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MEMORANDUM

To: Chairman Hutton and Members of the House Committee on Commerce,
Labor and Economic Development

From: Charles Reimer, Assistant Revisor of Statutes

Date: 3-13-2016

Subject: SB 352

SB 352 changes the real estate broker and salesperson licensing requirements for nonresidents to permit a nonresident broker who does not meet the licensing requirements for a Kansas real estate broker's license to instead obtain a real estate salesperson's license. The bill also removes an outdated provision of law requiring a nonresident applying for a Kansas license to appoint the director of the Kansas real estate commission as the nonresident's agent for service of process.

Section 1 makes changes to the statute governing the circumstances under which a nonresident may be granted a Kansas broker's license. Much of the changes involve reorganization—the amendments that enable a nonresident broker to obtain a Kansas salesperson's license are found at (b). A nonresident broker may be granted a Kansas salesperson's license if the nonresident meets all requirements that apply to Kansas residents except for the requirements of professional experience pursuant to K.S.A. 58-3039(d)(1) or (e) and does not qualify for a waiver which would permit issuance of a Kansas broker's license if the commission finds the nonresident broker has obtained equivalent experience. In addition, the nonresident broker must submit the certification pursuant to K.S.A. 58-3039(h): a “recommendation of the supervising broker or branch broker with whom the salesperson or associate broker is to be associated, or by whom the salesperson or associate broker is to be employed, certifying that the applicant is honest, trustworthy and of good reputation”.

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Kan. Stat. Ann. § 58-3039 (West)

The referenced requirements for experience under K.S.A. 58-3039(d)(1) or (e) are:

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

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

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

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

Kan. Stat. Ann. § 58-3039 (West)

The activities described in subsection (f) of K.S.A. 58-3035 are:

(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.

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- (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.

Kan. Stat. Ann. § 58-3035 (West)

The provision requiring designation by a nonresident applicant of the director of the Kansas real estate commission as the agent for service of process is removed on page 2, subsection (g), from line 33 to page 3, line 6.