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Kansas Real Estate Commission

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Chapter 58.—PERSONAL AND REAL PROPERTY

Article 30.—REAL ESTATE BROKERS AND SALESPERSONS

Cross References to Related Sections:

Kansas real estate commission, see ch. 74, art. 42.

Law Review and Bar Journal References:

"Potential Liability of Real Estate Brokers and Salesmen for Misrepresentation and Nondisclosure in Kansas," Craig Altenhofen, 52 J.K.B.A. 9 (1983).
"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

Attorney General's Opinions:

Licensure of real estate brokers and salespersons; exemptions; attorneys. 94-6.

58-3001.

History: L. 1947, ch. 411, § 1; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. Business broker selling assets of corporation including real property is a real estate broker and must be licensed to recover commission. *Thomas v. Jarvis*, 213 K. 671, 673, 518 P.2d 532.
2. Regulation of commission (86-3-8(a)) operated as statute of frauds; void; oral contract between principal and agent to sell realty. *Marcotte Realty & Auction, Inc. v. Schumacher*, 225 K. 193, 197, 589 P.2d 570.

58-3002.

History: L. 1947, ch. 411, § 2; L. 1959, ch. 260, § 1; L. 1967, ch. 308, § 1; L. 1973, ch. 225, § 1; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. License hereunder unnecessary where owner or his employee leases property. *Lambertz v. Builders, Inc.*, 183 K. 602, 609, 610, 331 P.2d 559.
2. Applied in holding business broker selling assets of corporation including real property must be licensed to recover commission. *Thomas v. Jarvis*, 213 K. 671, 673, 674, 675, 676, 518 P.2d 532.

58-3003.

History: L. 1947, ch. 411, § 3; L. 1963, ch. 328, § 1; L. 1967, ch. 308, § 2; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. License hereunder unnecessary where owner or his employee leases property. *Lambertz v. Builders, Inc.*, 183 K. 602, 610, 611, 331 P.2d 559.
2. Mentioned; exclusions inapplicable to business broker selling assets of corporation which included real estate; broker must be licensed to recover commission. *Thomas v. Jarvis*, 213 K. 671, 674, 518 P.2d 532.

58-3004.

History: L. 1947, ch. 411, § 4; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. Allegation and proof of license required to maintain action for commission. *Deines v. Frevert*, 170 K. 278, 279, 280, 224 P.2d 1023.
2. Action for stock sale commission; real estate license proof requirements inapplicable. *Harrington v. Propulsion Engine Corp.*, 172 K. 574, 578, 581, 241 P.2d 733.

58-3005.

History: L. 1947, ch. 411, § 5; Repealed, L. 1959, ch. 260, § 8; June 30.

58-3006.

History: L. 1947, ch. 411, § 12; L. 1959, ch. 260, § 2; L. 1967, ch. 308, § 3; L. 1973, ch. 225, § 2; L. 1978, ch. 219, § 1; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. Mentioned in holding act applicable to business broker selling assets of corporation which include real estate; broker must be licensed to recover commission. *Thomas v. Jarvis*, 213 K. 671, 674, 518 P.2d 532.

58-3007.

History: L. 1947, ch. 411, § 13; L. 1979, ch. 176, § 2; Repealed, L. 1980, ch. 164, § 47; July 1.

58-3008.

History: L. 1947, ch. 411, § 14; L. 1973, ch. 225, § 3; L. 1977, ch. 193, § 1; L. 1979, ch. 176, § 3; Repealed, L. 1980, ch. 164, § 47; July 1.

58-3009.

History: L. 1947, ch. 411, § 15; Repealed, L. 1980, ch. 164, § 47; July 1.

58-3010.

History: L. 1947, ch. 411, § 16; L. 1967, ch. 308, §4; Repealed, L. 1980, ch. 164, § 47; July 1.

58-3011.

History: L. 1947, ch. 411, § 17; L. 1973, ch. 225, §4; Repealed, L. 1980, ch. 164, § 47; July 1.

58-3012.

History: L. 1947, ch. 411, § 18; Repealed, L. 1973, ch. 225, § 9; July 1.

58-3013.

History: L. 1947, ch. 411, § 19; L. 1973, ch. 225, §5; Repealed, L. 1980, ch. 164, § 47; July 1.

58-3014.

History: L. 1947, ch. 411, § 20; L. 1956, ch. 52, § 13; L. 1957, ch. 431, § 10; L. 1959, ch. 260, § 3; L. 1963, ch. 398, §17; L. 1970, ch. 223, § 1; L. 1973, ch. 225, § 6; L. 1977, ch. 194, § 1; L. 1979, ch. 176, § 1; Repealed, L. 1980, ch. 164, § 47; July 1.

58-3015.

History: L. 1947, ch. 411, § 21; L. 1963, ch. 328, § 2; L. 1973, ch. 225, § 7; L. 1975, ch. 296, § 1; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. Regulation of commission (86-3-8(a)) operated as statute of frauds; void; oral contract between principal and agent to sell realty. *Marcotte Realty & Auction, Inc. v. Schumacher*, 225 K. 193, 197, 589 P.2d 570.
2. The court is limited in its scope of review on appeals from orders of the Kansas real estate commission; insufficient evidence; reversed. *Kansas Real Estate Comm'n v. Pottratz*, 6 K.A.2d 115, 118, 119, 121, 122, 626 P.2d 1243.

58-3016.

History: L. 1947, ch. 411, § 22; L. 1959, ch. 260, § 4; L. 1973, ch. 225, § 8; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. Court is limited in its scope of review on appeals from orders of the Kansas real estate commission; insufficient evidence; reversed. *Kansas Real Estate Comm'n v. Pottratz*, 6 K.A.2d 115, 116, 118, 626 P.2d 1243.

58-3017.

History: L. 1947, ch. 411, § 23; L. 1977, ch. 193, §2; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. Court is limited in its scope of review on appeals from orders of the Kansas real estate commission; insufficient evidence; reversed. *Kansas Real Estate Comm'n v. Pottratz*, 6 K.A.2d 115, 116, 117, 118, 626 P.2d 1243.

58-3018.

History: L. 1947, ch. 411, § 25; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. Mentioned in holding act applicable to business broker selling assets of corporation which include real estate; broker must be licensed to recover commission. *Thomas v. Jarvis*, 213 K. 671, 674, 518 P.2d 532.

58-3019.

History: L. 1947, ch. 411, § 26; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. Allegation and proof of license required to maintain action for commission. *Deines v. Frevert*, 170 K. 278, 279, 280, 224 P.2d 1023.
2. Action for stock sale commission only; license proof requirements hereunder inapplicable. *Harrington v. Propulsion Engine Corp.*, 172 K. 574, 578, 581, 241 P.2d 733.
3. Cited; section applied. *Hedges v. Keas*, 180 K. 540, 306 P.2d 181. Modified: 181 K. 503, 313 P.2d 264.
4. Inapplicable to employee leasing employer's property. *Lambertz v. Builders, Inc.*, 183 K. 602, 609, 331 P.2d 559.
5. Business broker selling assets of corporation including real property is a real estate broker and must be licensed to recover commission. *Thomas v. Jarvis*, 213 K. 671, 673, 674, 518 P.2d 532.
6. Pleadings and testimony sufficient under statute to meet required allegation of licensing. *Marcotte Realty & Auction, Inc. v. Schumacher*, 225 K. 193, 197, 589 P.2d 570.

58-3020, 58-3021.

History: L. 1947, ch. 411, §§ 27, 29; Repealed, L. 1980, ch. 164, § 47; July 1.

58-3022.

History: L. 1959, ch. 260, § 7; L. 1971, ch. 192, § 1; L. 1977, ch. 193, § 3; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. Cited; held that real estate agent was not entitled to a partial real estate commission. *Harrin v. Brown Realty Co.*, 226 K. 453, 457, 602 P.2d 79.

58-3023 through 58-3028.

History: L. 1974, ch. 326, §§ 1 to 6; Repealed, L. 1980, ch. 164, § 47; July 1.

58-3029.

History: L. 1974, ch. 326, § 7; L. 1975, ch. 404, §4; Repealed, L. 1980, ch. 164, § 47; July 1.

58-3030.

History: L. 1974, ch. 326, § 8; Repealed, L. 1980, ch. 164, § 47; July 1.

CASE ANNOTATIONS

1. Regulation 86-3-8(a) operated as statute of frauds; void; oral contract to sell real estate between principal and agent. *Marcotte Realty & Auction, Inc. v. Schumacher*, 225 K. 193, 196, 589 P.2d 570.

58-3031 through 58-3033.

History: L. 1974, ch. 326, §§ 9 to 11; Repealed, L. 1980, ch. 164, § 47; July 1.

LICENSING

58-3034. Title of act. K.S.A. 58-3034 through 58-3077, and K.S.A. 2019 Supp. 58-3078 through 58-3085, and amendments thereto, shall be known and may be cited as the real estate brokers' and salespersons' license act.

History: L. 1980, ch. 164, § 1; L. 1986, ch. 209, § 19; L. 1995, ch. 252, § 13; L. 2000, ch. 102, § 1; L. 2007, ch. 88, § 16; July 1.

Law Review and Bar Journal References:

- "Survey of Kansas Law: Property," 29 K.L.R. 555, 563, 564, 565 (1981).
- "Effects of the Kansas Real Estate Brokers and Salespersons License Act," Craig J. Altenhofen, 10 J.K.T.L.A. No. 4, 15 (1987).
- "Broker Beware—Real Estate Agent Liability in Kansas After *Johnson v. Geer Real Estate Co.*," Marilyn M. Eddy, 35 K.L.R. 645, 648, 649 (1987).
- "Tort Law: Real Estate Broker Beware: Remain Ignorant of Property Flaws and the Innocent Buyer Wins [*Mahler v. Keenan Real Estate, Inc.*, 876 P.2d 609 (Kan. 1994)]," Lisa M. Agrimonti, 34 W.L.J. 345, 350 (1995).
- "Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).
- "Survey of Kansas Tort Law: Part II," William E. Westerbeke, 50 K.L.R. 225 (2002).

Attorney General's Opinions:

Exemptions from licensing requirement. 86-111.

CASE ANNOTATIONS

1. Act not applicable to transaction involving modular home and no real estate. *First Nat'l Bank of Girard v. Coykendall*, 8 K.A.2d 636, 637, 664 P.2d 874 (1983).
2. Cited; violations of act may be basis of suits brought against real estate brokers. *Johnson v. Geer Real Estate Co.*, 239 K. 324, 330, 331, 720 P.2d 660 (1986).
3. Failure of licensed real estate salesperson to state act inapplicable to sale of own home no breach of duty. *Heller v. Martin*, 14 K.A.2d 48, 55, 782 P.2d 1241 (1989).
4. Act held as not establishing a separate cause of action for negligent or fraudulent misrepresentation. *Brunett v. Albrecht*, 248 K. 634, 642, 810 P.2d 276 (1991).
5. Whether state recognizes tort of negligent misrepresentation by real estate agent who induces sale examined. *Mahler v. Keenan Real Estate, Inc.*, 255 K. 593, 599, 606, 876 P.2d 609 (1994).
6. Attorney exemption does not apply to the prohibition against splitting a brokerage commission with a nonlicensee. *Stewart Title of the Midwest v. Reece & Nichols Realtors*, 294 K. 553, 276 P.3d 188 (2012).

58-3035. Definitions. 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) "Primary office" means a supervising broker's principal place of business for each company created or established by the broker.

(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.

(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).

(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.

