

Approved: 3/6/08
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:22 A.M. on February 25, 2008 in Room 784 of the DSOB.

All members were present except:

Brenda Landwehr- excused
Candy Ruff- excused
John Grange- excused
Louis Ruiz- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Renaë Jefferies, Office of Revisor of Statutes
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Sherry Diel, Kansas Real Estate Commission

Others attending: See attached list.

The Chairman called for the committee to work **Substitute for HB 2826 - Enacting the homeowners' association act.** This bill is a combination of the wording from **HB 2445, HB 2837 and HB 2826.**

Renaë Jefferies was called upon to explain the wording of the Substitute for HB 2826 (Attachment 1).

Representative Kiegerl asked why we wanted to limit mediation to two hours. Representative Pauls said that it was to protect the resident from having to pay for long mediation when it was not necessary.

Representative Brunk asked Renaë if the bill allowed voting by proxy, mail or other means. Renaë said yes. He further asked if the Attorney General supported developing the educational literature and website. Representative Huntington said that he was verbally committed to it. Finally he asked how the home owners association would know to implement these changes required by the act. Renaë said that it was usually in the newspaper. They would learn of it the same way that they do any change in the law.

Representative Huntington made a motion to amend the wording of Section 2, subsection (a) to add "in person or by proxy". Seconded by Representative Metsker and passed by unanimous voice vote.

Representative Huntington made a motion to add the following wording to Section 2, subsection (e). "The board of directors shall not meet in closed executive session unless it is in consultation with its attorneys about matters properly a part of the attorney-client relationship or if it involves personnel matters of a confidential nature". The motion was seconded by Representative Humerickhouse and passed by unanimous voice vote.

Representative Huntington made a motion to clarify the language of Section 2, subsection (f) to state that the board of directors, "at least 15 days before adopting any proposed assessments, special charges or fees of general application" shall notify the homeowners, apartment owners or residents of such assessments, special charges or fee. It was seconded by Representative Humerickhouse. The motion passed on a unanimous voice vote.

Representative Huntington made a motion to amend Section 3, subsection (a) after the word "association" to read "to receive and tally the ballots cast for the election of members of the board of directors, to verify the number of votes received against the number of persons voting and proxies voted." The motion was seconded by Representative Humerickhouse and passed with a unanimous voice vote.

Representative Huntington made a motion to clarify Section 3, subsection (d) to include language that the dispute resolution procedure would be fully implemented no later than one year following the

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:22 A.M. on February 25, 2008 in Room 784 of the DSOB.

effective date of the act. The motion was seconded by Representative Pauls and passed with a unanimous voice vote.

Representative Huntington made a motion to add subsection (i) to Section 5 to provide that: "The provisions of this section shall not apply to any homeowners' association with an annual budget less than \$100,000 unless the homeowners' association opts in to the provisions of this section. The second was by Representative Humerickhouse and passed by unanimous voice vote.

The Chairman asked Renae Jefferies to produce a final copy of the bill and it would be worked tomorrow.

The Chairman call the attention of the committee to work **HB 2746 - Amendments to real estate brokers' and salespersons' license act; advertising.**

Sherry Diel was called upon to explain the balloon amendment (Attachment 2). The amendments supplied an enlargement of what constitutes unprofessional conduct.

Representative Huntington asked about New Section 6, subsection (a) if the words "No licensee" included a broker or an agent. Sherry replied yes it would include them.

Renae Jefferies asked about the crossed off sections in the balloon. Sherry said that they were not being taken out of the bill. They were crossed off because she was not dealing with them.

Representative Pauls said that it was a helpful clarification.

Representative Brunk asked if the "unprofessional conduct" language had been struck. Sherry said yes.

Representative Pauls made a motion to move the balloon amendment. Representative Humerickhouse seconded the motion. The motion passed on a unanimous voice vote.

The Chairman asked Sherry to explain a Technical Balloon (Attachment 3). The first change was on page 16 of the bill where the language "whether acting as an agent, transaction broker or a principal" was stricken. Technical changes were made on page 17. The word "licensee" was added in place of "broker, associate broker or salesperson" on lines 17 and 18 and lines 24 and 25. On page 18 the words "or (26) were added to allow forgery to be covered by the recovery fund.

Renae Jefferies pointed out that the change on page 18 should be "or (25) rather than "or (26). Sherry looked at it and agreed.

Representative Huntington made a motion to adopt the Technical Balloon and it was seconded by Representative Humerickhouse. It passed by a unanimous voice vote.

Representative Kiegerl made a motion to strike the words "or attempt to represent" on page 11, line 30 of the bill. The motion was seconded by Representative Tietze and passed by unanimous voice vote.

Representative Pauls made a motion to move the bill out as amended. Representative Tietze seconded the motion. The motion carried by a unanimous voice vote.

The chairman said that the next meeting was tomorrow and adjourned the meeting at 10:35 A.M.

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MEMORANDUM

To: House Committee on Commerce and Labor
From: Renae Jefferies, Assistant Revisor
Date: February 25, 2008
Subject: Substitute for House Bill No. 2826

Substitute for HB 2826 combined the provisions of House bills 2445, 2826 and 2837 into one bill. As you will recall, the committee was briefed and heard testimony on these bills on Thursday, February 21, 2008. The substitute bill establishes the homeowners' association act concerning for-profit homeowners associations, non-profit homeowners' associations and associations of apartment owners relating to duties, required procedures, attorney fees (HB 2445 and 2826), dispute resolution and duties of the Attorney General (HB 2837).

To aid in the drafting and understanding of the provisions of the act, definitions from HB 2837 were moved to section 1 of the act and expanded upon to include all three types of associations.

As defined in this act, homeowners' association means for-profit homeowners' associations, nonprofit homeowners' associations and associations of apartments.

