

CHAPTER 104
HOUSE BILL No. 2560

AN ACT concerning real estate salespersons and brokers; relating to licensure; technical amendments; amending K.S.A. 58-3037, 58-3038, 58-3041, 58-3042, 58-3044, 58-3060, 58-3061, 58-30,102 and 58-30,103 and K.S.A. 2009 Supp. 58-3035, 58-3043, 58-3062 and 58-3068 and repealing the existing sections.

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

Section 1. K.S.A. 2009 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) (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)~~ (m) “Primary office” means a supervising broker’s principal place of business for each company created or established by the broker.

~~(o)~~ (n) “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)~~ (o) “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)~~ (p) “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. 58-3037 is hereby amended to read as follows: 58-3037. The provisions of this act shall not apply to:

(a) Any person, other than a person licensed under this act, who directly performs any of the acts within the scope of this act with reference to such person’s own property.

(b) Any person who directly performs any of the acts within the scope of this act with reference to property that such person is authorized to transfer in any way by a power of attorney from the owner, provided that such person receives no commission or other compensation, direct or indirect, for performing any such act.

(c) Services rendered by an attorney licensed to practice in this state in performing such attorney’s professional duties as an attorney.

(d) Any person acting as receiver, trustee in bankruptcy, administrator, executor or guardian, or while acting under a court order or under the authority of a will or a trust instrument or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency.

(e) Any officer or employee of the federal or state government, or any political subdivision or agency thereof, when performing the official duties of the officer or employee.

(f) Any multiple listing service wholly owned by a nonprofit organization or association of brokers.

(g) Any nonprofit referral system or organization of brokers formed for the purpose of referral of prospects for the sale or listing of real estate.

(h) Railroads or other public utilities regulated by the state of Kansas, or their subsidiaries, affiliated corporations, officers or regular employees, unless performance of any of the acts described in subsection (f) of K.S.A. 58-3035, and amendments thereto, is in connection with the sale, purchase, lease or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

(i) The sale or lease of real estate by an employee of a *person, association, corporation, limited liability company, limited liability partnership, partnership or professional corporation* which owns or leases such real estate, if such employee owns ~~not less than~~ 5% or greater interest in *such association, limited liability company, limited liability partnership, partnership or professional corporation* or of the stock of such corporation.

(j) The sale or lease of new homes by a person, ~~partnership, association or domestic corporation~~ *association, corporation, limited liability company, limited liability partnership or professional corporation* who

constructed such homes, but the provisions of this act shall apply to the sale or lease of any such homes by any employee of such person, ~~partnership or association~~ *association, corporation, limited liability company, limited liability partnership, partnership or professional corporation if such employee owns less than 5% interest in such association, limited liability company, limited liability partnership, partnership or professional corporation* or by any employee of ~~such a~~ corporation who owns less than 5% of the stock of such corporation.

(k) The lease of real estate for agricultural purposes.

Sec. 3. K.S.A. 58-3038 is hereby amended to read as follows: 58-3038. (a) Except as provided by subsection (b), no action shall be instituted or recovery be had in any court of this state by any person for compensation for any act or service, the performance of which requires a license under this act, unless such person was duly licensed under this act at the time of offering to perform any such act or service or procuring any promise to contract for the payment of compensation for any such contemplated act or service.

(b) Subsection (a) shall not apply to ~~partnerships, associations or corporations~~ *associations, corporations, limited liability companies, limited liability partnerships, partnerships or professional corporations* whose partners, members, officers and employees are licensed as provided by subsection (b) of K.S.A. 58-3042, and amendments thereto.

(c) Except as provided by K.S.A. 58-3076, and amendments thereto, nothing herein shall preclude a person who is properly licensed as a broker or salesperson in another jurisdiction from collecting a referral fee.