History: L. 1980, ch. 164, § 2; L. 1986, ch. 209, § 1; L. 1988, ch. 197, § 1; L. 1989, ch. 167, § 1; L. 1993, ch. 241, § 1; L. 1995, ch. 149, § 1; L. 1996, ch. 212, § 19; Revived, L. 1997, ch. 65, § 3; L. 1997, ch. 65, § 4; L. 2000, ch. 102, § 2; L. 2006, ch. 151, § 1; L. 2008, ch. 155, § 1; L. 2009, ch. 7, § 1; L. 2010, ch. 104, § 1; July 1.

Revisor's Note:

Section was amended twice in 1995 session, see also 58-3035a.

Section was also amended by L. 1996, ch. 212, § 20, but that version was repealed by L. 1997, ch. 65, § 47.

Attorney General's Opinions:

Licensure of real estate brokers and salespersons; exemptions; government officer or employee; public utilities. 93-158.

Real estate brokers and salespersons' prohibited acts; offering or giving prizes, gifts or gratuities. 94-17.

Errors and omissions insurance program offers a seller-client something of value other than broker services. 1998-53.

58-3035a.

History: L. 1980, ch. 164, § 2; L. 1986, ch. 209, § 1; L. 1988, ch. 197, § 1; L. 1989, ch. 167, § 1; L. 1993, ch. 241, § 1; L. 1995, ch. 252, § 14; Repealed, L. 1996, ch. 212, § 21; May 23.

58-3036. Licensure required. Unless exempt from this act under K.S.A. 58-3037, and amendments thereto, no person shall:

(a) Directly or indirectly engage in or conduct or represent that such person engages in or conducts the business of a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(b) Directly or indirectly act or represent that such person acts as a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(c) Perform or offer, attempt or agree to perform any act described in subsection (f) of K.S.A. 58-3035, and amendments thereto, whether as a part of a transaction or as an entire transaction, unless such person is licensed pursuant to this act.

History: L. 1980, ch. 164, § 3; L. 1986, ch. 209, § 15; L. 1989, ch. 167, § 2; L. 1995, ch. 252, § 15; L. 1996, ch. 212, § 3; L. 1997, ch. 65, § 5; L. 2002, ch. 82, § 1; July 1.

Law Review and Bar Journal References:

"Survey of Kansas Tort Law: Part II," William E. Westerbeke, 50 K.L.R. 225 (2002).

Attorney General's Opinions:

Licensure of real estate brokers and salespersons; exemptions; government officer or employee; public utilities. 93-158.

CASE ANNOTATIONS

1. Whether developer's leasing activity was severable from and did not bar recovery under development contract examined. Woodmont Corp. v. Rockwood Center Partnership, 858 F.Supp. 158, 159 (1994).

58-3037. Exemptions. 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 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, 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, 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 a corporation who owns less than 5% of the stock of such corporation.

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

History: L. 1980, ch. 164, § 4; L. 1986, ch. 209, § 16; L. 1989, ch. 167, § 3; L. 1991, ch. 163, § 1; L. 1995, ch. 252, § 16; L. 1996, ch. 212, § 4; L. 1997, ch. 65, § 6; L. 2002, ch. 82, § 2; L. 2010, ch. 104, § 2; July 1.

Attorney General's Opinions:

Exemptions from licensing requirement. 86-111.

Licensure of real estate brokers and salespersons; exemptions; government officer or employee; public utilities. 93-158.

CASE ANNOTATIONS

1. Court awarded a finder's fee to attorney for proposing the ultimate buyer of a building. In re Metcalf Assocs.-2000, 42 K.A.2d 412, 213 P.3d 751 (2009).

58-3038. Licensure required for recovery of compensation for services; exceptions. (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 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.

History: L. 1980, ch. 164, § 5; L. 1986, ch. 209, § 2; L. 2000, ch. 102, § 3; L. 2010, ch. 104, § 3; July 1.

Law Review and Bar Journal References:

"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

Attorney General's Opinions:

Exemptions from licensing requirement. 86-111.

58-3039. Licensure; application; criminal history record check; qualifications; examination. (a) Any person desiring to act as a broker or salesperson must file an application for a license with the commission or, if required by the commission, with the testing service designated by the commission. The application shall be in such form and detail as the commission shall prescribe. The commission may require any portion of the application to be submitted electronically.

(1) Any applicant who qualifies for licensure as a salesperson shall submit the application accompanied by evidence of compliance with K.S.A. 58-3046a(a) and (c), and amendments thereto.

(2) Any applicant who qualifies for licensure as a broker shall submit the application accompanied by evidence of compliance with K.S.A. 58-3046a(b) and (d), and amendments thereto.

(3) All applicants shall submit the application and license fees as prescribed by K.S.A. 58-3063, and amendments thereto.

(b) (1) As part of an application for an original license or in connection with any investigation of any holder of a license, the commission shall require a person to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of criminal history in this state or other jurisdiction. The commission shall require the applicant to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check in the manner designated by the Kansas bureau of investigation. The commission shall use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license.

(2) Local and state law enforcement officers and agencies shall assist the commission in taking and processing fingerprints of applicants for and holders of any license and shall release all records of adult convictions to the commission.

(3) The commission may fix and collect a fee in an amount necessary to reimburse the commission for the cost of fingerprinting and the criminal history record check. Such fee shall be established by rule and regulation in accordance with K.S.A. 58-3063, and amendments thereto. Any moneys collected under this subsection shall be deposited in the state treasury and credited to the background investigation fee fund.

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

(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 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 K.S.A. 58-3035(f), and amendments thereto, for a period of at least two years during the three years immediately preceding the date of the application for a license.

The commission may adopt rules and regulations to implement the provisions of this subsection.

(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).

(f) Each applicant for an original license shall be required to pass an examination covering the subject matter which brokers or salespersons generally confront while conducting activities that require a real estate license. The examination shall consist of a general portion that tests the applicant's knowledge of real estate matters that have general application. The state portion of the examination shall test the applicant's knowledge of real estate subject matter applicable to a specific jurisdiction.

(1) Except as provided in K.S.A. 58-3040, and amendments thereto, each applicant for an original license shall be required to pass the general or national portion of the examination.

(2) Each applicant for an original license shall be required to pass the Kansas state portion of the examination.

(3) No license shall be issued on the basis of an examination if either or both portions of the examination were administered more than six months prior to the date that the applicant's application is received by the commission. The examination may be given by the commission or testing service designated by the commission. Each person taking the examination shall pay the examination fee prescribed pursuant to K.S.A. 58-3063, and amendments thereto, which fee the commission may require to be paid to it or

directly to the testing service designated by the commission. The examination for a broker's license shall be different from or in addition to that for a salesperson's license.

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

(h) An application for an original license as a salesperson or associate broker shall be accompanied by the 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.

History: L. 1980, ch. 164, § 6; L. 1985, ch. 188, § 1; L. 1986, ch. 209, § 3; L. 1988, ch. 197, § 2; L. 1989, ch. 167, § 4; L. 1995, ch. 149, § 2; L. 1997, ch. 65, § 7; L. 2002, ch. 82, § 3; L. 2006, ch. 159, § 1; L. 2007, ch. 88, § 1; L. 2019, ch. 23, § 1; July 1.

Revisor's Note:

Section was amended twice in 1995 session, see also 58-3039a.

Attorney General's Opinions:

Real estate broker and salesmen; nonresident licenses. 84-70.

CASE ANNOTATIONS

1. No fiduciary relationship exists between prospective purchaser with own agent and seller's agent. *Stevens v. Jayhawk Realty Co.*, 9 K.A.2d 338, 344, 677 P.2d 1019 (1984).

2. Imposition of harsher sanctions against broker than agents for same violations not arbitrary and capricious. *Bannon v. Kansas Real Estate Comm'n*, 12 K.A.2d 54, 59, 733 P.2d 330 (1987).

58-3039a.

History: L. 1980, ch. 164, § 6; L. 1985, ch. 188, § 1; L. 1986, ch. 209, § 3; L. 1988, ch. 197, § 2; L. 1989, ch. 167, § 4; L. 1995, ch. 252, § 17; Repealed, L. 1996, ch. 212, § 21; May 23.

58-3040. Nonresident license. (a) A nonresident of this state may be granted a broker's license if:

- (1) The nonresident is licensed as a broker in the nonresident's state of residence; and
 - (2) the nonresident meets all requirements imposed by this act on Kansas residents for licensure as a broker, except as provided by subsection (e).
- (b) A nonresident broker may be granted a salesperson's license, if:
- (1) The nonresident is licensed as a broker in the nonresident's state of residence;
 - (2) the nonresident meets all requirements imposed by this act on Kansas residents for licensure as a broker, except for the requirements of K.S.A. 58-3039(d) or (e), and amendments thereto, and the nonresident does not qualify for a waiver pursuant to subsection (e); and
 - (3) the nonresident submits the certification described in K.S.A. 58-3039(h), and amendments thereto.
- (c) A nonresident salesperson employed by or associated with a broker licensed pursuant to this act may be granted a salesperson's license under the broker, if:
- (1) The salesperson is licensed as a salesperson in the salesperson's state of residence; and
 - (2) the salesperson meets all requirements imposed by this act on Kansas residents for licensure as a salesperson, except as provided by subsection (f).
- (d) The commission may enter into agreements with other jurisdictions as to the issuance of reciprocal licenses.
- (e) The commission may waive the education provided by K.S.A. 58-3046a(b), and amendments thereto, the examination provided by K.S.A. 58-3039, and amendments thereto, and the experience provided by K.S.A. 58-3039(d) or (e), and amendments thereto, and issue an original broker's license to a nonresident or to a Kansas resident who holds a broker's license issued by another jurisdiction if, in the judgment of the commission, the applicant received equivalent education, passed an equivalent examination and obtained equivalent experience. The applicant shall meet all other requirements imposed by this act.
- (f) The commission may waive the education provided by K.S.A. 58-3046a(a), and amendments thereto, and the examination provided by K.S.A. 58-3039, and amendments thereto, and issue an original salesperson's license to a nonresident or to a Kansas resident who holds a license issued by another jurisdiction if, in the judgment of the commission, the applicant received equivalent education and passed an equivalent examination. The applicant shall meet all other requirements imposed by this act.
- (g) Prior to the issuance of a license to a nonresident, the applicant must agree in writing to abide by all provisions of this act with respect to the applicant's real estate activities within the state and submit to the jurisdiction of the commission and the state in all matters relating thereto. The agreement shall be filed with the commission and shall remain in force for so long as the nonresident is licensed by this state and thereafter with respect to acts or omissions committed while licensed as a nonresident.
- (h) A nonresident licensed under this section shall be entitled to the same rights and subject to the same obligations as are provided in this act for Kansas residents, except that revocation or suspension of a nonresident's license in the nonresident's state of residence shall automatically cause the same revocation or suspension of the nonresident's license issued under this act. No hearing shall be granted to a nonresident licensee whose license is subject to the automatic revocation or suspension except for the purpose of establishing the fact of revocation or suspension of the nonresident's license by the nonresident's state of residence.

History: L. 1980, ch. 164, § 7; L. 1985, ch. 188, § 2; L. 1986, ch. 209, § 4; L. 1993, ch. 241, § 2; L. 2016, ch. 30, § 1; L. 2019, ch. 23, § 2; July 1.

Attorney General's Opinions:

Real estate broker and salesmen; nonresident licenses. 84-70.

58-3041. Restricted or conditioned license. (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 [subsection] (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 [subsection] (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 (1) through (10) of subsection (a);

(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.

History: L. 1980, ch. 164, § 8; L. 1984, ch. 313, § 84; L. 1995, ch. 149, § 3; L. 2010, ch. 104, § 4; July 1.

58-3042. License nontransferable; only individuals licensed; primary office; supervising broker. (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 an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation. Each person who is an owner, officer 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 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.