"Non-profit homeowners associations" means those non-profit organizations exempt from federal income tax pursuant to section 528 of the federal internal revenue code and "associations of apartment owners" means all of the apartment or condominium unit owners acting as a group in accordance with the bylaws and declaration."

"Resident" means a real property owner or lessee whose property is subject to the jurisdiction of a nonprofit homeowners' association. The term resident does not include persons renting or leasing a home, apartment or condominium unit subject to the authority of a for-profit homeowners' association or an association of apartment owners.

Section 2 combines former section 1 of HB 2826 and HB 2445, pertaining to the duties of the board of directors regarding the amendment of the by-laws of a homeowners' associations, elections for membership on the board of directors and disclosure of proposed assessments, special charges or fees of general application.

A change was made to this section removing the requirement in subsection (d) that the board of directors meetings be subject to Kansas' open meetings act and requiring instead that all meetings be open to all homeowners, apartment owners or residents of the homeowners' association.

Section 3 contains former section 2 of HB 2826 and HB 2445, providing that a homeowners' association shall adopt rules regarding the election of the board of directors, the provision of association records to homeowners, apartment owners and residents, dispute resolution and the provision of information concerning the rights of homeowners' apartment owners or residents under the act.

A change was made to subsection (a) of the former sections to require the selection of one board member and two nonboard members who are homeowners, apartment owners or residents of the homeowners' association to tally the ballots cast for the election of directors of the board, report the results to the board of directors and publish them to the homeowners, apartment owners or residents of the homeowners' association. This is in place of the requirement that the board of directors appoint one or more neutral and independent election inspectors to conduct the election of directors in a manner to insure the integrity of the election process no later than 45 days prior to the date of the election;

Section 4 contains former section 3 of HB 2826 which provides that in a civil action by a homeowner, apartment owner or resident against a homeowners' association covered under this act, should the homeowner, apartment owner or resident win, the court shall award such homeowner, apartment owner or resident actual costs and expenses, including reasonable attorney fees.

Section 5 contains former section 2 of HB 2837 which sets out the procedures and guidelines for dispute resolution between the homeowners' association and the homeowner, apartment owner or resident. Subsection (e) of that section now provides that mediation shall not exceed two hours unless the parties agree to a longer time. This is a change from the former language which provided that the agreement for a longer period of mediation be made in advance

of the mediation. Under the new language, the parties can agree to a longer time at any point in the mediation.

Section 6 which was former section 3 in HB 2837, provides that the Attorney General shall develop written educational materials and an interactive website for the purpose of providing guidance to homeowners' associations and their residents and sets out topics to be included in the interactive website and the educational materials. Additionally, homeowners, apartment owners and residents are to be notified by their homeowners' association regarding the availability of the educational materials and the website no later than the next annual meeting following the effective date of the act. No change was made to this section.

Sections 5 and 6 concerning dispute resolution, formerly contained in HB 2837, were originally applicable only to nonprofit homeowners' associations with a budget over \$100,000. Under the provisions of the substitute bill, the dispute resolution procedure is available to the homeowners, apartment owners and residents of all associations, no matter what the homeowners' association budget is.

The act takes effect upon publication in the Kansas register.

1 ered to be an interest in real estate.
 2 (n) (p) "Salesperson" means an individual, other than an associa
 3 broker, who is employed by a broker or is associated with a broker as
 4 independent contractor and participates in any activity described in su
 5 section (f).
 6 (o) (q) "Supervising broker" means an individual, other than a bran
 7 broker, who has a broker's license and who has been designated as tl
 8 broker who is responsible for the supervision of the primary office of
 9 broker and the activities of salespersons and associate brokers who a
 10 assigned to such office and all of whom are licensed pursuant to subse
 11 tion (b) of K.S.A. 58-3042 and amendments thereto. Supervising broke
 12 also means a broker who operates a sole proprietorship and with who...
 13 associate brokers or salespersons are affiliated as employees or independ
 14 ent contractors.

15 Sec. 2. K.S.A. 2007 Supp. 58-3043 is hereby amended to read as
 16 follows: 58-3043. (a) In determining whether to grant or renew a license
 17 the commission shall consider:

- 18 (1) Any revocation or suspension of a prior real estate license;
- 19 ~~(2) whether an applicant has committed any of the practices enu-~~
 20 ~~merated in K.S.A. 58-3062, and amendments thereto, or has violated this~~
 21 ~~act or rules and regulations adopted hereunder during the term of any~~
 22 ~~prior license;~~
- 23 (3) any plea of guilty or *nolo contendere* to, or any conviction of any
 24 misdemeanor which reflects on the applicant's honesty, trustworthiness,
 25 integrity or competence to transact the business of real estate;
- 26 (4) any conduct of the applicant which reflects on the applicant's hon-
 27 esty, trustworthiness, integrity or competence to transact the business of
 28 real estate; and
- 29 (5) such other matters as the commission deems pertinent.
- 30 (b) In its consideration of any such prior revocation or, conduct, or
 31 plea of guilty or *nolo contendere* to or conviction of a misdemeanor as
 32 specified in subsection (a), the commission shall take into account con-
 33 sider the following factors:
- 34 (1) The nature of the offense;
- 35 (2) any aggravating or extenuating circumstances;
- 36 (3) the time elapsed since such revocation or conduct, conduct or
 37 plea of guilty or *nolo contendere* to or conviction of a misdemeanor;
- 38 (4) the rehabilitation or restitution performed by the applicant; and
 39 such
- 40 (5) any other factors as that the commission deems relevant.
- 41 (b) (c) The commission may deny a license to any person who, with-
 42 out a license, has engaged in a real estate activity for which a license was
 43 required.

