

SENATE BILL No. 439

AN ACT concerning real estate brokers and salespersons; relating to the licensure and regulation thereof; amending K.S.A. 58-3043 and 58-3047 and K.S.A. 2001 Supp. 58-3036, 58-3037, 58-3039, 58-3042, 58-3045, 58-3050 and 58-30,103 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 58-3036 is hereby amended to read as follows: 58-3036. Unless exempt from this act under K.S.A. 58-3037, and amendments thereto, no person shall:

(a) Directly or indirectly engage in or conduct or represent that such person engages in or conducts the business of a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(b) Directly or indirectly act or represent that such person acts as a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(c) Perform or offer, attempt or agree to perform any act described in subsection ~~(e)~~ (f) of K.S.A. 58-3035, and amendments thereto, whether as a part of a transaction or as an entire transaction, unless such person is licensed pursuant to this act.

Sec. 2. K.S.A. 2001 Supp. 58-3037 is hereby amended to read as follows: 58-3037. The provisions of this act shall not apply to:

(a) Any person, other than a person licensed under this act, who directly performs any of the acts within the scope of this act with reference to such person's own property.

(b) Any person who directly performs any of the acts within the scope of this act with reference to property that such person is authorized to transfer in any way by a power of attorney from the owner, provided that such person receives no commission or other compensation, direct or indirect, for performing any such act.

(c) Services rendered by an attorney licensed to practice in this state in performing such attorney's professional duties as an attorney.

(d) Any person acting as receiver, trustee in bankruptcy, administrator, executor or guardian, or while acting under a court order or under the authority of a will or a trust instrument or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency.

(e) Any officer or employee of the federal or state government, or any political subdivision or agency thereof, when performing the official duties of the officer or employee.

(f) Any multiple listing service wholly owned by a nonprofit organization or association of brokers.

(g) Any nonprofit referral system or organization of brokers formed for the purpose of referral of prospects for the sale or listing of real estate.

(h) Railroads or other public utilities regulated by the state of Kansas, or their subsidiaries, affiliated corporations, officers or regular employees, unless performance of any of the acts described in subsection ~~(e)~~ (f) of K.S.A. 58-3035, and amendments thereto, is in connection with the sale, purchase, lease or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

(i) The sale or lease of real estate by an employee of a corporation which owns or leases such real estate, if such employee owns not less than 5% of the stock of such corporation.

(j) The sale or lease of new homes by a person, partnership, association or domestic corporation who constructed such homes, but the provisions of this act shall apply to the sale or lease of any such homes by any employee of such person, partnership or association or by any employee of such corporation who owns less than 5% of the stock of such corporation.

(k) The lease of real estate for agricultural purposes.

Sec. 3. K.S.A. 2001 Supp. 58-3039 is hereby amended to read as follows: 58-3039. (a) Any person desiring to act as a broker or salesperson must file a written application for a license with the commission or, if required by the commission, with the testing service designated by the commission. The application shall be in such form and detail as the commission shall prescribe and shall be accompanied by application and license fees prescribed by K.S.A. 58-3063, and amendments thereto.

(b) A license to engage in business as a broker or salesperson shall be granted only to a person who is 18 or more years of age and who has a high school diploma or its equivalent.

(c) In addition to the requirements of subsection (b), except as provided in subsection (d), each applicant for an original license as a broker shall have been:

(1) Licensed as a salesperson in this state or as a salesperson or broker in another state, and shall have been actively engaged in any of the activities described in subsection ~~(e)~~ (f) of K.S.A. 58-3035, and amendments thereto, for a period of at least two years during the five years immediately preceding the date of the application for a license; or

(2) if an applicant resides in a county that according to the 1994 estimates of the U.S. bureau of the census has a population of 20,000 or less, the commission may, upon a finding that such county suffers from a shortage of brokers and upon compelling evidence of need, waive or alter the requirements of this subsection. The commission shall adopt rules and regulations to establish alternative licensing criteria for such applicants.

(d) The commission may accept proof of experience in the real estate or a related business or a combination of such experience and education which the commission believes qualifies the applicant to act as a broker as being equivalent to all or part of the experience required by subsection (c).

(e) Except as provided in K.S.A. 58-3040, and amendments thereto, each applicant for an original license shall be required to pass a written examination covering generally the matters confronting brokers or salespersons, and no license shall be issued on the basis of such an examination either or both sections of which were administered more than four months prior to the date that the applicant's application is filed with the commission. The examination may be given by the commission or any person designated by the commission. Each person taking the examination shall pay the examination fee prescribed pursuant to K.S.A. 58-3063, and amendments thereto, which fee the commission may require to be paid to it or directly to the testing service designated by the commission. The examination for a broker's license shall be different from or in addition to that for a salesperson's license.

