

## CHAPTER 159

### SENATE BILL No. 269

AN ACT concerning real estate brokers and salespersons; relating to licensure; relating to escrow accounts; relating to prohibited acts; amending K.S.A. 58-3039, 58-3062, 58-3077 and 58-30,113 and repealing the existing sections.

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

Section 1. K.S.A. 58-3039 is hereby amended to read as follows: 58-3039. (a) Any person desiring to act as a broker or salesperson must file a written application for a license with the commission or, if required by the commission, with the testing service designated by the commission. The application shall be in such form and detail as the commission shall prescribe and shall be accompanied by application and license fees prescribed by K.S.A. 58-3063, and amendments thereto.

(b) A license to engage in business as a broker or salesperson shall be granted only to a person who is 18 or more years of age and who has a high school diploma or its equivalent.

(c) In addition to the requirements of subsection (b), except as provided in subsection (d), each applicant for an original license as a broker shall have been:

(1) Licensed as a salesperson in this state or as a salesperson or broker in another state, and shall have been actively engaged in any of the activities described in subsection (f) of K.S.A. 58-3035, and amendments thereto, for a period of at least two years during the five years immediately preceding the date of the application for a license; or

(2) if an applicant resides in a county that ~~according to the 1994 estimates of the U.S. bureau of the census~~ has a population of 20,000 or less, the commission may, upon a finding that such county suffers from a shortage of brokers and upon compelling evidence of need, waive or alter the requirements of this subsection. The commission shall adopt rules and regulations to establish alternative licensing criteria for such applicants.

(d) The commission may accept proof of experience in the real estate or a related business or a combination of such experience and education which the commission believes qualifies the applicant to act as a broker as being equivalent to all or part of the experience required by subsection (c).

(e) Except as provided in K.S.A. 58-3040, and amendments thereto, each applicant for an original license shall be required to pass a written examination covering generally the matters confronting brokers or salespersons, and no license shall be issued on the basis of such an examination either or both sections of which were administered more than four months prior to the date that the applicant's application is filed with the commission. The examination may be given by the commission or any person designated by the commission. Each person taking the examination shall pay the examination fee prescribed pursuant to K.S.A. 58-3063, and amendments thereto, which fee the commission may require to be paid to it or directly to the testing service designated by the commission. The examination for a broker's license shall be different from or in addition to that for a salesperson's license.

(f) (1) Each applicant for an original salesperson's license who meets the requirements of this act shall be issued a temporary salesperson's license which shall expire six months after the last calendar day of the month in which the license was issued, on the last calendar day of that month.

(2) No later than 10 days prior to the expiration date of a temporary salesperson's license, the salesperson shall file an application on a form provided by the commission. The application shall be accompanied by the license fee prescribed by K.S.A. 58-3063, and amendments thereto, and evidence of compliance with the requirements of subsection (f)(1) of K.S.A. 58-3046a, and amendments thereto. The commission shall issue a salesperson's license to a person who complies with the provisions of this paragraph. The issuance date of the salesperson's license shall be the day following the expiration date of the temporary license. The expiration date

of the license shall be determined in accordance with a schedule established by rules and regulations of the commission.

(3) Failure to comply with the provisions of paragraph (2) shall automatically cancel the temporary license on its expiration date.

(4) A person whose temporary salesperson's license was canceled pursuant to paragraph (3) may apply for a salesperson's license ~~provided~~ *if* such application, the license fee prescribed by K.S.A. 58-3063, and amendments thereto, *plus a late fee of \$50* and evidence of attendance of 30 hours of instruction received after issuance of the temporary license pursuant to subsection (f)(1) of K.S.A. 58-3046a, and amendments thereto, are received by the commission within three months after the expiration date of the temporary license. The commission shall issue a salesperson's license to a person who complies with the provisions of this paragraph. The expiration date of the license shall be determined in accordance with a schedule established by rules and regulations of the commission.

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

(h) An application for an original license as a salesperson shall be accompanied by the recommendation of the broker with whom the salesperson is to be associated, or by whom the salesperson is to be employed, certifying that the applicant is honest, trustworthy and of good reputation.

Sec. 2. K.S.A. 58-3062 is hereby amended to read as follows: 58-3062. (a) No licensee, whether acting as an agent, transaction broker 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 Kansas or 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 Kansas or 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) Pay a commission or compensation to any person, not licensed under this act, for performing any activity for which a license is required under this act.

(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) Except as provided by K.S.A. 40-2404, and amendments thereto, 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 K.S.A. 58-3077, 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. 2005 Supp. 17-7662 *et seq.*, and amendments thereto, or (iv) has organized as a limited liability partnership as defined in K.S.A. 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.

