

CHAPTER 155
HOUSE BILL No. 2746

AN ACT concerning real estate brokers and salespersons; relating to licensure, prohibited acts, advertising and definitions; amending K.S.A. 58-3067, 58-3068 and 74-4202 and K.S.A. 2007 Supp. 58-3035, 58-3043, 58-3047, 58-3050 and 58-3062 and repealing the existing sections.

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

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

- (a) "Act" means the real estate brokers' and salespersons' license act.
- (b) "Advance listing fee" means any fee charged for services related to promoting the sale or lease of real estate and paid in advance of the rendering of such services, including any fees charged for listing, advertising or offering for sale or lease any real estate, but excluding any fees paid solely for advertisement or for listing in a publication issued for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the listing.
- (c) "Associate broker" means an individual who has a broker's license and who is employed by another broker or is associated with another broker as an independent contractor and participates in any activity described in subsection (f).
- (d) "Branch broker" means an individual who has a broker's license and who has been designated to supervise a branch office and the activities of salespersons and associate brokers assigned to the branch office.
- (e) "Branch office" means a place of business other than the principal place of business of a broker.
- (f) "Broker" means an individual, other than a salesperson, who advertises or represents that such individual engages in the business of buying, selling, exchanging or leasing real estate or who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owner, purchaser, lessor or lessee of real estate:
 - (1) Sells, exchanges, purchases or leases real estate.
 - (2) Offers to sell, exchange, purchase or lease real estate.
 - (3) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase or leasing of real estate.
 - (4) Lists or offers, attempts or agrees to list real estate for sale, lease or exchange.
 - (5) Auctions or offers, attempts or agrees to auction real estate or assists an auctioneer by procuring bids at a real estate auction.
 - (6) Buys, sells, offers to buy or sell or otherwise deals in options on real estate.
 - (7) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate.
 - (8) Assists in or directs the negotiation of any transaction calculated or intended to result in the sale, exchange or lease of real estate.
 - (9) Engages in the business of charging an advance listing fee.
 - (10) Provides lists of real estate as being available for sale or lease, other than lists provided for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the list.
- (g) "Commission" means the Kansas real estate commission.
- (h) "Exchange" means a type of sale or purchase of real estate.
- (i) "Interest" means: (1) Having any type of ownership in the real estate involved in the transaction; or (2) an officer, member, partner or shareholder of any entity that owns such real estate excluding an ownership interest of less than 5% in a publicly traded entity.
- (j) "Lease" means rent or lease for nonresidential use.
- ~~(k)~~ (k) "Licensee" means any person licensed under this act as a broker or salesperson.
- ~~(l)~~ (l) "Office" means a broker's place of business, where records may be maintained and licenses displayed, whether or not it is the broker's primary office.
- ~~(m)~~ (m) "Person" means any individual or any foreign or domestic corporation, partnership or association.

~~(n)~~ (n) "Primary office" means a supervising broker's principal place of business for each company created or established by the broker.

~~(m)~~ (o) "Real estate" means any interest or estate in land, including any leasehold or condominium, whether corporeal, incorporeal, freehold or nonfreehold and whether the real estate is situated in this state or elsewhere, but does not include oil and gas leases, royalties and other mineral interests, and rights of way and easements acquired for the purpose of constructing roadways, pipelines, conduits, wires and facilities related to these types of improvement projects for private and public utilities, municipalities, federal and state governments, or any political subdivision. For purpose of this act, any rights of redemption are considered to be an interest in real estate.

~~(l)~~ (p) "Salesperson" means an individual, other than an associate broker, who is employed by a broker or is associated with a broker as an independent contractor and participates in any activity described in subsection (f).

~~(k)~~ (q) "Supervising broker" means an individual, other than a branch broker, who has a broker's license and who has been designated as the broker who is responsible for the supervision of the primary office of a broker and the activities of salespersons and associate brokers who are assigned to such office and all of whom are licensed pursuant to subsection (b) of K.S.A. 58-3042 and amendments thereto. "Supervising broker" also means a broker who operates a sole proprietorship and with whom associate brokers or salespersons are affiliated as employees or independent contractors.