(a) Whether an applicant has committed any of the following during the term of any prior real estate license:

(1) a violation of any of the practices enumerated in K.S.A. 58-3062, and amendments thereto;

(2) a violation of this act or rules and regulations adopted hereunder; or

(3) a violation of the brokerage relationships in real estate transactions act, K.S.A. 58-30,101 et seq., and amendments thereto.

(b) whether an applicant has been finally adjudicated and a determination was made by a federal, state or other appropriate licensing body that the applicant committed any violation that is comparable to a violation in paragraph (a) during the term of any real estate license issued to the applicant by another jurisdiction.

1 (e) (d) When an applicant has made a false statement of material fact
2 on the application, such false statement may be sufficient reason for re-
3 fusal of a license. 21 2

4 (d) (e) (1) Except as provided in paragraph (2), the commission shall
5 refuse to grant a license to an applicant if the applicant has entered a plea
6 of guilty or nolo contendere to, or has been convicted of:

7 (A) (i) Any offense that is comparable to any crime which would re-
8 quire the applicant to register as provided in the Kansas offender regis-
9 tration act; or

10 (ii) any federal, military or other state conviction for an offense that
11 is comparable to any crime under the laws of this state which would
12 require the applicant to register as provided in the Kansas offender reg-
13 istration act; or

14 (B) (i) Any felony other than a felony under ~~clause subparagraph (A);~~
15 or

16 (ii) any federal, military or other state conviction for an offense that
17 is comparable to any under the laws of this state other than a felony under
18 ~~clause subparagraph (A).~~

19 (2) The commission may ~~issue a grant an original~~ license pursuant to
20 subsection (e) (f) if the applicant's application is received at least:

21 (A) Fifteen years after the date of the applicant's discharge from post-
22 release supervision, *completion of any nonprison sanction or suspension*,
23 *of the imposition of the sentence* resulting from any plea of guilty or nolo
24 *contendere to* or conviction of any offense specified in ~~clause subpara-~~
25 ~~graph (A) of paragraph (1);~~ or

26 (B) five years after the date of the applicant's discharge from post-
27 release supervision, *completion of any nonprison sanction or suspension*
28 *of the imposition of the sentence* resulting from any plea of guilty or nolo
29 *contendere to* or conviction of any offense specified in ~~clause subpara-~~
30 ~~graph (B) of paragraph (1), whichever is applicable.~~

31 (3) For the purposes of this subsection, "postrelease supervision"
32 shall have the meaning ascribed to it in K.S.A. 21-4703 and amendments
33 thereto.

34 (4) For the purposes of this subsection, "nonprison sanction" shall
35 have the meaning ascribed to it in K.S.A. 21-4703, and amendments
36 thereto.

37 (e) (f) (1) The commission may ~~grant a renew or grant an original~~
38 license to an applicant who has entered a plea of guilty or nolo contendere
39 to, or has been convicted of any crime listed in paragraph (1) of subsection
40 (d) (e) if the applicant presents to the commission satisfactory proof that
41 the applicant now bears a good reputation for honesty, trustworthiness,
42 integrity and competence to transact the business of real estate in such a
43 manner as to safeguard the interest of the public. The burden of proof

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1 shall be on the applicant to present such evidence to the commission.
2 (2) In addition to the factors listed in ~~subsection (a)~~ subsections (a)
3 and (b), in determining whether or not the applicant presently has a good
4 reputation as required in subsection ~~(e)~~ (f), the commission shall consider
5 the following additional factors:
6 (A) The extent and nature of the applicant's past criminal activity;
7 (B) the age of the applicant at the time of the commission of the
8 crime or crimes;
9 (C) the amount of time elapsed since the applicant's last criminal
10 activity;
11 (D) the conduct and work activity of the applicant prior to and fol-
12 lowing the criminal activity; and
13 (E) evidence of the applicant's rehabilitation or rehabilitative effort;
14 and
15 (F) all other evidence of the applicant's present fitness for a license.
16 Sec. 3. K.S.A. 2007 Supp. 58-3047 is hereby amended to read as
17 follows: 58-3047. (a) The commission shall issue a license as broker or
18 salesperson to each applicant who is qualified under and complies with
19 all provisions of this act and rules and regulations adopted hereunder.
20 The form of license shall be prescribed by the commission.
21 (b) A salesperson's or associate broker's license shall be delivered or
22 mailed to the supervising broker or branch broker, if applicable, and shall
23 be kept in the custody and control of such broker until canceled or until
24 the salesperson or associate broker leaves employment by or association
25 with the broker.
26 (c) Immediately upon the termination of a salesperson or associate
27 broker from employment by or association with a broker, the supervising
28 broker or branch broker, if applicable, shall return such salesperson's or
29 associate broker's license to the commission for cancellation. A license
30 canceled but not suspended or revoked may be reinstated at any time
31 during the period for which it was issued upon receipt of the fee for
32 reinstatement prescribed by K.S.A. 58-3063 and amendments thereto and
33 an application therefor. Such application shall be made on a form pro-
34 vided by the commission and shall be signed by the licensee and the
35 licensee's supervising broker or branch broker, if applicable.
36 (d) Upon a change in a supervising broker's name, business name
37 or trade name for the primary office or a change in the location of a
38 supervising broker's office, the supervising broker shall, within 10 days,
39 return to the commission together with the reinstatement fee prescribed
40 by K.S.A. 58-3063 and amendments thereto, for cancellation and rein-
41 statement under the new name or location of the supervising broker: (1)
42 The license of the supervising broker; (2) the license of any other broker
43 who is associated with the supervising broker and whose license requires

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1 ~~(h) (i)~~ All administrative proceedings pursuant to this section shall be
2 conducted in accordance with the Kansas administrative procedure act.