History: L. 1980, ch. 164, § 9; L. 1986, ch. 209, § 17; L. 1989, ch. 167, § 5; L. 1993, ch. 241, § 3; L. 1995, ch. 252, § 18; L. 1996, ch. 212, § 5; L. 1997, ch. 65, § 8; L. 2002, ch. 82, § 4; L. 2010, ch. 104, § 5; July 1.

Law Review and Bar Journal References:

"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

58-3043. Granting or renewal of license; considerations of the commission; conviction of crime; effect of. (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 postrelease 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 postrelease 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" and "nonprison sanction" shall have the meaning ascribed to them in K.S.A. 2019 Supp. 21-6803, 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;
 - (E) evidence of the applicant's rehabilitation or rehabilitative effort; and
 - (F) all other evidence of the applicant's present fitness for a license.
- History:** L. 1980, ch. 164, § 10; L. 1984, ch. 313, § 85; L. 1986, ch. 209, § 5; L. 2002, ch. 82, § 5; L. 2004, ch. 82, § 1; L. 2007, ch. 88, § 2; L. 2008, ch. 155, § 2; L. 2010, ch. 104, § 6; L. 2011, ch. 30, § 205; July 1.

Cross References to Related Sections:

Prohibited acts, see 58-3062.

CASE ANNOTATIONS

1. Denial of real estate salesperson's license not supported by substantial competent evidence (prior conviction of possession of marijuana). In re Appeal of Gates from Kansas Real Estate Comm'n., 273 K. 1025, 46 P.3d 1206 (2002).

58-3044. Denial of license; hearing; incomplete applications. (a) If the commission, after a complete application for a license or renewal of a license has been filed, accompanied by the proper fee, refuses to issue or renew the license, 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.

History: L. 1980, ch. 164, § 11; L. 1984, ch. 313, § 86; L. 1986, ch. 209, § 6; L. 2010, ch. 104, § 7; July 1.

58-3045. Expiration of license; renewal, fee; reinstatement and renewal of expired license, late fee. (a) Each license issued or renewed by the commission shall expire on a date determined in accordance with a schedule established by rules and regulations of the commission, which date shall be not more than two years from the date of issuance or renewal. Except as otherwise provided by this act, applicants for issuance or renewal of a license must satisfy all applicable requirements prior to issuance or renewal of the license.

(b) (1) Each license shall be renewable upon the filing of a renewal application on or before the expiration date. Such application shall be made on a form provided by the commission and accompanied by the renewal fee prescribed by K.S.A. 58-3063, and amendments thereto.

(2) Failure to comply with paragraph (1) on or before the expiration date will automatically expire the license on the license expiration date unless the license is reinstated and renewed pursuant to subsection (c).

(c) The commission may reinstate and renew the license of a licensee who has failed to comply with the requirements of subsection (b)(1) if within six months following the date of the expiration of the license, the licensee submits to the commission an application for late renewal. Such application shall be made on a form provided by the commission. Such application shall be accompanied by payment of the renewal fee prescribed by K.S.A. 58-3063, and amendments thereto, plus a late fee of \$100.

(d) An application for renewal filed in compliance with the requirements of subsection (b) shall entitle the applicant to continue operating under the applicant's existing license after its specified expiration date, unless such license has been suspended or revoked and has not been reinstated or unless such license is restricted, until such time as the commission determines whether the application fulfills such requirements.

History: L. 1980, ch. 164, § 12; L. 1984, ch. 313, § 87; L. 1986, ch. 209, § 7; L. 1997, ch. 65, § 9; L. 2002, ch. 82, § 8; L. 2007, ch. 88, § 7; L. 2019, ch. 23, § 3; July 1.

58-3046.

History: L. 1980, ch. 164, § 13; Repealed, L. 1982, ch. 231, § 3; July 1.

58-3046a. Licensure; educational requirements. (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 completed within the 12 months immediately preceding the receipt by the commission of the 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 completed 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 a Kansas real estate fundamentals course, of not less than 30 and no more than 45 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 completed 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 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 completed within the six months immediately preceding the receipt by the commission of the application for licensure.

(d) Any person who applies for an original license in this state as a broker on or after January 1, 2020, shall submit evidence, satisfactory to the commission, of attendance of a Kansas real estate management course, of not less than 30 and no more than 45 hours of instruction, approved by the commission and completed within the six months immediately preceding the receipt by the commission of the application for licensure. The hours shall be in addition to any hours of instruction used to meet the requirements of subsection (b), (c), (e) or (f).

(e) Any person who applies for an original license in this state as a broker who is a nonresident of Kansas or who is a resident of Kansas applying for licensure pursuant to K.S.A. 58-3040(e), 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 completed 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.

(f) At or prior to each license expiration 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 continuing education approved by the commission and completed after issuance of the license and during the renewal period. This requirement shall not apply to a license on deactivated status pursuant to K.S.A. 58-3047, and amendments thereto.

(g) Except for courses reviewed pursuant to subsection (j), 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) a technical college as defined by K.S.A. 74-32,407, 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;
- (5) a similar institution, approved by the commission, in another state; or
- (6) an entity, approved by the commission, to provide continuing education.

(h) 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 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.

(i) 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.

(j) 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 continuing education required by subsection (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.

(k) The commission shall publish a list of courses approved by the commission.

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

History: L. 1982, ch. 231, § 1; L. 1985, ch. 188, § 3; L. 1986, ch. 209, § 8; L. 1991, ch. 163, § 2; L. 1993, ch. 241, § 4; L. 1995, ch. 149, § 4; L. 1997, ch. 65, § 10; L. 2006, ch. 66, § 1; L. 2007, ch. 88, § 6; L. 2009, ch. 7, § 2; L. 2015, ch. 21, § 1; L. 2019, ch. 23, § 4; July 1.

Attorney General's Opinions:

Lists of names from public records; real estate brokers and salespersons; educational requirements. 84-45.

58-3046b. Same; act supplemental to license act. This act shall be part of and supplemental to the real estate brokers' and salespersons' license act.

History: L. 1982, ch. 231, § 2; July 1.

58-3047. Issuance of license; deactivation and reinstatement; termination of salesperson or associate broker, effect on license; duties of supervising broker and branch broker; effect of deactivation. (a) The commission shall issue a license as broker or salesperson to each applicant who is qualified under and complies with all provisions of this act and rules and regulations adopted hereunder. The form of license shall be prescribed by the commission.

(b) A salesperson's or associate broker's license shall be in the control of their supervising broker or branch broker, if applicable, until deactivated by the commission at the request of the salesperson or associate broker or the supervising broker or branch broker.

(c) The supervising broker or branch broker shall immediately notify the commission of the termination of employment or association with a salesperson or associate broker and request deactivation of the salesperson's or associate broker's license. A license deactivated but not suspended or revoked may be reinstated at any time during the period for which it was issued upon receipt of the fee for reinstatement prescribed by K.S.A. 58-3063, and amendments thereto, and an application therefor. Such application shall be made on a form provided by the commission.

(d) If a supervising broker or branch broker requests a salesperson's or associate broker's license to be deactivated for 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, the supervising broker or branch broker shall submit a written statement to the commission,

within 10 days, setting forth the alleged facts that were involved. The supervising broker of the primary office shall be responsible for ensuring that the branch broker complies with this subsection.

(e) A license deactivated for a period of not more than two years and that is not suspended or revoked shall be reinstated if the licensee complies with the requirements of K.S.A. 58-3046a, and amendments thereto, for the immediately preceding license period and pays the fee for reinstatement prescribed by K.S.A. 58-3063, and amendments thereto, and an application therefor. Such application shall be made on a form provided by the commission.

(f) A license deactivated for a continuous period of more than two years and not more than five years and that is not suspended or revoked shall be reinstated if the licensee submits evidence, satisfactory to the commission, of attendance at continuing education approved by the commission that totals six additional hours of instruction for each full year that the license has been on deactivated status, pays the fee for reinstatement prescribed by K.S.A. 58-3063, and amendments thereto, and an application therefor. Such application shall be made on a form provided by the commission.

(g) A license deactivated for a continuous period of more than five years and that is not suspended or revoked shall be reinstated if the licensee meets the examination requirements for an original applicant, submits evidence, satisfactory to the commission, of attendance at courses of instruction approved by the commission that totals six additional hours of instruction for each full year that the license has been on deactivated status, pays the fee for reinstatement prescribed by K.S.A. 58-3063, and amendments thereto, and an application therefor. Such application shall be made on a form provided by the commission.

(h) A licensee whose license is deactivated shall not be entitled to act in any capacity for which a license is required, until the licensee's license has been reinstated.

History: L. 1980, ch. 164, § 14; L. 1986, ch. 209, § 9; L. 2002, ch. 82, § 9; L. 2007, ch. 88, § 9; L. 2008, ch. 155, § 3; L. 2019, ch. 23, § 5; July 1.

Cross References to Related Sections:

Prohibited acts, see 58-3062.

58-3048. Commission powers and duties. (a) The commission may publish periodically a list of the names and addresses of all persons licensed under the provisions of this act. The commission may publish information concerning disciplinary actions and other information relative to enforcement of the provisions of this act and may provide such information for publication in newspapers and trade journals and to broadcast media.

(b) The commission, may conduct, hold or assist in conducting or holding real estate courses or institutes, and incur and pay the necessary expenses incurred thereby, which courses or institutes shall be open to any licensee without any charge or fee therefor.

(c) The commission may conduct, hold or assist in conducting or holding instructor development workshops, and incur and pay the necessary expenses incurred thereby.

(d) The commission may assist real estate institutes and foundations, with financial aid or otherwise, in sponsoring studies, surveys and programs for the benefit of real estate licensees, and the elevation of the real estate business.

(e) The commission shall publicize (1) the existence of the real estate recovery revolving fund and the availability of recovery therefrom, (2) the acts for which recovery may be allowed and (3) information regarding the filing of claims for payments, including the conditions and limitations to which the filing of claims and recovery are subject under the provisions of the real estate brokers' and salespersons' license act.

History: L. 1980, ch. 164, § 15; L. 1981, ch. 304, § 1; L. 1989, ch. 167, § 6; L. 1993, ch. 241, § 5; July 1.

58-3049.

History: L. 1980, ch. 164, § 16; L. 1985, ch. 188, § 4; Repealed, L. 2019, ch. 23, § 11; July 1.

58-3050. Refusal to grant or renew; revocation, suspension or restriction of license; censure of licensee; disciplinary actions; civil fines; aggravating circumstances; procedures; recovery of actual costs and attorney fees. (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 or applicant 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;

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

(3) the licensee or applicant 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 or applicant has obtained or reinstated, or attempted to obtain or reinstate, a license by false or fraudulent representation;

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

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

History: L. 1980, ch. 164, § 17; L. 1984, ch. 313, § 88; L. 1986, ch. 209, § 10; L. 1988, ch. 197, § 3; L. 1991, ch. 163, § 3; L. 1995, ch. 252, § 19; L. 1996, ch. 212, § 6; Revived, L. 1997, ch. 65, § 11; L. 1997, ch. 65, § 12; L. 2002, ch. 82, § 6; L. 2004, ch. 82, § 2; L. 2007, ch. 88, § 3; L. 2008, ch. 155, § 4; L. 2009, ch. 7, § 3; L. 2015, ch. 21, § 2; July 1.

Revisor's Note:

Section was also amended by L. 1996, ch. 212, § 12, but that version was repealed by L. 1997, ch. 65, § 47.

CASE ANNOTATIONS

1. No fiduciary relationship exists between prospective purchaser with own agent and seller's agent. *Stevens v. Jayhawk Realty Co.*, 9 K.A.2d 338, 344, 677 P.2d 1019 (1984).
2. Cited; violations of act may be basis of suits brought against real estate brokers. *Johnson v. Geer Real Estate Co.*, 239 K. 324, 331, 720 P.2d 660 (1986).

58-3051 through 58-3055.