Sec. 4. K.S.A. 58-3041 is hereby amended to read as follows: 58-3041. (a) ~~The commission may at any time issue a restricted license to a person:~~

~~—(1) Who is or has been licensed but who has been found by the commission after a hearing, held in accordance with the provisions of the Kansas administrative procedure act, to have violated any provision of this act or rules and regulations adopted hereunder;~~

~~—(2) who is applying for an original license under this act and has met the examination and experience requirements but has been found by the commission after a hearing, held in accordance with the provisions of the Kansas administrative procedure act, to have failed to make a satisfactory showing that such person meets all other applicable requirements; or~~

~~—(3) who is applying for an original license as a broker under this act but whose activities or experience and education, pursuant to subsection (c) of K.S.A. 58-3039 and amendments thereto, have been found by the commission after a hearing, held in accordance with the provisions of the Kansas administrative procedure act, to have been limited to a specialized activity or particular type of transaction, thereby justifying restriction of the license to the specialized activity or type of transaction.~~

~~—(b) A restricted license issued pursuant to this section may be restricted, as the commission determines advisable in the public interest, as follows:~~

~~—(1) By term;~~

~~—(2) to employment by or association with a particular broker as an independent contractor;~~

~~—(3) to a particular type of transaction; or~~

~~—(4) by other conditions deemed advisable by the commission, including the filing of a surety bond in such amount as may be required by the commission for the protection of persons with whom the licensee may deal.~~

~~—(c) The holder of a restricted license shall not be entitled to automatic renewal of such license, such renewal being in the discretion of the commission.~~

(a) The commission may issue a restricted or conditioned license to an applicant for an original license or grant an application for renewal of a license, as deemed by the commission to be in the public interest. Restrictions or conditions may be imposed on the issuance of the original license or the renewal of the license, if the applicant:

(1) Has violated the Kansas real estate brokers' and salespersons' license act, K.S.A. 58-3034 et seq., and amendments thereto, the brokerage relationships in real estate transactions act, K.S.A. 58-30,101 et seq., and amendments thereto, or rules and regulations promulgated thereunder;

(2) has a pending charge, plea of guilty or nolo contendere, or conviction of a felony offense unless the application cannot be considered as

pursuant to K.S.A. 58-3043, and amendments thereto;

(3) has a pending charge, plea of guilty or nolo contendere or conviction of a misdemeanor offense which the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant to transact the business of real estate;

(4) has received a diversion or suspended imposition of sentence which the commission determines the underlying facts resulting in the misdemeanor charge being filed reflect on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate;

(5) has a pending case or has received a determination from a military tribunal or administrative proceeding which the commission determines may reflect on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate;

(6) has pending civil litigation, has a judgment or settlement in civil litigation, has tax liens or other liens which the commission determines may reflect on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate;

(7) has a pending or finally adjudicated case involving the denial of a license, suspension, revocation, voluntary surrender or any other disciplinary action taken by another jurisdiction against a real estate salesperson's or broker's license;

(8) has a pending or finally adjudicated case involving the denial of a license, registration or certificate of a suspension, revocation, voluntary surrender or any other disciplinary action taken by the state of Kansas or another jurisdiction against any professional or occupational license, registration or certificate held by the applicant;

(9) has a pending or finally adjudicated case in the state of Kansas or another jurisdiction involving the practice of a profession or occupation without having the required licensure, registration or certification; or

(10) such other matters as the commission deems pertinent pursuant to K.S.A. 58-3043, and amendments thereto.

(b) Except as provided in paragraph (c), restrictions or conditions that may be imposed by the commission on the issuance of an original license or the granting of an application for renewal of a license under paragraph (a) include restrictions and conditions as:

(1) To employment by or association with as an independent contractor a specific supervising broker or branch broker;

(2) to a specified period of time;

(3) to a particular type of transaction;

(4) to require any specified reports or periodic and final reports regarding the status of any matters in paragraphs (a)(1) through (10);

(5) to require medical, counseling, psychologist or psychiatric reports as deemed advisable by the commission in the public interest;

(6) to require compliance with and proof of satisfactory completion of the conditions of any probation, diversion, suspended imposition of sentence, post-release supervision or similar sentence;

(7) to require specified education be completed and proof of completion submitted to the commission. The education taken shall not be applied towards the continuing education requirements for renewal of a license;

(8) to file a surety bond in such amount as may be required by the commission for the protection of persons with whom the licensee may do business; or

(9) to require other restrictions or conditions deemed advisable by the commission in the interest of the public.

