

Approved 1/24/84
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:00 a.m./~~noon~~ January 17, 19 84 in room 254-E of the Capitol.

All members were present ~~except~~

Committee staff present: Russell Mills, Legislative Research
Emalene Correll, Legislative Research
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee: Janet Stubbs, Homebuilders Association of Kansas
J. Paul Flower, Kansas Real Estate Commission

The Minutes of the meeting of January 11, 1984, were read and amended by deleting "for passage" in the third line from the bottom of the page.

The Chairman recognized Janet Stubbs who spoke for the Homebuilders Association of Kansas. She presented copies of their proposed amendments to the real estate license law. The amendments concern exemptions and prohibited acts and copies are attached to these Minutes. (Attachment #1) Senator Meyers moved the introduction of the proposed bill. 2d by Senator Francisco. Motion carried. The committee will introduce the legislation.

The Chairman introduced Paul Flower from the Real Estate Commission. Mr. Flower presented three packets for the perusal of the committee. Packet No. 1 concerns technical changes (Attachment #2); Packet No. 2 concerns conceptual changes that were sent out last year (Attachment #3); and Packet No. 3 concerns items the committee has not seen before (Attachment #4). Mr. Flower, when questioned, said that the Governor had vetoed the proposed legislation last year and that the item the Governor had found unacceptable had not been included in this proposed legislation. Senator Meyers moved that the three proposals be drafted into the appropriate proposed legislation. 2d by Senator Morris. Motion carried. The Chairman stated that it will be requested that the legislation be referred back to this committee for consideration.

The Chairman stated that he had asked Russell Mills to review for the committee additional items which are still before the committee. Mr. Mills briefed the committee on the following bills. There was some discussion.

SCR1611, by the Joint Committee on Rules and Regulations, concerning revoking certain rules and regulations of board of technical professions. Mr. Mills said this was designed primarily to attract the attention of the state board of technical professions, and to revoke the number of regulations. Some action has been taken by the board and Mr. Mills will check further.

SCR1615, by the Committee on Federal and State Affairs, concerning advertising limitations for alcoholic beverages. Relative to regulations of ABC about the price of alcoholic beverages.

SCR1640, by Special Committee on Corrections, concerning inmate furloughs, requesting detailed annual reports: Re: Proposal Nos. 12 and 13. This came out of the Interim Special Committee on Corrections and deals with reports that would be submitted annually by the Secretary of Corrections to county and district attorneys and members of the Legislature concerning furloughs granted inmates of state correctional institutions.

HCR5035, by Committee on Government Organization, modifying regulation of ABC director, deliveries by manufacturers and distributors. Rules and regulations modified to permit licensed retailers to order liquor from distributors after 2:00 p.m.

The meeting adjourned at 11:35 a.m.

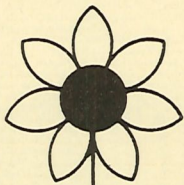
Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

1-17-84
Attachment #1

HOME BUILDERS ASSOCIATION

OF KANSAS, INC.

Executive Director
JANET J. STUBBS



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H.B.A. ASSOCIATIONS

- Central Kansas
- Dodge City
- Emporia
- Garden City
- Hutchinson
- Manhattan
- Montgomery County
- Pittsburg
- Salina
- Topeka
- Wichita

PAST PRESIDENTS

- Lee Haworth 1965 & 1970
- Warren Schmidt 1966
- Mel Clingan 1967
- Ken Murrow 1968
- Roger Harter 1969
- Dick Mika 1971-72
- Terry Messing 1973-74
- Denis C. Stewart 1975-76
- Jerry D. Andrews 1977
- R. Bradley Taylor 1978
- Joel M. Pollack 1979
- Richard H. Bassett 1980
- John W. McKay 1981
- Donald L. Tasker 1982
- Frank A. Stuckey 1983

PROPOSED AMENDMENTS:

58-3037. Exemptions. The provisions of this act shall not apply to:

(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 five percent (5%) of the stock of such corporation, or~~ the employees of such person, partnership or association.

58-3062. Prohibited Acts.

(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 a broker or employed by a person, partnership, association or domestic corporation engaged in construction of new homes. ~~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.



K.S.A. 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 be not 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 the filing, prior to the expiration date of the license, of a renewal 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 58-3046a and amendments thereto. 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. 1982 Supp. 58-3063 and amendments thereto. 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. ATTACHMENT 2 1-17-84

K.S.A. 58-3045 (continued)

(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 *58-3046a and amendments thereto* or advise the applicant that the applicant's right to operate under the prior license will expire ~~twenty-five (25)~~ 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 an application therefore and the payment of the renewal fee. Compliance with K.S.A. ~~1980 Supp. 58-3046~~ *58-3046a and amendments thereto* 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~~ *58-3046a and amendments thereto* for the immediately preceding license period and payment of the fee for reinstatement prescribed by K.S.A. ~~1982 Supp. 58-3063~~ *and amendments thereto* . 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. ~~1982 Supp. 58-3060~~ *and amendments thereto* .

(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~~ *such person's* license is reinstated.

K.S.A. 1982 Supp. 58-3041 is hereby amended to read as follows: 58-3041. (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.

K.S.A. 58-3044. Denial of license; hearing. (a) If the commission, after an application for a license or renewal of a license has been filed with the proper form, accompanied by the proper fee, shall refuse to issue or renew the license, it shall give notice of its refusal to the applicant within ten (10) days after its decision. The notice shall set forth the reasons for such refusal.

