

CHAPTER 67

SENATE BILL No. 534
(Amended by Chapter 180)

AN ACT concerning real estate brokers and salespersons; relating to certain commercial real estate transactions; amending K.S.A. 2003 Supp. 58-3062 and repealing the existing section.

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

Section 1. K.S.A. 2003 Supp. 58-3062 is hereby amended to read as follows: 58-3062. (a) No licensee, whether acting as an agent or a principal, 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) Misappropriate moneys required to be deposited in a trust account pursuant to K.S.A. 58-3061, and amendments thereto, convert such moneys to the licensee's personal use or 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 broker from having funds in an amount not to exceed \$100 in the broker's trust account to pay expenses for the use and maintenance of such account.

(4) Accept, give or charge any rebate or undisclosed commission.

(5) 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.

(6) Represent or attempt to represent a broker without the broker's express knowledge and consent.

(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 contract of sale or lease.

(11) Offer or give prizes, gifts or gratuities which are contingent upon an agency agreement or the sale, purchase or lease of real estate. Products or services which are offered or given pursuant to a licensee carrying out the duties of a seller's agent pursuant to K.S.A. 2003 Supp. 58-30,106, and amendments thereto, a buyer's agent pursuant to K.S.A. 2003 Supp. 58-30,107, and amendments thereto, or a transaction broker pursuant to K.S.A. 2003 Supp. 58-30,113, and amendments thereto, shall not be considered to be a prize, gift or gratuity.

(12) 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.

(13) 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.

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

(15) 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.

(16) 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.

(17) 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.

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

(19) 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.

(20) Fail to deposit any check or cash received as an earnest money deposit or as a deposit on the purchase of a lot within five business days after the purchase agreement or lot reservation agreement is signed by all parties, unless otherwise specifically provided by written agreement of all parties to the purchase agreement or lot reservation agreement, in which case the licensee shall deposit the check or cash received on the date provided by such written agreement.

(21) 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.

(22) Refuse to appear or testify under oath at any hearing held by the commission.

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

(24) Knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement, involving the issuance of a title insurance policy or contract concerning which the licensee is directly or indirectly connected, from a title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof.

(25) Engage in the purchase of one-, two-, three- or four-family dwellings, including condominiums and cooperatives, or the acquisition of any right, title or interest therein, including any equity or redemption interests, if:

(A) (i) At the time of such purchase, the dwellings are subject to a right of redemption pursuant to foreclosure of a mortgage on such dwellings; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder or judgment creditor who held such mortgage; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the judgment lien arising from the foreclosure of such mortgage, as payments become due under the loan, regardless of whether the licensee is obligated to do so;

(B) (i) the dwellings are subject to a loan which is secured by a mortgage and which is in default at the time of such purchase or in default within one year after such purchase; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the mortgage as the payments come due, regardless of whether the licensee is obligated on the loan; or

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

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

(27) *Enter into contracts with persons not licensed by the commission to perform services requiring a license under K.S.A. 58-3034 et seq., and amendments thereto, except as provided by section 2, and amendments thereto.*

(b) No salesperson or associate broker shall:

(1) Except as provided in paragraph (A) or (B), accept a commission or other valuable consideration from anyone other than the broker by whom the licensee is employed or with whom the licensee is associated as an independent contractor.

(A) A salesperson or associate broker may accept a commission or other valuable consideration from a licensee who employs the salesperson or associate broker as a personal assistant provided that: (i) the licensee and the salesperson or associate broker who is employed as a personal

assistant are licensed under the supervision of the same broker, and (ii) the supervising broker agrees in writing that the personal assistant may be paid by the licensee.

(B) If a salesperson or associate broker has (i) organized as a professional corporation pursuant to K.S.A. 17-2706 *et seq.*, and amendments thereto, (ii) incorporated under the Kansas general corporation code contained in K.S.A. 17-6001 *et seq.*, and amendments thereto, (iii) organized under the Kansas limited liability company act contained in K.S.A. 2003 Supp. 17-7662 *et seq.*, and amendments thereto, or (iv) has organized as a limited liability partnership as defined in K.S.A. 2003 Supp. 56a-101, and amendments thereto, the commission or other valuable consideration may be paid by the licensee's broker to such professional corporation, corporation, limited liability company or limited liability partnership. This provision shall not alter any other provisions of this act.

(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.

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

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

(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.

(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.

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

(A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement 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, in which case the broker shall deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or

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

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

(A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement 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, in which case the broker shall deliver the purchase

agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or

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

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

(A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement 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, in which case the broker shall deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or

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

The commission may adopt rules and regulations to require that such purchase agreement which provides that the earnest money be held by an escrow agent other than a real estate broker include: (1) notification of whether or not the escrow agent named in the purchase agreement maintains a surety bond, and (2) notification that statutes governing the disbursement of earnest money held in trust accounts of real estate brokers do not apply to earnest money deposited with the escrow agent named in the purchase agreement.

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

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

New Sec. 2. (a) As used in this section:

(1) "Commercial real estate" means any real estate for which the present use is other than (A) one to four residential units or (B) for agricultural purposes.

(2) "Foreign licensee" means a real estate licensee, in good standing of another state or country.

(3) Words and phrases used in this section have the meanings ascribed thereto in K.S.A. 58-3035, and amendments thereto.

(b) A branch broker or supervising broker may cooperate with and share commissions or other compensation for services related to commercial real estate with a foreign licensee and such foreign licensee shall be permitted to perform services requiring a license under K.S.A. 58-3034 *et seq.*, and amendments thereto, with respect to commercial real estate in this state even though such foreign licensee is not licensed thereunder if:

(1) The real estate is not improved with a single family residence; and

(2) the foreign licensee agrees to cooperate with a branch broker or supervising broker of this state in any commercial real estate transaction, as evidenced by execution of and compliance with a broker cooperation agreement which shall include, but not be limited to, provisions requiring:

(A) The foreign licensee to comply with all applicable laws and regulations of this state;

(B) the foreign licensee to submit to the jurisdiction of the courts of this state, the jurisdiction of the Kansas real estate commission and the applicability of the laws and regulations of this state for the conduct of the foreign licensee with respect to commercial real estate and any and all claims related thereto;

(C) the foreign licensee to give its written irrevocable written consent to service of process upon such foreign licensee by valid service upon the secretary of state of this state and upon the secretary of state of the state or province of the foreign licensee's real estate licensure;

(D) all escrow funds, including but not limited to, earnest deposits and security deposits, concerning the commercial real estate to be held in this state in the trust account of a branch broker or supervising broker

of this state;

(E) a description of how any and all compensation earned on any commercial real estate transaction shall be shared between the foreign licensee and the branch broker or supervising broker of this state;

(F) the foreign licensee and the branch broker or supervising broker of this state to agree to each keep the other informed of all showings and negotiations for commercial real estate;

(G) the foreign licensee and the branch broker or supervising broker of this state to agree to furnish to the other copies of all documents related to any commercial real estate transaction required by Kansas law to be retained, including but not limited to, agency disclosure, offers, counter-offers, purchase and sale contracts, leases and closing statements.

(c) A copy of any broker cooperation agreement shall be provided to the commission within five business days of the execution thereof.

(d) The provisions of this section shall be a part of and supplemental to the Kansas real estate brokers' and salespersons' license act.

Sec. 3. K.S.A. 2003 Supp. 58-3062 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2004.