(c) The commission may issue a restricted or conditioned license to an applicant for an original broker's license and may grant an application for renewal of a broker's license, as deemed by the commission to be in the public interest, if the applicant lacks solely the requisite experience or related education for unrestricted or unconditioned licensure. Restrictions or conditions may be imposed on the license at the discretion of the commission, including restricting or conditioning a license:

(1) To employment by or association with as an independent contractor a specific supervising broker or branch broker;

(2) to a specified period of time;

(3) to a particular type of transaction;

(4) to prohibit employing or associating with any salespersons or associate brokers as a supervising broker or a branch broker;

(5) to require specified education be completed and proof of completion be submitted, and the education taken shall not be applied towards

the continuing education requirements for renewal of a license;

(6) to file a surety bond in such amount as may be required by the commission for the protection of persons with whom the licensee may do business; or

(7) by other restrictions or conditions deemed advisable by the commission in the interest of the public.

(d) Unless the commission deems revocation of a license is appropriate pursuant to K.S.A. 58-3050, and amendments thereto, the commission may at any time issue a restricted or conditioned license to a licensee with any conditions or restrictions, as deemed by the commission to be in the public interest, if the licensee:

(1) Has violated the Kansas real estate brokers' and salespersons' license act, K.S.A. 58-3034 et seq., and amendments thereto, the brokerage relationships in real estate transactions act, K.S.A. 58-30,101 et seq., and amendments thereto, or rules and regulations promulgated thereunder;

(2) has a pending charge, plea of guilty or nolo contendere, or conviction of a felony offense;

(3) has a pending charge, plea of guilty or nolo contendere, or conviction of a misdemeanor offense that the commission determines reflects on the licensee's honesty, trustworthiness, integrity or competence to transact the business of real estate;

(4) has been adjudicated and found to be guilty of violating the federal fair housing act, 42 U.S.C. 3601 et seq., and amendments thereto, or the Kansas acts against discrimination, K.S.A. 44-1015 through 44-1044, and amendments thereto;

(5) has obtained or reinstated, or attempted to obtain or reinstate, a license by false or fraudulent misrepresentation;

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

(7) has a pending or finally adjudicated case filed in another jurisdiction involving the condition, probation, suspension or revocation of a real estate salesperson's or broker's license.

(e) Restrictions or conditions that may be imposed against a licensee at any time as provided in paragraph (d), as deemed by the commission to be in the public interest may include the restrictions and conditions as provided in paragraphs (1) through (9) of subsection (b).

(f) Granting or renewing a license, whether the license is restricted, conditioned or not, or taking disciplinary action against a license using restrictions and conditions shall be at the sole discretion of the commission as it deems appropriate to safeguard the public interest. The holder of a restricted or conditioned license shall not be entitled to automatic renewal of a license by complying with K.S.A. 58-3045, and amendments thereto.

(g) Restrictions or conditions shall not be imposed upon a license unless the applicant or licensee is provided notice and an opportunity to be heard in accordance with the Kansas administrative procedure act.

Sec. 5. K.S.A. 58-3042 is hereby amended to read as follows: 58-3042. (a) No real estate license shall give authority to any person other than the person to whom the license is issued.

