

MINUTES OF THE House COMMITTEE ON Federal & State Affairs

The meeting was called to order by Rep. Neal D. Whitaker, Chairman at
Chairperson

1:30 ~~am~~/p.m. on January 24, 1983 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

- Russ Mills, Legislative Research
- Chris Stanfield, Legislative Research
- Mary Torrence, Revisor of Statute's Office
- Nora Crouch, Committee Secretary

Conferees appearing before the committee:

- Paul Flower, Director, Kansas Real Estate Commission
- Ernie Mosher, Kansas League of Municipalities

Chairman Whitaker called the meeting to order and announced that two bill proposals were to be presented to the Committee for consideration of introduction.

Paul Flower, Director, Kansas Real Estate Commission, appeared explaining that some clean up amendments needed to be made to the current real estate statutes. He addressed 6 proposed changes (See Attachments A & B) and explained each change to the Committee.

Rep. Vancrum asked about the change on trust accounts being maintained in another state and would it still be possible to recover against the trust monies or would a filing action in another state have to be initiated in order to release those funds. Mr. Flower responded that their counsel did not see this as a problem. A question was posed to staff about incorporating all changes into one bill. Staff responded that this would be no problem.

Rep. Roe moved, Rep. Vancrum seconding, that the bill be introduced as a Committee bill. The motion passed.

Ernie Mosher, Kansas League of Municipalities, appeared regarding a bill to use current population figures in the distribution of tax monies. Originally the Board of Agriculture census that was made very year was used, however, in 1979, a bill changed this to provide that the annual state enumeration would be based on federal census data. He stated we have a fact situation where the total exceeds the sum of its parts which statistically you are not supposed to do. He further explained the share of the monies distributed throughout the system to cities and counties. The problem that now exists is that there are estimates as to county-wide population but no detail. (See Attachment C)

Rep. Hensley moved, Rep. Peterson seconding, that the bill be introduced as a Committee bill. The motion passed.

Chairman Whitaker informed the Committee that a copy of updated material on the Alcoholic Beverage Control Division had been furnished them for their information.

Rep. Barr moved, Rep. Eckert seconding, that the minutes of the January 12, 1983, meeting be approved. The motion passed.

The Chairman reminded Committee members that the meeting on Wednesday, January 26th was on HCR 5008.

Chairman Whitaker introduced Rep. Ardena Matlack, Ranking Minority Member, to the Committee.

The meeting adjourned.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 1-24-83

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
<i>Mark Stover</i>	<i>535 K. Rd 1212</i>	<i>K. R. E. Comm.</i>
<i>Jean Duncan</i>	<i>" "</i>	<i>" "</i>
<i>Tom Wilder</i>	<i>Topdra</i>	<i>KSL</i>
<i>Zammy Johnson</i>	<i>-</i>	<i>Intern</i>



January 19, 1983

Representative Neal Whitaker, Chairman
Federal and State Affairs House Committee
Room 115-S
Capitol Building

STATE OF KANSAS

**KANSAS
REAL ESTATE
COMMISSION**

PHONE: (913) 296-3411
Room 1212 535 Kansas
TOPEKA, KANSAS 66603

COMMISSIONERS:

PATRICK L. KEENAN, JR.
CHAIRPERSON

1ST CONGRESSIONAL DISTRICT
GREAT BEND

DORA I. "SUSIE" FARMER
VICE-CHAIRPERSON

2ND CONGRESSIONAL DISTRICT
TONCANOXIE

M. W. PERRY III

3RD CONGRESSIONAL DISTRICT
OVERLAND PARK

TERRY F. MESSING

4TH CONGRESSIONAL DISTRICT
HUTCHINSON

THERESA M. KARLESKINT

5TH CONGRESSIONAL DISTRICT
PARSONS

J. PAUL FLOWER
DIRECTOR

MEMBER:
NATIONAL
ASSOCIATION
OF
REAL ESTATE
LICENSE LAW
OFFICIALS

Dear Representative Whitaker:

Enclosed are some changes to the License Act which the Real Estate Commission would like to propose to your committee.

K.S.A. 58-3041

This is a substantial change in that it would allow a restricted license to be issued to a person who does not meet the experience requirements as currently outlined. However, the statute allows the commission considerable discretion in equivalent experience. It would also allow for a restricted license to be issued without the expense of a hearing.

K.S.A. 58-3045

This is merely a cross reference that did not get made at the time the statute was amended.

K.S.A. 58-4049

This also is merely a cross reference that did not get made at the time the statute was amended.

