

Approved 2/4/86 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. ~~xxx~~ on January 29, 19<sup>86</sup> in room 254-E of the Capitol.

All members were present ~~except~~

Committee staff present:

J. Russell Mills, Legislative Research  
Emalene Correll, Legislative Research  
Mary Torrence, Assistant Revisor of Statutes  
June Windscheffel, Committee Secretary

Conferees appearing before the committee:

Colonel Bert Cantwell, Kansas Highway Patrol  
Karen McClain, Kansas Association of Realtors  
Gene Yockers, Kansas Real Estate Commission

Senator Arasmith moved that the Minutes of January 28, be approved as corrected. Seconded by Senator Morris. Motion carried.

The Chairman introduced Colonel Bert Cantwell, Superintendent of the Kansas Highway Patrol. Colonel Cantwell presented proposed legislation concerning the capitol area security patrol and their power of authority. Senator Morris moved that a bill be introduced. Seconded by Senator Vidricksen. Motion carried.

Colonel Cantwell said that in response to a 1985 audit of Patrol Staff resources by the Division of Legislative Post Audit, the Kansas Highway Patrol has developed a manpower allocation model which addresses various concerns. This report presents the Kansas Highway Patrol's recommended procedure for allocating field trooper positions to provide coverage to ensure reasonable protection on the interstate, U.S. and state highway systems. The Director said that the Highway Patrol needs a policy statement, and will appreciate help with one. It was the consensus of the Committee that the Chairman coordinate with Legislative Post Audit and Colonel Cantwell to arrange for a Committee meeting to discuss the matter. The Chairman will do so. Colonel Cantwell left a copy of the report with the Chairman.

Senator Reilly said that he had a request from Terry Stevens, of the Fraternal Order of Police, asking staff to draft a proposal that would permit the surviving children of any Kansas peace officer, who was slain while in the line of duty, to attend a Kansas college or university tuition free. Senator Daniels moved that the proposed legislation be introduced. Seconded by Senator Anderson. Motion carried.

The next conferee was Karen McClain of the Kansas Association of Realtors. She presented a proposed amendment to the Kansas Real Estate Brokers and Salesmen Act, a preamble. Senator Morris asked if they would consider adding: "independent of any other right or act pursuant to statute or common law." Ms. McClain will check with the Board's legal counsel and report back to the Committee. (Attachment 1)

Gene Yockers of the Kansas Real Estate Commission appeared with two requests for legislation. The proposal is for two separate bills, one dealing with the recovery fund sections and the other with amendments to the license act. (Attachments 2, 3 and 4) Senator Arasmith moved that the proposals be introduced. Seconded by Senator Martin. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,  
room 254-E, Statehouse, at 11:00 a.m. ~~p.m.~~ on January 29, 1986.

Senator Morris reported that the Liquor Law Review Committee met about six hours Monday, and it was confirmed by Representative Robert Miller that the House is not desiring to consider any legislation concerning alcoholic beverages unless something absolutely needs fixing. Senator Morris believes a bill has been introduced in the House which deals with some revisions to the "happy hour." The other issues will be put out to the various subcommittees to make certain they consider those items as they are reviewed in the subcommittee areas.

The meeting was adjourned.



Executive Offices:  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611  
Telephone 913/267-3610

PROPOSED AMENDMENT TO THE KANSAS REAL ESTATE BROKERS AND SALESMEN ACT

"NOTHING IN THIS ACT SHALL BE CONSTRUED TO GRANT TO ANY PERSON A PRIVATE RIGHT OF ACTION FOR DAMAGES OR TO ENFORCE THE PROVISIONS OF THIS ACT OR THE REGULATIONS ISSUED UNDER THIS ACT."

Sen. Fed. & State Affairs  
1/29/86 Attachment 1



# KANSAS ASSOCIATION OF REALTORS

Executive Offices.  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611  
Telephone 913 267-3610

August 26, 1985

Mr. Gerald L. Goodell  
Goodell, Stratton, Edmonds & Palmer  
Two Fifteen West Eighth Avenue  
Topeka, KS 66603

RE: Private Causes of Action  
Kansas Real Estate License Act

Dear Jerry:

The above captioned subject is and has been a problem to members of our Association, as well as all licensees. At present, as you are well aware, the terminology "knew or should have known" is one big problem. However, the leadership feels that to cure only that one problem, will allow similiar type problems to surface in other areas of the license law.

The leadership feels as you do, that the License Act was only intended to allow the Real Estate Commission to regulate the licensees and was not intended for private causes of action.

The Association has considered one of two thrusts to pursue in introducing an amendment to the License Act:

1. The purpose of this act is to provide the means for the State of Kansas to protect the public in real estate transactions within the state, ....and shall not be considered the basis for private causes of action.

or:

2. Introduce legislation similiar to that introduced by the Illinois Association of REALTORS®, which was passed into law:

SB 554, nothing in this act shall be construed to grant to any person a private right of action for damages or to enforce the provisions of this act or the regulations issued under this act.