~~(b) No license shall be granted to a corporation, partnership, association or limited liability company~~ *(b) No license shall be granted to an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation. Each person who is an owner, officer of a corporation or a member of a partnership, association or limited liability company or member of an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation and who performs any act described in subsection (f) of K.S.A. 58-3035, and amendments thereto, and each person who is employed by or associated with a corporation, partnership, association or limited liability company an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation and who performs any act described in subsection (f) of K.S.A. 58-3035, and amendments thereto, shall be a licensed broker or licensed salesperson.*

(c) If any person who is an owner, officer or member of an association, corporation, limited liability company, limited liability partnership or professional corporation performs any act described in subsection (f) of K.S.A. 58-3035, and amendments thereto, a primary office shall be established and a supervising broker shall be designated pursuant to K.S.A. 58-3060, and amendments thereto, to supervise the office and any employed or associated salespersons or associate brokers and the supervising broker shall obtain approval for the supervising broker's business name

or trade name pursuant to K.S.A. 58-3079, and amendments thereto.

Sec. 6. K.S.A. 2009 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) (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) *The commission may renew or grant an original license to an applicant who has any prior revocation or suspension, conduct or plea of guilty or nolo contendere to or conviction of a misdemeanor as specified in subsection (a) 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.* In its consideration of any prior revocation, conduct or plea of guilty or *nolo contendere* to or conviction of a misdemeanor as specified in subsection (a), the commission shall consider the following factors:

- (1) The nature of the offense;
- (2) any aggravating or extenuating circumstances;
- (3) the time elapsed since such revocation, conduct or plea of guilty or *nolo contendere* to or conviction of a misdemeanor;
- (4) the rehabilitation or restitution performed by the applicant; and
- (5) any other factors that the commission deems relevant.

- (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.

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

- (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 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 subparagraph (A).

- (2) The commission may grant an original license pursuant to subsection (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 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 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.

(f) (1) The commission may 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 (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 subsections (a) and (b), in determining whether or not the applicant presently has a good reputation as required in subsection (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. 7. K.S.A. 58-3044 is hereby amended to read as follows: 58-3044. (a) If the commission, after ~~an~~ ~~a complete~~ application for a license or renewal of a license has been filed ~~with the proper form~~, accompanied by the proper fee, refuses to issue or renew the license, ~~it~~ ~~the commission~~ shall give *written* notice to the applicant setting forth the reasons for such refusal. Such notice and an opportunity to be heard shall be given in accordance with the provisions of the Kansas administrative procedure act, unless the application for a license is denied solely because of the applicant's failure to pass a required examination.

(b) If an incomplete application is filed with the commission or the proper fees are not paid, the commission shall provide written notice to the applicant of the deficiency. If the deficiency is not corrected within a reasonable time or if no time remains to correct the deficiency, the commission shall provide written notice to the applicant that the applicant may withdraw the incomplete application and request to receive any applicable refund. If the applicant fails to respond to the commission's notice within a reasonable time, the application shall be considered incomplete and the provisions of the Kansas administrative procedure act shall not apply. The applicant may request to receive any applicable refund. For purposes of this paragraph only, reasonable time shall mean not less than 10 calendar days.

Sec. 8. K.S.A. 58-3060 is hereby amended to read as follows: 58-3060. (a) Each licensed resident broker shall have and maintain a principal place of business in the state of Kansas, or in an adjoining state with the written permission of the commission, which shall serve as such broker's primary office for the transaction of business. Each licensed nonresident broker shall have and maintain a principal place of business in the broker's state of residence or in the state of Kansas which shall serve as such broker's primary office for the transaction of business.

(b) A supervising broker shall be designated to supervise the primary office and the activities of salespersons and associate brokers assigned to the primary office. Each additional office or place of business, other than the primary office, shall be designated a branch office and a branch broker shall be designated to supervise such office and the activities of salespersons and associate brokers assigned to such office.

(c) A branch broker's license and those of salespersons and associate

brokers assigned to the branch office shall be displayed in the branch office. All other licenses of brokers, salespersons and associate brokers shall be displayed in the broker's primary office.

(d) A broker shall give written notice to the director of any change in location of any office of the broker, by returning licenses for cancellation and reinstatement under the new location as provided by K.S.A. 58-3047 and amendments thereto.