(f) (1) ~~On and after October 1, 1997,~~ Each applicant for an original salesperson's license who meets the requirements of this act shall be issued a temporary salesperson's license which shall expire six months after the last calendar day of the month in which the license was issued, on the last calendar day of that month.

(2) No later than 10 days prior to the expiration date of a temporary salesperson's license, the salesperson shall file an application on a form provided by the commission. The application shall be accompanied by the license fee prescribed by K.S.A. 58-3063, and amendments thereto, and evidence of compliance with the requirements of subsection (f)(1) of K.S.A. 58-3046a, and amendments thereto. The commission shall issue a salesperson's license to a person who complies with the provisions of this paragraph. The issuance date of the salesperson's license shall be the day following the expiration date of the temporary license. The expiration date of the license shall be determined in accordance with a schedule established by rules and regulations of the commission.

(3) Failure to comply with the provisions of paragraph (2) shall automatically cancel the temporary license on its expiration date.

(4) A person whose temporary salesperson's license was canceled pursuant to paragraph (3) may apply for a salesperson's license provided such application, the license fee prescribed by K.S.A. 58-3063, and amendments thereto, and evidence of attendance of 30 hours of instruction received after issuance of the temporary license pursuant to subsection (f)(1) of K.S.A. 58-3046a, and amendments thereto, are received by the commission within three months after the expiration date of the temporary license. The commission shall issue a salesperson's license to a person who complies with the provisions of this paragraph. The expiration date of the license shall be determined in accordance with a schedule established by rules and regulations of the commission.

(g) The commission, prior to granting an original license, shall require proof that the applicant has a good reputation for honesty, trustworthi-

ness, integrity and competence to transact the business of broker or salesperson in such manner as to safeguard the public interest.

(h) An application for an original license as a salesperson shall be accompanied by the recommendation of the broker with whom the salesperson is to be associated, or by whom the salesperson is to be employed, certifying that the applicant is honest, trustworthy and of good reputation.

Sec. 4. K.S.A. 2001 Supp. 58-3042 is hereby amended to read as follows: 58-3042. (a) No real estate license shall give authority to any person other than the person to whom the license is issued.

(b) No license shall be granted to a corporation, partnership, association or limited liability company. Each person who is an officer of a corporation or a member of a partnership, association or limited liability company and who performs any act described in subsection ~~(e)~~ (f) of K.S.A. 58-3035, and amendments thereto, and each person who is employed by or associated with a corporation, partnership, association or limited liability company and who performs any act described in subsection ~~(e)~~ (f) of K.S.A. 58-3035, and amendments thereto, shall be a licensed broker or licensed salesperson.

Sec. 5. K.S.A. 58-3043 is hereby amended to read as follows: 58-3043. (a) In determining whether to grant *or renew* a license the commission shall consider:

- (1) Any revocation or suspension of a prior real estate license;
- (2) whether an applicant has committed any of the practices enumerated in K.S.A. 58-3062, and amendments thereto, or has violated this act or rules and regulations adopted hereunder during the term of any prior license;
- (3) any plea of guilty or *nolo contendere* to, or any conviction of: (A) Forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any other similar offense; (B) a crime involving moral turpitude; or (C) any felony charge; and
- (4) such other matters as the commission deems pertinent.

In its consideration of any such prior revocation, conduct or conviction, the commission shall take into account the nature of the offense; any aggravating or extenuating circumstances; the time elapsed since such revocation, conduct or conviction; the rehabilitation or restitution performed by the applicant; and such other factors as the commission deems relevant.

(b) The commission may deny a license to any person who, without a license, has engaged in a real estate activity for which a license was required.

(c) When an applicant has made a false statement of material fact on the application, such false statement may be sufficient reason for refusal of a license.

