

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2122

By Committee on Commerce, Labor and Economic Development

1-29

1 AN ACT concerning real estate brokers and salespersons; pertaining to
2 licensure; pertaining to technical amendments; amending K.S.A. 58-
3 30,106 and K.S.A. 2012 Supp. 58-3046a, 58-3050, 58-3062 and 58-
4 30,103 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2012 Supp. 58-3046a is hereby amended to read as
8 follows: 58-3046a. (a) Except as provided in K.S.A. 58-3040, and
9 amendments thereto, any person who applies for an original license in this
10 state as a salesperson shall submit evidence, satisfactory to the
11 commission, of attendance of a principles of real estate course, of not less
12 than 30 hours of instruction, approved by the commission and received
13 within the 12 months immediately preceding the filing of application for
14 salesperson's license. The commission may require the evidence to be
15 furnished to the commission with the original application for license or it
16 may require the applicant to furnish the evidence to the testing service
17 designated by the commission as a prerequisite to taking the examination
18 required by K.S.A. 58-3039, and amendments thereto. If the evidence is
19 furnished to the testing service, the instruction shall have been received
20 within 12 months immediately preceding the date of the examination.

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

35 (c) Any person who applies for an original license in this state as a
36 salesperson on or after July 1, 2007, shall submit evidence, satisfactory to

1 the commission, of attendance of a Kansas real estate practice course, of
2 not less than 30 hours of instruction, approved by the commission and
3 received within the six months immediately preceding the filing of the
4 application for licensure.

5 (d) Any person who applies for an original license in this state as a
6 broker on or after July 1, 2007, who is a nonresident of Kansas or who is a
7 resident of Kansas applying for licensure pursuant to subsection (e) of
8 K.S.A. 58-3040, and amendments thereto, shall submit evidence,
9 satisfactory to the commission, of attendance of a Kansas real estate
10 course, of not less than four hours of instruction and received within the
11 six months immediately preceding the filing of the application for
12 licensure. Such course shall be approved by the commission and shall be
13 specific to Kansas law with primary emphasis on issues that arise under
14 the brokerage relationships in real estate transactions act, K.S.A. 58-
15 30,101 et seq., and amendments thereto, and rules or regulations adopted
16 thereunder.

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

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

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

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

33 (3) At or prior to each license renewal thereafter, 12 hours of
34 ~~additional instruction~~ *continuing education* received during the renewal
35 period.

36 (g) Any person who qualifies for original licensure as a salesperson
37 pursuant to K.S.A. 58-3039, and amendments thereto, on or after July 1,
38 2007, shall not be required to comply with subsection (e) until the second
39 license renewal period if the license expires less than six months after it is
40 issued.

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

- 1 (1) An institution which is accredited by the north central association
2 of colleges and secondary schools accrediting agency;
- 3 (2) ~~an area vocational or vocational-technical school~~ *technical*
4 *college* as defined by K.S.A. 72-4412, and amendments thereto;
- 5 (3) a private or out-of-state postsecondary educational institution
6 which has been issued a certificate of approval pursuant to the Kansas
7 private and out-of-state postsecondary educational institution act;
- 8 (4) any agency of the state of Kansas; ~~or~~
- 9 (5) a similar institution, approved by the commission, in another
10 state; *or*
- 11 (6) *an entity, approved by the commission, to provide continuing*
12 *education.*
- 13 (i) The commission shall adopt rules and regulations to:
- 14 (1) Prescribe minimum curricula and standards for all courses offered
15 to fulfill education requirements of this act;
- 16 (2) designate a course of study to fulfill any specific requirement,
17 which may include a testing requirement;
- 18 (3) prescribe minimum qualifications for instructors of approved
19 courses; and
- 20 (4) establish standards and procedures for approval of courses and
21 instructors, monitoring courses, advertising, registration and maintenance
22 of records of courses, and withdrawal of approval of courses and
23 instructors.
- 24 (j) The commission may approve distance education courses
25 consisting solely or primarily of instruction provided online or in other
26 computer-assisted formats, or by correspondence, audiotape, videotape or
27 other media. For the purposes of this section, attendance of one hour of
28 instruction shall mean 50 minutes of classroom instruction or the
29 equivalent thereof in distance education study as determined by the
30 commission.
- 31 (k) Courses of instruction required by this section shall be courses
32 approved by the commission either before or after their completion. The
33 commission may give credit toward the 12 hours of ~~additional instruction~~
34 *continuing education* required by subsection (e) or (f) to any licensee who
35 submits an application for course review obtained from the commission
36 and pays the fee prescribed by K.S.A. 58-3063, and amendments thereto,
37 if, in the judgment of the commission, the course meets the objectives of
38 continuing education.
- 39 (l) The commission shall publish annually a list of educational
40 institutions and entities and the courses offered by them in this state which
41 are approved by the commission.
- 42 (m) No license shall be issued or renewed unless the applicable
43 requirements set forth in this section are met within the time prescribed.