The Association would appreciate your opinion. If this or a similiar type legislation should pass, would this give our members relief from the private causes we have witnessed in the past?

Sincerely,

James W. Mayer  
Executive Vice President

LAW OFFICES OF

**GOODELL, STRATTON, EDMONDS & PALMER**

TWO FIFTEEN EAST EIGHTH AVENUE

**TOPEKA, KANSAS 66603**

AREA CODE 913-233-0593

GERALD L. GOODELL  
WAYNE T. STRATTON  
ROBERT E. EDMONDS  
ARTHUR E. PALMER  
H. PHILIP ELWOOD  
HAROLD S. YOUNGENTOB  
CHARLES R. HAY  
PATRICK M. SALSBUURY  
MARLA J. LUCKERT

August 29, 1985

LES E. DIEHL  
JO E. JENKINS  
THOMAS L. BELL  
DAVID E. BRUNS

Mr. James W. Mayer  
Executive Vice President  
Kansas Association of REALTORS  
3644 SW Burlingame Road  
Topeka, Kansas 66611

Re: Kansas Real Estate Brokers and  
Salesmen Act, Private Cause of Action  
for Damages

Dear Jim:

This will acknowledge your letter of August 26, 1985, requesting my opinion as to whether or not the Association should seek legislation during the 1986 session of the Kansas legislature to prohibit anyone from maintaining a private cause based solely upon alleged violations of the Kansas Real Estate Brokers and Salesmen Act.

In Stevens v. Jayhawk Realty Co. 9 Kan. App. 2d 338 (affirmed by the Kansas Supreme Court in 236 Kan. 90), there is unfortunate language which could arguably impose a private cause of action based upon violation of the act. The precise issue is now before the Court of Appeals in Billy G. Johnson v. Geer Real Estate Company, Court of Appeals No. 84-57649-A.

I do not know whether or not the Court of Appeals will hand down its decision before commencement of the 1986 legislature. The decision may or may not be favorable in view of the language of the decision in Stevens v. Jayhawk Realty Co. I am concerned that the Court may reaffirm Stevens or simply ignore that issue since other issues were raised.

For this reason, I would recommend that the Kansas Association of REALTORS seek legislation amending the Kansas Real Estate Brokers and Salesmen Act to specifically provide that it does not form the basis of a private cause of action. The purpose of the act would be for the regulation of the real estate sales profession by a state board. Of the two suggestions, I would prefer Item 2. If you have any further questions, please let me know.

Very truly yours

  
Gerald L. Goodell

GLG:mph

1/29/86  
Attachment #2



January 29, 1986

Mr. Chairman and members of the Committee:

STATE OF KANSAS

**KANSAS  
REAL ESTATE  
COMMISSION**

PHONE: (913) 296-3411  
217 East Fourth  
TOPEKA, KANSAS 66603-3598

**COMMISSIONERS:**

- IGNATIUS "ICKIE" KISNER**  
1ST CONGRESSIONAL DISTRICT  
STAFFORD
- DORA I. "SUSIE" FARMER**  
2ND CONGRESSIONAL DISTRICT  
TONGANOXIE
- M. W. PERRY III**  
3RD CONGRESSIONAL DISTRICT  
OVERLAND PARK
- TERRY F. MESSING**  
CHAIRPERSON  
4TH CONGRESSIONAL DISTRICT  
HUTCHINSON
- THERESA M. KARLESKINT**  
VICE CHAIRPERSON  
5TH CONGRESSIONAL DISTRICT  
PARSONS
- GENE YOCKERS**  
DIRECTOR

My name is Gene Yockers, and I represent the Kansas Real Estate Commission. We are requesting introduction of two pieces of legislation.

#1, which is quite lengthy, amends the Kansas Real Estate Brokers' and Salespersons' License Act. In brief overview, we consider the major revisions to be the sections dealing with office and trust account requirements and prohibited acts. The balance of the proposal contains minor revisions and clean-up language, and defines terms that are referred to in the statute or regulations.

#2 amends the real estate recovery revolving fund sections. The recovery fund was originally established in 1974 by a separate act. We would like to have it introduced by a second bill.

The major changes are:

To provide for assessment any time the balance drops below \$100,000 instead of when the balance is below \$100,000 on July 1 of any year; and to provide for immediate assessment instead of at the next renewal date. Since we are now on two-year staggered licensing, it would take two years to collect the assessment from all licensees.

To provide for attorney fees of the claimant to be within the \$15,000 cap presently allowed per transaction; to provide for attorney fees incurred by the Commission in defending the fund to be paid from the recovery fund instead of the Commission's operating fund.

We would like to thank this Committee for your consideration in these matters.

MEMBER:  
NATIONAL  
ASSOCIATION  
OF  
REAL ESTATE  
LICENSE LAW  
OFFICIALS



1/29/86  
Attachment #3  
1

BOLD type is deleted language.  
UNDERLINED is new language.