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

(1) Any revocation or suspension of a prior real estate license;

~~(2) whether an applicant has committed any of the practices enumerated in K.S.A. 58-3062, and amendments thereto, or has violated this act or rules and regulations adopted hereunder during the term of any prior license~~

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

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

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

or

(iii) 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 subparagraph (A) during the term of any real estate license issued to the applicant by another jurisdiction;

(3) any plea of guilty or *nolo contendere* to, or any conviction of any misdemeanor which reflects on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate;

(4) any conduct of the applicant which reflects on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate; and

(5) such other matters as the commission deems pertinent.

*(b) In its consideration of any ~~such~~ prior revocation ~~or~~, conduct, or plea of guilty or *nolo contendere* to or conviction of a misdemeanor as specified in subsection (a), the commission shall ~~take into account~~ consider the following factors:*

(1) The nature of the offense;

(2) any aggravating or extenuating circumstances;

*(3) the time elapsed since such revocation ~~or conduct~~, ~~conduct~~ or plea of guilty or *nolo contendere* to or conviction of a misdemeanor;*

(4) the rehabilitation or restitution performed by the applicant; and

such

(5) any other factors as that the commission deems relevant.

~~(b)~~ (c) The commission may deny a license to any person who, without a license, has engaged in a real estate activity for which a license was required.

~~(c)~~ (d) When an applicant has made a false statement of material fact on the application, such false statement may be sufficient reason for re-

fusal of a license.

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

(A) (i) Any offense that is comparable to any crime which would require the applicant to register as provided in the Kansas offender registration act; or

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

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

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

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

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

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

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

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

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

(2) In addition to the factors listed in ~~subsection (a)~~ subsections (a) and (b), in determining whether or not the applicant presently has a good reputation as required in subsection ~~(e)~~ (f), the commission shall consider the following additional factors:

(A) The extent and nature of the applicant's past criminal activity;

(B) the age of the applicant at the time of the commission of the crime or crimes;

(C) the amount of time elapsed since the applicant's last criminal activity;

(D) the conduct and work activity of the applicant prior to and following the criminal activity; and

(E) evidence of the applicant's rehabilitation or rehabilitative effort; and

(F) all other evidence of the applicant's present fitness for a license.

Sec. 3. K.S.A. 2007 Supp. 58-3047 is hereby amended to read as follows: 58-3047. (a) The commission shall issue a license as broker or salesperson to each applicant who is qualified under and complies with all provisions of this act and rules and regulations adopted hereunder. The form of license shall be prescribed by the commission.

(b) A salesperson's or associate broker's license shall be delivered or mailed to the supervising broker or branch broker, if applicable, and shall be kept in the custody and control of such broker until canceled or until the salesperson or associate broker leaves employment by or association with the broker.

(c) Immediately upon the termination of a salesperson or associate broker from employment by or association with a broker, the supervising broker or branch broker, if applicable, shall return such salesperson's or

associate broker's license to the commission for cancellation. A license canceled but not suspended or revoked may be reinstated at any time during the period for which it was issued upon receipt of the fee for reinstatement prescribed by K.S.A. 58-3063 and amendments thereto and an application therefor. Such application shall be made on a form provided by the commission and shall be signed by the licensee and the licensee's supervising broker or branch broker, if applicable.

(d) Upon a change in a supervising broker's name, business name or trade name for the primary office or a change in the location of a supervising broker's office, the supervising broker shall, within 10 days, return to the commission together with the reinstatement fee prescribed by K.S.A. 58-3063 and amendments thereto, for cancellation and reinstatement under the new name or location of the supervising broker: (1) The license of the supervising broker; (2) the license of any other broker who is associated with the supervising broker and whose license requires reinstatement under the new name or location; and (3) the licenses of all salespersons and associate brokers employed by or associated with the supervising broker.

(e) The supervising broker of the primary office shall be responsible for ensuring that the branch broker complies with ~~subsection (f)~~ *subsections (f) and (l)*.

(f) Upon a change in a supervising broker's name, business name or trade name for the primary office or a change in the location of a branch broker's office, the branch broker shall, within 10 days, return to the commission, for cancellation and reinstatement under the new name for the primary office and branch office or location of the branch office, the license of the branch broker and the licenses of all salespersons and associate brokers assigned to the branch office, together with the reinstatement fee prescribed by K.S.A. 58-3063 and amendments thereto.

(g) (1) To change the broker designated as the branch broker or supervising broker of an office, the supervising broker shall, within 10 days, notify the commission on a form approved by the commission. Except as provided in paragraphs (2), (3) or (4), the supervising broker shall return to the commission, for cancellation and reinstatement, the licenses of the current broker and new broker, together with the reinstatement fee prescribed by K.S.A. 58-3063 and amendments thereto.