Sec. 6. K.S.A. 2001 Supp. 58-3050 is hereby amended to read as follows: 58-3050. (a) *The commission may refuse to grant or renew a license and the license of any licensee may be revoked, suspended, conditioned or restricted or a licensee may be censured, if:*

- (1) ~~The commission finds that the license has been obtained by false or fraudulent representation or that the licensee has committed a violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, whether the licensee acted as an agent or a principal in the real estate transaction;~~
- (2) the licensee has entered a plea of guilty or *nolo contendere* to, or has been convicted of: (A) Forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any other similar offense; (B) a crime involving moral turpitude; or (C) any felony charge; ~~or~~
- (3) the licensee has been finally adjudicated and found to be guilty of violation of the federal fair housing act (42 U.S.C. 3601 et seq.) or K.S.A. 44-1015 through 44-1029, and amendments thereto;
- (4) *the licensee has obtained a license by false or fraudulent representation; or*
- (5) *the licensee has violated any lawful order or directive of the commission.*

(b) In addition to or in lieu of any other administrative, civil or crim-

inal remedy provided by law, the commission, in accordance with the Kansas administrative procedure act and upon a finding that a licensee has violated a provision of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, may impose on such licensee a civil fine not exceeding \$500 for each violation.

(c) If a broker or salesperson has been declared disabled by a court of competent jurisdiction, the commission shall suspend the broker's or salesperson's license for the period of disability.

(d) (1) *Except as provided by paragraph (2) of this subsection, no complaint alleging violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, shall be commenced more than three years from the date of the occurrence which is the subject of the complaint.*

(2) *Unless the violation is not reasonably ascertainable, complaints alleging violation of subsection (a)(4) or (a)(5) shall be commenced within three years from the date of the occurrence of the violation. If the violation is not reasonably ascertainable, complaints alleging violation of subsection (a)(4) or (a)(5) shall be commenced within three years from the date of violation is ascertained by the commission.*

(e) All administrative proceedings pursuant to this section shall be conducted in accordance with the Kansas administrative procedure act.

(f) Notwithstanding any provision of this act or the brokerage relationships in real estate transactions act to the contrary, the commission may use emergency adjudicative proceedings, as provided by K.S.A. 77-536, and amendments thereto, to summarily suspend the license of any licensee if the commission has reasonable cause to believe that the licensee's trust account is in unsound condition or that the licensee is misappropriating funds belonging to other persons.

(g) If a licensee has entered a plea of guilty or *nolo contendere* to, or has been convicted of, any felony charge, the commission may use emergency adjudicative proceedings, as provided by K.S.A. 77-536, and amendments thereto, to suspend, revoke, *condition* or restrict the licensee's license.

(h) When the real estate license of an individual is revoked and that individual's name is included in the trade or business name of a real estate brokerage business, the commission may deny continued use of the trade or business name if, in the opinion of the commission, it would be confusing or misleading to the public.

If the revocation of the individual's license is appealed to district court and a stay of the commission's order is granted by the court, the commission may not deny continued use of the trade or business name until such time as the district court upholds the order of the commission.

Sec. 7. K.S.A. 2001 Supp. 58-30,103 is hereby amended to read as follows: 58-30,103. (a) Except when acting as a transaction broker or solely as a seller, buyer, landlord or tenant, a broker shall act only as a statutory agent in any real estate transaction. A licensee shall not act as ~~an undisclosed~~ a dual agent or in a dual capacity of agent and undisclosed principal in any transaction.

(b) A broker may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent if the broker complies with this act in establishing the relationships for each transaction. A broker who has been working with a seller, landlord, buyer or tenant as a transaction broker may act as an agent for the seller, landlord, buyer or tenant if the broker complies with this act in establishing the agency relationship.

(c) A broker may be engaged as a transaction broker by oral or written agreement with the seller, landlord, buyer or tenant. A broker shall be considered a transaction broker unless:

(1) An agency relationship between the broker and the party to be represented is established pursuant to this section; or

(2) a broker works with a buyer or tenant as a subagent of the seller or landlord by accepting an offer of subagency.

(d) (1) Except as provided in subsection (d)(2), a broker intending to establish an agency relationship with a seller or landlord shall enter

into a written agency agreement with the party to be represented prior to the licensee's engaging in any of the activities enumerated in subsection ~~(e)~~ (f) of K.S.A. 58-3035, and amendments thereto, as an employee of, or on behalf of, the seller or landlord.

(2) If the real estate which is to be offered for sale is owned by any agency of the federal government, a broker may, on behalf of the owner, engage in activities enumerated in subsection ~~(e)~~ (f) of K.S.A. 58-3035, and amendments thereto, after obtaining verbal authorization from the federal agency for which services are to be performed.

(e) To establish an agency relationship with a buyer or tenant, a broker shall enter into a written agency agreement with the party to be represented no later than the signing of an offer to purchase or lease.