1 Sec. 2. K.S.A. 2012 Supp. 58-3050 is hereby amended to read as
2 follows: 58-3050. (a) Except as provided in subsection (b) and (c), the
3 commission may refuse to grant or renew a license and the license of any
4 licensee may be revoked, suspended, conditioned or restricted or a licensee
5 may be censured, if:

6 (1) The licensee *or applicant* has committed a violation of this act or
7 rules and regulations adopted hereunder, or the brokerage relationships in
8 real estate transactions act or rules and regulations adopted thereunder;

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

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

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

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

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

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

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

29 (1) Is currently licensed under this act;

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

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

35 (d) (1) In addition to or in lieu of any other administrative, civil or
36 criminal remedy provided by law, the commission, in accordance with the
37 Kansas administrative procedure act and upon a finding that a licensee has
38 violated a provision of this act or rules and regulations adopted hereunder,
39 or the brokerage relationships in real estate transactions act or rules and
40 regulations adopted thereunder, may impose on such licensee a civil fine
41 not exceeding \$1,000 for each violation.

42 (2) A civil fine not exceeding \$5,000 per violation may be imposed if
43 the commission makes specific findings that aggravating circumstances

1 exist and that the licensee:

2 (A) Misappropriated funds belonging to another person;

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

4 (C) represented to a lender, guaranteeing agency or any other
5 interested party, either verbally or through the preparation of false
6 documents, an amount in excess of the true and actual sale price of the real
7 estate or terms differing from those actually agreed upon;

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

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

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

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

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

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

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

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

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

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

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

1 (a)(4) or (a)(5) shall be commenced within three years from the date of
2 violation is ascertained by the commission.

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

5 (j) Notwithstanding any provision of this act or the brokerage
6 relationships in real estate transactions act to the contrary, the commission
7 may use emergency adjudicative proceedings, as provided by K.S.A. 77-
8 536, and amendments thereto, to summarily suspend the license of any
9 licensee if the commission has reasonable cause to believe that the
10 licensee's trust account is in unsound condition or that the licensee is
11 misappropriating funds belonging to other persons.

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

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

21 (m) The commission shall be authorized to recover from the fine
22 imposed the commission's actual costs to investigate and prosecute a
23 disciplinary case against a licensee, including attorney fees. The portion of
24 the fine amount collected that equals the commission's actual costs related
25 to the investigation and prosecution of the case and attorney fees, as
26 certified by the executive director of the commission to the state treasurer,
27 shall be credited to the real estate commission fee fund. The balance of the
28 fine amount collected shall be credited to the state general fund.

29 Sec. 3. K.S.A. 2012 Supp. 58-3062 is hereby amended to read as
30 follows: 58-3062. (a) No licensee, whether acting as an agent, transaction
31 broker or a principal, shall:

32 (1) Fail to account for and remit any money which comes into the
33 licensee's possession and which belongs to others.

34 (2) Misappropriate moneys required to be deposited in a trust account
35 pursuant to K.S.A. 58-3061, and amendments thereto, convert such
36 moneys to the licensee's personal use or commingle the money or other
37 property of the licensee's principals with the licensee's own money or
38 property, except that nothing herein shall prohibit a broker from having
39 funds in an amount not to exceed \$100 in the broker's trust account to pay
40 expenses for the use and maintenance of such account.

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

42 (4) Pay a referral fee to a person who is properly licensed as a broker
43 or salesperson in Kansas or another jurisdiction or who holds a corporate

1 real estate license in another jurisdiction if the licensee knows that the
2 payment of the referral fee will result in the payment of a rebate by the
3 Kansas or out-of-state licensee.

