

Approved 1-17-89
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

11:10 a.m./~~p.m.~~ on January 11, 1989 in room 254-E of the Capitol.

All members were present ~~except~~:

Committee staff present:

Mary Galligan, Legislative Research
Marty Robison, Committee Secretary

Conferees appearing before the committee:

Chairman Reilly welcomed the committee members back for the year and introduced the new members to the committee. Committee members were reminded that this committee has no deadline for introduction of bills. An overview of the anticipated issues was reviewed by the chairman.

Chairman Reilly presented members a copy of a proposal from the Real Estate Commission dealing with amendments to the Kansas real estate brokers' and salespersons' license act (Attachment 1). Senator Bond moved the committee introduce the proposal. The motion was seconded by Senator Morris and passed.

The meeting was adjourned at 11:36 a.m.

12-20-88 draft - proposed amendments to Kansas real estate brokers' and salespersons' license act

Agency disclosure

Section 1(b) - defines agency agreement (written agreement)

Section 3(a) sets out the disclosure that is required:

- (14) when licensee acts as agent of seller or lessor
- (15) when licensee acts as agent of buyer or lessee
- (16) when licensee represents both buyer and seller or both lessor and lessee

Also related to agency: 3(a)(10), (11), (12), (13), (17)
3(b) and 3(c)

Other Amendments

Section 1

(f)(5) - to clarify that "ringmen" at real estate auctions need to be licensed.

Section 2

to delete the requirement for annual publication of names and addresses of licensees

- since the change from annual to two-year renewals (staggered every two months), a publication is immediately out-of-date
- statute prohibits use of names and addresses for certain purposes
- a computer print-out publication once a year is of no value

Section 3(a)(4) prohibits a Kansas licensee from paying a rebate. The purpose of the amendment is to prohibit participation in plans through which the Kansas licensee would pay a referral fee to a broker licensed in another jurisdiction, who in turn pays a rebate to the principals.

SF-SA
1-11-89

Attachment 1

Section 1. K.S.A. 1988 Supp. 58-3035 is hereby amended to read as follows: 58-3035. As used in this act, unless the context otherwise requires:

(a) "Advance listing fee" means any fee charged for services related to promoting the sale or lease of real estate and paid in advance of the rendering of such services, including any fees charged for listing, advertising or offering for sale or lease any real estate, but excluding any fees paid solely for advertisement or for listing in a publication issued for the sole purpose of promoting the sale or lease 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 publish the listing.

(b) "Agency agreement" means a written agreement between the principal and the licensee setting forth the terms and conditions of the relationship.

(c) "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 (e) (f):

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

~~(e)~~ (f) "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 or assists an auctioneer by procuring bids at a real estate auction.

(6) Buys, sells, offers to buy or sell or otherwise deals in options on real estate.

(7) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate.

(8) Assists in or directs the negotiation of any transaction calculated or intended to result in the sale, exchange or lease of real estate.

(9) Engages in the business of charging an advance listing fee.

(10) Provides lists of real estate as being available for sale or lease, other than lists provided for the sole purpose of promoting the sale or lease 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 publish the list.

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

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

~~(h)~~ (i) "Licensee" means any person licensed under this act as a broker or salesperson.

~~(i)~~ (j) "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.

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

{k} (l) "Real estate" means any interest or estate in land, including any leasehold or condominium, whether corporeal, incorporeal, freehold or nonfreehold 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.

{l} (m) "Salesperson" means 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 {e} (f).

{m} (n) "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 the primary office of a broker and the activities of salespersons and associate brokers who are assigned to such office and all of whom are licensed pursuant to subsection (b) of K.S.A. 58-3042 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.

Sec. 2. K.S.A. 58-3048 is hereby amended to read as follows: 58-3048. (a) The commission may publish periodically ~~shall publish at least annually~~ a list of the names and addresses of all persons licensed under the provisions of this act. ~~together with such other information relative to the enforcement of the provisions of this act as it may deem of interest to the public.~~ The commission may publish information concerning disciplinary actions, and other information relative to the enforcement of the provisions of this act, and may send such information for publication in newspapers and trade journals and to broadcast media.

(b) The commission may conduct, hold or assist in conducting or holding real estate courses or institutes, and incur and pay the necessary expenses incurred thereby, which courses or

institutes shall be open to any licensee without any charge or fee therefor.

(c) The commission may assist real estate institutes and foundations, with financial aid or otherwise, in sponsoring studies, surveys and programs for the benefit of real estate licensees, and the elevation of the real estate business.

(d) The commission shall publicize (1) the existence of the real estate recovery revolving fund and the availability of recovery therefrom; (2) the acts for which recovery may be allowed; and (3) information regarding the filing of claims for payments, including the conditions and limitations to which the filing of claims and recovery are subject under the provisions of the real estate brokers' and salespersons' license act.