3 ~~(i) (j)~~ Notwithstanding any provision of this act or the brokerage rela-
4 tionships in real estate transactions act to the contrary, the commission
5 may use emergency adjudicative proceedings, as provided by K.S.A. 77-
6 536, and amendments thereto, to summarily suspend the license of any
7 licensee if the commission has reasonable cause to believe that the li-
8 censee's trust account is in unsound condition or that the licensee is mis-
9 appropriating funds belonging to other persons.

10 ~~(j) (k)~~ If a licensee has entered a plea of guilty or nolo contendere to,
11 or has been convicted of, any felony charge, the commission may use
12 emergency adjudicative proceedings, as provided by K.S.A. 77-536, and
13 amendments thereto, to suspend or revoke the licensee's license.

14 ~~(k) (l)~~ When the real estate license of an individual is revoked and
15 that individual's name is included in the trade or business name of a real
16 estate brokerage business, the commission may deny continued use of
17 the trade or business name if, in the opinion of the commission, it would
18 be confusing or misleading to the public.

19 ~~(m)~~ *The commission shall be authorized to recover from the fine im-*
20 *posed the commission's actual costs to investigate and prosecute a disci-*
21 *plinary case against a licensee, including attorney fees. The portion of the*
22 *fine amount collected that equals the commission's actual costs related to*
23 *the investigation and prosecution of the case and attorney fees, as certified*
24 *by the executive director of the commission to the state treasurer, shall be*
25 *credited to the real estate commission fee fund. The balance of the fine*
26 *amount collected shall be credited to the state general fund.*

27 Sec. 5. K.S.A. 2007 Supp. 58-3062 is hereby amended to read as
28 follows: 58-3062. (a) No licensee, whether acting as an agent, transaction
29 broker or a principal, shall:

30 ~~(1)~~ Intentionally use advertising that is misleading or inaccurate in
31 any material particular or that in any way misrepresents any property,
32 terms, values, policies or services of the business conducted, or uses the
33 trade name, collective membership mark, service mark or logo of any
34 organization owning such name, mark or logo without being authorized
35 to do so. ~~Commit any act that is deemed to be unprofessional conduct as~~
36 ~~defined by the commission by rules and regulations.~~

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

(2) 39 ~~(3)~~ Misappropriate moneys required to be deposited in a trust ac-
40 count pursuant to K.S.A. 58-3061, and amendments thereto, convert such
41 moneys to the licensee's personal use or commingle the money or other
42 property of the licensee's principals with the licensee's own money or
43 property, except that nothing herein shall prohibit a broker from having

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- 1 funds in an amount not to exceed \$100 in the broker's trust account to
- 2 pay expenses for the use and maintenance of such account.
- ~~(3)~~ 3 ~~(4)~~ Accept, give or charge any rebate or undisclosed commission.
- ~~(4)~~ 4 ~~(5)~~ Pay a referral fee to a person who is properly licensed as a broker
- 5 or salesperson in Kansas or another jurisdiction or who holds a corporate
- 6 real estate license in another jurisdiction if the licensee knows that the
- 7 payment of the referral fee will result in the payment of a rebate by the
- 8 Kansas or out-of-state licensee.
- ~~(5)~~ 9 ~~(6)~~ Represent or attempt to represent a broker without the broker's
- 10 express knowledge and consent.
- ~~(6)~~ 11 ~~(7)~~ Guarantee or authorize any person to guarantee future profits that
- 12 may result from the resale of real property.
- ~~(7)~~ 13 ~~(8)~~ Place a sign on any property offering it for sale or lease without
- 14 the written consent of the owner or the owner's authorized agent.
- ~~(8)~~ 15 ~~(9)~~ Offer real estate for sale or lease without the knowledge and con-
- 16 sent of the owner or the owner's authorized agent or on terms other than
- ~~(9)~~ 17 those authorized by the owner or the owner's authorized agent.
- ~~(10)~~ 18 ~~(10)~~ Induce any party to break any contract of sale or lease.
- 19 ~~(11)~~ Pay a commission or compensation to any person, not licensed
- 20 under this act, for performing any activity for which a license is required
- 21 under this act.
- ~~(11)~~ 22 ~~(12)~~ Fail to see that financial obligations and commitments between
- 23 the parties to an agreement to sell, exchange or lease real estate are in
- 24 writing, expressing the exact agreement of the parties or to provide, within
- 25 a reasonable time, copies thereof to all parties involved.
- ~~(12)~~ 26 ~~(13)~~ Procure a signature to a purchase contract which has no definite
- 27 purchase price, method of payment, description of property or method
- ~~(13)~~ 28 of determining the closing date.
- ~~(14)~~ 29 ~~(14)~~ Engage in fraud or make any substantial misrepresentation.
- 30 ~~(15)~~ Represent or attempt to represent to any lender, guaranteeing
- 31 agency or any other interested party, either verbally or through the prep-
- 32 aration of false documents, an amount in excess of the true and actual
- 33 sale price of the real estate or terms differing from those actually agreed
- 34 upon.
- ~~(15)~~ 35 ~~(16)~~ Fail to make known to any purchaser or lessee any interest the
- 36 licensee has in the real estate the licensee is selling or leasing or to make
- 37 known to any seller or lessor any interest the licensee will have in the real
- 38 estate the licensee is purchasing or leasing.
- ~~(16)~~ 39 ~~(17)~~ Fail to inform both the buyer, at the time an offer is made, and
- 40 the seller, at the time an offer is presented, that certain closing costs must
- 41 be paid and the approximate amount of such costs.
- ~~(17)~~ 42 ~~(18)~~ Fail without just cause to surrender any document or instrument
- 43 to the rightful owner.