(2) The license of a broker is not required to be returned to the commission for cancellation and reinstatement if the broker is:

(A) An associate broker in the primary office and will function as the supervising broker; or

(B) an associate broker in the branch office and will function as the branch broker.

(3) The license of a supervising broker is not required to be returned to the commission for cancellation and reinstatement if the broker will continue to be associated or employed by the primary office as an associate broker.

(4) The license of a branch broker is not required to be returned to the commission for cancellation and reinstatement if the broker will continue to be associated or employed by the branch office as an associate broker.

(h) If a salesperson's or associate broker's employment or association with a supervising broker is terminated by the supervising broker for violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, the supervising broker shall submit a written statement to the commission, within 10 days, setting forth the alleged facts that were involved.

(i) If a salesperson's or associate broker's employment or association with a branch broker is terminated by the branch broker for violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, the branch broker shall submit a written statement to the commission, within 10 days, setting forth the alleged facts that were involved.

(j) When a termination occurs pursuant to subsections (h) or (i) and a real estate transaction is involved, the duty to report shall apply whether the salesperson or associate broker acted as an agent, transaction broker or as a principal in the transaction.

(k) *Upon closure of a primary office, the supervising broker shall,*

within 10 days, notify the commission of the closure of the office and return to the commission the supervising broker's license and the licenses of all salespersons or associate brokers employed by or associated with the primary office for the following:

(1) Cancellation and reinstatement if the supervising broker has paid the appropriate fee and filed the appropriate form with the commission for purposes of the supervising broker becoming employed by or associated with a new supervising broker or branch broker;

(2) cancellation and reinstatement if the salesperson or associate broker has paid the appropriate fee and filed the appropriate form with the commission for purposes of the salesperson or associate broker becoming employed by or associated with a new supervising broker or branch broker; or

(3) placement of each license on inactive status.

(l) Upon closure of a branch office, the branch broker shall, within 10 days, notify the commission of the closure of the office and return to the commission the branch broker's license and the licenses of all salespersons or associate brokers employed by or associated with the branch office for the following:

(1) Cancellation and reinstatement if the branch broker has paid the appropriate fee and filed the appropriate form with the commission for purposes of the branch broker becoming employed by or associated with a new supervising broker or branch broker;

(2) cancellation and reinstatement if the salesperson or associate broker has paid the appropriate fee and filed the appropriate form with the commission for purposes of the salesperson or associate broker becoming employed by or associated with a new supervising broker or branch broker; or

(3) placement of each license on inactive status.

Sec. 4. K.S.A. 2007 Supp. 58-3050 is hereby amended to read as follows: 58-3050. (a) Except as provided in subsection (b) and (c), the commission may refuse to grant or renew a license and the license of any licensee may be revoked, suspended, conditioned or restricted or a licensee may be censured, if:

(1) The licensee has committed a violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, whether the licensee acted as an agent, *transaction broker* or a principal in the real estate transaction;

(2) the licensee has entered a plea of guilty or nolo contendere to, or has been convicted of any misdemeanor which reflects on the licensee's honesty, trustworthiness, integrity or competence to transact the business of real estate;

(3) the licensee has been finally adjudicated and found to be guilty of violation of the federal fair housing act (42 U.S.C. 3601 et seq.) or K.S.A. 44-1015 through 44-1029, and amendments thereto;

(4) the licensee has obtained a license by false or fraudulent representation;

(5) the licensee has violated any lawful order or directive of the commission; or

(6) the licensee has committed a violation in another state and disciplinary action taken against such licensee resulted in the suspension, probation or revocation of such licensee's real estate license in such other state.

(b) Except as provided in subsection (c), the commission shall suspend or revoke the license of any licensee who has entered a plea of guilty or nolo contendere to, or has been convicted of any felony.

(c) The provisions of subsection (b) shall not apply to any person who:

(1) Is currently licensed under this act;

(2) has entered a plea of guilty or nolo contendere to, or has been convicted of any offense specified in subsection (b); and

(3) has disclosed such plea or conviction in such person's application for any license or renewal thereof on or before July 1, 2007, prior to the commission's action on such application.