58-3035. Definitions. As used in this act, unless the context otherwise requires:

(a) "Advance listing fee" means any fee charged for services and paid in advance of the rendering of such services, including **without limitation** any fees charged for listing, advertising, or offering for sale or lease any **property real estate**, but excluding any fees paid solely for advertisement in a newspaper of general circulation or for listing in a publication issued for the sole purpose of promoting the sale or lease of real estate wherein the advertising or listing directs inquiries directly to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish such information.

(b) "Associate broker" means an individual who has a broker's license and who is employed by another broker or is associated with another broker as an independent contractor and participates in any activity described in subsection (c) (e).

(c) "Branch broker" means an individual who has a broker's license and who has been designated to supervise a branch office and the activities of salespersons and associate brokers assigned to the branch office.

(d) "Branch office" means a place of business other than the principal place of business of a broker.

(c) (e) "Broker" means an individual, other than a salesperson, who advertises or represents that such individual engages in the business of buying, selling, exchanging or leasing real estate or who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owner, purchaser, lessor or lessee of real estate:

- (1) Sells, exchanges, purchases or leases real estate.
- (2) Offers to sell, exchange, purchase or lease real estate.
- (3) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase or leasing of real estate.
- (4) Lists or offers, attempts or agrees to list real estate for sale, lease or exchange.
- (5) Auctions or offers, attempts or agrees to auction real estate.
- (6) Buys, sells, offers to buy or sell or otherwise deals in options on real estate.
- (7) Advertises or represents that such individual engages in the business of buying, selling, exchanging or leasing real estate.
- (8) (7) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate.
- (9) (8) Assists in or directs the negotiation of any transaction calculated or intended to result in the sale, exchange or lease of real estate.

(10) (9) Engages in the business of charging an advance listing fee. in connection with any contract by which such individual undertakes to promote the sale or lease of real estate either through its listing in a publication issued for such purpose or for referral of information concerning such real estate to brokers, or both.

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(11) (10) Assists in or directs the procurement of or arrangement for mortgage financing on real estate while not acting in the capacity of a mortgagee or a mortgagee's agent who is authorized to make real estate loans under state or federal authority.

(12) (11) Provides lists of real estate as being available for sale, but excluding any lists provided for the sole purpose of promoting the sale of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who provide such lists.

(d) (f) "Commission" means the Kansas real estate commission.

(e) (g) "Lease" means rent or lease for nonresidential use.

(f) (h) "Licensee" means any person licensed under this act as a broker, associate broker or salesperson.

(g) (i) "Office" means a broker's place of business, where records may be maintained and licenses displayed, whether or not it is the broker's principal place of business.

(h) (j) "Person" means any individual or any foreign or domestic corporation, or partnership, or association.

(i) (k) "Real estate" means any interest or estate in land, including any leasehold or condominium, whether corporeal, incorporeal, freehold or non-freehold and whether the real estate is situated in this state or elsewhere, but does not include oil and gas leases, royalties and other mineral interests.

(j) (l) "Salesperson" means any an individual, other than an associate broker, who is employed by a broker or is associated with a broker as an independent contractor and participates in any activity described in subsection (c) (e).

(m) "Supervising broker" means an individual, other than a branch broker, who has a broker's license and who has been designated as the broker who is responsible for the supervision of an office and the activities of salespersons and associate brokers, all of whom are licensed pursuant to subsection (b) of K.S.A. 3042 and amendments thereto. "Supervising broker" also means a broker who operates a sole proprietorship and with whom associate brokers or salespersons are affiliated as employees or independent contractors.



58-3038. Licensure required to recover compensation. No action shall be instituted or recovery be had in any court of this state by any person for compensation for any act or service, the performance of which requires a license under this act, unless such person was duly licensed under this act at the time of offering to perform any such act or service or procuring any promise to contract for the payment of compensation for any such contemplated act or service: Provided, That this section shall not apply to partnerships, associations or corporations whose members, officers and employees are licensed as provided in K.S.A. 58-3042(b) and amendments thereto." Nothing herein shall preclude a person who is properly licensed as a broker or salesperson in another jurisdiction from collecting a referral fee.

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 the appropriate license fee.

(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), each applicant for an original license as a broker shall have been licensed and actively engaged in business as a salesperson, in this or another state, and actively engaged in any of the activities described in subsection (c) 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. The commission, in its discretion, may accept proof of experience deemed by the commission to be equivalent to two years' experience as salesperson 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. In addition to the other requirements of this section, on and after July 1, 1985, the provisions of K.S.A. 58-3046a and amendments thereto shall apply.

(d) 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, was 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.

(e) The commission, prior to granting an original license, shall require proof that the applicant has a good reputation for honesty, trustworthiness, integrity and competence to transact the business of broker or salesperson in such manner as to safeguard the public interest.

(f) 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.