History: L. 1980, ch. 164, §§ 18 to 22; Repealed, L. 1984, ch. 313, § 157; July 1, 1985.

58-3056. Costs of hearing; assessment; itemization. The costs of any hearing before the commission may be assessed against the licensee or applicant if the order of the commission is adverse to the licensee or applicant. The commission may reduce any such assessment to judgment by filing a petition in the district court of Shawnee county. No license shall be reinstated, renewed or issued if an assessment for costs has not been paid by the holder of or applicant for such license. Costs shall include:

- (a) Statutory fees and mileage of witnesses attending a hearing or for the taking of depositions used as evidence;
- (b) reporter's or stenographic charges for the taking of depositions used as evidence or for transcripts of the hearing;
- (c) expenses for audits, appraisals, surveys and title examinations; and
- (d) such other charges authorized to be taxed as costs, as specified by K.S.A. 60-2003 and amendments thereto.

History: L. 1980, ch. 164, § 23; L. 1986, ch. 209, § 11; July 1.

58-3057.

History: L. 1980, ch. 164, § 24; Repealed, L. 1984, ch. 313, § 157; July 1, 1985.

58-3058. Appeal of commission orders. Any person aggrieved by an order of the commission may appeal the order in accordance with the provisions of the Kansas judicial review act.

History: L. 1980, ch. 164, § 25; L. 1984, ch. 313, § 89; L. 2010, ch. 17, § 105; July 1.

CASE ANNOTATIONS

1. Contention that trial court employed improper standard in reviewing commission's order without merit. *Bannon v. Kansas Real Estate Comm'n*, 12 K.A.2d 54, 57, 733 P.2d 330 (1987).

58-3059.

History: L. 1980, ch. 164, § 26; Repealed, L. 1984, ch. 313, § 157; July 1, 1985.

58-3060. Brokers; primary office and branch offices, requirements, notices to commission of certain changes or office closure; effect of office closure on affiliated licenses. (a) Each licensed resident broker shall have and maintain a primary office in the state of Kansas, or in an adjoining state. Each licensed nonresident broker shall have and maintain a primary office in the broker's state of residence or in the state of Kansas.

(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 supervising broker shall give written notice to the commission within five days of any change in the:

- (1) Supervising broker's name;
- (2) business name;
- (3) trade name;
- (4) location of any office of the broker; or
- (5) broker designated as the branch broker or supervising broker of an office.

(d) A supervising broker shall give written notice to the commission within five days of closure of a primary office or branch office. The commission shall place each license that is still affiliated with the closed office, at the time of closure, on inactive status unless that license is affiliated with another office.

(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, 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.

(f) A primary office may be in the supervising broker's residence. A branch office may be in the branch broker's residence.

History: L. 1980, ch. 164, § 27; L. 1986, ch. 209, § 12; L. 2010, ch. 104, § 8; L. 2019, ch. 23, § 6; July 1.

CASE ANNOTATIONS

1. Imposition of harsher sanctions against broker than agents for same violations not arbitrary and capricious. *Bannon v. Kansas Real Estate Comm'n*, 12 K.A.2d 54, 59, 733 P.2d 330 (1987).

58-3061. Trust accounts. (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, 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 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.

History: L. 1980, ch. 164, § 28; L. 1983, ch. 76, § 7; L. 1986, ch. 209, § 13; L. 1991, ch. 163, § 4; L. 2010, ch. 104, § 9; July 1.

Law Review and Bar Journal References:

"Effects of the Kansas Real Estate Brokers and Salespersons License Act," Craig J. Altenhofen, 10 J.K.T.L.A. No. 4, 15 (1987).

CASE ANNOTATIONS

1. Revocation of broker's license for failure to comply with trust account requirements and other violations upheld. *Bannon v. Kansas Real Estate Comm'n*, 12 K.A.2d 54, 56, 59, 733 P.2d 330 (1987).

58-3062. Prohibited acts. (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 organized as 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 association, corporation, limited liability company, 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 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 or engage in harassment towards:

(A) A client or customer or a former 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) No applicant or licensee shall:

(1) Engage in fraud or make any substantial misrepresentation to the commission;

(2) commit forgery in any representation or document submitted to the commission;

(3) sign or initial, on behalf of another person, any application, for or accompanying document submitted to the commission unless authorized to do so by a duly executed power of attorney;

(4) interfere with any investigation, administrative proceeding, quasi-judicial proceeding or any other disciplinary matter of the commission, including, but not limited to:

(A) Threatening to engage in or engaging in physical abuse or harassment toward any witness, complainant or individual listed in subsection (e)(1);

(B) destroying evidence;

(C) refusing or failing to appear or testify under oath at any hearing; or

(D) refusing or failing 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;

(5) fail without just cause to surrender any document or instrument to the rightful owner; or

(6) demonstrate incompetency to act as a broker, associate broker or salesperson in dealings with the commission, including the repeated failure to:

(A) Submit required forms to the commission in a timely and complete manner;

(B) make available to the commission all records relating to the real estate business; or

(C) comply with the provisions of this subsection.

(g) 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.

(h) 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.

History: L. 1980, ch. 164, § 29; L. 1986, ch. 209, § 14; L. 1989, ch. 167, § 7; L. 1991, ch. 163, § 5; L. 1992, ch. 120, § 1; L. 1993, ch. 241, § 6; L. 1995, ch. 252, § 20; L. 1996, ch. 212, § 7; Revived, L. 1997, ch. 65, § 13; L. 1997, ch. 65, § 14; L. 1998, ch. 93, § 74; L. 1999, ch. 119, § 86; L. 2000, ch. 102, § 4; L. 2002, ch. 72, § 1; L. 2004, ch. 67, § 1; L. 2004, ch. 180, § 6; L. 2005, ch. 179, § 19; L. 2006, ch. 159, § 2; L. 2008, ch. 155, § 5; L. 2009, ch. 7, § 4; L. 2010, ch. 104, § 10; L. 2015, ch. 21, § 3; July 1.

Revisor's Note:

Section was also amended by L. 1996, ch. 212, § 13, but that version was repealed by L. 1997, ch. 65, § 47.
Section was also amended by L. 2004, ch. 82, § 3, but that version was repealed by L. 2004, ch. 180, § 18.

Law Review and Bar Journal References:

"Potential Liability of Real Estate Brokers and Salesmen for Misrepresentation and Nondisclosure in Kansas," Craig Altenhofen, 52 J.K.B.A. 9, 11, 13 (1983).
"Overstating the Value of Property to Induce a Listing," Murray S. Levin, 34 K.L.R. 757, 776, 793 (1986).
"Effects of the Kansas Real Estate Brokers and Salespersons License Act (KREBSA)," Craig J. Altenhofen, Vol. X, No. 4, J.K.T.L.A. 15 (1987).
"Broker Beware—Real Estate Agent Liability in Kansas After Johnson v. Geer Real Estate Co.," Marilyn M. Eddy, 35 K.L.R. 645, 646 (1987).
"Tort Law: Real Estate Broker Beware: Remain Ignorant of Property Flaws and the Innocent Buyer Wins [Mahler v. Keenan Real Estate, Inc., 876 P.2d 609 (Kan. 1994)]," Lisa M. Agrimonti, 34 W.L.J. 345, 350 (1995).
"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

Attorney General's Opinions:

Real estate broker and salesmen; nonresident licenses. 84-70.
Real estate brokers and salespersons' prohibited acts; offering or giving prizes, gifts or gratuities. 94-17.
Errors and omissions insurance program offers a seller-client something of value other than broker services. 1998-53.
No violation when portion of commission is used to purchase gift card for licensee's client. 2018-17.

CASE ANNOTATIONS

1. Real estate agent has statutory duty to public even though no fiduciary relationship exists between prospective purchaser and agent. *Stevens v. Jayhawk Realty Co.*, 9 K.A.2d 338, 344, 677 P.2d 1019 (1984).
2. Violations of act may be basis of suits brought against real estate brokers. *Johnson v. Geer Real Estate Co.*, 239 K. 324, 331, 720 P.2d 660 (1986).
3. Revocation of broker's license for acting as agent and undisclosed principal and self-dealing perpetrating fraud upheld. *Bannon v. Kansas Real Estate Comm'n*, 12 K.A.2d 54, 56, 57, 59, 733 P.2d 330 (1987).
4. Act held as not establishing a separate cause of action for negligent or fraudulent misrepresentation. *Brunett v. Albrecht*, 248 K. 634, 641, 810 P.2d 276 (1991).
5. Whether state recognizes tort of negligent misrepresentation by real estate agent who induces sale examined. *Mahler v. Keenan Real Estate, Inc.*, 255 K. 593, 599, 876 P.2d 609 (1994).
6. Alleged violation of section did not justify pro tanto credit against punitive damages award. *York v. InTrust Bank, N.A.*, 265 K. 271, 313, 962 P.2d 405 (1998).
7. Attorney exemption does not apply to the prohibition against splitting a brokerage commission with a nonlicensee. *Stewart Title of the Midwest v. Reece & Nichols Realtors*, 294 K. 553, 276 P.3d 188 (2012).

58-3063. Fees. (a) The commission shall adopt rules and regulations fixing the amounts of the fees provided for by this act, subject to the following:

- (1) For any examination required for licensure, a fee in an amount equal to the actual cost of the examination and the administration thereof.
 - (2) For any criminal history record check, a fee in the amount necessary to reimburse the commission for the cost of administering the criminal history record check.
 - (3) For submission of an application for an original salesperson's license, an amount not exceeding \$25.
 - (4) For submission of an application for an original broker's license, an amount not exceeding \$50.
 - (5) For an original salesperson's license, a fee based on a two-year amount not exceeding \$150.
 - (6) For an original broker's license, a fee based on a two-year amount not exceeding \$200.
 - (7) For renewal of a salesperson's license, a fee based on a two-year amount not exceeding \$150.
 - (8) For renewal of a broker's license, a fee based on a two-year amount not exceeding \$200.
 - (9) For reinstatement of a license which has been deactivated pursuant to K.S.A. 58-3047(c), and amendments thereto, an amount not exceeding \$15.
 - (10) For approval of a course of instruction submitted by a course provider pursuant to K.S.A. 58-3046a, and amendments thereto, an amount not exceeding \$75.
 - (11) For approval of a course of instruction submitted by any licensee for credit toward the 12 hours of additional instruction required by K.S.A. 58-3046a, and amendments thereto, an amount not exceeding \$20.
 - (12) For each branch office opened or established, an amount not exceeding \$100.
 - (13) For each primary office of a company created or established by a supervising broker, an amount not exceeding \$100.
- (b) Subject to the limitations of this section, the commission shall fix the fees provided for by this section in the amounts necessary to administer and enforce this act.
- (c) The fees provided for by this section shall be applicable regardless of the type of license.

History: L. 1980, ch. 164, § 30; L. 1985, ch. 189, § 1; L. 1988, ch. 197, § 4; L. 1993, ch. 241, § 7; L. 1997, ch. 65, § 15, L. 2006, ch. 151, § 2; L. 2007, ch. 88, § 4; L. 2015, ch. 21, § 6; L. 2019, ch. 23, § 7; July 1.

Attorney General's Opinions:

Real estate broker has duty to disclose all adverse information regarding premises known by broker but not as to who resides in area; i.e. sex offenders. 2004-10.

58-3064. Injunction to enforce law. Whenever any person has engaged in any act or practice that constitutes 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, the commission may institute an action in the district court of the county in which the person resides or in the district court in the county in which such act or practice occurred for an injunction to enforce compliance with the act or rules and regulations. The commission shall not be required to give any bond or pay any filing fee for initiating such action. Upon a showing that the person has engaged in any act or practice in violation of the act or rules and regulations, the court may enjoin all such acts or practices and may make any orders necessary to conserve, protect and disburse any funds involved.