(b) Upon written request from the applicant filed within twenty (20) days after service of such notice on the applicant, the commission shall set the matter for a hearing in which the applicant or licensee shall receive an opportunity to refute the commission's reasons for refusing to issue or renew the license. The hearing shall be conducted within sixty (60) days after receipt of the applicant's request and shall be at such time and place as the commission shall prescribe. At least ~~thirty-(30)~~ ^{twenty (20)} days prior to the date set for the hearing, the commission shall send notice of the date and place of the hearing to the applicant or licensee by ~~registered~~ *certified* mail to the applicant's last known business *or residence* address, *whichever is applicable*.

(c) Notwithstanding anything herein to the contrary, an applicant for a license shall not be entitled to a hearing if the applicant's application is refused for failure to pass an examination.

K.S.A. 1982 Supp. 58-3052 is hereby amended to read as follows:
58-3052. 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}~~ 120 days after receipt of a complaint, at a time and place prescribed by the commission. At least ~~{30}~~ 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 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 associated 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}~~ 120 days, the complaint shall be deemed dismissed with prejudice unless the matter has been continued by agreement of the licensee and the commission.

K.S.A. 58-3061, Trust accounts; requirements. (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 the 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 in a real estate transaction by the broker or by the broker's associate brokers or salespersons on behalf of a principal or any other person shall be deposited or invested in such 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 or credit union which is insured with an insurer or guarantee corporation as required under K.S.A. 17-2246, and amendments thereto.*

(b) Each broker shall notify the commission of the name of the bank, credit union 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 of 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.*

(j) *Nothing in this section 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 30 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."

K.S.A. 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) commingle 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~~)\$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;

(10) induce any party to a contract of listing, sale or lease to break such a 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 dates;

(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 receipts;

(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 in response 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; or

(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; or

(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, 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

K.S.A. 58-3062 (continued)

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; or

(5) fail to return or release an earnest money deposit, except by court order or upon written agreement of the buyer and seller, when a 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.

K.S.A. 58-3037. Exemptions. The provisions of this act shall not apply to:

(a) Any ~~person~~ *individual* who directly performs any of the acts within the scope of this act with reference to such ~~person's~~ *individual's* own property.

(b) Any ~~person~~ *individual* who directly performs any of the acts within the scope of this act with reference to property that such ~~person~~ *individual* is authorized to transfer in any way by a power of attorney from the owner, provided that such ~~person~~ *individual* 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~~ *individual* 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 (c) of K.S.A. 1980-Supp. 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 five percent (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 five percent (5%) of the stock of such corporation.

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

K.S.A. 58-3050. Revocation, suspension or restriction of license, censure of licensee; grounds; complaint. (a) The license of any licensee may be revoked, suspended 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;
- (2) the licensee has been convicted of a felony or has entered a plea of guilty to a felony charge;
- (3) *the licensee has been convicted of or has entered a plea of guilty to a misdemeanor charge for acts which demonstrate a danger of physical harm to the public or are otherwise a threat to the public with whom the licensee will deal; or*
- ~~(3)~~ (4) the licensee has been finally adjudicated and found to be guilty of refusing to show, sell or lease any real estate to a qualified purchaser or lessee because of such purchaser's or lessee's race, color, religion, national origin, sex or ethnic group.

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

(c) Complaints may be initiated by any aggrieved person, by the director or by any member of the commission and may be upon information and belief. Any member of the commission initiating a complaint shall take no part in the commission's deliberations or vote on the matters stated herein.

(d) The complaint shall be verified and state the charges against the licensee with reasonable definiteness. The licensee may file an answer to the complaint setting forth any defenses that the licensee may have.

(e) The director shall have the authority to dismiss any complaint that, in the director's opinion after any necessary investigation, is frivolous or unsubstantiated. The commission, at its next regularly scheduled meeting, may reinstate any complaint so dismissed upon a vote of two (2) members. Any complaint not so reinstated shall be deemed dismissed with prejudice.

(f) A complaint shall be filed not more than one year after the occurrence complained of or one year after the conclusion of litigation involving the occurrence complained of, whichever is later, or if the charge involves fraud, misrepresentation or a false promise, the complaint shall be filed within one year after the date of discovery by the aggrieved party, except that in no case shall a complaint be filed later than five (5) years from the date of the occurrence which is the subject of the complaint.

K.S.A. 58-3056, Same; assessment of costs. The costs of any hearing before the commission may be assessed against the licensee or applicant if the order of the commission is adverse to the licensee or applicant or against the complainant, other than the director of the commission, if the order is adverse to the complainant. The commission may reduce any such assessment to judgement by filing a petition in the district court of Shawnee county. No license shall be reinstated, renewed or issued if any assessment for costs has not been paid by the holder of or applicant for such license. Costs shall include all items specified by K.S.A. 60-2003, as applicable, and expenses for audits, appraisals, survey- and title examinations :

- (1) *Statutory fees and mileage of witnesses attending a hearing or the taking of depositions used as evidence.*
- (2) *Reporter's or stenographic charges for the taking of depositions used as evidence and/or transcripts of the hearing.*
- (3) *Expenses for audits, appraisals, surveys and title examinations.*
- (4) *Such other charges as are by statute authorized to be taxed as costs, as specified by K.S.A. 60-2003 and amendments thereto.*

K.S.A. 58-3060. Broker's Office, requirements. Every licensed resident broker shall have and maintain a principal place of business in the state of Kansas, *or in an adjoining state with written permission of the Commission*, which shall serve as the broker's primary office for the transaction of business. Such office shall be the place at which the broker's license and those of salespersons and associate brokers employed by or associated with the broker are displayed. A broker shall give written notice to the director of any change in location of any office of the broker.