58-3040. Nonresident license. (a) A nonresident of this state may be granted a broker's license if:

(1) The nonresident is licensed as a broker in the nonresident's state of residence; and

(2) Such nonresident meets all requirements imposed by this act on Kansas residents for licensure as a broker, except that the commission may waive the education requirements and the examination requirement for a nonresident who has received education equivalent to that required by Kansas, and has passed an examination equivalent to that given to Kansas residents and whose state of residence has entered into a reciprocal agreement with the commission as to the issuance of reciprocal licenses.

(b) A nonresident salesperson or associate broker employed by or associated with a broker licensed pursuant to this act may be granted a salesperson's or broker's license under such broker, if:

(1) The salesperson or associate broker is licensed as a salesperson or associate broker in the salesperson's or associate broker's state of residence; and

(2) Such salesperson or associate broker meets all requirements imposed by this act on Kansas residents for licensure as a salesperson or broker, except that the commission may waive the education requirements and the examination requirement for a nonresident salesperson or associate broker who has received education equivalent to that required by Kansas, and has passed an examination equivalent to that given to Kansas residents and whose state of residence has entered into a reciprocal agreement with the commission as to the issuance of reciprocal licenses.

(c) Prior to the issuance of a license to a nonresident, the applicant shall file with the commission a designation in writing that appoints the director of the commission as the applicant's agent, upon whom all judicial and other process or legal notices directed to the applicant may be served in the event such applicant becomes a licensee. Any process or legal notices to a nonresident licensee shall be directed to the director, accompanied by a fee of \$3, and, in the case of a summons, shall require the nonresident licensee to answer within 40 days from the date of service on such licensee. A summons and a certified copy of the petition shall be forthwith forwarded by the clerk of the court to the director, who shall immediately forward a copy of the summons and the certified copy of the petition to the nonresident licensee. Thereafter, the director shall make return of the summons to the court from which it was issued, showing the date of its receipt by the director, the date of forwarding and the name and address of the person to whom the director forwarded a copy. Such return shall have the same force and effect as a return made by the sheriff on process directed to the sheriff.

(d) Prior to the issuance of a license to a nonresident, the applicant must agree in writing to abide by all provisions of this act with respect to the applicant's real estate activities within the state and submit to the jurisdiction of the commission and the state in all matters relating thereto. Such agreement shall be filed with the commission and shall remain in force for so long as the nonresident is licensed by this state and thereafter with respect to acts or omissions committed while licensed as a nonresident.

(e) A nonresident licensed under this section shall be entitled to the same rights and subject to the same obligations as are provided in this act for Kansas residents, except that revocation or suspension of a nonresident's license in the nonresident's state of residence shall automatically cause the same revocation or suspension of such nonresident's license issued under this act. No hearing shall be granted to a nonresi-

58-3040 p. 2

dent licensee where license is subject to such automatic revocation or suspension except for the purpose of establishing the fact of revocation or suspension of the nonresident's license by the nonresident's state of residence.

58-3043. Considerations in granting license. (a) In determining whether to grant 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) entering a plea of guilty to, or any conviction of, forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any other similar offense or of a felony or a crime involving moral turpitude or to 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.

(b) (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.



58-3044. Denial of license; hearing. 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, refuses to issue or renew the license, it shall give notice to the applicant setting forth the reasons for such refusal. Such notice and an opportunity to be heard shall be given in accordance with the provisions of the Kansas administrative procedure act, unless the application for a license or renewal is denied solely because of the applicant's failure to pass a required examination.

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 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, on or before 30 days 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. 58-3046 58-3046a and amendments thereto. In each case where 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. 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 \$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. 58-3046, and amendments thereto, or advise the applicant that the applicant's right to operate under the prior license will expire 25 days from the date such notice is mailed or on the date the license would normally expire, whichever is later. The commission may extend the expiration date whenever a hearing is requested.

58-3046a. (a) Any person who applies for an original license in this state as a salesperson after July 1, 1982, shall submit, at the time of the original application, evidence, satisfactory to the commission, of attendance of a principles of real estate course, of not less than 30 hours of instruction, approved by the commission. The commission may require the evidence to be furnished to the commission with the original application for license, or it may require the applicant to furnish the evidence to the testing service designated by the commission as a prerequisite to taking the examination provided in K.S.A. 58-3039 and amendments thereto.

(b) Any person who applies for an original license in this state as a broker after July 1, 1985, shall submit, at the time of the original application, evidence, satisfactory to the commission, of attendance of 24 hours of instruction, approved by the commission and received within 12 months immediately preceding the filing of the application for broker's license. Such hours shall be in addition to any hours of instruction used to meet the requirements of subsection (c) or (d). The commission may require the evidence to be furnished to the commission with the original application for license, or it may require the applicant to furnish the evidence to the testing service designated by the commission as a prerequisite to taking the examination provided in K.S.A. 58-3039 and amendments thereto. If the evidence is furnished to the testing service, the instruction shall have been received within 12 months immediately preceding the date of the examination.