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(20) fall to respond in a timely manner to any request from the commission or the commission's designee for documents or information that concerns directly or indirectly any real estate transaction or the licensee's real estate business;

- 1 ~~(18)~~ ~~(18)~~ Accept anything other than cash as earnest money unless that
- 2 fact is communicated to the owner prior to the owner's acceptance of the
- 3 offer to purchase, and such fact is shown in the purchase agreement.
- 4 ~~(19)~~ ~~(19)~~ Fail to deposit any check or cash received as an earnest money
- 5 deposit or as a deposit on the purchase of a lot within five business days
- 6 after the purchase agreement or lot reservation agreement is signed by
- 7 all parties, unless otherwise specifically provided by written agreement of
- 8 all parties to the purchase agreement or lot reservation agreement, in
- 9 which case the licensee shall deposit the check or cash received on the
- 10 date provided by such written agreement.
- 11 ~~(20)~~ ~~(20)~~ Fail in response to a request by the commission or the director
- 12 to produce any document, book or record in the licensee's possession or
- 13 under the licensee's control that concerns, directly or indirectly, any real
- 14 estate transaction or the licensee's real estate business.
- 15 ~~(21)~~ ~~(21)~~ Refuse to appear or testify under oath at any hearing held by
- 16 the commission.
- 17 ~~(22)~~ ~~(22)~~ Demonstrate incompetency to act as a broker, associate broker
- 18 or salesperson.
- 19 ~~(23)~~ ~~(23)~~ Except as provided by K.S.A. 40-2404, and amendments thereto,
- 20 knowingly receive or accept, directly or indirectly, any rebate, reduction
- 21 or abatement of any charge, or any special favor or advantage or any
- 22 monetary consideration or inducement, involving the issuance of a title
- 23 insurance policy or contract concerning which the licensee is directly or
- 24 indirectly connected, from a title insurance company or title insurance
- 25 agent, or any officer, employee, attorney, agent or solicitor thereof.
- 26 ~~(24)~~ ~~(24)~~ Engage in the purchase of one-, two-, three- or four-family
- 27 dwellings, including condominiums and cooperatives, or the acquisition
- 28 of any right, title or interest therein, including any equity or redemption
- 29 interests, if:
- 30 (A) (i) At the time of such purchase, the dwellings are subject to a
- 31 right of redemption pursuant to foreclosure of a mortgage on such dwell-
- 32 ings; (ii) the licensee fails to give written notice of the purchase, within
- 33 20 days thereafter, to the mortgage holder or judgment creditor who held
- 34 such mortgage; and (iii) the licensee, unless otherwise required by law or
- 35 court order, fails to apply any rent proceeds from the dwellings to the
- 36 judgment lien arising from the foreclosure of such mortgage, as payments
- 37 become due under the loan, regardless of whether the licensee is obli-
- 38 gated to do so;
- 39 (B) (i) the dwellings are subject to a loan which is secured by a mort-
- 40 gage and which is in default at the time of such purchase or in default
- 41 within one year after such purchase; (ii) the licensee fails to give written
- 42 notice of the purchase, within 20 days thereafter, to the mortgage holder;
- 43 and (iii) the licensee, unless otherwise required by law or court order,

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1 fails to apply any rent proceeds from the dwellings to the mortgage as the
2 payments come due, regardless of whether the licensee is obligated on
3 the loan; or

4 (C) the licensee fails to notify, at the time of rental, any person rent-
5 ing any such dwelling of the extent and nature of the licensee's interest
6 in such dwelling and the probable time until possession will be taken by
7 the mortgage holder or judgment creditor.

(25)

8 ~~(26)~~ Commit forgery or, unless authorized to do so by a duly executed
9 power of attorney, sign or initial any contractual agreement on behalf of
10 another person in a real estate transaction.

(26)

11 ~~(27)~~ Enter into contracts with persons not licensed by the commission
12 to perform services requiring a license under K.S.A. 58-3034 et seq., and
13 amendments thereto, except as provided by K.S.A. 58-3077, and amend-
14 ments thereto.

15 (b) No salesperson or associate broker shall:
16 (1) Except as provided in paragraph subparagraph (A) or (B), accept
17 a commission or other valuable consideration from anyone other than the
18 broker by whom the licensee is employed or with whom the licensee is
19 associated as an independent contractor.

20 (A) A salesperson or associate broker may accept a commission or
21 other valuable consideration from a licensee who employs the salesperson
22 or associate broker as a personal assistant provided that: (i) The licensee
23 and the salesperson or associate broker who is employed as a personal
24 assistant are licensed under the supervision of the same broker, and (ii)
25 the supervising broker agrees in writing that the personal assistant may
26 be paid by the licensee.

27 (B) If a salesperson or associate broker has (i) organized as a profes-
28 sional corporation pursuant to K.S.A. 17-2706 et seq., and amendments
29 thereto, (ii) incorporated under the Kansas general corporation code con-
30 tained in K.S.A. 17-6001 et seq., and amendments thereto, (iii) organized
31 under the Kansas limited liability company act contained in K.S.A. 17-
32 7662 et seq., and amendments thereto, or (iv) has organized as a limited
33 liability partnership as defined in K.S.A. 56a-101, and amendments
34 thereto, the commission or other valuable consideration may be paid by
35 the licensee's broker to such professional corporation, corporation, lim-
36 ited liability company or limited liability partnership. This provision shall
37 not alter any other provisions of this act.

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

42 (3) (A) Except as provided by paragraph subparagraph (B), be em-
43 ployed by or associated with a licensee at any one time other than the

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(6) Fail to submit to the supervising broker or branch broker, within 10 business days, any document that must be maintained in the supervising broker's or branch broker's business records for each real estate transaction. The 10-day period shall commence when the document is executed by the client or customer or, if a signature is not required or is not obtained, upon presentation of a document to the client or customer.