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

(5) (A) Fail to disclose to such salesperson's or associate broker's supervising broker or branch broker that such salesperson or associate broker is performing any activity for which a license is required under K.S.A. 58-3036, and amendments thereto; or (B) *perform any activity for which a license is required under K.S.A. 58-3036, and amendments thereto*, outside the supervision of the supervising broker or branch broker. The provisions of this subsection shall not apply to any activity or person exempted from the real estate brokers' and salespersons' license act pursuant to K.S.A. 58-3037, and amendments thereto.

(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.

Sec. 3. K.S.A. 58-3077 is hereby amended to read as follows: 58-3077. (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 com-

mercial 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 *either* in the trust account of a *Kansas-licensed* branch broker or supervising broker ~~of this state~~ *or by a third-party escrow agent located in 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, counteroffers, 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. 4. K.S.A. 58-30,113 is hereby amended to read as follows: 58-30,113. ~~On and after October 1, 1997:~~

(a) A broker engaged as a transaction broker ~~is not~~ *shall not act as* an agent for either party.

(b) A transaction broker shall have the following obligations and responsibilities:

(1) To perform the terms of any written or oral agreement made with any party to the transaction;

(2) to exercise reasonable skill and care as a transaction broker, including, but not limited to:

(A) Presenting all offers and counteroffers in a timely manner, even when the property is subject to a contract of sale;

(B) advising the parties regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the transaction broker knows but the specifics of which are beyond the expertise of the licensee;

(C) accounting in a timely manner for all money and property received;

(D) keeping the parties fully informed regarding the transaction;

(E) assisting the parties in complying with the terms and conditions of any contract including closing the transaction;

(F) disclosing to all prospective buyers or tenants all adverse material facts actually known by the transaction broker, including but not limited to:

(i) Any environmental hazards affecting the property which are required by law to be disclosed;

(ii) the physical condition of the property;

(iii) any material defects in the property;

(iv) any material defects in the title to the property; or  
(v) any material limitation on the seller's or landlord's ability to perform under the terms of the contract; and

(G) disclosing to any prospective seller or landlord all adverse material facts actually known by the transaction broker, including but not limited to material facts concerning the buyer's or tenant's financial ability to perform the terms of the transaction;

(3) comply with all requirements of this act and rules and regulations adopted hereunder; and

(4) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights and rules and regulations.

(c) Except as provided in subsection (d), the transaction broker is not required to disclose to any party to the transaction information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the party.

(d) A transaction broker shall disclose to the party any facts actually known by the transaction broker that were omitted from or contradict any information included in a written report described in subsection (c).

(e) If pursuant to subsection (b)(2)(B), the transaction broker advised the parties to obtain expert advice as to material matters about which the transaction broker knows but the specifics of which are beyond the expertise of the transaction broker, no cause of action for any person shall arise against the transaction broker pertaining to such material matters.

(f) In any transaction regarding the sale or lease of real estate other than commercial property or residential property of more than four units, the following information shall not be disclosed by a transaction broker without the consent of all parties:

(1) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(2) that a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(3) what the motivating factors are for any party buying, selling, or leasing the property;

(4) that a seller, buyer, landlord or tenant will agree to financing terms other than those offered; or

(5) any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party unless the disclosure is required by law or failure to disclose such information would constitute fraudulent misrepresentation.

(g) (1) Except as provided in subsection (g)(2), in any transaction regarding the sale or lease of commercial property or residential property of more than four units, the following information may be disclosed by a transaction broker unless prohibited by the parties:

(A) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(B) that a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(C) what the motivating factors are for any party buying, selling or leasing the property; or

(D) that a seller, buyer, landlord or tenant will agree to financing terms other than those offered.

(2) Any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party shall not be disclosed unless the disclosure is required by law or failure to disclose such information would constitute fraudulent misrepresentation.

(h) A transaction broker has no duty to conduct an independent inspection of the property for the benefit of any party to the transaction and has no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, buyer, tenant or qualified third party inspectors.

(i) A transaction broker has no duty to conduct an independent investigation of the buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by the buyer or tenant.

(j) A transaction broker may do the following without breaching any obligation or responsibility:

(1) Show alternative properties not owned by the seller or landlord

to a prospective buyer or tenant;

(2) list competing properties for sale or lease;

(3) show properties in which the buyer or tenant is interested to other prospective buyers or tenants; and

(4) serve as a single agent or subagent for the same or for different parties in other real estate transactions.

(k) Information known to a transaction broker shall not be imputed to any party to the transaction or to any licensee within the brokerage firm engaged as a transaction broker.

(l) A transaction broker may cooperate with other brokers or cooperate and pay compensation to other brokers but shall not engage any subagents.

Sec. 5. K.S.A. 58-3039, 58-3062, 58-3077 and 58-30,113 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 20, 2006.

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