(f) An agency agreement shall set forth the terms and conditions of the relationship, including a fixed date of expiration, any limitation on the duty of confidentiality and the terms of compensation, and shall refer to the duties and obligations pursuant to K.S.A. 2001 Supp. 58-30,106 or 58-30,107, and amendments thereto. The agreement shall be signed by the party to be represented and by the broker or a licensee affiliated with the broker. A copy of the agreement shall be furnished to the client at the time the client signs the agreement. If, at the time the client signs the agreement, the agreement is not signed by the broker or a licensee affiliated with the broker, the broker or a licensee affiliated with the broker shall furnish a copy of the agreement to the client within a reasonable time after the agreement is signed by the broker or a licensee affiliated with the broker.

(g) An agency agreement with a seller or landlord shall include any potential:

(1) for the seller's agent or landlord's agent to act as a transaction broker;

(2) for an affiliated licensee to act as a designated agent for the buyer and the designated agent's supervising broker or branch broker, and an affiliated licensee if applicable, to act as a transaction broker; or

(3) for the broker to designate an affiliated licensee to act as the designated agent for the seller on the broker's personal listing pursuant to subsection (b)(2) of K.S.A. 58-30,109 and amendments thereto.

(h) An agency agreement with a buyer or tenant shall include any potential:

(1) For the buyer's agent or tenant's agent to act as a transaction broker; or

(2) For an affiliated licensee to act as a designated agent for the seller and the designated agent's supervising broker or branch broker, and an affiliated licensee if applicable, to act as a transaction broker.

(i) An agency agreement shall not contain an authorization for the broker to sign or initial any document on behalf of the broker's client in a real estate transaction or authorization for the broker to act as attorney-in-fact for the client.

(j) An agency agreement with a seller shall not provide that the broker's commission be based on the difference between the gross sales price and the net proceeds to the owner.

(k) The broker shall not assign, sell or otherwise transfer a written agency agreement to another broker without the express written consent of all parties to the original agreement.

(l) A licensee shall not solicit an agency agreement from a seller or landlord if the licensee knows that the seller or landlord has, with regard to the property, an agency agreement granting an exclusive right to sell or exclusive agency to another broker.

(m) A licensee shall not solicit an agency agreement from a buyer or tenant if the licensee knows that the buyer or tenant has a written agency agreement granting exclusive representation to another broker.

(n) A licensee shall not induce any party to break any agency agreement.

(o) If a licensee knows that a buyer or tenant has an agency agreement granting exclusive representation to another broker, the licensee shall not contact the buyer or tenant and shall not initiate negotiations for the sale, exchange or lease of real estate with the buyer or tenant. The licensee may negotiate the sale, exchange or lease of real estate directly with the buyer or tenant with the informed consent of the buyer or tenant. The informed consent shall be evidenced by a consent agreement signed by

the buyer or tenant prior to any such direct negotiation. The consent agreement shall acknowledge the buyer or tenant agency agreement and that the buyer or tenant may be liable for compensation under the terms of the agency agreement. The commission, by rules and regulations, shall adopt a consent agreement to be used by licensees pursuant to this subsection.

(p) A licensee shall not *contact the seller or landlord or* negotiate a sale, exchange or lease of real estate directly with a seller or landlord if the licensee knows that the seller or landlord has an agency agreement granting an exclusive right to sell or exclusive agency to another broker. A buyer's or tenant's agent or a subagent may present an offer to the seller or landlord if the seller's or landlord's agent is present.

Sec. 8. K.S.A. 2001 Supp. 58-3045 is hereby amended to read as follows: 58-3045. (a) Except for a temporary salesperson's license issued pursuant to subsection (f) of K.S.A. 58-3039, and amendments thereto, each license issued or renewed by the commission shall expire on a date determined in accordance with a schedule established by rules and regulations of the commission, which date shall be not more than two years from the date of issuance or renewal. Except as otherwise provided by this act, applicants for issuance or renewal of a license must satisfy all applicable requirements prior to issuance or renewal of the license.

(b) (1) Except for a temporary salesperson's license issued pursuant to subsection (f) of K.S.A. 58-3039, and amendments thereto, each license shall be renewable upon the filing of a renewal application on or before the renewal date, which is the last calendar day of the month preceding the license expiration date. Such application shall be made on a form provided by the commission and accompanied by (A) the renewal fee prescribed by K.S.A. 58-3063, and amendments thereto, and (B) evidence of compliance with the requirements of K.S.A. 58-3046a and amendments thereto or the licensee's license with the licensee's request that the license be deactivated on the renewal date pursuant to K.S.A. 58-3049, and amendments thereto.

(2) Failure to comply with paragraph (1) on or before the renewal date will automatically cancel the license on the license expiration date unless the license is renewed pursuant to subsection (c) prior to the expiration date.