K.S.A. 58-3052

This changes the notice from 30 days to 20 days which would bring the License Act into harmony with the proposed Uniform Administrative Procedures Act.

This also would allow us to deliver notices to a residence address where there is no business address.

K.S.A. 58-3059

This asks that a court cannot grant a stay or suspension of a commission order without our being given notice of the hearing. This was part of the act prior to the codification of 1980. We are not asking that we tell the court of our position merely that we be a part of the hearing. At this time we are not even notified, only the respondent is present.

K.S.A. 58-3061

This would allow trust accounts in an adjoining state with written permission of the commission. This would be helpful to business. This also would allow some persons to be exempt from maintaining a trust account.

This also states in a positive manner what was formerly stated negatively in K.S.A. 58-3062 (c) (5) & (6).

Atch. A

Representative Whitaker

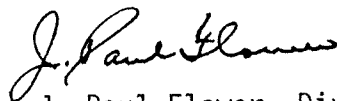
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January 19, 1983

page 3 of K.S.A. 58-3061 is suggested language for brokers to use in case the buyer and seller wish to state in the contract a method of determining when a contract is not consummated. This has always been a problem and in many cases the amount of money involved is not worth the cost of interpleading. We do not feel that this type of language should be left to each and every broker out in the field. They very likely may try to write too much into this section of the contract and void the entire contract. This language is compatible with that of the several of the larger boards that provide sample contracts to their members.

Any consideration that you may give this letter will be appreciated.

Respectfully yours,

A handwritten signature in cursive script that reads "J. Paul Flower".

J. Paul Flower, Director
Real Estate Commission

58-3041. RESTRICTED LICENSE. (a) The commission may at any time issue a restricted license to a person:

(1) Who is or has been licensed but who has been found by the commission after a hearing to have violated any provision of this act or rules and regulations adopted hereunder; or

(2) Who is applying for an original license under this act and has met the examination and ~~experience~~ *education* requirements but has been found by the commission after a hearing to have failed to make a satisfactory showing that he or she meets all other applicable requirements.

(b) A restricted license issued pursuant to this section may be restricted, as the commission determines advisable in the public interest, as follows:

(1) By term;

(2) To employment by or association with a particular broker as an independent contractor;

(3) To a particular type of transaction; or

(4) By other conditions deemed advisable by the commission, including the filing of a surety bond in such amount as may be required by the commission for the protection of persons with whom the licensee may deal.

(c) The holder of a restricted license shall not be entitled to automatic renewal of such license, such renewal being in the discretion of the commission.

Atch. B

58-3045. EXPIRATION OF LICENSE; RENEWAL. (a) 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 not be more than two (2) 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) Each license shall be renewable upon filing, prior to the expiration date of the license, of a renewed application. Such application shall be made on a form provided by the commission and accompanied by the required renewal fee and evidence of compliance with the requirements of K.S.A. 1980 Supp. 58-3046 *1982 Supp. 58-3046a*. In each case in which a license is issued or renewed for a period of other than one year, the commission shall compute to the nearest whole month the required fee, based on annual renewal fee provided for by K.S.A. 1980 Supp. 58-3063. Failure to remit the required fee when due will automatically cancel the license, except that any licensee who fails to pay the required renewal fee when due may have the licensee's license reinstated and renewed by the payment of the required renewal fee and a late fee of fifty dollars (\$50), if such fees are remitted to the commission not later than six months following the expiration date of such license.

(c) 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.

(d) If the commission determines that the applicant has not complied with the requirements for renewal of the applicant's license, it shall advise the applicant of an extended period for compliance under K.S.A. 1980 Supp. 58-3046 1982 Supp. 58-3046a or advise the applicant that the applicant's right to operate under the prior license will expire twenty-five (25) days from the date such notice is mailed or on the date the license would normally expire, whichever is later. The commission, in its discretion, may extend the expiration date whenever a hearing is requested.

K.S.A. 58-3049. DEACTIVATED LICENSE. (a) The license of a broker or salesperson may be deactivated upon request of such broker or salesperson and return of the license to the commission. Such license shall be held in the office of the commission for the period that it remains deactivated.

(b) A license which is deactivated and which is not suspended or revoked may be reinstated at any time during the period for which the license is issued and may be renewed upon application therefor and the payment of the renewal fee. Compliance with K.S.A. 1980 Supp. 58-3046 1982 Supp. 58-3046a is not required for renewal of a license which is deactivated.

