

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on January 25, 2006 in Room 241-N of the Capitol.

All members were present except:

Patricia Kilpatrick- excused

Scott Schwab- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department

Norm Furse, Office of Revisor of Statutes

Renae Jefferies, Office of Revisor of Statutes

June Evans, Committee Secretary

Conferees appearing before the committee:

Sherry C. Diel, Executive Director, Kansas Real Estate Commission

Others attending:

See attached list.

The Chairman announced that Friday, January 27's meeting had been cancelled.

The Chairman opened the hearing on **SB 269 - Real Estate brokers and salespersons; escrow account requirements; prohibited acts; rebates.**

Staff gave a briefing on **SB 269** stating that the bill was carried over from the 2005 session. There are some technical changes; the date of 2004 needs to be changed to 2005 wherever it appears in the bill. Another technical amendment is that K.S.A. Supp. 58-3062 was amended into another bill last year. Section 2 has been deleted.

Sherry C. Diel, Executive Director, Kansas Real Estate Commission, testified as a proponent to **SB 269** with requested amendments: (1) a \$50 late fee would be added to K.S.A. 58-3039(f)(2) when an application to convert a temporary salesperson's license to a standard salesperson's license is filed subsequent to the expiration date of the temporary license; (2) permit escrow funds derived from a broker cooperation agreement to either be held in the Kansas broker's trust account or by a third-party escrow agent located in Kansas; (3) address an alleged ambiguity in the wording of the statute to clarify that a licensee engaged as a transaction broker shall not act as an agent for either party in the real estate transaction; (4) a salesperson or associate broker must notify their supervising broker or branch broker of any licensed activities that they are performing and any licensed activities conducted by the affiliated licensee must be performed under the general supervision of the supervising broker or branch broker (Attachment 1).

Written testimony in support of **SB 269** was provided by Bill Yanek, KAR Director of Government Relations, Kansas Association of Realtors (Attachment 2).

The meeting adjourned at 9:20 a.m. The next meeting will be January 26, 2006.



KANSAS

KANSAS REAL ESTATE COMMISSION
SHERRY C. DIEL, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Memo To: Chairperson Dahl and Members of the Commerce & Labor Committee
From: Sherry C. Diel, Executive Director, Kansas Real Estate Commission
RE: SB 269
Date: January 25, 2006

SB 269 contains three proposed amendments to the Kansas Real Estate Brokers' and Salespersons' License Act, K.S.A. 58-3034 *et seq.*, and the Kansas Brokerage Relationships in Real Estate Transactions Act, K.S.A. 58-30,101 *et seq.*

I have also attached a balloon amendment that is technical in nature and would correct an error that occurred during the 2004 Session that was recently discovered.

The proposed amendments are as follows:

- A \$50 late fee would be added to K.S.A. 58-3039(f)(2) when an application to convert a temporary salesperson's license to a standard salesperson's license is filed subsequent to the expiration date of the temporary license. A temporary license is issued for six months during which time the new salesperson must complete a 30-hour post-license course. Existing law provides a three-month grace period after the expiration date of the temporary salesperson's license to file an application for late conversion of the license to a standard salesperson's license, but no penalty is imposed when the application is filed late. The Commission estimates that 10% of the applications to convert a temporary salesperson license to a standard salesperson license are filed late.
- K.S.A. 58-3077 was passed during the 2004 Session. The statute permits a Kansas-licensed supervising or branch broker to enter into a broker cooperation agreement with a foreign licensee who is not licensed in Kansas to perform real estate activities in a commercial real estate transaction. Existing law requires escrow monies derived from a commercial co-brokerage relationship to be held in the Kansas broker's trust account. The Commission understands that very few commercial brokers maintain trust accounts. The proposed amendment to K.S.A. 58-3077(b)(2) would permit escrow funds derived from a broker cooperation agreement to either be held in the Kansas broker's trust account or by a third-party escrow agent located in Kansas.
- The proposed amendment to K.S.A. 58-30,113(a) would address an alleged ambiguity in the wording of the statute to clarify that a licensee engaged as a

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transaction broker shall not act as an agent for either party in the real estate transaction. A transaction broker is supposed to remain neutral in the transaction without advocating for the interest of one party over the other. A licensee functioning as a transaction broker is merely a facilitator in the transaction. The current version of the law states that a transaction broker *is not* an agent of either party. In late 2004, the Commission received an adverse decision in a Shawnee County District Court case in which the judge ruled that it is an inherent conflict of interest for a licensee who is the buyer or seller in the transaction to act as a transaction broker. However, the judge also determined that the current version of K.S.A. 58-30,113(a) is just a statement of fact as opposed to being prohibitory in nature.