1 supervising broker who employs such salesperson or associate broker or
2 with who the salesperson or associate broker is associated as an inde-
3 pendent contractor.

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

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

13 (5) (A) Fail to disclose to such salesperson's or associate broker's su-
14 pervising broker or branch broker that such salesperson or associate bro-
15 ker is performing any activity for which a license is required under K.S.A.
16 58-3036, and amendments thereto; or (B) perform any activity for which
17 a license is required under K.S.A. 58-3036, and amendments thereto,
18 outside the supervision of the supervising broker or branch broker. The
19 provisions of this subsection shall not apply to any activity or person ex-
20 empted from the real estate brokers' and salespersons' license act pur-
21 suant to K.S.A. 58-3037, and amendments thereto.

22 (c) No broker shall:

23 (1) Pay a commission or compensation to any person for performing
24 the services of an associate broker or salesperson unless such person is
25 licensed under this act and employed by or associated with the broker.

26 (2) Fail to deliver to the seller in every real estate transaction, at the
27 time the transaction is closed, a complete, detailed closing statement
28 showing all of the receipts and disbursements handled by the broker for
29 the seller, or fail to deliver to the buyer a complete statement showing
30 all money received in the transaction from such buyer and how and for
31 what the same was disbursed, or fail to retain true copies of such state-
32 ments in the broker's files, except that the furnishing of such statements
33 to the seller and buyer by an escrow agent shall relieve the broker's re-
34 sponsibility to the seller and the buyer.

35 (3) Fail to properly supervise the activities of an associated or em-
36 ployed salesperson or associate broker.

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

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

42 (d) (1) If a purchase agreement provides that the earnest money be
43 held by an escrow agent other than a real estate broker, no listing broker

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1 shall:

2 (A) Fail to deliver the purchase agreement and earnest money de-
3 posit to the escrow agent named in the purchase agreement within five
4 business days after the purchase agreement is signed by all parties unless
5 otherwise specifically provided by written agreement of all parties to the
6 purchase agreement, in which case the broker shall deliver the purchase
7 agreement and earnest money deposit to the escrow agent named in the
8 purchase agreement on the date provided by such written agreement; or

9 (B) fail to obtain and keep in the transaction file a receipt from the
10 escrow agent showing date of delivery of the purchase agreement and
11 earnest money deposit.

12 (2) If a purchase agreement provides that the earnest money be held
13 by an escrow agent other than a real estate broker and the property was
14 not listed with a broker, no broker for the buyer shall:

15 (A) Fail to deliver the purchase agreement and earnest money de-
16 posit to the escrow agent named in the purchase agreement within five
17 business days after the purchase agreement is signed by all parties unless
18 otherwise specifically provided by written agreement of all parties to the
19 purchase agreement, in which case the broker shall deliver the purchase
20 agreement and earnest money deposit to the escrow agent named in the
21 purchase agreement on the date provided by such written agreement; or

22 (B) fail to obtain and keep in the transaction file a receipt from the
23 escrow agent showing date of delivery of the purchase agreement and
24 earnest money deposit.

25 (3) If a purchase agreement provides that the earnest money be held
26 by an escrow agent other than a real estate broker and neither the seller
27 nor buyer is represented by a broker, no transaction broker shall:

28 (A) Fail to deliver the purchase agreement and earnest money de-
29 posit to the escrow agent named in the purchase agreement within five
30 business days after the purchase agreement is signed by all parties unless
31 otherwise specifically provided by written agreement of all parties to the
32 purchase agreement, in which case the broker shall deliver the purchase
33 agreement and earnest money deposit to the escrow agent named in the
34 purchase agreement on the date provided by such written agreement; or

35 (B) fail to obtain and keep in the transaction file a receipt from the
36 escrow agent showing date of delivery of the purchase agreement and
37 earnest money deposit.

38 The commission may adopt rules and regulations to require that such
39 purchase agreement which provides that the earnest money be held by
40 an escrow agent other than a real estate broker include: (1) Notification
41 of whether or not the escrow agent named in the purchase agreement
42 maintains a surety bond, and (2) notification that statutes governing the
43 disbursement of earnest money held in trust accounts of real estate bro-

2-10

No licensee shall:

- (1) Threaten to engage in or engage in physical abuse towards a client, customer, or another licensee;
- (2) threaten to file a lien on residential property;
- (3) engage in harassment towards a client, customer or another licensee;
- (4) conduct real estate business with impaired judgment or objectivity as the result of mental illness or addiction to alcohol or controlled substances;
- (5) be finally adjudicated by a federal or state agency and found to be guilty of a violation of a federal or state law regulating the real estate industry or regulating a closely related industry whose licensees or members are commonly involved in real estate matters;
- (6) be finally adjudicated by a federal or state agency and found to be guilty of a violation of a federal or state law prohibiting discrimination against any client or customer on the basis of color, race, gender, religion, national origin, age, disability, or familial status; or
- (7) intentionally misappropriate or misuse any personal property or real property of a client or customer.

1 kers do not apply to earnest money deposited with the escrow agent
2 named in the purchase agreement.

3 (e) A branch broker shall not be employed by or associated with more
4 than one supervising broker at any one time unless each supervising bro-
5 ker who employs or associates with the branch broker consents to such
6 multiple employment or association. Such consent shall be on a form
7 provided by the commission and shall not be effective until a signed copy
8 of the completed form has been filed with the commission.

(f)

(g)

9 (4) Nothing in this section shall be construed to grant any person a
10 private right of action for damages or to eliminate any right of action
11 pursuant to other statutes or common law.