(c) No license which is deactivated shall be reinstated without the applicant's compliance with the requirements of K.S.A. 1980 Supp. 58-3046 1982 Supp. 58-3046a for the immediately preceding license period and payment of the fee for reinstatement prescribed by K.S.A. 1980 Supp. 58-3063. Any license that has been deactivated for a continuous period of more than two (2) years shall be reinstated only if the licensee has met the examination requirement for an original applicant.

(d) A broker whose license is deactivated need not maintain the place of business required by K.S.A. 1980 Supp. 58-3060.

(e) A licensee whose license is deactivated shall not be entitled to act in any capacity for which a license is required until his or her license has been reinstated.

58-3052, HEARING ON COMPLAINT Except as otherwise provided in this act, the commission shall give a licensee a hearing before censuring the licensee or restricting, revoking or suspending the licensee's license. The hearing shall be held within one hundred twenty (120) days after receipt of a complaint, at a time and place prescribed by the commission, At least ~~thirty (30)~~ *twenty (20)* days prior to the date set for the hearing, the commission shall send notice of the hearing to the licensee by ~~registered~~ *certified* mail to the licensee's last known ~~business address~~ *business or residence address, whichever is applicable*. The notice shall contain a statement of the charges against the licensee and the date and place of the hearing. If the licensee is a salesperson or associate broker, the commission shall also notify the broker by whom the salesperson or associate broker is employed or with whom the salesperson or associate broker is associated by mailing a copy of the notice to the broker's last known business address. If the hearing is not held within one hundred twenty (120) days, the complaint shall be deemed dismissed with prejudice unless the matter has been continued by agreement of the licensee and the commission.

58-3059. SAME;STAY OF SUSPENSION OF COMMISSION ORDER. (a) The filing or pendency of a petition for review shall not in itself stay or suspend the operation of any order of the commission, but, during the pendency of a proceeding, the court in its discretion may stay or suspend such order in whole or in part.

(b) Any order of the court staying or suspending an order of the commission shall be based upon a specific finding by the court from the evidence presented that great and irreparable damage would result to the petitioner in the absence of such stay or suspension.

(c) No stay or suspension shall be ordered by the court except after at least ten (10) days notice to the director of the commission and after a hearing.

(d) No stay or suspension shall be entered until the petitioner has filed a bond with sufficient surety to be approved by the court in such reasonable sum as the court may deem necessary to adequately protect the interests of the public.

58-3061. TRUST ACCOUNTS; REQUIREMENTS AND EXEMPTIONS (a) *Unless exempt under subsection (h)*, each broker shall maintain, in the broker's name or the broker's firm name, a separate trust account in this state, *or in an adjoining state with written permission of the commission*, designated as such. ~~in which all~~ All down payments, earnest money deposits, advance listing fees or other trust funds received by the broker or by the broker's associate brokers or salespersons on behalf of a principal or any other person shall be deposited *in said trust account* unless all parties having an interest in the funds have agreed otherwise in writing. The account shall be with an insured bank or savings and loan association.

(b) Each broker shall notify the commission of the name of the bank or savings and loan association in which the trust account is maintained and of the account name.

(c) Each broker shall grant full access to all records pertaining to the broker's trust account to the commission and its duly authorized representatives. A trust account examination shall be made at such time as the commission may direct.

(d) A broker may maintain more than one trust account if the commission is advised of each such account as required in subsection (b) of this section and authorized to examine all such accounts in accordance with subsection (c) of this section.

(e) If a broker maintains a separate trust account for any office, the broker shall maintain a separate bookkeeping system in such office.

(f) A broker shall not be entitled to any part of the earnest money or other money paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated unless

otherwise agreed in writing by all parties to the transaction.

(g) A broker shall make available, for inspection by the commission and its duly authorized representatives, all records relating to the broker's real estate business. Such records shall be kept in a form and for a term prescribed by the commission. Any inspection shall be made at such time as the commission may direct.

(h) The requirement to maintain a trust account shall not apply to:

- (1) A broker whose license is on deactivated status;*
- (2) A broker who acts as an associate broker;*
- (3) A broker who is an officer of a corporation or a partner and who is not the supervising broker of an office of the corporation or partnership; or*

(4) A broker whose real estate activities, in the opinion of the commission, do not necessitate the holding of trust funds.

(i) Upon acceptance of an offer and deposit of earnest money in a broker's trust account, such deposit may be disbursed only:

- (1) Pursuant to written authorization of buyer and seller; or*
- (2) Pursuant to a court order; or*
- (3) When a transaction is closed according to its terms.*

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PROVIDED HOWEVER, nothing herein shall prohibit the parties to a real estate sales contract from agreeing, in the sales contract, to the following procedure:

"Notwithstanding other terms of this contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and Seller agree that failure by either to respond in writing to a certified letter from broker within 7 days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within thirty days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money deposit as suggested in any such certified letter or as demanded by the other party hereto."