(e) The requirement of maintaining an office as provided by this section shall not apply to an associate broker, to a broker whose license is on deactivated status or to an officer ~~of a corporation, partner of a partnership or member of an association,~~ *member, partner, shareholder or employee of an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation* who is not designated as the supervising broker of an office *of the association, corporation, limited liability company, limited liability partnership, partnership or professional corporation.*

Sec. 9. K.S.A. 58-3061 is hereby amended to read as follows: 58-3061. (a) Unless exempt under subsection (f), each broker shall maintain, in the broker's name or the broker's firm name, a separate trust account in this state, or in an adjoining state with written permission of the commission, designated as such. All down payments, earnest money deposits, advance listing fees or other trust funds received in a real estate transaction by the broker or by the broker's associate brokers or salespersons on behalf of a principal or any other person shall be deposited or invested in such account unless all parties having an interest in the funds have agreed otherwise in writing. The account shall be with an insured bank or savings and loan association or credit union which is insured with an insurer or guarantee corporation as required under K.S.A. 17-2246 and amendments thereto. A broker shall not retain any interest accrued on moneys held in an interest-bearing trust account without the written consent of all parties to the transaction.

(b) Each broker shall notify the commission of the name of the bank, credit union or savings and loan association in which the trust account is maintained and of the account name by completing a consent to audit form obtained from the commission. A broker may maintain more than one trust account if the commission is advised of each such account as required by this subsection and authorized to examine all such accounts. If a separate trust account is maintained for a branch office, the branch broker shall maintain trust account records required by rules and regulations of the commission and all transaction files related to the branch office trust account.

(c) Each broker shall grant full access to all records pertaining to the broker's trust account to the commission and its duly authorized representatives. A trust account examination shall be made at such time as the commission directs.

(d) No payments shall be made from the broker's trust account other than a withdrawal of earned commissions payable to the broker or distributions made on behalf of the beneficiaries of the trust account. A broker shall not be entitled to any part of the earnest money or other money paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated unless otherwise agreed in writing by all parties to the transaction.

(e) A broker shall make available, for inspection by the commission and its duly authorized representatives, all records relating to the broker's real estate business. Such records shall be kept in a form and for a term prescribed by the commission. An inspection shall be made at such time as the commission directs.

(f) The requirement of maintaining a trust account shall not apply to: (A) A broker whose license is on deactivated status; (B) a broker who acts as an associate broker; (C) a broker who is an officer ~~of a corporation, a member of an association or a partner of a partnership,~~ *member, partner, shareholder or employee of an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation* and who is not the supervising broker of an office ~~of the corporation, association or partnership~~ *association, corporation, limited liability company, limited liability partnership, partnership or professional corporation*; or (D) a broker whose real estate activities, in the opinion of the commission, do not necessitate the holding of trust funds.

(g) Upon acceptance of an offer and deposit of earnest money in a broker's trust account, such deposit may be disbursed only:

- (1) Pursuant to written authorization of buyer and seller;
- (2) pursuant to a court order; or
- (3) when a transaction is closed according to the agreement of the parties.

(h) Nothing in this section shall prohibit the parties to a real estate contract from agreeing, in the sales contract, to the following procedure:

“Notwithstanding any other terms of this contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and seller agree that failure by either to respond in writing to a certified letter from broker within seven days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within 30 days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto.”

(i) The commission may direct a broker to remit moneys from the broker's trust account to the commission for deposit into the real estate recovery revolving fund established within the state treasury by K.S.A. 58-3023 and amendments thereto, upon the following determinations having been made by the commission:

- (1) That the money has been in the broker's trust account for five or more years;
- (2) if the money was an earnest money deposit, that an earnest money dispute existed or the broker did not obtain written authorization of buyer and seller to disburse the funds; and
- (3) that the funds do not meet the criteria for payment to the state treasurer under the disposition of unclaimed property act.