(d) (1) In addition to or in lieu of any other administrative, civil or criminal remedy provided by law, the commission, in accordance with the Kansas administrative procedure act and upon a finding that a licensee has violated a provision of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or

rules and regulations adopted thereunder, may impose on such licensee a civil fine not exceeding ~~\$500~~ \$1,000 for each violation.

(2) *A civil fine not exceeding \$5,000 per violation may be imposed if the commission makes specific findings that aggravating circumstances exist and that the licensee:*

(A) *Misappropriated funds belonging to another person;*

(B) *engaged in fraud or made any substantial misrepresentation;*

(C) *represented to a 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;*

(D) *committed forgery or signed or initialed a contractual agreement on behalf of another person in a real estate transaction unless authorized to do so by a duly executed power of attorney; or*

(E) *intentionally failed to disclose to a client or customer all adverse material facts actually known by the licensee regarding environmental hazards affecting the property that are required by law to be disclosed, the physical condition of the property, material defects in the real property, defects in the title to the real property or the client's or customer's ability to perform under the terms of the agreement.*

(e) *For the purposes of subsection (d), the term "aggravating circumstances" means:*

(1) *The licensee's conduct involved fraud or deceit; and*

(2) (A) *the licensee's conduct directly resulted in substantial loss or created a significant risk of substantial loss to a customer or client; or*

(B) *the licensee's conduct resulted in substantial financial gain to the licensee; or*

(C) *the licensee has a history of prior disciplinary actions involving violations similar to the violations described in subsection (d)(2).*

~~(f)~~ (f) In all matters pending before the commission, the commission shall have the power to revoke the license of any licensee who voluntarily surrenders such licensee's license or who does not renew such license pending investigation of misconduct or while charges of misconduct are pending or anticipated.

~~(g)~~ (g) If a broker or salesperson has been declared ~~disabled~~ incompetent by a court of competent jurisdiction, the commission shall suspend the broker's or salesperson's license for the period of disability.

~~(h)~~ (h) (1) Except as provided by paragraph (2) of this subsection, no complaint alleging violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, shall be commenced more than three years from the date of the occurrence which is the subject of the complaint.

(2) Unless the violation is not reasonably ascertainable, complaints alleging violation of subsection (a)(4) or (a)(5) shall be commenced within three years from the date of the occurrence of the violation. If the violation is not reasonably ascertainable, complaints alleging violation of subsection (a)(4) or (a)(5) shall be commenced within three years from the date of violation is ascertained by the commission.

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

~~(j)~~ (j) Notwithstanding any provision of this act or the brokerage relationships in real estate transactions act to the contrary, the commission may use emergency adjudicative proceedings, as provided by K.S.A. 77-536, and amendments thereto, to summarily suspend the license of any licensee if the commission has reasonable cause to believe that the licensee's trust account is in unsound condition or that the licensee is misappropriating funds belonging to other persons.

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

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

(m) *The commission shall be authorized to recover from the fine imposed the commission's actual costs to investigate and prosecute a disci-*

iplinary case against a licensee, including attorney fees. The portion of the fine amount collected that equals the commission's actual costs related to the investigation and prosecution of the case and attorney fees, as certified by the executive director of the commission to the state treasurer, shall be credited to the real estate commission fee fund. The balance of the fine amount collected shall be credited to the state general fund.

Sec. 5. K.S.A. 2007 Supp. 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)~~ (2) 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)~~ (3) Accept, give or charge any rebate or undisclosed commission.

~~(5)~~ (4) 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)~~ (5) Represent or attempt to represent a broker without the broker's express knowledge and consent.

~~(7)~~ (6) Guarantee or authorize any person to guarantee future profits that may result from the resale of real property.

~~(8)~~ (7) 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)~~ (8) 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)~~ (9) Induce any party to break any contract of sale or lease.

~~(11)~~ (10) 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)~~ (11) 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)~~ (12) 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)~~ (13) Engage in fraud or make any substantial misrepresentation.

~~(15)~~ (14) 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)~~ (15) 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)~~ (16) 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)~~ (17) Fail without just cause to surrender any document or instrument to the rightful owner.

~~(19)~~ (18) 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)~~ (19) 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.

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

~~(22)~~ (21) Refuse to appear or testify under oath at any hearing held by the commission.

~~(23)~~ (22) Demonstrate incompetency to act as a broker, associate broker or salesperson.