- The technical balloon for K.S.A. 58-3062(b)(5) adds language that was mistakenly omitted when 2004 SB 404 and 534, which both amended K.S.A. 58-3062, were combined into HB 2949 at the end of the 2004 Session. The intention is that a salesperson or associate broker must notify their supervising broker or branch broker of any licensed activities that they are performing and any licensed activities conducted by the affiliated licensee must be performed under the general supervision of the supervising broker or branch broker.

Thank you for your consideration of our request, and I would be happy to address any questions from the Committee.

Attachment: Balloon amendment for K.S.A. 58-3062(b)(5)

1 as an independent contractor.

2 (A) A salesperson or associate broker may accept a commission or
3 other valuable consideration from a licensee who employs the salesperson
4 or associate broker as a personal assistant provided that: (i) the licensee
5 and the salesperson or associate broker who is employed as a personal
6 assistant are licensed under the supervision of the same broker, and (ii)
7 the supervising broker agrees in writing that the personal assistant may
8 be paid by the licensee.

9 (B) If a salesperson or associate broker has (i) organized as a profes-
10 sional corporation pursuant to K.S.A. 17-2706 *et seq.*, and amendments
11 thereto, (ii) incorporated under the Kansas general corporation code con-
12 tained in K.S.A. 17-6001 *et seq.*, and amendments thereto, (iii) organized
13 under the Kansas limited liability company act contained in K.S.A. 2004
14 Supp. 17-7662 *et seq.*, and amendments thereto, or (iv) has organized as
15 a limited liability partnership as defined in K.S.A. 2004 Supp. 56a-101,
16 and amendments thereto, the commission or other valuable consideration
17 may be paid by the licensee's broker to such professional corporation,
18 corporation, limited liability company or limited liability partnership. This
19 provision shall not alter any other provisions of this act.

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

24 (3) (A) Except as provided by paragraph (B), be employed by or as-
25 sociated with a licensee at any one time other than the supervising broker
26 who employs such salesperson or associate broker or with who the sales-
27 person or associate broker is associated as an independent contractor.

28 (B) An associate broker may be employed by or associated with more
29 than one supervising broker at any one time if each supervising broker
30 who employs or associates with the associate broker consents to such
31 multiple employment or association. Such consent shall be on a form
32 provided by the commission and shall not be effective until a signed copy
33 of the completed form has been filed with the commission.

34 (4) Except as provided by subsection (b), pay a commission or com-
35 pensation to any person for performing any activity for which a license is
36 required under this act.

37 (5) Fail to disclose to such salesperson's or associate broker's super-
38 vising broker or branch broker that such salesperson or associate broker
39 is performing any activity for which a license is required under K.S.A. 58-
40 3036, and amendments thereto, outside the supervision of the supervising
41 broker or branch broker. The provisions of this subsection shall not apply
42 to any activity or person exempted from the real estate brokers' and sa-
43 lespersons' license act pursuant to K.S.A. 58-3037, and amendments

or perform any activity for which a license is required under K.S.A. 58-3036, and amendments thereto.



TO: HOUSE COMMERCE AND LABOR COMMITTEE
FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: January 25, 2006
SUBJECT: Senate Bill 269

The Kansas Association of REALTORS® supports Senate Bill 269, which provides needed technical amendments to the Real Estate Brokers' and Salespersons' License Act (KSA 58-3034 *et seq.*) and the Brokerage Relationships in Real Estate Transactions Act (KSA 58-30,101 *et seq.*).



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