(c) Any person licensed in this state as a broker on or after July 1, 1982, and any person licensed in this state as a salesperson on or after July 1, 1982, and prior to July 1, 1988, shall submit evidence, satisfactory to the commission, of attendance of courses of instruction approved by the commission at or prior to each renewal date established by the commission as follows:

(1) For each license renewal prior to July 1, 1987, four hours of additional instruction received during any annual renewal period and eight hours of additional instruction received during any biennial renewal period. Such evidence shall not be required at the first license renewal of a salesperson whose original license expires less than six months after issuance.

(2) For each license renewal after July 1, 1987, six hours of additional instruction received during any annual renewal period and 12 hours of additional instruction received during any biennial renewal period. Such evidence shall not be required at the first license renewal of a salesperson whose original license expires less than six months after issuance.

(d) Any person who obtains an original license in this state as a salesperson after July 1, 1988, shall submit evidence, satisfactory to the commission, of attendance of courses of instruction approved by the commission at or prior to each renewal date established by the commission as follows:

(1) At or prior to the first license renewal, 30 hours of instruction received after the date of licensure. Such evidence shall not be required until the second license renewal if the original license expires less than six months after issuance.

(2) At or prior to the second license renewal, 20 hours of instruction received during the renewal period. Such evidence shall not be required until the third license renewal if the original license expires less than six months after issuance.

(3) At or prior to each license renewal thereafter, six hours of additional instruction received during any annual renewal period and 12 hours of additional instruction received during any biennial renewal period.

Hours required by subparts (1) and (2) of this subsection are based on an annual renewal period. If the first license renewal is biennial, 50 hours of instruction received during the renewal period shall be required. Such evidence shall not be required until the second license renewal if the original license expires less than six months after issuance. If the first license renewal is annual and the second license renewal is biennial, 26 hours of instruction received during the second renewal period shall be required. Such evidence shall not be required until the third license renewal if the original license expires less than six months after issuance.

Any salesperson who obtains a broker's license in this state prior to completing the 50 hours of instruction required by this subsection shall submit the same evidence to renew the broker's license that would have been required to renew the salesperson's license.

(e) Any person who accumulated hours of instruction which were reported to the commission by January 1, 1983, and are on record with the commission shall receive credit for those hours to apply toward requirements of subsection (c).

(f) The commission shall adopt rules and regulations to (1) prescribe minimum curricula and standards for all courses offered (1) to fulfill education requirements of this act, (2) to designate a course of study to fulfill any specific requirement, and (3) to prescribe minimum qualifications for and approve instructors of approved courses, and (4) to monitor courses and withdraw approval of courses and instructors.

(g) For the purpose of this section, one hour of instruction shall mean 50 minutes of classroom instruction or the equivalent thereof in correspondence study as determined by the commission.

(h) Courses of instruction required by this section shall be courses approved by the commission and offered by:

(1) An institution which qualifies as an eligible institution for the federal guaranteed loan program under the higher education act of 1965 (P.L. 89-329), as amended;

(2) an area vocational or vocational-technical school as defined by K.S.A. 72-4412 and amendments thereto;

(3) a proprietary school which has been issued a certificate of approval pursuant to the Kansa proprietary school act;

(4) the Kansas association of realtors, the national association of realtors or any affiliate thereof, the Kansas bar association, or the American bar association; or any trade or professional organization approved by the commission;

(5) any agency of the state of Kansas; or

(6) a similar institution, approved by the commission, in another state.

(i) The commission shall publish annually a list of educational institutions and entities and the courses offered by them in this state which are approved by the commission.

(j) No license shall be issued or renewed unless the applicable requirements set forth in this section are met within the time prescribed.

58-3047. Issuance of license; cancellation and reinstatement.

(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. 1980 Supp. 58-3063, and amendments thereto, and an application therefor in a form prescribed by the commission.

(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 ten 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. 1980 Supp. 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 ten days, return to the commission together with the reinstatement fee prescribed by K.S.A. 1980 Supp. 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 ten 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 branch broker, the license of the branch broker and the licenses of all salespersons and associate brokers assigned to the branch office. Upon a change in the designation of a branch broker or supervising broker of an office, the supervising broker shall, within ten 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.

58-3050. Revocation, suspension or restriction of license; censure of licensee. (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 entered a plea of guilty to, or has been convicted of, forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any other similar offense or a crime involving moral turpitude or any a felony charge; or has entered a plea of guilty to a felony charge; or

(3) 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) No complaint alleging violation of this act or rules and regulations adopted hereunder shall be commenced more than one year after the occurrence complained of, or if the charge involves fraud, misrepresentation or a false promise, more than one year after the date of discovery by the aggrieved party. In no case shall a complaint be commenced more than five years from the date of the occurrence which is the subject of the complaint.

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



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 judgment by filing a petition in the district court of Shawnee county. No license shall be reinstated, renewed or issued if an 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, surveys and title examinations.