~~(24)~~ (23) 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)~~ (24) 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)~~ (25) 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)~~ (26) 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 subparagraph (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. 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~~ *subparagraph* (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.

(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.*

(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 de-

posit 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) *No licensee shall:*

(1) *Threaten to engage in or engage in physical abuse towards a client, customer or another licensee;*

(2) *threaten to file or 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.*

(f) 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.

(g) 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. 6. (a) No licensee shall use any promotion or advertisement in any type of media that:

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

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

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

(4) promotes the licensee's business in a manner that could confuse or mislead the public by using terms or a trade name or a business name that could be construed as the trade name or business name of a supervising broker.

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

(A) Be conducted under the direct supervision of the supervising broker or branch broker;

(B) include the name of the supervising broker's trade name or business name by prominently and conspicuously displaying or announcing the supervising broker's trade name or business name in a readable and identifiable manner; and

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

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

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

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

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

(1) The contact information for the employed or associated salesperson or associate broker;

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

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

(4) a domain name or website which does not include terms that are confusing to the public or which cannot be construed as a supervising broker's trade name or business name.

(e) Unless property personally owned by a licensee or in which a licensee has an interest is listed with a supervising broker or branch broker, all advertising caused by the licensee regarding the property shall be done in a manner that clearly informs the public that a real estate licensee is the owner of or has an interest in the property advertised.

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

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

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

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

(a) Payments shall be made only pursuant to an order of a court of

competent jurisdiction, as provided in K.S.A. 58-3071 and amendments thereto, and in the manner prescribed by this act.

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

(c) Payments for claims based upon judgments against any one licensed broker or salesperson shall not exceed in the aggregate \$30,000 within any calendar year, but in no event shall payments for claims based upon judgments against any one licensed broker or salesperson exceed in the aggregate \$50,000.

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

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

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

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

(B) subsection (a)(1), (2), ~~(3), (14), (13), (18), (19) or (20)~~ (25) or subsection (b)(2) of K.S.A. 58-3062 and amendments thereto; or

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

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

(b) Any person may seek recovery from the real estate recovery revolving fund under the following conditions:

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

(2) the claim is made within two years after the date that final judgment is entered;

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

(4) such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, subject to being sold or applied in satisfaction of the judgment, and by such search such person has discovered no such property or assets, or that such person has discovered such property and assets and that such person has taken all necessary action and proceedings for the application thereof to the judgment and that the amount thereby realized was insufficient to satisfy the judgment;

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

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

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

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

(2) the person acted as principal or agent in the real estate transaction which is the subject of the claim and is a licensed broker or salesperson or is a partnership, association, limited liability company or corporation whose partners, members, officers and employees are licensed as pro-

vided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or

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

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

- (1) *Production and distribution of an agency newsletter;*
- (2) *monitoring education courses;*
- (3) *expansion of materials available for consumers; and*
- (4) *education grants to high schools and universities for course materials on money management and home ownership.*

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

(b) The commission shall receive applications for, and issue licenses to, brokers and salespersons, as provided in ~~this~~ *the real estate brokers' and salespersons' license act* and shall administer the provisions of this act and the brokerage relationships in real estate transactions act. The commission may do all things necessary and convenient for carrying into effect the provisions of the acts and may adopt rules and regulations not inconsistent with the acts. For the purpose of the acts, the commission shall make all necessary investigations, and every licensee shall furnish to the commission such evidence as the licensee may have as to any violation the acts or any rules and regulations adopted under the acts. The commission may enforce any order by an action in the district court of the county where the alleged violator resides or where the violation allegedly occurred.

(c) Each member of the commission shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(d) The commission shall hold meetings and hearings in the city of Topeka or at such places as it shall determine at such times as it may designate and on request of two or more of its members.

(e) The commission shall maintain an office in the city of Topeka, and all files, records and property of the commission shall at all times be and remain therein.

(f) The commission shall adopt a seal by which it shall attest its proceedings. Copies of all records and papers required by law or the commission to be filed in the office of the commission, when duly certified by the director, assistant director or chairperson of the commission and attested by the seal of the commission, shall be received in evidence in all courts of the state of Kansas equally and with like effect as the originals.

Sec. 10. K.S.A. 58-3067, 58-3068 and 74-4202 and K.S.A. 2007 Supp. 58-3035, 58-3043, 58-3047, 58-3050 and 58-3062 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 14, 2008.
