

CHAPTER 7

HOUSE BILL No. 2068

AN ACT concerning real estate brokers and salespersons; relating to licensure; amending K.S.A. 2008 Supp. 58-3035, 58-3046a, 58-3050, 58-3062, 58-3080, 58-3082, 58-3083, 58-3084, 58-3085 and 58-3086 and repealing the existing sections.

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

Section 1. K.S.A. 2008 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) “Licensee” means any person licensed under this act as a broker or salesperson.

~~(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.~~

(l) (1) “Office” means any permanent location where one or more licensees regularly conduct real estate business as described in subsection (f) or a location that is held out as an office.

(2) “Office” does not mean a model home office in a new home subdivision if the real estate transaction files are maintained in the primary office or branch office.

(m) “Person” means any individual or any foreign or domestic corporation, partnership or association.

(n) “Primary office” means a supervising broker’s principal place of business for each company created or established by the broker.

(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.

(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).

(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. 2008 Supp. 58-3046a is hereby amended to read as follows: 58-3046a. (a) Except as provided in K.S.A. 58-3040, and amendments thereto, any person who applies for an original license in this state as a salesperson shall submit evidence, satisfactory to the commission, of attendance of a principles of real estate course, of not less than 30 hours of instruction, approved by the commission and received within the 12 months immediately preceding the filing of application for salesperson’s license. The commission may require the evidence to be furnished to the commission with the original application for license or it may require the applicant to furnish the evidence to the testing service designated by the commission as a prerequisite to taking the examination required by K.S.A. 58-3039 and amendments thereto. If the evidence is furnished to the testing service, the instruction shall have been received within 12 months immediately preceding the date of the examination.

(b) Except as provided in K.S.A. 58-3040, and amendments thereto, any person who applies for an original license in this state as a broker shall submit evidence, satisfactory to the commission, of attendance of 24 hours of instruction, approved by the commission and received within the 12 months immediately preceding the filing of application for broker’s license. Such hours shall be in addition to any hours of instruction used to meet the requirements of subsection (c), (d), (e) or (f). The commission may require the evidence to be furnished to the commission with the original application for license, or it may require the applicant to furnish the evidence to the testing service designated by the commission as a prerequisite to taking the examination provided in K.S.A. 58-3039, and amendments thereto. If the evidence is furnished to the testing service, the instruction shall have been received within 12 months immediately preceding the date of the examination.

(c) Any person who applies for an original license in this state as a salesperson on or after July 1, 2007, shall submit evidence, satisfactory to the commission, of attendance of a Kansas real estate practice course, of not less than 30 hours of instruction, approved by the commission and received within the six months immediately preceding the filing of the application for licensure.

(d) Any person who applies for an original license in this state as a broker on or after July 1, 2007, who is a nonresident of Kansas or who is a resident of Kansas applying for licensure pursuant to subsection (e) of K.S.A. 58-3040, and amendments thereto, shall submit evidence, satisfactory to the commission, of attendance of a Kansas real estate course,

of not less than four hours of instruction and received within the six months immediately preceding the filing of the application for licensure. Such course shall be approved by the commission and shall be specific to Kansas law with primary emphasis on issues that arise under the brokerage relationships in real estate transactions act, K.S.A. 58-30,101 et seq., and amendments thereto, and rules or regulations adopted thereunder.

(e) At or prior to each renewal date established by the commission, any person who is licensed in this state as a broker or as a salesperson shall submit evidence, satisfactory to the commission, of attendance of not less than 12 hours of additional instruction approved by the commission and received during the renewal period.

(f) Any person who obtains a temporary license in this state as a salesperson prior to July 1, 2007, shall submit evidence, satisfactory to the commission, of attendance of courses of instruction approved by the commission as follows:

(1) No later than ten days prior to the expiration date of the temporary license, 30 hours of instruction received after the date of licensure.

(2) At or prior to the first renewal of a license issued pursuant to K.S.A. 58-3039, and amendments thereto, 12 hours of additional instruction received during the renewal period. Such evidence shall not be required until the second license renewal if the license expires less than six months after issuance.

(3) At or prior to each license renewal thereafter, 12 hours of additional instruction received during the renewal period.

(g) Any person who qualifies for original licensure as a salesperson pursuant to K.S.A. 58-3039, and amendments thereto, on or after July 1, 2007, shall not be required to comply with subsection (e) until the second license renewal period if the license expires less than six months after it is issued.