(a) Statutory fees and mileage of witnesses attending a hearing or for the taking of depositions used as evidence;

(b) reporter's or stenographic charges for the taking of depositions used as evidence or for transcripts of the hearing;

(c) expenses for audits,, appraisals, surveys and title examinations; and

(d) such other charges authorized to be taxed as costs, as specified by K.S.A. 60-2003 and amendments thereto.

58-3060. Broker's office, requirements. (a) Every Each licensed resident broker shall have and maintain a principal place of business in the state of Kansas, or in an adjoining state with the written permission of the commission, which shall serve as such broker's primary office for the transaction of business. Each licensed nonresident broker shall have and maintain a principal place of business in the broker's state of residence or in the state of Kansas which shall serve as such broker's primary office for the transaction of business.

(b) A supervising broker shall be designated for each office which has more than one broker. Each additional office or place of business of a broker shall be designated a branch office and shall be supervised by a branch broker. 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.

(b) A branch broker's license and those of salespersons and associate brokers assigned to the branch office shall be displayed in the branch office. All other licenses of brokers, salespersons and associate brokers shall be displayed in the broker's primary office.

(c) A broker shall give written notice to the director of any change in location of any office of the broker, by returning licenses for cancellation and reinstatement under the new location as provided by K.S.A. 58-3047 and amendments thereto.

(d) The requirement to maintain an office provided by this section shall not apply to an associate broker, a broker whose license is on deactivated status, or to an officer of a corporation or member of a partnership or association who is not designated as the supervising broker of an office.

58-3061. Trust accounts; requirements. (a) Unless exempt under subsection (f), 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 down payments, earnest money deposits, advance listing fee 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 by 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. A broker shall not retain any interest accrued on monies held in an interest-bearing trust account without the written consent of all parties to the transaction.

(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 by completing a Consent to Audit form obtained from the commission. A broker may maintain more than one trust account if the commission is advised of each such account as required by this subsection and authorized to examine all such accounts. If a separate trust account is maintained for a branch office, the branch broker shall maintain trust account records required by rules and regulations of the commission and all transaction files related to the branch office trust account.

(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) and authorized to examine all such accounts in accordance with subsection (c).

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

(f) (d) No payments shall be made from the broker's trust account other than a withdrawal of earned commissions payable to the broker or distributions made on behalf of the beneficiaries of the trust account. 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) (e) 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 An inspection shall be made at such time as the commission may direct.

(f) The requirement to maintain a trust account shall not apply to a broker whose license is on deactivated status; a broker who acts as an associate broker; a broker who is an officer of a corporation or a member of an association or partnership and who is not the supervising broker of an office of the corporation, association or partnership; or a broker whose real estate activities, in the opinion of the commission, do not necessitate the holding of trust funds.

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(g) 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;

(2) pursuant to a court order; or

(3) when a transaction is closed according to the agreement of the parties.

(h) Nothing in this section shall prohibit the parties to a real estate contract from agreeing, in the sales contract, to the following procedure:

"Notwithstanding any 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 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 license'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.

(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) (12) 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) (13) 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) (14) Fail to see that financial obligations and commitments regarding real estate between the parties to an agreement to sell, exchange or lease real estate are in writing, expressing the exact agreement of the parties or to provide, within a reasonable time, copies thereof to all parties involved.

(16) (15) 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.



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

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

(20) (18) 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) (19) Fail to make known to any purchaser or lessee any interest the licensee has in the property real estate the licensee is selling or leasing or to make known to any seller or lessor any interest the licensee has in the real estate the licensee is purchasing or leasing.

(22) (20) 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) (21) 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) (22) Fail without just cause to surrender any document or instrument to the rightful owner.

(25) (23) 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 purchase agreement.

(26) (24) 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) (25) Fail in response 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) (26) 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) (27) Refuse to appear or testify under oath at any hearing held by the commission.

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

(31) (29) 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.

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(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, 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.



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58-3066. (a) The real estate recovery revolving fund established within the state treasury by K.S.A. 58-3023 is hereby continued in existence. Such fund shall be used in the manner and for the purpose provided by this act.

(b) If At any time the unencumbered balance remaining in the real estate recovery revolving fund on July 1 of any year is less than \$100,000, the director of accounts and reports, upon a duly executed order or voucher approved by the chairperson of the commission or by a person or persons designated by the chairperson, shall transfer such moneys from the real estate fee fund as are necessary to maintain the balance of the revolving fund at \$200,000, except that the chairperson of the commission or the person or persons designated by the chairperson to approve vouchers shall not cause to be transferred moneys from the real estate fee fund to the extent that the balance in such fee fund would be reduced to an amount less than the amount necessary to provide for the expenses of the operation and maintenance of the office of the commission and the enforcement of this act. Subsequent to any transfer under this section, each licensed broker who renews such broker's license for the next succeeding renewal period shall be assessed a fee of \$10, and each licensed salesperson who renews such salesperson's license for the next succeeding renewal period shall be assessed a fee of \$5. Such fees shall be in addition to the renewal fees provided for by K.S.A. 1980 Supp. 58-3063, and shall be deposited in the real estate fee fund pursuant to this act. each licensed broker shall be immediately assessed a fee of \$10, and each licensed salesperson shall be immediately assessed a fee of \$5. Such fees shall be deposited in the real estate recovery revolving fund. If a licensee does not pay the assessment within 30 days from the date notice of assessment is mailed to the last residence address reported to the commission by the licensee, the licensee's license shall be automatically suspended until the assessment is paid. A fee of \$15 shall be paid by the licensee to reinstate the suspended license. Fees paid to reinstate licenses suspended under this section shall be deposited in the real estate fee fund pursuant to this act.