12 New Sec. 6. (a) No licensee, whether acting as an agent, transaction
13 broker or a principal, shall use any promotion or advertisement in any
14 type of media that:

15 (1) is misleading or inaccurate as to any material fact or that in any
16 way misrepresents any property, terms, values, policies or services of the
17 business conducted;

18 (2) includes the trade name, trademark, collective membership mark,
19 service mark or logo of any organization owning such name, mark or logo
20 without being authorized to do so;

21 (3) includes a location where real estate activity is conducted that is
22 not registered as a primary office or branch office with the commission;
23 or

24 (4) promotes the licensee's business in a manner that could confuse
25 or mislead the public by using terms or a trade name or a business name
26 that could be construed as the trade name or business name of a super-
27 vising broker.

28 (b) Except as specified by subsection (c), all advertising conducted
29 by a licensee shall:

30 (A) Be conducted under the direct supervision of the supervising bro-
31 ker or branch broker;

32 (B) include the name of the supervising broker's trade name or busi-
33 ness name by prominently and conspicuously displaying or announcing
34 the supervising broker's trade name or business name in a readable and
35 identifiable manner; and

36 (C) include any other information that the supervising broker or
37 branch broker considers necessary.

38 (c) The advertising of property for sale, lease or exchange shall not
39 be required to include the supervising broker's trade name or business
40 name if the property is not listed with a broker and if either of the fol-
41 lowing conditions is met:

- 42 (1) The property is personally owned by a licensee; or
- 43 (2) a licensee has an interest in the property.

HOUSE BILL No. 2746

By Committee on Commerce and Labor

2-4

9 AN ACT concerning real estate brokers and salespersons; relat
10 censure, prohibited acts, advertising and definitions; amendin
11 58-3067, 58-3068 and 74-4202 and K.S.A. 2007 Supp. 58-3035, 58-
12 3043, 58-3047, 58-3050 and 58-3062 and repealing the existing
13 sections.
14

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

16 Section 1. K.S.A. 2007 Supp. 58-3035 is hereby amended to read as
17 follows: 58-3035. As used in this act, unless the context otherwise
18 requires:

19 (a) "Act" means the real estate brokers' and salespersons' license act.

20 (b) "Advance listing fee" means any fee charged for services related
21 to promoting the sale or lease of real estate and paid in advance of the
22 rendering of such services, including any fees charged for listing, adver-
23 tising or offering for sale or lease any real estate, but excluding any fees
24 paid solely for advertisement or for listing in a publication issued for the
25 sole purpose of promoting the sale or lease of real estate wherein inquiries
26 are directed to the owner of the real estate or to real estate brokers and
27 not to unlicensed persons who publish the listing.

28 (c) "Associate broker" means an individual who has a broker's license
29 and who is employed by another broker or is associated with another
30 broker as an independent contractor and participates in any activity de-
31 scribed in subsection (f).

32 (d) "Branch broker" means an individual who has a broker's license
33 and who has been designated to supervise a branch office and the activi-
34 ties of salespersons and associate brokers assigned to the branch office.

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

37 (f) "Broker" means an individual, other than a salesperson, who ad-
38 vertises or represents that such individual engages in the business of buy-
39 ing, selling, exchanging or leasing real estate or who, for compensation,
40 engages in any of the following activities as an employee of, or on behalf
41 of, the owner, purchaser, lessor or lessee of real estate:

42 (1) Sells, exchanges, purchases or leases real estate.

43 (2) Offers to sell, exchange, purchase or lease real estate.

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1 ~~kers do not apply to earnest money deposited with the escrow agent~~
2 ~~named in the purchase agreement.~~

3 ~~(e) A branch broker shall not be employed by or associated with more~~
4 ~~than one supervising broker at any one time unless each supervising bro-~~
5 ~~ker who employs or associates with the branch broker consents to such~~
6 ~~multiple employment or association. Such consent shall be on a form~~
7 ~~provided by the commission and shall not be effective until a signed copy~~
8 ~~of the completed form has been filed with the commission.~~

9 ~~(f) Nothing in this section shall be construed to grant any person a~~
10 ~~private right of action for damages or to eliminate any right of action~~
11 ~~pursuant to other statutes or common law.~~

12 ~~New Sec. 6. (a) No licensee, whether acting as an agent, transaction~~
13 ~~broker or a principal, shall use any promotion or advertisement in any~~
14 ~~type of media that:~~

15 ~~(1) Is misleading or inaccurate as to any material fact or that in any~~
16 ~~way misrepresents any property, terms, values, policies or services of the~~
17 ~~business conducted;~~

18 ~~(2) includes the trade name, trademark, collective membership mark,~~
19 ~~service mark or logo of any organization owning such name, mark or logo~~
20 ~~without being authorized to do so;~~

21 ~~(3) includes a location where real estate activity is conducted that is~~
22 ~~not registered as a primary office or branch office with the commission;~~
23 ~~or~~

24 ~~(4) promotes the licensee's business in a manner that could confuse~~
25 ~~or mislead the public by using terms or a trade name or a business name~~
26 ~~that could be construed as the trade name or business name of a super-~~
27 ~~vising broker.~~

28 ~~(b) Except as specified by subsection (c), all advertising conducted~~
29 ~~by a licensee shall:~~

30 ~~(A) Be conducted under the direct supervision of the supervising bro-~~
31 ~~ker or branch broker;~~

32 ~~(B) include the name of the supervising broker's trade name or busi-~~
33 ~~ness name by prominently and conspicuously displaying or announcing~~
34 ~~the supervising broker's trade name or business name in a readable and~~
35 ~~identifiable manner; and~~

36 ~~(C) include any other information that the supervising broker or~~
37 ~~branch broker considers necessary.~~