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

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

8 (7) Place a sign on any property offering it for sale or lease without
9 the written consent of the owner or the owner's authorized agent.

10 (8) Offer real estate for sale or lease without the knowledge and
11 consent of the owner or the owner's authorized agent or on terms other
12 than those authorized by the owner or the owner's authorized agent.

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

14 (10) Pay a commission or compensation to any person, not licensed
15 under this act, for performing any activity for which a license is required
16 under this act.

17 (11) Fail to see that financial obligations and commitments between
18 the parties to an agreement to sell, exchange or lease real estate are in
19 writing, expressing the exact agreement of the parties or to provide, within
20 a reasonable time, copies thereof to all parties involved.

21 (12) Procure a signature to a purchase contract which has no definite
22 purchase price, method of payment, description of property or method of
23 determining the closing date.

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

25 (14) Represent to any lender, guaranteeing agency or any other
26 interested party, either verbally or through the preparation of false
27 documents, an amount in excess of the true and actual sale price of the real
28 estate or terms differing from those actually agreed upon.

29 (15) Fail to make known to any purchaser or lessee any interest the
30 licensee has in the real estate the licensee is selling or leasing or to make
31 known to any seller or lessor any interest the licensee will have in the real
32 estate the licensee is purchasing or leasing.

33 (16) Fail to inform both the buyer, at the time an offer is made, and
34 the seller, at the time an offer is presented, that certain closing costs must
35 be paid and the approximate amount of such costs.

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

38 (18) Accept anything other than cash as earnest money unless that
39 fact is communicated to the owner prior to the owner's acceptance of the
40 offer to purchase, and such fact is shown in the purchase agreement.

41 (19) Fail to deposit any check or cash received as an earnest money
42 deposit or as a deposit on the purchase of a lot within five business days
43 after the purchase agreement or lot reservation agreement is signed by all

1 parties, unless otherwise specifically provided by written agreement of all
2 parties to the purchase agreement or lot reservation agreement, in which
3 case the licensee shall deposit the check or cash received on the date
4 provided by such written agreement.

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

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

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

13 (23) Except as provided by K.S.A. 40-2404, and amendments thereto,
14 knowingly receive or accept, directly or indirectly, any rebate, reduction or
15 abatement of any charge, or any special favor or advantage or any
16 monetary consideration or inducement, involving the issuance of a title
17 insurance policy or contract concerning which the licensee is directly or
18 indirectly connected, from a title insurance company or title insurance
19 agent, or any officer, employee, attorney, agent or solicitor thereof.

20 (24) Engage in the purchase of one-, two-, three- or four-family
21 dwellings, including condominiums and cooperatives, or the acquisition of
22 any right, title or interest therein, including any equity or redemption
23 interests, if:

24 (A) (i) At the time of such purchase, the dwellings are subject to a
25 right of redemption pursuant to foreclosure of a mortgage on such
26 dwellings; (ii) the licensee fails to give written notice of the purchase,
27 within 20 days thereafter, to the mortgage holder or judgment creditor who
28 held such mortgage; and (iii) the licensee, unless otherwise required by
29 law or court order, fails to apply any rent proceeds from the dwellings to
30 the judgment lien arising from the foreclosure of such mortgage, as
31 payments become due under the loan, regardless of whether the licensee is
32 obligated to do so;

33 (B) (i) the dwellings are subject to a loan which is secured by a
34 mortgage and which is in default at the time of such purchase or in default
35 within one year after such purchase; (ii) the licensee fails to give written
36 notice of the purchase, within 20 days thereafter, to the mortgage holder;
37 and (iii) the licensee, unless otherwise required by law or court order, fails
38 to apply any rent proceeds from the dwellings to the mortgage as the
39 payments come due, regardless of whether the licensee is obligated on the
40 loan; or

41 (C) the licensee fails to notify, at the time of rental, any person
42 renting any such dwelling of the extent and nature of the licensee's interest
43 in such dwelling and the probable time until possession will be taken by

1 the mortgage holder or judgment creditor.