(c) All payments and disbursements from the real estate recovery revolving fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the commission or by any person or persons designated by the commission. Amounts **transferred to deposited** in the real estate recovery revolving fund under this section shall not be subject to any limitation imposed by any appropriation act of the legislature. All payments and disbursements from the real estate recovery revolving fund shall be subject to post audit in accordance with article 11 of chapter 46 of the Kansas Statutes Annotated and any amendments thereto.

(d) The pooled money investment board may invest and reinvest the moneys in the real estate recovery revolving fund in (1) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, or (2) in interest bearing time deposits in any commercial bank or trust company located in Kansas, except that the amount so invested in any such bank or trust company shall not exceed an amount equal to the total capital and surplus of such bank or trust company and shall be secured in the manner prescribed by subsections (a) to (e), inclusive, of K.S.A. 75-4218, or (3) if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than 30 days' duration with a Kansas bank for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof, or (4) in shares or accounts in savings and loan associations insured by the federal savings and loan insurance corporation, or other federal agency, to the extent covered by such insurance. All moneys received as interest earned by the investment of the moneys in the real estate recovery revolving fund shall be credited to such fund.

58-3067. Payments from the real estate recovery revolving fund under the provisions of this act shall be subject to the following conditions and limitations:

(a) Payments shall be made only pursuant to an order of a court of competent jurisdiction, as provided in K.S.A. 1981 Supp. 58-3071, and amendments thereto, and in the manner prescribed by this act.

(b) Payments for claims arising out of the same transaction shall be limited in the aggregate to \$15,000, irrespective of the number of claimants or parcels of real estate involved in the transaction.

(c) Payments for claims based upon judgments against any one licensed broker or salesperson shall not exceed in the aggregate \$30,000 within any calendar year, but in no event shall payments for claims based upon judgments against any one licensed broker or salesperson exceed in the aggregate \$50,000.

(d) If, at any time, the moneys in the real estate recovery revolving fund are insufficient to satisfy any valid claim, or portion thereof, the director of the commission shall satisfy such unpaid claim or portion thereof, as soon as a sufficient amount of money has been transferred to deposited in the fund as provided in subsection (b) of K.S.A. 1981 Supp. 58-3066 and amendments thereto. Where there is more than one such claim outstanding, such claims shall be paid in the order that they were made. Any such unsatisfied claim, or portion thereof, shall accrue interest at the rate of 4% per annum.



58-3068. (a) Moneys in the real estate recovery revolving fund shall be used in the manner provided by this act to reimburse persons who suffer monetary damages by reason of any of the following acts committed in connection with any transaction involving the sale of real estate in this state by any broker or salesperson who was licensed under the laws of this state at the time the act was committed or by any unlicensed employee of such broker or salesperson:

(1) Violation of any one of the following provisions of this act; or act:

(A) K.S.A. 58-3061 and amendments thereto;

(B) K.S.A. 58-3062(a)(2), (3), (18), (25), and (26) and amendments thereto; or

(C) K.S.A. 58-3062(b)(2) and amendments thereto; or

(2) Obtaining money or property by any act which would constitute any crime defined by K.S.A. 21-3705, 21-3706, 21-3707, 21-3710, 21-3711 or 21-3712 or K.S.A. 1980 Supp. 21-3701 or 21-3704, or any amendments thereto.

(b) Any person may seek recovery from the real estate recovery revolving fund under the following conditions:

(1) Such person has received final judgment in a court of competent jurisdiction of this state in any action wherein the cause of action was based on any of the acts described in subsection (a);

(2) The act for which recovery is sought occurred not more than two years prior to making such claim; Such claim is made within two years from the date of the final judgment;

(3) Such person has caused to be issued a writ of execution upon such judgment, and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(4) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, subject to being sold or applied in satisfaction of the judgment, and by such search such person has discovered no such property or assets, or that such person has discovered such property and assets and that such person has taken all necessary action and proceedings for the application thereof to the judgment and that the amount thereby realized was insufficient to satisfy the judgment;

(5) Any amounts recovered by such person from the judgment debtor, or from any other sources, has been applied to the damages awarded by the court; and

(6) Such person is not a person who is precluded by subsection (c) from making a claim for recovery.