58-3062. PROHIBITED ACTS. (a) No licensee shall:

(1) Intentionally use advertising that is misleading or inaccurate in any material particular or that in any way misrepresents any property, terms, values, policies or services of the business conducted, or uses the trade name, collective membership mark, service mark or logo of any organization owning such name, mark or logo without being authorized to do so.

(2) Fail to account for and remit any money which comes into the licensee's possession and which belongs to others.

(3) Comingle the money or other property of the licensee's principals with the licensee's own money or property, except that nothing herein shall prohibit a licensee from depositing in a trust account a sum not to exceed one hundred dollars (\$100) to pay expenses for the use and maintenance of such account.

(4) Accept, give or charge any rebate or undisclosed commission.

(5) Represent or attempt to represent a broker without the broker's express knowledge and consent.

(6) Act in a dual capacity of agent and undisclosed principal in any transaction.

(7) Guarantee or authorize any person to guarantee future profits that may result from the resale of real property.

(8) Place a sign on any property offering it for sale or lease without the written consent of the owner or the owner's authorized agent.

(9) Offer real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.

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(10) Induce any party to a contract of listing, sale or lease to break such contract.

(11) Negotiate a sale, exchange or lease of real estate directly with an owner or lessor if the licensee knows that such owner or lessor has, with regard to the property, a written outstanding contract granting an exclusive agency or an exclusive right to sell or lease to another broker.

(12) Offer or give prizes, gifts or gratuities which are contingent upon a client's listing, purchasing or leasing property.

(13) Fail to include a fixed date of expiration in any written listing agreement or fail to furnish a copy of the agreement to the principal within a reasonable time.

(14) Enter into a listing agreement on real property in which the broker's commission is based upon the difference between the gross sales price and the net proceeds to the owner.

(15) Fail to see that financial obligations and commitments regarding real estate are in writing, expressing the exact agreement of the parties or to provide copies thereof to all parties involved.

(16) Procure a signature to a purchase contract which has no definite purchase price, method of payment, description of property or method of determining the closing date.

(17) Fail to deliver within a reasonable time a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller.

(18) Engage in fraud or make any substantial misrepresentation.

(19) Act for more than one party in a transaction without the knowledge of all parties for whom the licensee acts.

(20) Represent to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

(21) Fail to make known to any purchaser any interest the licensee has in the property the licensee is selling or leasing.

(22) Fail to make clear to the party for whom the licensee is acting, or fail to divulge to all parties, any compensation arrangement with more than one party.

(23) Fail to inform both the buyer, at the time an offer is made, and the seller, at the time an offer is presented, that certain closing costs must be paid and the approximate amount of such costs.

(24) Fail without just cause to surrender any document or instrument to the rightful owner.

(25) Accept anything other than cash as earnest money unless that fact is communicated to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the earnest money receipt.

(26) Fail to deposit any check or cash received as an earnest money deposit within five (5) business days after the purchase agreement is signed by all parties, unless otherwise specifically provided by written agreement of all parties to the purchase agreement.

(27) Fail to respond to a request by the commission or the director to produce any document, book or record in the licensee's possession or under the licensee's control that concerns, directly or indirectly, any real estate transaction or the licensee's real estate business.

(28) Fail to submit a written bona fide offer to the seller when such offer is received prior to the seller's accepting an offer in writing and before the broker has knowledge of such acceptance.

(29) Refuse to appear or testify under oath at any hearing held by the commission.

(30) Demonstrate incompetency to act as a broker, associate broker or salesperson.

(31) Fail to disclose, or ascertain and disclose, to any person with whom the licensee is dealing, any material information which relates to the property with which the licensee is dealing and which such licensee knew or should have known.

(b) No salesperson or associate broker shall:

(1) Accept a commission or other valuable consideration from anyone other than the salesperson's or associate broker's employing broker or the broker with whom the salesperson or associate broker is associated.

(2) Fail to place, as soon after receipt as practicable, any deposit money or other funds entrusted to the salesperson or associate broker in the custody of the broker whom the salesperson or associate broker represents.

(c) No broker shall:

(1) Pay a commission or compensation to any person for performing the services of an associate broker or salesperson unless such person is licensed under this act and employed by or associated with the broker, except that nothing herein shall prohibit the payment of a referral fee to a person who is properly licensed as a broker or salesperson in another jurisdiction.