Sec. 10. K.S.A. 2009 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 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~~ *an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation*, the commission or other valuable consideration may be paid by the licensee's broker to such ~~professional corporation~~ *association, corporation, limited liability company or, limited liability partnership, partnership or professional corporation*. 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 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 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 state-

ments 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 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) conduct real estate business with impaired judgment or objectivity as the result of mental illness or addiction to alcohol or controlled substances;

(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;

(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

(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. 11. K.S.A. 2009 Supp. 58-3068 is hereby amended to read as follows: 58-3068. (a) 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), (13), (18), (19) or (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, 21-3707, 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~~ *an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation* whose partners, members, officers and employees are licensed as provided 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. 12. K.S.A. 58-30,102 is hereby amended to read as follows: 58-30,102. As used in the brokerage relationships in real estate transactions act, unless the context otherwise requires:

(a) "Affiliated licensee" means any individual licensed as a salesperson or broker under the Kansas real estate brokers' and salespersons' license act who is employed by a broker or affiliated with a broker as an independent contractor.

(b) "Agency" means every relationship in which a broker acts for or represents another, by the latter's express written authority, in a real estate transaction. "Agency" also means the relationship in which a broker, by verbal authorization pursuant to subsection (d)(2) of K.S.A. 58-30,103, and amendments thereto, acts for or represents any agency of the federal government in the sale of property owned by the federal agency.

(c) "Agency agreement" means a written agreement setting forth the terms and conditions of the relationship between a broker and the broker's client.

(d) "Broker" means: (1) An individual who is licensed as a broker under the Kansas real estate brokers' and salespersons' license act and who has an agency with a seller, buyer, landlord or tenant or acts as a transaction broker; or (2) ~~a corporation, partnership, association or limited liability company~~ *an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation*, of which the officers and members, or persons employed by or associated with the ~~corporation, partnership, association or limited liability company~~ *association, corporation, limited liability company, limited liability partnership, partnership or professional corporation*, are licensed pursuant to K.S.A. 58-3042, and amendments thereto and which has an agency with a seller, buyer, landlord or tenant or acts as a transaction broker. The term "broker" includes the broker's affiliated licensees except where the context would otherwise indicate. If an individual broker is indicated by the context, the term "broker" means the supervising broker as defined by K.S.A. 58-3035, and amendments thereto.

(e) "Brokerage firm" means the business entity of a broker, whether ~~a proprietorship, partnership, corporation, association or limited liability company~~ *an association, corporation, limited liability company, limited liability partnership, partnership, proprietorship or professional corporation*.

(f) "Buyer's agent" means a broker who has an agency with a buyer. The term includes the broker's affiliated licensees.

(g) "Client" means a seller, landlord, buyer or tenant who has an agency with a broker.

(h) "Commission" means the Kansas real estate commission.

(i) "Confidential information" means information made confidential by statute, rule, regulation or instructions from the client or personal information about the client which might place the other party at an advantage over the client unless the information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee.

(j) "Customer" means a seller, landlord, buyer or tenant in a real estate transaction in which a broker is involved but who has not entered

into an agency with the broker.

(k) “Designated agent” means a licensee affiliated with a broker who has been designated by the broker, or the broker’s duly authorized representative, to act as the agent of a broker’s buyer or seller client to the exclusion of all other affiliated licensees.

(l) “Exclusive agency agreement” means a written agency agreement that sets forth the terms and conditions of the relationship between a broker and the broker’s clients and does the following:

(1) Grants the broker the exclusive right to represent the seller in the sale of the seller’s property; and

(2) provides the broker will be compensated if the broker or any other person or entity produces a purchaser in accordance with the terms specified in the agreement or if the property is sold during the term of the listing agreement, unless the property is sold solely through the efforts of the seller or to specifically exempted persons or entities.

(m) “Exclusive right to sell agreement” means a written agency agreement or written transaction brokerage agreement that sets forth the terms and conditions of the relationship between a broker and the broker’s clients or customers and does the following:

(1) Grants the broker the exclusive right to assist the seller in the sale of the seller’s property; and

(2) provides the broker will be compensated if the broker, seller or any other person or entity produces a purchaser in accordance with the terms specified in the agreement or if the property is sold during the term of the listing agreement to anyone other than specifically exempted persons or entities.