2 (25) Commit forgery or, unless authorized to do so by a duly
3 executed power of attorney, sign or initial any contractual agreement on
4 behalf of another person in a real estate transaction.

5 (26) Enter into contracts with persons not licensed by the commission
6 to perform services requiring a license under K.S.A. 58-3034 et seq., and
7 amendments thereto, except as provided by K.S.A. 58-3077, and
8 amendments thereto.

9 (b) No salesperson or associate broker shall:

10 (1) Except as provided in subparagraph (A) or (B), accept a
11 commission or other valuable consideration from anyone other than the
12 broker by whom the licensee is employed or with whom the licensee is
13 associated as an independent contractor.

14 (A) A salesperson or associate broker may accept a commission or
15 other valuable consideration from a licensee who employs the salesperson
16 or associate broker as a personal assistant provided that: (i) The licensee
17 and the salesperson or associate broker who is employed as a personal
18 assistant are licensed under the supervision of the same broker, and (ii) the
19 supervising broker agrees in writing that the personal assistant may be paid
20 by the licensee.

21 (B) If a salesperson or associate broker has organized as an
22 association, corporation, limited liability company, limited liability
23 partnership, partnership or professional corporation, the commission or
24 other valuable consideration may be paid by the licensee's broker to such
25 association, corporation, limited liability company, limited liability
26 partnership, partnership or professional corporation. This provision shall
27 not alter any other provisions of this act.

28 (2) Fail to place, as soon after receipt as practicable, any deposit
29 money or other funds entrusted to the salesperson or associate broker in
30 the custody of the broker whom the salesperson or associate broker
31 represents.

32 (3) (A) Except as provided by subparagraph (B), be employed by or
33 associated with a licensee at any one time other than the supervising
34 broker who employs such salesperson or associate broker or with who the
35 salesperson or associate broker is associated as an independent contractor.

36 (B) An associate broker may be employed by or associated with more
37 than one supervising broker at any one time if each supervising broker
38 who employs or associates with the associate broker consents to such
39 multiple employment or association. Such consent shall be on a form
40 provided by the commission and shall not be effective until a signed copy
41 of the completed form has been filed with the commission.

42 (4) Except as provided by subsection (b), pay a commission or
43 compensation to any person for performing any activity for which a

1 license is required under this act.

2 (5) (A) Fail to disclose to such salesperson's or associate broker's
3 supervising broker or branch broker that such salesperson or associate
4 broker is performing any activity for which a license is required under
5 K.S.A. 58-3036, and amendments thereto; or (B) perform any activity for
6 which a license is required under K.S.A. 58-3036, and amendments
7 thereto, outside the supervision of the supervising broker or branch broker.
8 The provisions of this subsection shall not apply to any activity or person
9 exempted from the real estate brokers' and salespersons' license act
10 pursuant to K.S.A. 58-3037, and amendments thereto.

11 (6) Fail to submit to the supervising broker or branch broker, within
12 10 business days, any document that must be maintained in the supervising
13 broker's or branch broker's business records for each real estate
14 transaction. The ten-day period shall commence when the document is
15 executed by the client or customer or, if a signature is not required or is not
16 obtained, upon presentation of a document to the client or customer.

17 (c) No broker shall:

18 (1) Pay a commission or compensation to any person for performing
19 the services of an associate broker or salesperson unless such person is
20 licensed under this act and employed by or associated with the broker.

21 (2) Fail to deliver to the seller in every real estate transaction, at the
22 time the transaction is closed, a complete, detailed closing statement
23 showing all of the receipts and disbursements handled by the broker for
24 the seller, or fail to deliver to the buyer a complete statement showing all
25 money received in the transaction from such buyer and how and for what
26 the same was disbursed, or fail to retain true copies of such statements in
27 the broker's files, except that the furnishing of such statements to the seller
28 and buyer by an escrow agent shall relieve the broker's responsibility to
29 the seller and the buyer.

30 (3) Fail to properly supervise the activities of an associated or
31 employed salesperson or associate broker.

32 (4) Lend the broker's license to a salesperson, or permit a salesperson
33 to operate as a broker.

34 (5) Fail to provide to the principal a written report every 30 days,
35 along with a final report, itemizing disbursements made by the broker
36 from advance listing fees.