History: L. 1980, ch. 164, § 31; L. 1995, ch. 252, § 21; L. 1996, ch. 212, § 8; Revived, L. 1997, ch. 65, § 16; L. 1997, ch. 65, § 17; Oct. 1.

Revisor's Note:

Section was also amended by L. 1996, ch. 212, § 14, but that version was repealed by L. 1997, ch. 65, § 47.

CASE ANNOTATIONS

1. Party dissatisfied with appraisers' award under 12-527 has right to trial de novo on reasonableness of award. Rural Water District No. 2 v. City of Louisburg, 288 K. 811, 207 P.3d 1055 (2009).

58-3065. Penalties for violations; reporting of minor violations for prosecution not required. (a) Willful violation of any provision of this act or the brokerage relationships in real estate transactions act is a misdemeanor punishable by imprisonment for not more than 12 months or a fine of not less than \$100 or more than \$1,000, or both, for the first offense and imprisonment for not more than 12 months or a fine of not less than \$1,000 or more than \$10,000, or both, for a second or subsequent offense.

(b) Nothing in this act or the brokerage relationships in real estate transactions act shall be construed as requiring the commission or the director to report minor violations of the acts for criminal prosecution whenever the commission or the director believes that the public interest will be adequately served by other administrative action.

History: L. 1980, ch. 164, § 32; L. 1995, ch. 252, § 22; L. 1996, ch. 212, § 9; Revived, L. 1997, ch. 65, § 18; L. 1997, ch. 65, § 19; Oct. 1.

Revisor's Note:

Section was also amended by L. 1996, ch. 212, § 15, but that version was repealed by L. 1997, ch. 65, § 47.

58-3066. Recovery revolving fund; assessment of fees to maintain balance; payments; interest. (a) The real estate recovery revolving fund established within the state treasury by K.S.A. 58-3023, and amendments thereto, is hereby continued in existence. Such fund shall be used in the manner and for the purpose provided by this act.

(b) At any time that the balance remaining in the real estate recovery revolving fund is less than \$100,000 the commission, without delay, shall assess each licensed broker a fee of \$10 and each licensed salesperson a fee of \$5. Such fees shall be deposited in the state treasury and credited to the real estate recovery revolving fund. If a licensee does not pay the assessment within 30 days from the date notice of assessment is mailed to the last residence address reported to the commission by the licensee, the licensee's license may be suspended in accordance with the Kansas administrative procedure act until the assessment is paid. A fee of \$15 shall be paid by the licensee to reinstate the suspended license. Fees paid to reinstate licenses suspended under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund and the real estate fee fund as provided by subsection (a) of K.S.A. 58-3074, and amendments thereto.

(c) All payments and disbursements from the real estate recovery revolving fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the commission or by any person or persons designated by the commission. Amounts credited to the real estate recovery revolving fund under this section shall not be subject to any limitation imposed by any appropriation act of the legislature. All payments and disbursements from the real estate recovery revolving fund shall be subject to post audit in accordance with article 11 of chapter 46 of the Kansas Statutes Annotated and any amendments thereto.

(d) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the real estate recovery revolving fund interest earnings based on:

- (1) The average daily balance of moneys in the real estate recovery revolving fund for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

History: L. 1980, ch. 164, § 33; L. 1981, ch. 304, § 2; L. 1986, ch. 210, § 1; L. 1987, ch. 295, § 5; L. 1989, ch. 48, § 86; L. 1992, ch. 272, § 5; L. 1996, ch. 253, § 9; L. 2001, ch. 5, § 202; July 1.

CASE ANNOTATIONS

1. Purpose of fund considered; simple unsecured promissory note relative to purchase of chattel (modular home) did not involve sale of real estate. First Nat'l Bank of Girard v. Coykendall, 8 K.A.2d 636, 637, 638, 664 P.2d 874 (1983).

58-3067. Same; recovery from; limitations. Except as provided in subsection (d) of K.S.A. 58-3068, and amendments thereto, payments from the real estate recovery revolving fund under the provisions of this act shall be subject to the following conditions and limitations:

(a) Payments shall be made only pursuant to an order of a court of competent jurisdiction, as provided in K.S.A. 58-3071, and amendments thereto, and in the manner prescribed by this act.

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

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

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

History: L. 1980, ch. 164, § 34; L. 1981, ch. 304, § 3; L. 1986, ch. 210, § 2; L. 2008, ch. 155, § 7; July 1.

58-3068. Recovery revolving fund; use of moneys, limitations. (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) 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, prior to their repeal, or K.S.A. 2019 Supp. 21-5801, 21-5803, 21-5821, 21-5823, 21-5824 or 21-5826, 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 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.

History: L. 1980, ch. 164, § 35; L. 1981, ch. 304, § 4; L. 1986, ch. 210, § 3; L. 1986, ch. 209, § 18; L. 1989, ch. 167, § 8; L. 1992, ch. 120, § 2; L. 1995, ch. 252, § 23; L. 1996, ch. 212, § 10; Revived, L. 1997, ch. 65, § 20; L. 1997, ch. 65, § 21; L. 2008, ch. 155, § 8; L. 2010, ch. 104, § 11; L. 2011, ch. 30, § 206; July 1.

Revisor's Note:

Section was also amended by L. 1996, ch. 212, § 16, but that version was repealed by L. 1997, ch. 65, § 47.

Law Review and Bar Journal References:

"Potential Liability of Real Estate Brokers and Salesmen for Misrepresentation and Nondisclosure in Kansas," Craig Altenhofen, 52 J.K.B.A. 9, 11, 15 (1983).

"Effects of the Kansas Real Estate Brokers and Salespersons License Act," Craig J. Altenhofen, 10 J.K.T.L.A. No. 4, 15 (1987).
"Broker Beware—Real Estate Agent Liability in Kansas After Johnson v. Geer Real Estate Co.," Marilyn M. Eddy, 35 K.L.R. 645 (1987).
"Tort Law: Real Estate Broker Beware: Remain Ignorant of Property Flaws and the Innocent Buyer Wins [Mahler v. Keenan Real Estate, Inc., 876 P.2d 609 (Kan. 1994)]," Lisa M. Agrimonti, 34 W.L.J. 345, 350 (1995).

CASE ANNOTATIONS

1. Recovery barred by two-year statute of limitations; alleged loss was not real estate transaction. First Nat'l Bank of Girard v. Coykendall, 8 K.A.2d 636, 637, 638, 664 P.2d 874 (1983).
2. Acts for which recovery allowed considered; simple unsecured promissory note relative to purchase of chattel (modular home) did not involve sale of real estate. First Nat'l Bank of Girard v. Coykendall, 8 K.A.2d 636, 637, 638, 664 P.2d 874 (1983).
3. No recovery against fund unless claimant has final judgment for violation of act or certain specified crimes; paragraphs (2) and (3) of subsection (c) considered. Gonzales v. Callison, 9 K.A.2d 567, 570, 683 P.2d 454 (1984).
4. Cited; violations of act may be basis of suits brought against real estate brokers. Johnson v. Geer Real Estate Co., 239 K. 324, 331, 720 P.2d 660 (1986).
5. Act held as not establishing a separate cause of action for negligent or fraudulent misrepresentation. Brunett v. Albrecht, 248 K. 634, 641, 810 P.2d 276 (1991).

58-3069. Same; court order directing payment from, when; hearing; recovery limitation; attorney fees. (a) Any person who meets all of the conditions prescribed by subsection (b) of K.S.A. 58-3068 and amendments thereto, except where the court finds compliance not reasonable or practicable pursuant to subsection (b), may apply to the court in which the judgment was rendered for an order directing the real estate commission to cause payment to be made to such person from the real estate recovery revolving fund. At the time the application is made, the court shall cause notice thereof to be given to the director of the commission, stating the time set by the court for a hearing thereon, which shall not be less than 10 nor more than 30 days after the application is filed.

(b) At the hearing, the claimant shall appear and present such proof and evidence as the court may require to establish the claimant's right to recovery from the real estate recovery revolving fund, and the director of the commission may appear, in person or by counsel, and present evidence or testimony with respect thereto. Upon the hearing, the court may enter an order directing the director of the commission to cause payment to be made to the claimant from the real estate recovery revolving fund if the court determines that:

(1) The claimant meets all of the conditions prescribed by subsection (b) of K.S.A. 58-3068 and amendments thereto; or
(2) compliance with subsection (b)(4), (5) or (6) of K.S.A. 58-3068 and amendments thereto is not reasonable or practicable and the claimant is otherwise qualified and has pursued all reasonable means to collect the amount of the judgment or the unsatisfied portion thereof.

(c) The recovery allowed a claimant hereunder shall be the lesser of:

(1) An amount equal to that part of the unsatisfied portion of the judgment which reflects actual or compensatory damages plus the amount of any reasonable attorney fees incurred by the claimant in effecting recovery hereunder; or
(2) \$15,000.

History: L. 1980, ch. 164, § 36; L. 1981, ch. 304, § 5; L. 1986, ch. 210, § 4; July 1.

Law Review and Bar Journal References:

"Broker Beware—Real Estate Agent Liability in Kansas After Johnson v. Geer Real Estate Co.," Marilyn M. Eddy, 35 K.L.R. 645 (1987).

CASE ANNOTATIONS

1. No recovery against fund unless claimant has final judgment for violation of act or certain specified crimes. Gonzales v. Callison, 9 K.A.2d 567, 670 683 P.2d 454 (1984).

58-3070. Same; duties of commission in recovery actions; fees and expenses of counsel. When the director of the commission receives notice of any action or hearing, as provided in K.S.A. 58-3068 and 58-3069, and amendments thereto, the director may intervene, enter an appearance, file an answer, defend the action or take whatever other action the director deems appropriate on the behalf and in the name of the defendant, and may take recourse through any appropriate method of review on behalf of, and in the name of, the defendant. All fees and expenses of counsel hired by the commission for the performance of duties for the commission hereunder shall be paid out of the real estate recovery revolving fund.

History: L. 1980, ch. 164, § 37; L. 1981, ch. 304, § 6; L. 1986, ch. 210, § 5; July 1.

58-3071. Same; conditions on court order of directing payment. Any order of the court issued pursuant to K.S.A. 58-3069 shall be conditioned as follows:

(a) Upon receipt by the claimant of the payment from the real estate recovery revolving fund, the claimant shall assign the claimant's right, title and interest in the judgment, to the extent of such payment, to the director of the commission, and thereupon the director shall be subrogated to such right, title and interest of the claimant; and any amount subsequently recovered on the judgment by the director, to the extent of the director's right, title and interest therein, shall be for the purpose of reimbursing the real estate recovery revolving fund.

(b) If the limitations on payments from the real estate recovery revolving fund, as prescribed by K.S.A. 58-3067, preclude payment of the entire amount stated in the court's order, the director of the real estate commission shall be obligated to cause payment to be made therefrom only to the extent permitted under K.S.A. 58-3067.

History: L. 1980, ch. 164, § 38; July 1.

CASE ANNOTATIONS

1. No recovery against fund unless claimant has final judgment for violation of act or certain specified crimes. *Gonzales v. Callison*, 9 K.A.2d 567, 570, 683 P.2d 454 (1984).

58-3072. Same; payment from in settlement of claim; revocation of license until reimbursement of amount paid. Upon the payment of any amount from the real estate recovery revolving fund in settlement of a claim in satisfaction of a judgment against a licensed broker or salesperson, the license of such broker or salesperson shall be automatically revoked. No such broker or salesperson shall be eligible to receive a new license until the broker or salesperson has repaid in full the amount paid from the real estate recovery revolving fund on such broker's or salesperson's account plus interest on that amount at the rate provided by K.S.A. 16-204 and amendments thereto for a judgment rendered on the same date that the amount was paid from the fund. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

History: L. 1980, ch. 164, § 39; L. 1986, ch. 210, § 6; July 1.