(c) A person shall not be qualified to make a claim for recovery from the real estate recovery revolving fund, if:

(1) The person is the spouse of the judgment debtor or a personal representative of such spouse;

(2) The person is a licensed broker or salesperson, or a partnership, association or corporation whose members, officers and employees are licensed as provided in K.S.A. 58-3042(b) and amendments thereto, who acted as principal or agent in the real estate transaction which is the subject of the claim; or



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(3) Such person's claim is based upon a real estate transaction in which the licensed broker or salesperson was acting on the broker's or salesperson's own behalf with respect to property owned or controlled by such broker or salesperson.

(d) Any licensed broker or salesperson, who committed the act or acts, or who was the employer of an unlicensed employee who committed the act or acts, upon which a cause of action for recovery from the real estate recovery revolving fund is based, shall give notice at the time the action is commenced to the director of the commission by restricted mail, as defined by K.S.A. 60-103.

58-3069. (a) Any person who meets all of the conditions prescribed by subsection (b) of K.S.A. 1981 Supp. 58-3068, and amendments thereto, except where the court finds compliance not reasonable or practicable pursuant to subsection (b) of this section, may apply to the court in which the judgment was rendered for an order directing the real estate commission to cause payment to be made to such person from the real estate recovery revolving fund. At the time the application is made, the court shall cause notice thereof to be given to the director of the commission, stating the time set by the court for a hearing thereon, which shall not be less than 10 nor more than 30 days after the application is filed.

(b) At the hearing, the claimant shall appear and present such proof and evidence as the court may require to establish the claimant's right to recovery from the real estate recovery revolving fund, and the director of the commission may appear, in person or by counsel, and present evidence or testimony with respect thereto. Upon the hearing, the court may enter an order directing the director of the commission to cause payment to be made to the claimant from the real estate recovery revolving fund if the court determines that:

(1) The claimant meets all of the conditions prescribed by subsection (b) of K.S.A. 1981 Supp. 58-3068, and amendments thereto; or

(2) Compliance with paragraph (4), (5) or (6) of subsection (b) of K.S.A. 1981 Supp. 58-3068, and amendments thereto, is not reasonable or practicable and the claimant is otherwise qualified and has pursued all reasonable means to collect the amount of the judgment or the unsatisfied portion thereof.

(c) The recovery allowed a claimant hereunder shall be in an amount equal to the unsatisfied portion of the judgment or \$15,000, whichever is less. The recovery shall be limited to the amount of the judgment reflecting actual or compensatory damages. In addition to the amount of any recovery allowed a claimant under this subsection, the court may also allow such claimant to recover from the fund the amount of any reasonable attorney's fees incurred by the claimant in effecting such recovery: Provided, That the recovery allowed a claimant hereunder for the amount of the judgment and attorney's fees shall not exceed \$15,000.

58-3070. When the director of the commission receives notice of any action or hearing, as provided in K.S.A. 1981 Supp. 58-3068 and 58-3069, and amendments thereto, the director may intervene, enter an appearance, file an answer, defend the action or take whatever other action the director deems appropriate on the behalf and in the name of the defendant, and take recourse through any appropriate method of review on behalf of, and in the name of, the defendant. All fees and expenses of counsel hired by the commission for the performance of such duties for the commission shall be paid out of the real estate recovery revolving fund.

74-4206. The attorney general shall render opinions to the commission on all questions of law relating to the interpretation of this act or arising in the administration thereof, and shall act as attorney for the commission in all actions and proceedings brought by or against the commission under or pursuant to any of the provisions of this act. The commission may hire independent counsel when the commission deems appropriate. Except as provided by K.S.A. 58-3070, and amendments thereto, all fees and expenses of such independent counsel arising out of the performance of duties for the commission shall be paid out of the real estate fee fund.

58-3072. Upon the payment of any amount from the real estate recovery revolving fund in settlement of a claim in satisfaction of a judgment against a licensed broker or salesperson, the license of such broker or salesperson shall be automatically revoked. No such broker or salesperson shall be eligible to receive a new license until the broker or salesperson has repaid in full, plus interest at the rate of six percent (6%) a year, judgment rate of interest provided by K.S.A. 16-204, and amendments thereto, the amount paid from the real estate recovery revolving fund on such broker's or salesperson's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

58-3074. (a) Except as provided by subsection (b), the director of the commission shall remit all moneys received by or for the director from fees, charges or penalties to the state treasurer at least monthly. Upon receipt thereof the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the real estate fee fund established by the former K.S.A. 58-3014, which fund is hereby continued in existence. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director or by a person or persons designated by the director.

(b) The director of the commission shall remit to the state treasurer at least monthly all moneys received by or for the director pursuant to K.S.A. 1981 Supp. 58-3066 to 58-3072, and amendments thereto, inclusive. Upon receipt thereof, and except for fees paid to reinstate licenses suspended under subsection (b) of 58-3066, and amendments thereto, and except as provided by subsection (d) of K.S.A. 1981 Supp. 58-3066, and amendments thereto, the state treasurer shall deposit the entire amount in the state treasury and credit the same to the real estate fee fund real estate recovery revolving fund.