(n) “Landlord’s agent” means a broker who has entered into an agency with a landlord. The term includes the broker’s affiliated licensees.

(o) “Licensee” means any person licensed under the Kansas real estate brokers’ and salespersons’ license act as a broker or salesperson.

(p) “Ministerial acts” means those acts that a licensee may perform for a person that are informative in nature and do not rise to the level of active representation on behalf of a person. Examples of these acts include, but are not limited to:

(1) Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;

(2) responding to telephone inquiries from a person concerning the price or location of property;

(3) attending an open house and responding to questions about the property from a consumer;

(4) setting an appointment to view property;

(5) responding to questions of consumers walking into a licensee’s office concerning brokerage services offered on particular properties;

(6) accompanying an appraiser, inspector, contractor or similar third party on a visit to a property;

(7) describing a property or the property’s condition in response to a person’s inquiry; or

(8) referral to another broker or service provider.

(q) “Seller’s agent” means a broker who has an agency with a seller. The term includes the broker’s affiliated licensees and subagents of the broker.

(r) “Qualified third party” means a federal, state or local governmental agency or any person whom the broker, the affiliated licensee or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare a written report.

(s) “Statutory agent” means a seller’s agent, a buyer’s agent, a landlord’s agent, a tenant’s agent or a designated agent in a real estate transaction.

(t) “Tenant’s agent” means a broker who has an agency with a prospective tenant. The term includes the broker’s affiliated licensees.

(u) “Transaction broker” means a broker who assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to such transaction. The term includes the broker’s affiliated licensees.

(v) “Written transaction brokerage agreement” means a written agreement setting forth the terms and conditions of the relationship between a broker acting as a transaction broker and the broker’s customers.

Sec. 13. K.S.A. 58-30,103 is hereby amended to read as follows: 58-30,103. (a) Except when acting as a transaction broker or solely as a seller, buyer, landlord or tenant, a broker shall act only as a statutory agent in any real estate transaction. A licensee shall not act as a dual agent or in a dual capacity of agent and undisclosed principal in any transaction.

(b) A broker may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent if the broker complies with this act in establishing the relationships for each transaction. A broker who has been working with a seller, landlord, buyer or tenant as a transaction broker may act as an agent for the seller, landlord, buyer or tenant if the broker complies with this act in establishing the agency relationship.

(c) A broker may be engaged as a transaction broker by oral or written agreement with the seller, landlord, buyer or tenant. A broker shall be considered a transaction broker unless:

(1) An agency relationship between the broker and the party to be represented is established pursuant to this section; or

(2) a broker works with a buyer or tenant as a subagent of the seller or landlord by accepting an offer of subagency.

(d) (1) Except as provided in subsection (d)(2), a broker intending to establish an agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented prior to the licensee's engaging in any of the activities enumerated in subsection (f) of K.S.A. 58-3035, and amendments thereto, as an employee of, or on behalf of, the seller or landlord.

(2) If the real estate which is to be offered for sale is owned by any agency of the federal government, a broker may, on behalf of the owner, engage in activities enumerated in subsection (f) of K.S.A. 58-3035, and amendments thereto, after obtaining verbal authorization from the federal agency for which services are to be performed.

(e) To establish an agency relationship with a buyer or tenant, a broker shall enter into a written agency agreement with the party to be represented no later than the signing of an offer to purchase or lease.