CASE ANNOTATIONS

1. No recovery against fund unless claimant has final judgment for violation of act or certain specified crimes. *Gonzales v. Callison*, 9 K.A.2d 567, 570, 683 P.2d 454 (1984).

58-3073. Same; unlawful acts; penalty. It shall be unlawful for any person or such person's agent to file with the commission any statement or other document, required under the provisions of K.S.A. 58-3066 to 58-3071, inclusive, and amendments of such sections, which is false or untrue or contains any material misstatement of fact. Violation of the provisions of this section is a class A misdemeanor.

History: L. 1980, ch. 164, § 40; L. 1981, ch. 304, § 7; July 1.

58-3074. Disposition of moneys received by commission; real estate fee fund. (a) Except as provided by subsections (b) and (c), the director of the commission shall remit all moneys received by or for the director from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Ten percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the real estate fee fund established by former K.S.A. 58-3014, and amendments thereto, which fund is hereby continued in existence. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director or by a person or persons designated by the director.

(b) The director of the commission shall remit all moneys received by or for the director pursuant to K.S.A. 58-3066 through 58-3072, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Except as provided by subsections (b) and (d) of K.S.A. 58-3066, and amendments thereto, upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the real estate recovery revolving fund.

(c) The director of the commission shall remit all moneys received by or for the director pursuant to K.S.A. 58-3050, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit 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, to the real estate fee fund as provided by K.S.A. 58-3050, and amendments thereto. The balance of the fine amount collected shall be credited to the state general fund.

History: L. 1980, ch. 164, § 45; L. 1980, ch. 270, § 2; L. 1981, ch. 304, § 8; L. 1986, ch. 210, § 7; L. 1988, ch. 197, § 5; L. 2001, ch. 5, § 203; L. 2011, ch. 53, § 25; July 1.

58-3075. Severability clause. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: L. 1980, ch. 164, § 46; July 1.

58-3076. Referral fees, solicitation of; relocation benefits, threats to reduce or withhold; terminating or amending agency agreements. (a) A licensee or anyone on behalf of any such licensee or firm, whether licensed in this state or in another state shall not solicit a referral fee without reasonable cause. Reasonable cause shall not exist unless one of the following conditions exists:

- (1) An actual introduction of business has been made;
- (2) a contractual referral fee relationship exists; or
- (3) a contractual cooperative brokerage relationship exists.

(b) A licensee or anyone on behalf of any such licensee or firm, whether licensed in this state or in another shall not:

- (1) Threaten to reduce or withhold employee relocation benefits or take other action adverse to the interest of a client or customer of a real estate licensee; or

(2) counsel a client or customer of another real estate licensee on how to terminate or amend an existing agency agreement or sales contract. Communicating corporate relocation policy or benefits to a transferring employee shall not be considered a violation of this paragraph, as long as the communication does not involve advice or encouragement on how to terminate or amend an existing agency contract.

History: L. 2000, ch. 102, § 5; July 1.

58-3077. Commercial real estate; sharing commissions with unlicensed persons, when authorized. (a) As used in this section:

(1) "Commercial real estate" means any real estate for which the present use is other than (A) one to four residential units or (B) for agricultural purposes.

(2) "Foreign licensee" means a real estate licensee, in good standing of another state or country.

(3) Words and phrases used in this section have the meanings ascribed thereto in K.S.A. 58-3035, and amendments thereto.

(b) A branch broker or supervising broker may cooperate with and share commissions or other compensation for services related to commercial real estate with a foreign licensee and such foreign licensee shall be permitted to perform services requiring a license under K.S.A. 58-3034 et seq., and amendments thereto, with respect to commercial real estate in this state even though such foreign licensee is not licensed thereunder if:

(1) The real estate is not improved with a single family residence; and

(2) the foreign licensee agrees to cooperate with a branch broker or supervising broker of this state in any commercial real estate transaction, as evidenced by execution of and compliance with a broker cooperation agreement which shall include, but not be limited to, provisions requiring:

(A) The foreign licensee to comply with all applicable laws and regulations of this state;

(B) the foreign licensee to submit to the jurisdiction of the courts of this state, the jurisdiction of the Kansas real estate commission and the applicability of the laws and regulations of this state for the conduct of the foreign licensee with respect to commercial real estate and any and all claims related thereto;

(C) the foreign licensee to give its written irrevocable written consent to service of process upon such foreign licensee by valid service upon the secretary of state of this state and upon the secretary of state of the state or province of the foreign licensee's real estate licensure;

(D) all escrow funds, including but not limited to, earnest deposits and security deposits, concerning the commercial real estate to be held in this state either in the trust account of a Kansas-licensed branch broker or supervising broker or by a third-party escrow agent located in this state;

(E) a description of how any and all compensation earned on any commercial real estate transaction shall be shared between the foreign licensee and the branch broker or supervising broker of this state;

(F) the foreign licensee and the branch broker or supervising broker of this state to agree to each keep the other informed of all showings and negotiations for commercial real estate;

(G) the foreign licensee and the branch broker or supervising broker of this state to agree to furnish to the other copies of all documents related to any commercial real estate transaction required by Kansas law to be retained, including but not limited to, agency disclosure, offers, counter-offers, purchase and sale contracts, leases and closing statements.

(c) A copy of any broker cooperation agreement shall be provided to the commission within five business days of the execution thereof.

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

History: L. 2004, ch. 67, § 2; L. 2006, ch. 159, § 3; July 1.

Cross References to Related Sections:

Commercial real estate broker lien act, see 58-30a01 et seq.

58-3078. Residential real estate sales contract; required language; information regarding registration of persons convicted of crimes. (a) On and after July 1, 2008, each contract for the sale of residential real estate shall contain as part of such contract the following language:

"Kansas law requires persons who are convicted of certain crimes, including certain sexually violent crimes, to register with the sheriff of the county in which they reside. If you, as the buyer, desire information regarding those registrants, you may find information on the homepage of the Kansas Bureau of Investigation (KBI) at <http://www.Kansas.gov/kbi> or by contacting the local sheriff's office."

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

History: L. 2007, ch. 88, § 5; July 1.

58-3078a. Same; information regarding radon. On and after July 1, 2009, each contract for the sale of residential real property shall contain the following language:

"Every buyer of residential real property is notified that the property may present exposure to dangerous concentrations of indoor radon gas that may place occupants at risk of developing radon-induced lung cancer. Radon, a class-A human carcinogen, is

the leading cause of lung cancer in non-smokers and the second leading cause overall. Kansas law requires sellers to disclose any information known to the seller that shows elevated concentrations of radon gas in residential real property. The Kansas department of health and environment recommends all home-buyers have an indoor radon test performed prior to purchasing or taking occupancy of residential real property. All testing for radon should be conducted by a radon measurement technician. Elevated radon concentrations can be easily reduced by a radon mitigation technician. For additional information go to www.kansasradonprogram.org."

History: L. 2008, ch. 153, § 1; July 1.

58-3079. Supervising broker; use of trade name. (a) Each supervising broker who desires to do business under a trade name or business name other than the supervising broker's own name shall register with and obtain approval from the commission for use of the trade name or business name. The use of the trade name or business name may be disapproved by the commission if, in the judgment of the commission, the use of the trade name or business name would be misleading or confusing to the public. The reasons for disapproval may include the following:

(1) The requested trade name or business name or a similar name is currently in use, or has been in use during the past two years, in the same marketing area.

(2) Terms are used in the trade name or business name that are misleading or confusing.

(b) A branch office shall use the same trade name or business name as that used by the primary office.

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

History: L. 2007, ch. 88, § 8; July 1.

58-3080. Licenses of certain licensees placed on inactive status, when, pending transactions. (a) 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, the licensee transfers to another supervising broker or branch broker or the licensee is currently associated or employed with another broker. If deemed in the public interest until pending transactions are closed, the commission may authorize another broker to act as the supervising or branch broker during any period of deactivation.

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

History: L. 2007, ch. 88, § 10; L. 2009, ch. 7, § 5; L. 2019, ch. 23, § 8; July 1.

58-3081. Suspension or revocation of certain licenses; effect on associated or employed licensees, pending transactions. (a) When the license of a supervising broker or branch broker is suspended or revoked, 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 for the duration of the suspension or revocation, unless the licensee transfers to another supervising broker or branch broker or the licensee is currently associated or employed with another broker. If deemed in the public interest until pending transactions are closed, the commission may authorize another broker to act as the supervising or branch broker during any period of suspension 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.

History: L. 2007, ch. 88, § 11; L. 2019, ch. 23, § 9; July 1.

58-3082. Suspended, deactivated or revoked license; effect on commissions. (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 whether a licensee is entitled to compensation. Entitlement to compensation shall depend upon the terms of the licensee's written employment or independent contractor agreement with 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.

History: L. 2007, ch. 88, § 12; L. 2009, ch. 7, § 6; July 1.

58-3083. Expiration or deactivation of certain licenses; notifications required, when. (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.

History: L. 2007, ch. 88, § 13; L. 2009, ch. 7, § 7; July 1.

58-3084. Expiration, suspension, deactivation or revocation of certain licenses; effect on pending closings. (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.

History: L. 2007, ch. 88, § 14; L. 2009, ch. 7, § 8; July 1.

58-3085. Limitations on advertising, when. (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.

History: L. 2007, ch. 88, § 15; L. 2009, ch. 7, § 9; July 1.

58-3086. Advertising; prohibitions; requirements of; information disclosed; filing of agreements. (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 an office where real estate activity is conducted that is not 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.

History: L. 2008, ch. 155, § 6; L. 2009, ch. 7, § 10; July 1.

Source or Prior Law:
58-3062(a)(1).

58-3087 through 58-30,100. Reserved.

BROKERAGE RELATIONSHIPS

58-30,101. Title of act; compliance. (a) This act shall be known and may be cited as the brokerage relationships in real estate transactions act.

(b) Failure to comply with any requirement of K.S.A. 58-30,103 or K.S.A. 58-30,110, and amendments thereto, or rules and regulations adopted thereunder, shall not by itself render any agreement void or voidable nor shall it constitute a defense to any action to enforce such agreement or any action for breach of such agreement.

History: L. 1995, ch. 252, § 1; L. 1996, ch. 212, § 1; Revived and Amended, L. 1997, ch. 65, § 22; L. 1997, ch. 65, § 23; Oct. 1.

CASE ANNOTATIONS

1. Cited; granting of summary judgment against buyer held in error; case remanded. *Osterhaus v. Toth*, 39 K.A.2d 999, 1011, 187 P.3d 126 (2008).
2. Seller's real estate broker attempted to become a transaction broker but seller refused to sign purchase contract. *Premier Realty v. I.T.J. Investments*, 42 K.A.2d 148, 209 P.3d 741 (2009).

58-30,102. Definitions. 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) 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 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 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.

History: L. 1995, ch. 252, § 2; Revived, L. 1997, ch. 65, § 24; L. 1997, ch. 65, § 25; L. 2010, ch. 104, § 12; July 1.

Law Review and Bar Journal References:

"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

58-30,103. Written agency agreements; written transaction brokerage agreements. (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 K.S.A. 58-3035(f), 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 K.S.A. 58-3035(f), 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, 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 K.S.A. 58-30,109(b)(2), 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 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 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 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 agent or transaction broker of the seller or landlord is present.

History: L. 1995, ch. 252, § 3; Revived, L. 1997, ch. 65, § 26; L. 1997, ch. 65, § 27; L. 2002, ch. 82, § 7; L. 2010, ch. 104, § 13; L. 2015, ch. 21, § 4; July 1.

