency
16. Designated agent
17. Distance education course
18. Dual agency
19. Duplex
20. Education cycle
21. Family relationship - means any known familial relationship between a licensee and party
22. Fourplex
23. Guaranteed sales plan
24. Initial sales associate license
25. License recognition
26. Licensee
27. Personal relationship
28. Post-license education course
29. Pre-license course
30. Promotional activities
31. Prospective client
32. Renewal cycle
33. Security deposit

34. Single agency - is the type of agency where the principal broker and all affiliated licensees of the real estate brokerage company act as an agent for a buyer or seller, or a lessor or lessee, as the client on the same side of a transaction.
35. Single family residential real estate dwelling
36. Team or teams
37. Team leader
38. Timeshare
39. Townhouse
40. Transactional brokerage
41. Triplex
42. Unrestricted license
43. Without delay

201 KAR 11:220. Errors and Omissions Insurance Administrative Regulation:

Section 1. Minimum Coverage Requirements.

- a. A licensee shall carry continuous errors and omissions coverage that, at a minimum includes:
 - a. A limit of liability not less than \$100,000 for any one claim; AND
 - b. An annual aggregate limit of liability of not less than \$1,000,000

Section 2. Firm Coverage.

- a. A principal broker who purchases (this was “decides to purchase independent”) errors and omissions “firm coverage” insurance shall have at least the following:
 - a. One (1) to forty (40) licensees shall carry a \$1,000,000 annual aggregate; OR
 - b. Forty-one (41) or more licensees shall carry a \$2,000,000 annual aggregate.

Section 3. Deductibles.

- a. All errors and omissions or professional liability insurance policies shall have maximum deductibles, which may be separate deductibles, which shall not exceed:
 - a. \$2,500 for judgement or settlement and
 - b. \$1,000 for the cost of investigation and defense.

Section 4. Exclusions permitted.

- a. The language “consistent with common custom in the market.” was added to the regulation. **KYR reached out to the KREC for clarification on this and was provided with the following response: “the decision to remove the list of exclusions was to allow for a more dynamic regulation. Right now, to amend the exclusion list, we would have to go through the promulgation process every time. By allowing those exclusions which are common in the market, insurance providers and licensees have more flexibility in crafting their coverage.”**

201 KAR 11:210. Licensing, Education, and Testing Requirements Administrative Regulation:

This regulation was pretty much completely rewritten. I have provided you with what the KYR Government Affairs Committee discussed during this administrative regulation:

Section 2. Broker's license

- (1) Prior to applying for a broker's license, a prospective applicant shall:
- a. Complete not less than twenty-one (21) academic credit hours of education to acquire a broker's license, including a minimum of:
 - i. Nine (9) academic credit hours of real estate courses, which shall not include an applicant's sales associate prelicense education;
 - ii. Three (3) academic credit hours of Broker Management; and
 - iii. Nine (9) academic credit hours of broker elective courses, approved by the commission.

Broker's Licensing – After April 1, 2020, the 96 hours of prelicensing education that many licensees take to get their license will no longer be accepted towards Broker education hours when is someone is trying to obtain their Broker's license.

Section 3. Reciprocal Licensing.

Ohio reciprocity agreement language has been completed and will be sent back to Ohio for final approval/signature. Due to language in the regulations changing Kentucky from "recognition" to "reciprocity" in real estate licensing, the reciprocity agreement cannot go into effect until the new regulations go into effect with this language.

Section 9. Inactive Status.

- (4) To reactivate a license from inactive status, a licensee shall complete and submit Form 203, "License Status and Personal Information Update Form", or through the online services portal, and comply with KRS 324.310 and complete the following education:
- a. If the licensee has not taken the Core course in 4 years, the licensee shall complete Core; and
 - b. If the licensee has been inactive during more than one education cycle, the licensee shall take 6 hours of CE for each education cycle he or she was inactive, with 3 hours of each year in law courses.

The KREC's original language would have required licensee's coming out of inactive status to complete a max of 30 CE hours in order to reactivate. The L&O Committee passed an amendment that reduced the max of 30 CE hours to a **max of 12 CE hours.**

Section 12. Continuing Education Compliance and Delinquency.

(4) If the licensee fails to request an extension and fails to forward proof of completion prior to the deadline, the license shall be cancelled automatically.

- a. A license cancelled for nonfulfillment of the continuing education requirements may be reactivated if the licensee enters into a written delinquency plan, pays a **\$1,000** (used to be \$500) administrative fine, and either:
 - i. Places their license in inactive status; or
 - ii. Agrees in the delinquency plan to complete the delinquent CE requirements for the previous calendar year on or before April 30.

*Please remember that we are moving to a 2-year renewal cycle instead of a yearly renewal cycle. Each licensee MUST attend and successfully complete 6 hours of CE each year. Three of those hours of CE shall be in law, and three of the hours of CE may be in electives.

**201 KAR 11:190. Consumer and Administrative Complaints; Discipline; and
Administrative Hearings:**

Section 1. Filing a Complaint

- (2) The complaint must be filed no more than **1 year** (this used to be 2 years) from:
- a. Actual knowledge of the cause of action; or
 - b. The time circumstances would reasonably have put the complaint on notice of the cause of action.

Section 4. Withdrawal of a Complaint.

A complainant may withdraw a complaint if:

- (1) An answer has not been filed; and
- (2) **The withdrawal is made within 20 days of the date the complaint was received by the respondent** (used to be 20 days from when the complaint was filed); or

201 KAR 11: 121. Standards of Professional Conduct Regulation:

Section 2. Submission of written offers:

2 (a) "A licensee representing a seller shall submit a notice in writing to the licensee representing a buyer of the date and time when the offer was presented to the seller." **An amendment was passed during the Licensing and Occupations Committee that will add the language "or through electronic, text, or other media" after "in writing". This will allow the seller's agent to notify the buyer's agent through text or email.**

Section 5. Prospective Client Disclosures

- (1) A licensee shall complete, time and date, and deliver to the appropriate prospective client the commission's "Guide To Agency Relationships" at the earliest of the following times:
 - (a) Prior to entering into a contemplated written agreement to provide real estate brokerage services for compensation with a prospective client or party;
 - (b) Prior to entering into a contemplated 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 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 9. Principal Broker Duties and Prohibitions.

- a. 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.
- b. A principal broker who engages in property management shall also confidentially preserve, either in hard copy or digital format, for **five (5) years**.

201 KAR 11:170. Education Provider Requirements Regulation.

Section 2 and Section 3 of this regulation mention the requirement for classroom courses, at a minimum, that the provider shall require a student to sign in and sign out of each course. The GAC had some concerns as to what exactly this entails. The KREC provided some guidance as to what the intent is for these two provisions: Right now, credit for attendance at a course is conditioned on an evaluation from the student, which is then cross-checked with the sign in sheet to ensure everyone returned from a break, but the downside is the quality of feedback the Commission receives on courses and instructors, because students know the instructor can tie comments, etc. back to a student through the evaluation form. The Commission does not envision any particular process for signing in and out, just that a provider explains what their process will be.

All course content required by this administrative regulation shall be submitted to the commission for review and consideration prior to the approval of the course.