(f) An agency agreement *or written transaction brokerage agreement* shall set forth the terms and conditions of the relationship, including a fixed date of expiration, any limitation on the duty of confidentiality and the terms of compensation, and shall refer to the duties and obligations pursuant to K.S.A. 58-30,106 ~~or~~ 58-30,107 *or* 58-30,113, and amendments thereto. The agreement shall be signed by the party to be represented and by the broker or a licensee affiliated with the broker. A copy of the agreement shall be furnished to the *customer or* client at the time the *customer or* client signs the agreement. If, at the time the *customer or* client signs the agreement, the agreement is not signed by the broker or a licensee affiliated with the broker, the broker or a licensee affiliated with the broker shall furnish a copy of the agreement to the *customer or* client within a reasonable time after the agreement is signed by the broker or a licensee affiliated with the broker.

(g) An agency agreement with a seller or landlord shall include any potential:

(1) for the seller's agent or landlord's agent to act as a transaction broker;

(2) for an affiliated licensee to act as a designated agent for the buyer and the designated agent's supervising broker or branch broker, and an affiliated licensee if applicable, to act as a transaction broker; or

(3) for the broker to designate an affiliated licensee to act as the designated agent for the seller on the broker's personal listing pursuant to subsection (b)(2) of K.S.A. 58-30,109 and amendments thereto.

(h) An agency agreement with a buyer or tenant shall include any potential:

(1) For the buyer's agent or tenant's agent to act as a transaction broker; or

(2) For an affiliated licensee to act as a designated agent for the seller and the designated agent's supervising broker or branch broker, and an affiliated licensee if applicable, to act as a transaction broker.

(i) An agency agreement *or written transaction brokerage agreement* shall not contain an authorization for the broker to sign or initial any document on behalf of the broker's *customer or* client in a real estate transaction or authorization for the broker to act as attorney-in-fact for

the customer or client.

(j) An agency agreement or written transaction brokerage agreement with a seller shall not provide that the broker's commission be based on the difference between the gross sales price and the net proceeds to the owner.

(k) The broker shall not assign, sell or otherwise transfer a written agency agreement or written transaction brokerage agreement to another broker without the express written consent of all parties to the original agreement.

(l) A licensee shall not solicit an agency agreement or written transaction brokerage agreement from a seller or landlord if the licensee knows that the seller or landlord has, with regard to the property, an agency agreement or written transaction brokerage agreement granting an exclusive right to sell or exclusive agency to another broker.

(m) A licensee shall not solicit an agency agreement or written transaction brokerage agreement from a buyer or tenant if the licensee knows that the buyer or tenant has a written agency agreement or written transaction brokerage agreement granting an exclusive ~~representation~~ brokerage relationship to another broker.

(n) A licensee shall not induce any party to break any agency agreement or written transaction brokerage agreement.

(o) If a licensee knows that a buyer or tenant has an agency agreement or written transaction brokerage agreement granting an exclusive ~~representation~~ brokerage relationship to another broker, the licensee shall not contact the buyer or tenant and shall not initiate negotiations for the sale, exchange or lease of real estate with the buyer or tenant. The licensee may negotiate the sale, exchange or lease of real estate directly with the buyer or tenant with the informed consent of the buyer or tenant. The informed consent shall be evidenced by a consent agreement signed by the buyer or tenant prior to any such direct negotiation. The consent agreement shall acknowledge the buyer or tenant agency agreement or written transaction brokerage agreement and that the buyer or tenant may be liable for compensation under the terms of the agency agreement or written transaction brokerage agreement. The commission, by rules and regulations, shall adopt a consent agreement to be used by licensees pursuant to this subsection.

(p) A licensee shall not contact the seller or landlord or negotiate a sale, exchange or lease of real estate directly with a seller or landlord if the licensee knows that the seller or landlord has an ~~agency agreement granting an exclusive right to sell or exclusive agency to~~ exclusive agency agreement or exclusive right to sell agreement with another broker. A buyer's or tenant's agent or a subagent may present an offer to the seller or landlord if the seller's or landlord's agent is present.

Sec. 14. K.S.A. 58-3037, 58-3038, 58-3041, 58-3042, 58-3044, 58-3060, 58-3061, 58-30,102 and 58-30,103 and K.S.A. 2009 Supp. 58-3035, 58-3043, 58-3062 and 58-3068 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2010.