Sec. 3. K.S.A. 1988 Supp. 58-3062 is hereby amended to read as follows: 58-3062. (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 \$100 to pay expenses for the use and maintenance of such account.

(4) Accept, give or charge any rebate or undisclosed commission or pay a referral fee to a person who is properly licensed as a broker or salesperson in another jurisdiction or who holds a corporate real estate license in another jurisdiction if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the out-of-state licensee.

(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 break any agency agreement or contract of sale or lease ~~a contract of listing, sale or lease to break such contract.~~

(11) Solicit a listing or 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~~ agency agreement granting an ~~exclusive agency or an~~ exclusive right to sell or lease to another broker.

(12) Solicit an agency agreement or negotiate a sale, exchange or lease of real estate directly with a buyer or lessee if the licensee knows that such buyer or lessee has a written agency agreement granting exclusive representation to another broker.

(13) Fail to ~~include a fixed date of expiration in any written listing agreement~~ obtain a written agency agreement, including a fixed date of expiration, signed by the party to be represented and by the licensee or fail to furnish a copy of the agreement to the principal within a reasonable time.

(14) If the licensee represents the seller or lessor, fail to disclose to a prospective buyer or lessee that: ..

(A) the licensee is or will be acting as agent of the seller or lessor with the duty to represent the seller's or lessor's interest;

(B) the licensee will not be the agent of the prospective buyer or lessee; and

(C) information given to the licensee will be disclosed to the seller or lessor.

The disclosure set forth herein shall be made orally or in writing when the licensee agrees to assist the prospective buyer or lessee to locate and inspect property and shall be made in any contract for sale or lease.

(15) If the licensee represents the buyer or lessee, fail to disclose to a prospective seller or seller's agent, or lessor or lessor's agent, that:

(A) the licensee is or will be acting as agent of the buyer or lessee with the duty to represent the buyer's or lessee's interest;

(B) the licensee will not be the agent of the seller or lessor; and

(C) information given to the licensee will be disclosed to the buyer or lessee.

The disclosure set forth herein shall be made orally or in writing no later than the first showing of the property and shall be made in any contract for sale or lease.

~~(18)~~ (16) Act-for-more-than-one-party-in-a-transaction without-the-knowledge-of-all-parties-for-whom-the-licensee-acts.
If the licensee represents both the buyer and seller or both the lessor and lessee, the licensee shall immediately disclose in writing (A) that the licensee is acting as agent for both buyer and seller or for both lessor and lessee; and (B) the compensation arrangement. The disclosure shall be signed by both the buyer and the seller or both the lessor and lessee. In addition, the disclosure of the agency relationship between all licensees involved and the principals shall be included in any contract for sale or lease.

~~(12)~~ (17) Offer or give prizes, gifts or gratuities which are contingent upon ~~a-client's~~ the listing, purchasing or leasing real estate.

~~(14)~~ (18) 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)~~- (19) Fail to see that financial obligations and commitments 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)~~- (20) Procure a signature to a purchase contract which has no definite purchase price, method of payment, description of property or method of determining the closing date.

~~(17)~~ (21) Engage in fraud or make any substantial misrepresentation.

~~(19)~~- (22) 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.

~~(20)~~ (23) Fail to make known to any purchaser or lessee any interest the licensee has in the real estate the licensee is selling or leasing or to make known to any seller or lessor any interest the licensee will have in the real estate the licensee is purchasing or leasing.

~~(21)~~-~~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.~~

~~(22)~~- (24) 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.

~~(23)~~- (25) Fail without just cause to surrender any document or instrument to the rightful owner.

~~(24)~~- (26) 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 purchase agreement.

~~(25)~~ (27) Fail to deposit any check or cash received as an earnest money deposit within five 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.

~~(26)~~- (28) 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.

~~(27)~~ (29) Fail to submit a written bona fide offer to the ~~seller~~ licensee's principal when such offer is received prior to the ~~seller's~~ principal's accepting an offer in writing and before the ~~broker~~ licensee has knowledge of such acceptance.

~~(28)~~- (30) Refuse to appear or testify under oath at any hearing held by the commission.

~~(29)~~ (31) Demonstrate incompetency to act as a broker, associate broker or salesperson.

~~(30)~~- (32) 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) Failure to comply with any requirement of subsection (a)(13), (14), (15) or (16) or their corollary regulations shall not, by itself, render any agreement void or voidable, nor shall it constitute a defense to any action to enforce such agreement or any action for breach of such agreement.

(c) The commission may, by regulation, provide suggested forms of agency disclosure and agency agreements and such other prohibitions, limitations and conditions relating thereto as the commission may prescribe.

~~(b)~~- (d) 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.

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