Law Review and Bar Journal References:

"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

Attorney General's Opinions:

Furnishing disclosure of alternative agency relationship to prospective landlord or tenant client not required. 96-8.

CASE ANNOTATIONS

1. Seller's real estate broker attempted to become a transaction broker but seller refused to sign purchase contract. Premier Realty v. I.T.J. Investments, 42 K.A.2d 148, 209 P.3d 741 (2009).

58-30,104. Termination of relationships. (a) (1) The agency relationships set forth in K.S.A. 58-30,103, and amendments thereto, shall commence at the time that the client engages the broker, and shall continue until:

- (A) A transaction is closed according to the agreement of the parties; or
- (B) if a transaction is not closed according to the agreement of the parties, the earlier of:
 - (i) Any date of expiration agreed upon by the parties in the agency agreement or in any amendments thereto; or
 - (ii) any authorized termination of the relationship.

(2) Except as otherwise agreed in writing, a broker owes no further duties to the client after termination, expiration, or the closing of a transaction according to the agreement of the parties, except:

- (A) To account for all moneys and property relating to the engagement; and
- (B) to keep confidential all confidential information received during the course of the engagement unless:
 - (i) The client permits the disclosure by subsequent word or conduct;
 - (ii) such disclosure is required by law; or
 - (iii) the information becomes public from a source other than the broker.

(b) (1) The relationship between a transaction broker and a seller, landlord, buyer or tenant shall terminate when:

- (A) A transaction is closed according to the agreement of the parties; or
- (B) if a transaction is not closed according to the agreement of the parties, the earlier of:
 - (i) Any date of expiration agreed upon by the parties; or
 - (ii) any authorized termination of the relationship.

(2) Except as otherwise agreed in writing, a transaction broker owes no further duties to any party to the transaction after termination, expiration or the closing of a transaction according to the agreement of the parties, except:

- (A) To account for all moneys and property relating to the engagement; and
- (B) to keep confidential all information received during the course of the engagement which was made confidential by request of any party to the transaction, unless:
 - (i) The party permits the disclosure by subsequent word or conduct;
 - (ii) such disclosure is required by law; or
 - (iii) the information becomes public from a source other than the transaction broker.

History: L. 1995, ch. 252, § 4; Revived, L. 1997, ch. 65, § 28; L. 1997, ch. 65, § 29; Oct. 1.

58-30,105. Compensation. (a) Compensation is presumed to come from the transaction and shall be determined by agency or transaction broker agreements entered into pursuant to K.S.A. 58-30,103, and amendments thereto.

(b) Payment of compensation by itself shall not establish an agency between the party who paid the compensation and the broker or any affiliated licensee.

(c) In any transaction, the broker's compensation may be paid by the seller, the landlord, the buyer or the tenant. A broker may be compensated by more than one party for services in a transaction if the parties consent in writing to the multiple payments at or before the time of entering into a contract to buy, sell or lease.

(d) A broker may:

- (1) Pay a commission or compensation to any licensee affiliated with the broker for performing services under this act;
- (2) with the written agreement of the seller, landlord, buyer or tenant share a commission with another broker who acted as a transaction broker, a subagent or an agent of the other party; and

(3) pay a referral fee to a person who is licensed as a broker under the real estate brokers' and salespersons' license act or under the law of another jurisdiction, provided that written disclosure is made to the client of any financial interest that the broker has in the brokerage firm receiving the referral fee.

History: L. 1995, ch. 252, § 5; Revived, L. 1997, ch. 65, § 30; L. 1997, ch. 65, § 31; Oct. 1.

58-30,106. Minimum requirements of seller's or landlord's agent. (a) A seller's agent or a landlord's agent shall be a statutory agent with the duty and obligation to:

- (1) Perform the terms of the written agreement made with the client;
- (2) promote the interests of the client with the utmost good faith, loyalty and fidelity, including:
 - (A) presenting in a timely manner all offers to and from the client, when such offer is received prior to the closing of the sale unless the seller instructs the broker in the agency agreement not to submit offers after an offer has been accepted by the seller;
 - (B) disclosing to the client all adverse material facts actually known by the licensee about the buyer or tenant; and
 - (C) advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
- (3) account in a timely manner for all money and property received;

- (4) comply with all requirements of this act and rules and regulations adopted hereunder; and
- (5) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes and rules and regulations.

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

(c) A seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute or rule and regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.

(d) (1) A seller's or landlord's agent owes no duty or obligation to a customer, except that a licensee shall disclose to any customer all adverse material facts actually known by the licensee, including, but not limited to:

- (A) Any environmental hazards affecting the property which are required by law to be disclosed;
- (B) the physical condition of the property;
- (C) any material defects in the property;
- (D) any material defects in the title to the property; or
- (E) any material limitation on the client's ability to perform under the terms of the contract.

(2) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any qualified third party.

(3) Except as provided in subsection (d)(4), a seller's or landlord's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the client or customer.

(4) A seller's or landlord's agent shall disclose to the client or customer any facts actually known by the licensee that were omitted from or contradict any information included in a written report described in subsection (d)(3).

(5) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a licensee shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson.

(e) A seller's or landlord's agent may provide assistance to the customer by performing ministerial acts. Performing ministerial acts for the customer shall not be construed as violating the brokerage firm's agency with the seller or landlord and shall not be construed as forming an agency with the customer.

(f) A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.

(g) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer subagency and pay compensation to other brokers.

(h) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer to cooperate with a buyer's or tenant's agent or to cooperate with and pay compensation to a buyer's or tenant's agent.

(i) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer to cooperate with a transaction broker or to cooperate with and pay compensation to a transaction broker.

(j) If the seller or landlord has authorized the broker to offer cooperation with other licensees pursuant to subsection (g), (h) or (i) the broker shall not refuse permission to another licensee to show a listed property or refuse to receive and transmit to the seller or landlord a written offer on a listed property from another licensee unless specifically instructed by the seller in writing. The broker shall provide a copy of the written instructions to another licensee upon request.

(k) A seller's or landlord's agent shall not be liable for punitive or exemplary damages for the licensee's failure to perform any of the duties set forth in this section, unless such failure is shown by clear and convincing evidence that the licensee acted toward the plaintiff with willful conduct, wanton conduct, fraud or malice.

History: L. 1995, ch. 252, § 6; Revived, L. 1997, ch. 65, § 32; L. 1997, ch. 65, § 33; L. 2015, ch. 21, § 5; July 1.

Law Review and Bar Journal References:

"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

Attorney General's Opinions:

Real estate broker has duty to disclose all adverse information regarding premises known by broker but not as to who resides in area; i.e. sex offenders. 2004-10.

CASE ANNOTATIONS

1. In sale of house, seller's agent required to disclose prior report of extensive termite damage to premises. *Fitzmorris v. Demas*, 34 K.A.2d 267, 116 P.3d 764 (2005).
2. Cited; granting of summary judgment against buyer held in error; case remanded. *Osterhaus v. Toth*, 39 K.A.2d 999, 1011, 1016, 187 P.3d 126 (2008).
3. Seller's real estate broker attempted to become a transaction broker but seller refused to sign purchase contract. *Premier Realty v. I.T.J. Investments*, 42 K.A.2d 148, 209 P.3d 741 (2009).
4. Genuine issues of material facts on negligent misrepresentation remain; issues remanded. *Osterhaus v. Toth*, 291 K. 759, 249 P.3d 888 (2011).
5. The brokerage relationship in real estate transaction act does not eliminate the possibility of a common-law cause of action against an agent or broker for negligent misrepresentation. *Stechschulte v. Jennings*, 297 K. 2, 298 P.3d 1083 (2013).

58-30,107. Minimum requirements of buyer's or tenant's agent. (a) A buyer's or a tenant's agent shall be a statutory agent with the duty and obligation to:

- (1) Perform the terms of the written agreement made with the client;
- (2) promote the interests of the client with the utmost good faith, loyalty and fidelity, including:
 - (A) Presenting in a timely manner all offers to and from the client when such offer is received prior to the closing of the sale unless the buyer instructs the broker in the agency agreement not to submit offers after the client enters into a purchase contract;
 - (B) disclosing to the client all adverse material facts actually known by the licensee; and
 - (C) advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
- (3) account in a timely manner for all money and property received;
- (4) comply with all requirements of this act and rules and regulations adopted hereunder; and
- (5) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes or rules and regulations.

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

(c) A buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute or rule and regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

(d) (1) A buyer's or tenant's agent owes no duty or obligation to a customer, except that the licensee shall disclose to any customer all adverse material facts actually known by the licensee, including but not limited to material facts concerning the client's financial ability to perform the terms of the transaction.

(2) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any qualified third party.

(3) Except as provided in subsection (d)(4), a buyer's or tenant's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the client or customer.

(4) A buyer's or tenant's agent shall disclose to the client or customer any facts actually known by the licensee that were omitted from or contradict any information included in a written report described in subsection (d)(3).

(5) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a licensee shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson.

(e) A buyer's or tenant's agent may provide assistance to the seller or landlord by performing ministerial acts. Performing ministerial acts for the seller or landlord shall not be construed as violating the brokerage firm's agency with the buyer or tenant and shall not be construed as forming an agency with the seller or landlord.

(f) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This subsection is intended to allow a buyer's or tenant's agent to show competing buyers or tenants the same property and to assist competing buyers or tenants in attempting to purchase or lease a particular property.

(g) A buyer or tenant may agree in writing with a buyer's or tenant's agent that the agent may receive compensation from a seller's or landlord's agent or from a transaction broker.

(h) A buyer's or tenant's agent shall not be liable for punitive or exemplary damages for the licensee's failure to perform any of the duties set forth in this section, unless such failure is shown by clear and convincing evidence that the licensee acted toward the plaintiff with willful conduct, wanton conduct, fraud or malice.

History: L. 1995, ch. 252, § 7; Revived, L. 1997, ch. 65, § 34; L. 1997, ch. 65, § 35; Oct. 1.

Law Review and Bar Journal References:

"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

CASE ANNOTATIONS

1. Realtor not liable, realtor did not have firsthand actual knowledge and suggested professional inspection. *McLellan v. Raines*, 36 K.A.2d 1, 17, 140 P.3d 1034 (2006).

2. Defendant absolved of liability as to matters covered by inspection, where defendant advised plaintiff to get inspection. *Crandall v. Grbic*, 36 K.A.2d 179, 190, 138 P.3d 365 (2006).

58-30,108.

History: L. 1995, ch. 252, § 8; Revived, L. 1997, ch. 65, § 36; Repealed, L. 1997, ch. 65, § 48; Oct. 1.

58-30,109. Brokerage firm acting as a transaction broker; affiliated licensees; designated agents; rules and regulations. (a) In the absence of designated agents appointed pursuant to subsection (b), a brokerage firm may act as a transaction broker pursuant to K.S.A. 58-30,113, and amendments thereto, on an in-house transaction with the informed consent of the seller

client and the buyer client. The informed consent shall be evidenced by a transaction broker addendum to the agency agreements and shall be signed by the buyer prior to writing the offer and by the seller prior to signing the contract.

(b) (1) A broker may personally, or through the broker's duly authorized licensed representative, specifically designate, in a written agency agreement obtained pursuant to K.S.A. 58-30,103, and amendments thereto, one or more affiliated licensees who will be acting as legal agent of the buyer client or seller client to the exclusion of all other affiliated licensees.

(2) If a buyer client of a designated agent wants to see a property which was personally listed by the broker, the broker, with the written consent of the seller, may specifically designate an affiliated licensee who will act as legal agent of the seller client to the exclusion of all other affiliated licensees. The written consent of the seller shall contain the name of the prospective buyer and shall acknowledge that the broker shall act as a transaction broker regarding any transaction with the buyer. The written consent of the seller shall be signed prior to presentation of any offer.