(h) Except for courses reviewed pursuant to subsection (k), courses of instruction required by this section shall be courses approved by the commission and offered by:

(1) An institution which is accredited by the north central association of colleges and secondary schools accrediting agency;

(2) an area vocational or vocational-technical school as defined by K.S.A. 72-4412, and amendments thereto;

(3) a private or out-of-state postsecondary educational institution which has been issued a certificate of approval pursuant to the Kansas private and out-of-state postsecondary educational institution act;

(4) any agency of the state of Kansas; or

(5) a similar institution, approved by the commission, in another state.

(i) The commission shall adopt rules and regulations to: (1) Prescribe minimum curricula and standards for all courses offered to fulfill education requirements of this act, (2) designate a course of study to fulfill any specific requirement, which may include ~~requiring that licensees pass a test as prescribed by the commission for any course designated by the commission in rules and regulations as a mandatory core requirement~~ *a testing requirement*, (3) prescribe minimum qualifications for instructors of approved courses and (4) establish standards and procedures for approval of courses and instructors, monitoring courses, advertising, registration and maintenance of records of courses, and withdrawal of approval of courses and instructors.

(j) The commission may approve distance education courses consisting solely or primarily of instruction provided online or in other computer-assisted formats, or by correspondence, audiotape, videotape or other media. For the purposes of this section, attendance of one hour of instruction shall mean 50 minutes of classroom instruction or the equivalent thereof in distance education study as determined by the commission.

(k) Courses of instruction required by this section shall be courses approved by the commission either before or after their completion. The commission may give credit toward the 12 hours of additional instruction required by subsection (e) or (f) to any licensee who submits an application for course review obtained from the commission and pays the fee prescribed by K.S.A. 58-3063, and amendments thereto, if, in the judgment of the commission, the course meets the objectives of continuing education.

(l) The commission shall publish annually a list of educational insti-

tutions and entities and the courses offered by them in this state which are approved by the commission.

(m) No license shall be issued or renewed unless the applicable requirements set forth in this section are met within the time prescribed.

Sec. 3. K.S.A. 2008 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 *or reinstated, or attempted to obtain or reinstate*, 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 \$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) 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) If a broker or salesperson has been declared incompetent by a court of competent jurisdiction, the commission shall suspend the broker's or salesperson's license for the period of disability.

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

(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) 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) 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 disciplinary 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. 4. K.S.A. 2008 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) Fail to account for and remit any money which comes into the licensee's possession and which belongs to others.

(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.

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

(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.

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

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

(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.

(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.

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

(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.

(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.

(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.

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

(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.

(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.

(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.

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

(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.

(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.

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

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

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

(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.

(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.

(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.

(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 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 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 ex-

empted 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~~ *ten-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 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) No licensee shall:

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

(1) *Threaten to engage in or engage in physical abuse or engage in harassment towards:*

(A) *A client or customer;*

(B) *another licensee;*

(C) *commission members or staff;*

(D) *staff of the office of administrative hearings;*

(E) *staff from any real estate trade association or multiple listing service; or*

(F) *any person from another business or industry whose services are requested or required as part of a real estate transaction.*

(2) *threaten to file or file a lien on residential property;*

~~(3) engage in harassment towards a client, customer or another licensee;~~

~~(4)~~ (3) *conduct real estate business with impaired judgment or objectivity as the result of mental illness or addiction to alcohol or controlled substances;*

~~(5)~~ (4) *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)~~ (5) *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)~~ (6) *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.

Sec. 5. K.S.A. 2008 Supp. 58-3080 is hereby amended to read as follows: 58-3080. (a) *Except as provided in subsection (c)*, when the license of a supervising broker or branch broker expires *or is deactivated*, the licenses of all licensees associated with or employed by the supervising broker or branch broker shall automatically be placed on inactive status within five calendar days after written notice is issued by the commission to the associated or employed licensee unless notification is provided to the commission prior to the expiration date of the license *or the date the license is deactivated* that another broker will assume the role as the supervising broker or branch broker or the licensee transfers to another supervising broker or branch broker.

(b) If notification is not received by the commission prior to the expiration date *or deactivation date* of the supervising broker's or branch broker's license that another broker will act as supervising broker or branch broker, the supervising broker or branch broker whose license expires *or is deactivated* shall return to the commission the licenses of all licensees associated or employed by the supervising broker or branch broker before or immediately upon the expiration date *or deactivation date* of the supervising broker's or branch broker's license.

(c) *If deactivation is a condition imposed upon the license of a supervising broker or a branch broker by order of the commission pursuant to K.S.A. 58-3050, and amendments thereto, the commission may authorize another broker to act as the supervising broker or branch broker during the period of deactivation. If another broker is not authorized to act as*

the supervising broker or branch broker during the period of deactivation, the supervising broker or branch broker shall return to the commission the licenses of all licensees associated with or employed by the supervising broker or branch broker within five calendar days of the effective date of the commission's order of deactivation.