(2) Fail to deliver to the seller in every real estate transaction at the time the transaction is closed, a complete,

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detailed closing statement showing all of the receipts and disbursements handled by the broker for the seller, or fail to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, or fail to retain true copies of such statements in the broker's files, except that the furnishing of such statements to the seller and buyer by an escrow agent shall relieve the broker's responsibility to the seller and the buyer.

(3) Fail to properly supervise the activities of an associated or employed salesperson or associate broker.

(4) Lend the broker's license to a salesperson, or permit a salesperson to operate as a broker.

(5) Fail to return or release an earnest money deposit, except by court order or upon written agreement of the buyer and seller, when the transaction is terminated or consummated.

(6) After an offer has been accepted, disburse an earnest money deposit, except by court order or upon written agreement of the buyer and seller, when the transaction has not been terminated or consummated.

(7) (5) Fail to provide to the principal a written report every thirty (30) days, along with a final report, itemizing disbursements made by the broker from advance listing fees.

The purpose of this bill is to provide accurate information to county treasurers for the distribution of countywide retailers' sales tax collections. Under K.S.A. 1982 Supp. 12-192, one-half the revenue from a countywide sales tax is distributed based on population; the county general fund receives an amount based on the population outside cities; each city receives an amount based on its percentage share of the total county population.

The population information now certified by the division of the budget to the secretary of state does not provide consistent data for this purpose. For example, the report certified as of July 1, 1982 contained the Bureau of the Census July 1, 1981 provisional estimates for countywide figures, but contained the 1980 federal census figures (corrected) for cities--estimates for cities are not available. The division reports only countywide figures and city figures--not unincorporated areas. As a result, we have totals which exceed the sum of their parts if there is countywide growth, or parts exceeding the reported total if there is a countywide decrease. For example, Scott County (which has a countywide sales tax) has a reported population of 5,782 in 1980 and 5,877 in 1982, an increase of 95. The population of Scott City remained the same, at 4,154, in both reports. Further, the available information as to population of the unincorporated areas remained the same, since the countywide figures are not broken down since 1980 for cities and townships. Where is the money for the 95 people assigned?

This problem has resulted from the failure of the Bureau of the Census to provide updated census information for both cities and counties, as planned when we switched from the annual county enumeration. It is reported that budget cut-backs may prevent the Bureau from preparing such estimates in the future.

The bill would make certain that the population used by county treasurers is the most recent available for which a consistent date base is available. In other words, if updated city and county information is available in 1983 or later years, it will be used.

The reference to K.S.A. 1980 Supp. 11-203 in the first section of the bill has been stricken since this statute, by its terms, expired on July 1, 1982.

The other stricken line in Section 1 removes now obsolete material.

League of Kansas Municipalities
112 West Seventh Street
Topeka, Kansas 66603

Atch. C

_____ BILL No. _____

By _____

AN ACT relating to population figures; amending K.S.A. 1982 Supp. 11-201 and repealing the existing section.

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

Section 1. K.S.A. 1982 Supp. 11-201 is hereby amended to read as follows: 11-201. (a) Except as otherwise provided in ~~K.S.A. 1980 Supp. 11-203 and amendments thereto~~ subsection (b), the most recent population figures available from the United States Bureau of the Census as certified to the secretary of state by the division of the budget on July 1 of each year shall be used for all purposes in the application of the statutes of this state. ~~except that prior to July 1, 1981, in any county having a population of more than 160,000 and not more than 180,000, population figures and census of the state board of agriculture applicable to such county on June 30, 1979, shall be used for such purposes.~~ Whenever the use of the population figures or the census of the state board of agriculture is referred to or designated by a statute, such reference or designation shall be deemed to mean the population figures certified to the secretary of state pursuant to this section. The city and county population figures certified to the secretary of state pursuant to this section shall be distributed by the division of the budget to the cities and counties of the state and to such other governmental entities as the division deems appropriate and shall be made available by the division upon request of any other person.

The population figures certified to the secretary of state pursuant to this section shall be disposed of in accordance with K.S.A. 75-3501 et seq.

(b) The division of the budget shall, on July 1 of each year, distribute to the treasurer of each county a table showing the total population of the county, the total population of the county residing outside incorporated cities, and the population of each city therein, using the most recent information available from the Bureau of the Census which has a consistent date of actual or estimated enumeration for both cities and counties. The county treasurer shall use such report as the population base information for apportioning revenue from any countywide retailers' sales tax as required by K.S.A. 1982 Supp. 12-192.

Sec. 2. K.S.A. 1982 Supp. 11-201 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.