~~(c) Any licensee who failed to comply with the requirements of subsection (b)(1), may have the licensee's license reinstated and renewed by the payment of the renewal fee prescribed by K.S.A. 58-3063, and amendments thereto, and a late fee of \$50, if such fees are remitted to the commission not later than six months following the expiration date of such license and accompanied by (1) an application for late renewal obtained from the commission, and (2) evidence of compliance with the requirements of K.S.A. 58-3046a and amendments thereto or a written request that the licensee's license be renewed on deactivated status pursuant to K.S.A. 58-3049 and amendments thereto.~~

(c) *The commission may reinstate and renew the license of a licensee who has failed to comply with the requirements of subsection (b)(1) if within six months following the date of the expiration of the license, the licensee submits to the commission an application for late renewal. Such application shall be made on a form provided by the commission and shall be signed by the licensee. Except for late renewal of a license on deactivated status pursuant to K.S.A. 58-3849, and amendments thereto, such application also shall be signed by the licensee's supervising broker or branch broker, if applicable. Such application shall be accompanied by (1) evidence of compliance with K.S.A. 58-3046a, and amendments thereto, or a written request that such license be renewed on deactivated status pursuant to K.S.A. 58-3849, and amendments thereto, and (2) payment of the renewal fee prescribed by K.S.A. 58-3063, and amendments thereto, plus a late fee of \$50.*

(d) An application for renewal filed in compliance with the requirements of subsection (b) shall entitle the applicant to continue operating under the applicant's existing license after its specified expiration date, unless such license has been suspended or revoked and has not been reinstated or unless such license is restricted, until such time as the commission determines whether the application fulfills such requirements.

Sec. 9. K.S.A. 58-3047 is hereby amended to read as follows: 58-

3047. (a) The commission shall issue a license as broker or salesperson to each applicant who is qualified under and complies with all provisions of this act and rules and regulations adopted hereunder. The form of license shall be prescribed by the commission.

(b) A salesperson's or associate broker's license shall be delivered or mailed to the supervising broker or branch broker, if applicable, and shall be kept in the custody and control of such broker until canceled or until the salesperson or associate broker leaves employment by or association with the broker.

(c) Immediately upon the termination of a salesperson or associate broker from employment by or association with a broker, the supervising broker or branch broker, if applicable, shall return such salesperson's or associate broker's license to the commission for cancellation. A license canceled but not suspended or revoked may be reinstated at any time during the period for which it was issued upon receipt of the fee for reinstatement prescribed by K.S.A. 58-3063 and amendments thereto and an application therefor ~~in a form prescribed by the commission~~. *Such application shall be made on a form provided by the commission and shall be signed by the licensee and the licensee's supervising broker or branch broker, if applicable.*

(d) Except as provided in subsection (e), upon a change in the name under which a broker is licensed or a change in the location of a broker's office, the broker shall, within 10 days, return to the commission, for cancellation and reinstatement under the new name or location of the broker, the broker's license, together with the reinstatement fee prescribed by K.S.A. 58-3063 and amendments thereto.

(e) Upon a change in the name under which a supervising broker is licensed or a change in the location of a supervising broker's office, the supervising broker shall, within 10 days, return to the commission together with the reinstatement fee prescribed by K.S.A. 58-3063 and amendments thereto, for cancellation and reinstatement under the new name or location of the supervising broker: (1) The license of the supervising broker; (2) the license of any other broker who is associated with the supervising broker and whose license requires reinstatement under the new name or location; and (3) the licenses of all salespersons and associate brokers employed by or associated with the supervising broker. Upon a change in the name under which a branch broker is licensed or a change in the location of a branch broker's office, the branch broker shall, within 10 days, return to the commission, for cancellation and reinstatement under the new name or location of the branch broker, the license of the branch broker and the licenses of all salespersons and associate brokers assigned to the branch office, together with the reinstatement fee prescribed by K.S.A. 58-3063 and amendments thereto. Upon a change in the broker designated as the branch broker or supervising broker of an office, the supervising broker shall, within 10 days, return to the commission, for cancellation, the licenses of the brokers who are affected by the change, together with the reinstatement fee prescribed by K.S.A. 58-3063 and amendments thereto.

(f) When any salesperson or associate broker is discharged for a violation of any of the provisions of this act, a certified written statement of the facts with reference thereto shall be filed forthwith with the commission by the supervising broker.

Sec. 10. K.S.A. 58-3043 and 58-3047 and K.S.A. 2001 Supp. 58-3036, 58-3037, 58-3039, 58-3042, 58-3045, 58-3050 and 58-30,103 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.