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

Sec. 6. K.S.A. 2008 Supp. 58-3082 is hereby amended to read as follows: 58-3082. (a) A licensee whose license is suspended, *deactivated* or revoked may receive any personally earned commission during the period of suspension, *deactivation* or revocation only for those acts performed and for which commission was personally earned when the person was actively licensed prior to the effective date of the suspension, *deactivation* or revocation. This statute is not intended to determine ~~if whether~~ a licensee is entitled to compensation, ~~such~~. Entitlement ~~would to compensation shall~~ depend upon the terms of the licensee's written employment or independent contractor agreement with ~~their~~ *the licensee's* former supervising broker or branch broker and is a matter of contract law.

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

Sec. 7. K.S.A. 2008 Supp. 58-3083 is hereby amended to read as follows: 58-3083. (a) Unless notification is provided to the commission prior to the expiration date *or deactivation date* of the supervising broker's or branch broker's license that another broker will act as the supervising broker or branch broker, the supervising broker or branch broker whose license expires *or is deactivated*, on or before the expiration date *or deactivation date* of the license, shall advise all clients and customers that the supervising broker or branch broker and any licensees that are employed by or associated with the supervising broker or branch broker will be unable to perform the terms and conditions contained in the listing or brokerage agreement with the client or customer after the expiration *or deactivation* of the supervising broker's or branch broker's license. Upon receipt of notice from the supervising broker or branch broker or the expiration date *or deactivation date* of the supervising broker's or branch broker's license, whichever is earlier, the client or customer may enter into a listing or brokerage agreement with another broker of their choice.

(b) Unless the commission notifies the supervising broker or branch broker in writing that the commission has authorized another broker to act as the supervising broker or branch broker during the period of suspension, *deactivation* or revocation, the supervising broker or branch broker whose license is suspended, *deactivated* or revoked, within five calendar days after the effective date of the order of suspension, *deactivation* or revocation, shall advise all clients and customers that the supervising broker or branch broker and any licensees that are employed by or associated with the supervising broker or branch broker will be unable to perform the terms and conditions contained in the listing or brokerage agreement with the client or customer after the effective date of the suspension, *deactivation* or revocation. Upon receipt of notice from the supervising broker or branch broker, or upon the effective date of the order of suspension, *deactivation* or revocation if notice is not properly given, the client or customer may enter into a listing or brokerage agreement with another broker of their choice.

(c) A supervising broker or branch broker whose license expires or is suspended, *deactivated* or revoked may not sell or assign listings and brokerage agreements to another broker without the written consent of the owner of the property, and any sale or assignment of a listing or brokerage agreement must be completed prior to the expiration of the supervising broker's or branch broker's license or the effective date of the order of suspension, *deactivation* or revocation.

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

Sec. 8. K.S.A. 2008 Supp. 58-3084 is hereby amended to read as follows: 58-3084. (a) A supervising broker or branch broker whose license is expired or is suspended, *deactivated* or revoked may not personally finalize any pending closings. This responsibility must be given to another broker, an attorney, a financial institution or an escrow company.

(b) If the commission has not authorized another broker to act as the supervising broker or branch broker, transfer of the responsibility for

finalizing a pending closing shall be done with the written approval of all parties to the transaction.

(c) If the commission has not authorized another broker to act as the supervising broker or branch broker, all parties to the transaction shall be advised of the facts concerning the situation concerning the status of the license of the supervising broker or branch broker and shall be provided the name, address and telephone number of the responsible entity where all trust and escrow moneys will be held in accordance with the written agreement of the parties to the transaction.

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

Sec. 9. K.S.A. 2008 Supp. 58-3085 is hereby amended to read as follows: 58-3085. (a) If the commission has not authorized another broker to act as the supervising broker or branch broker, all advertising under the supervising broker's or branch broker's name or trade name, including, but not limited to, signage, must be removed or covered within five calendar days after the expiration date *or date of deactivation* of the supervising broker's or branch broker's license or the effective date of the order of suspension, *deactivation* or revocation.

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

Sec. 10. K.S.A. 2008 Supp. 58-3086 is hereby amended to read as follows: 58-3086. (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~~ *an office* where real estate activity is conducted that is not ~~registered~~ *designated* 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 cannot 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. 11. K.S.A. 2008 Supp. 58-3035, 58-3046a, 58-3050, 58-3062, 58-3080, 58-3082, 58-3083, 58-3084, 58-3085 and 58-3086 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 19, 2009.