(3) A designated agent of a seller client shall have the duties and obligations set forth in K.S.A. 58-30,106, and amendments thereto. A designated agent of a buyer client shall have the duties and obligations set forth in K.S.A. 58-30,107, and amendments thereto.

(4) In any transaction involving a designated agent, the supervising broker of the designated agent shall act as a transaction broker pursuant to K.S.A. 58-30,113, and amendments thereto, unless both buyer and seller are represented by designated agents and the designated agents are supervised by the same branch broker. In that case, the branch broker shall act as a transaction broker pursuant to K.S.A. 58-30,113, and amendments thereto. The supervising broker, or branch broker if applicable, may appoint an affiliated licensee to act in the transaction as a transaction broker pursuant to K.S.A. 58-30,113, and amendments thereto.

(5) A designated agent may disclose to the designated agent's supervising broker, or branch broker if applicable, and to an affiliated licensee appointed as a transaction broker pursuant to paragraph (4), confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a transaction.

(6) If a buyer client of a designated agent wants to see a property owned by a seller client of the designated agent, the designated agent may act as a transaction broker pursuant to K.S.A. 58-30,113, and amendments thereto, with the informed consent of the seller client and buyer client. The informed consent shall be evidenced by a transaction broker addendum to the agency agreements and shall be signed by the buyer prior to writing the offer and by the seller prior to signing the contract.

(c) The commission, by rules and regulations, shall adopt a transaction broker addendum form to be used by licensees pursuant to this section.

History: L. 1995, ch. 252, § 9; Revived, L. 1997, ch. 65, § 37; L. 1997, ch. 65, § 38; Oct. 1.

Law Review and Bar Journal References:

"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

CASE ANNOTATIONS

1. Seller's real estate broker attempted to become a transaction broker but seller refused to sign purchase contract. Premier Realty v. I.T.J. Investments, 42 K.A.2d 148, 209 P.3d 741 (2009).

58-30,110. Real estate brokerage relationships. (a) (1) The commission shall adopt a rule and regulation prescribing language which describes a seller's agent, a buyer's agent and a transaction broker for inclusion in a brochure entitled "real estate brokerage relationships".

(2) Except as provided in subsection (a)(3), a licensee shall furnish a prospective buyer or seller with the brochure at the first practical opportunity.

(3) A licensee is not required to provide a copy of the brochure to a prospective buyer or seller in the following instances:

- (A) The licensee is acting solely as a principal and not as an agent for another;
- (B) the communication from the licensee is a solicitation of business;
- (C) the transaction is regarding the sale of commercial property or the sale of residential property of more than four units;
- (D) the transaction is regarding the sale of property by public auction;
- (E) the licensee is only performing ministerial acts; or
- (F) the customer or client has already received the brochure from the licensee's brokerage firm.

(4) Acknowledgment of receipt of the brochure by the seller and buyer shall be included in any contract for sale.

(b) (1) Except for instances when a licensee is providing information through an advertisement or other form of public notice of the licensee's representation of a client, a licensee representing a client in a proposed real estate transaction shall disclose the representation at the time of the initial contact with another licensee representing the other party. The disclosure may be made orally or in writing.

(2) Each time a licensee is contacted by another licensee who requests permission to show property to a prospective buyer, the licensee shall inquire whether or not the licensee represents the buyer.

(c) The disclosure of the brokerage relationship between all licensees involved and the seller and buyer shall be included in any contract for sale and in any lot reservation agreement.

History: L. 1995, ch. 252, § 10; L. 1996, ch. 212, § 18; Revived, L. 1997, ch. 65, § 39; L. 1997, ch. 65, § 40; Oct. 1.

Law Review and Bar Journal References:

"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

Attorney General's Opinions:

Furnishing disclosure of alternative agency relationship to prospective landlord or tenant client not required. 96-8.

58-30,111. Imputed knowledge. (a) A client or customer shall not be liable for a misrepresentation or omission by the client's statutory agent or the transaction broker arising out of the agency or transaction broker agreement unless the client or customer knew of the misrepresentation or omission.

(b) A statutory agent or transaction broker shall not be liable for a misrepresentation or omission by the agent's client or the transaction broker's customer arising out of the agency or transaction broker agreement unless the licensee knew of the misrepresentation or omission.

(c) A statutory agent or transaction broker shall not be liable for an innocent or negligent misrepresentation in information provided to the seller or landlord or to the buyer or tenant if the licensee does not have personal knowledge of the error, inaccuracy or omission that is the basis for the claim of misrepresentation.

History: L. 1995, ch. 252, § 11; Revived, L. 1997, ch. 65, § 41; L. 1997, ch. 65, § 42; Oct. 1.

Law Review and Bar Journal References:

"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

Attorney General's Opinions:

The brokerage relationships in the real estate transactions act limits, but does not entirely supplant, the common law liability of real estate licensees. 2014-11.

CASE ANNOTATIONS

1. Genuine issues of material facts on negligent misrepresentation remain; issues remanded. *Osterhaus v. Toth*, 291 K. 759, 249 P.3d 888 (2011).

58-30,112. Forms; rules and regulations. The commission shall provide sample forms of agency agreements and, by rules and regulations, provide such other prohibitions, limitations and conditions relating thereto as the commission may prescribe.

History: L. 1995, ch. 252, § 12; Revived, L. 1997, ch. 65, § 43; L. 1997, ch. 65, § 44; Oct. 1.

58-30,113. Transaction broker; obligations of; disclosure of information. (a) A broker engaged as a transaction broker shall not act as an agent for either party.

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

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

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

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

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

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

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

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

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

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

(ii) the physical condition of the property;

(iii) any material defects in the property;

(iv) any material defects in the title to the property; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;
- (B) that a seller or landlord is willing to accept less than the asking price or lease rate for the property;
- (C) what the motivating factors are for any party buying, selling or leasing the property; or
- (D) that a seller, buyer, landlord or tenant will agree to financing terms other than those offered.

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

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

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

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

- (1) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant;
- (2) list competing properties for sale or lease;
- (3) show properties in which the buyer or tenant is interested to other prospective buyers or tenants; and
- (4) serve as a single agent or subagent for the same or for different parties in other real estate transactions.

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

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

History: L. 1997, ch. 65, § 1; L. 2006, ch. 159, § 4; July 1.

Law Review and Bar Journal References:

"Brokerage Relationships in Real Estate Transaction Act," Vernon L. Jarboe, 68 J.K.B.A. No. 5, 36 (1999).

Chapter 74.—STATE BOARDS, COMMISSIONS AND AUTHORITIES

Article 42.— KANSAS REAL ESTATE COMMISSION

Cross References to Related Sections:

Real estate brokers' and salespersons' license act, see ch. 58, art. 30.

Law Review and Bar Journal References:

"Survey of Kansas Law: Property," 29 K.L.R. 555, 563, 564 (1981).

74-4201. Kansas real estate commission; membership. (a) The Kansas real estate commission shall consist of five members appointed by the governor. Subject to the provisions of K.S.A. 1992 Supp. 75-4315c, one member shall be appointed from each congressional district and the remainder from the state at large. Each member shall have been, for a period of five years immediately preceding the member's appointment, a citizen and a resident of Kansas. Not less than three members shall have been real estate brokers for five years and not less than one member shall have never engaged in business as real estate brokers and shall not be so engaged while serving on the commission.

(b) At the expiration of the term of any member of the commission, the governor shall appoint a successor for a term of four years and until a successor is appointed and qualifies. In the event of a vacancy in the membership of the commission, the governor shall appoint a member to serve for the unexpired portion of the vacated term and until a successor is appointed and qualifies. Each member of the commission shall, before entering upon the member's duties, take and file with the commission an oath to faithfully perform the duties of the office.

History: L. 1947, ch. 411, § 6; L. 1959, ch. 260, § 5; L. 1961, ch. 391, § 1; L. 1978, ch. 308, § 66; L. 1980, ch. 164, § 41; L. 1981, ch. 304, § 9; L. 1992, ch. 262, § 12; July 1.

CASE ANNOTATIONS

1. Mentioned; title insurance companies liable in tort for damages; disbursement of purchasers funds. *Ford v. Guarantee Abstract & Title Co.*, 220 K. 244, 259, 553 P.2d 254.

74-4202. Kansas real estate commission; organization, terms of officers; powers and duties; compensation and expenses; meetings; office. (a) At the first meeting of the commission after January 1 of each year, or as required thereafter, the members shall elect a chairperson and a vice-chairperson from its membership. The members elected shall serve for a term of one year or the remainder of the term, as the case may be. The vice-chairperson shall exercise all of the powers of the chairperson in the absence of the chairperson. A majority of the members of the commission shall constitute a quorum for the exercise of the powers or authority conferred upon it.

(b) The commission shall receive applications for, and issue licenses to, brokers and salespersons, as provided in the real estate brokers' and salespersons' license act and shall administer the provisions of this act and the brokerage relationships in real estate transactions act. The commission may do all things necessary and convenient for carrying into effect the provisions of the acts and may adopt rules and regulations consistent with the acts. For the purpose of the acts, the commission shall make all necessary investigations, and every licensee shall furnish to the commission such evidence as the licensee may have as to any violation the acts or any rules and regulations adopted under the acts. The commission may enforce any order by an action in the district court of the county where the alleged violator resides or where the violation allegedly occurred.

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

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

(e) The commission shall maintain an office in the city of Topeka.

History: L. 1947, ch. 411, § 7; L. 1970, ch. 223, § 2; L. 1974, ch. 348, § 69; L. 1980, ch. 164, § 42; L. 1995, ch. 252, § 24; L. 1996, ch. 212, § 11; Revived, L. 1997, ch. 65, § 45; L. 1997, ch. 65, § 46; L. 2008, ch. 155, § 9; L. 2019, ch. 23, § 10; July 1.

Revisor's Note:

Section was also amended by L. 1996, ch. 212, § 17, but that version was repealed by L. 1997, ch. 65, § 47.

74-4203. Same; director; employees; administrative expenses. (a) The commission shall employ a director, who shall keep a record of all proceedings, hearings, meetings, communications and official acts of the commission, and perform such other duties as the commission may require. The director shall call a meeting of the commission upon written request of two (2) or more of its members.

(b) The commission may employ such other employees as may be necessary, fix salaries of all its employees, and make such other expenditures as are necessary to properly carry out the provisions of this act.

History: L. 1947, ch. 411, § 8; L. 1980, ch. 164, § 43; July 1.

74-4204.

History: L. 1947, ch. 411, § 24; Repealed, L. 1967, ch. 434, § 69; July 1.

74-4205.

History: L. 1947, ch. 411, § 9; Repealed, L. 1980, ch. 164, § 47; July 1.

74-4206. Duties of attorney general; independent counsel authorized. The attorney general shall render opinions to the commission on all questions of law relating to the interpretation of this act or arising in the administration thereof and shall act as attorney for the commission in all actions and proceedings brought by or against the commission under or pursuant to any of the provisions of this act. The commission may hire independent counsel when the commission deems appropriate. Except as provided by K.S.A. 58-3070 and amendments thereto, all fees and expenses of such independent counsel arising out of the performance of duties for the commission shall be paid out of the real estate fee fund.

History: L. 1947, ch. 411, § 28; L. 1980, ch. 164, § 44; L. 1986, ch. 210, § 8; July 1.

74-4207.

History: L. 1947, ch. 411, § 10; Repealed, L. 1980, ch. 164, § 47; July 1.

74-4208.

History: L. 1947, ch. 411, § 11; L. 1959, ch. 260, § 6; Repealed, L. 1980, ch. 164, § 47; July 1.

74-4209.

History: L. 1996, ch. 212, § 2; Repealed, L. 1997, ch. 65, § 47; July 1.