38 ~~(c) The advertising of property for sale, lease or exchange shall not~~
39 ~~be required to include the supervising broker's trade name or business~~
40 ~~name if the property is not listed with a broker and if either of the fol-~~
41 ~~lowing conditions is met:~~

42 ~~(1) The property is personally owned by a licensee; or~~

43 ~~(2) a licensee has an interest in the property.~~

3-3

1 (d) If authorized by the supervising broker or the branch broker, an
2 employed or associated salesperson or associate broker may include in
3 the advertisement:

4 (1) The contact information for the employed or associated salesper-
5 son or associate broker;

6 (2) a name or team name which cannot be construed as a supervising
7 broker's trade name or business name;

8 (3) a slogan which does not include terms that are confusing to the
9 public or which can not be construed as a supervising broker's trade name
10 or business name; and

11 (4) a domain name or website which does not include terms that are
12 confusing to the public or which can be construed as a supervising bro-
13 ker's trade name or business name.

14 (e) Unless property personally owned by a licensee or in which a
15 licensee has an interest is listed with a supervising broker or branch bro-
16 ker, all advertising caused by the licensee regarding the property shall be
17 done in a manner that clearly informs the public that a real estate broker,
18 associate broker or salesperson is the owner of or has an interest in the
19 property advertised.

20 (f) If a licensee does not have a buyer's agency agreement and is
21 soliciting property for purchasing for the benefit of the licensee or an
22 entity in which the licensee has an interest, all advertising by the licensee
23 that contains a solicitation to purchase property from potential sellers shall
24 clearly inform the public that a real estate broker, associate broker or
25 salesperson is involved in the solicitation of potential sellers of property.

26 (g) Each supervising broker who enters into an agreement that au-
27 thORIZES the supervising broker to utilize the name or trade name of any
28 person or entity in the conduct of the supervising broker's real estate
29 business shall file a copy of the agreement with the commission.

30 (h) This section shall be part of and supplemental to the real estate
31 brokers' and salespersons' license act.

32 Sec. 7. K.S.A. 58-3067 is hereby amended to read as follows: 58-
33 3067. *Payments Except as provided in subsection (d) of K.S.A. 58-3068,*
34 *and amendments thereto, payments* from the real estate recovery revol-
35 ving fund under the provisions of this act shall be subject to the following
36 conditions and limitations:

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

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

43 (c) Payments for claims based upon judgments against any one li-

not

licensee

purchase

licensee

3-4

1 censed broker or salesperson shall not exceed in the aggregate \$30,000
2 within any calendar year, but in no event shall payments for claims based
3 upon judgments against any one licensed broker or salesperson exceed in
4 the aggregate \$50,000.

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

13 Sec. 8. K.S.A. 58-3068 is hereby amended to read as follows: 58-
14 3068. (a) ~~Moneys Except as provided in subsection (d),~~ moneys in the real
15 estate recovery revolving fund shall be used in the manner provided by
16 this act to reimburse persons who suffer monetary damages by reason of
17 any of the following acts committed in connection with any transaction
18 involving the sale of real estate in this state by any broker or salesperson
19 who was licensed under the laws of this state at the time the act was
20 committed or by any unlicensed employee of such broker or salesperson:

21 (1) Violation of any of the following provisions of this act:

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

or (26) ~~23 (B) subsection (a)(2), (3), (14), (19) or (20) or subsection (b)(2) of~~
24 K.S.A. 58-3062 and amendments thereto; or

25 (2) violation of any provision of the brokerage relationships in real
26 estate transactions act; or

27 (3) obtaining money or property by any act which would constitute
28 any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3706, 21-
29 3707, 21-3710, 21-3711 or 21-3712, and amendments thereto.

30 (b) Any person may seek recovery from the real estate recovery re-
31 volving fund under the following conditions:

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

35 (2) the claim is made within two years after the date that final judg-
36 ment is entered;

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

43 (4) such person has made all reasonable searches and inquiries to

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1 ascertain whether the judgment debtor is possessed of real or personal
2 property or other assets, subject to being sold or applied in satisfaction
3 of the judgment, and by such search such person has discovered no such
4 property or assets, or that such person has discovered such property and
5 assets and that such person has taken all necessary action and proceedings
6 for the application thereof to the judgment and that the amount thereby
7 realized was insufficient to satisfy the judgment;

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

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

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

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

17 (2) the person acted as principal or agent in the real estate transaction
18 which is the subject of the claim and is a licensed broker or salesperson
19 or is a partnership, association, limited liability company or corporation
20 whose partners, members, officers and employees are licensed as pro-
21 vided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or

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

26 (d) *At any time that the balance remaining in the real estate recovery*
27 *revolving fund is greater than \$250,000, any amount over \$250,000 may*
28 *be used by the commission for the following purposes:*

29 (1) *Production and distribution of an agency newsletter;*

30 (2) *monitoring education courses;*

31 (3) *expansion of materials available for consumers; and*

32 (4) *education grants to high schools and universities for course ma-*
33 *terials on money management and home ownership.*

34 ~~Sec. 9. K.S.A. 74-4202 is hereby amended to read as follows: 74-~~
35 ~~4202. (a) Within 30 days after the appointment of the members to be~~
36 ~~regularly appointed within any year, the commission shall meet in the city~~
37 ~~of Topeka for the purpose of organizing by selecting from its membership~~
38 ~~a chairperson and such other officers as the commission may deem nec-~~
39 ~~essary and appropriate. A majority of the members of the commission~~
40 ~~shall constitute a quorum for the exercise of the powers or authority~~
41 ~~conferred upon it.~~

42 (b) ~~The commission shall receive applications for, and issue licenses~~
43 ~~to, brokers and salespersons, as provided in this the real estate brokers'~~