37 (d) (1) If a purchase agreement provides that the earnest money be
38 held by an escrow agent other than a real estate broker, no listing broker
39 shall:

40 (A) Fail to deliver the purchase agreement and earnest money deposit
41 to the escrow agent named in the purchase agreement within five business
42 days after the purchase agreement is signed by all parties unless otherwise
43 specifically provided by written agreement of all parties to the purchase

1 agreement, in which case the broker shall deliver the purchase agreement
2 and earnest money deposit to the escrow agent named in the purchase
3 agreement on the date provided by such written agreement; or

4 (B) fail to obtain and keep in the transaction file a receipt from the
5 escrow agent showing date of delivery of the purchase agreement and
6 earnest money deposit.

7 (2) If a purchase agreement provides that the earnest money be held
8 by an escrow agent other than a real estate broker and the property was not
9 listed with a broker, no broker for the buyer shall:

10 (A) Fail to deliver the purchase agreement and earnest money deposit
11 to the escrow agent named in the purchase agreement within five business
12 days after the purchase agreement is signed by all parties unless otherwise
13 specifically provided by written agreement of all parties to the purchase
14 agreement, in which case the broker shall deliver the purchase agreement
15 and earnest money deposit to the escrow agent named in the purchase
16 agreement on the date provided by such written agreement; or

17 (B) fail to obtain and keep in the transaction file a receipt from the
18 escrow agent showing date of delivery of the purchase agreement and
19 earnest money deposit.

20 (3) If a purchase agreement provides that the earnest money be held
21 by an escrow agent other than a real estate broker and neither the seller nor
22 buyer is represented by a broker, no transaction broker shall:

23 (A) Fail to deliver the purchase agreement and earnest money deposit
24 to the escrow agent named in the purchase agreement within five business
25 days after the purchase agreement is signed by all parties unless otherwise
26 specifically provided by written agreement of all parties to the purchase
27 agreement, in which case the broker shall deliver the purchase agreement
28 and earnest money deposit to the escrow agent named in the purchase
29 agreement on the date provided by such written agreement; or

30 (B) fail to obtain and keep in the transaction file a receipt from the
31 escrow agent showing date of delivery of the purchase agreement and
32 earnest money deposit.

33 The commission may adopt rules and regulations to require that such
34 purchase agreement which provides that the earnest money be held by an
35 escrow agent other than a real estate broker include: (1) Notification of
36 whether or not the escrow agent named in the purchase agreement
37 maintains a surety bond; and (2) notification that statutes governing the
38 disbursement of earnest money held in trust accounts of real estate brokers
39 do not apply to earnest money deposited with the escrow agent named in
40 the purchase agreement.

41 (e) No licensee shall:

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

- 1 (A) A client or customer *or a former client or customer*;
- 2 (B) another licensee;
- 3 (C) commission members or staff;
- 4 (D) staff of the office of administrative hearings;
- 5 (E) staff from any real estate trade association or multiple listing
- 6 service; or
- 7 (F) any person from another business or industry whose services are
- 8 requested or required as part of a real estate transaction.
- 9 (2) threaten to file or file a lien on residential property;
- 10 (3) conduct real estate business with impaired judgment or objectivity
- 11 as the result of mental illness or addiction to alcohol or controlled
- 12 substances;
- 13 (4) be finally adjudicated by a federal or state agency and found to be
- 14 guilty of a violation of a federal or state law regulating the real estate
- 15 industry or regulating a closely related industry whose licensees or
- 16 members are commonly involved in real estate matters;
- 17 (5) be finally adjudicated by a federal or state agency and found to be
- 18 guilty of a violation of a federal or state law prohibiting discrimination
- 19 against any client or customer on the basis of color, race, gender, religion,
- 20 national origin, age, disability or familial status; or
- 21 (6) intentionally misappropriate or misuse any personal property or
- 22 real property of a client or customer.
- 23 (f) ~~No applicant or licensee shall demonstrate, commit or engage in~~
- 24 ~~the following conduct if such conduct involves or affects the commission's~~
- 25 ~~duties and obligations to license and discipline applicants and licensees:~~
- 26 ~~(1) Fraud or substantial misrepresentation;~~
- 27 ~~(2) forgery;~~
- 28 ~~(3) sign or initial any application or other document unless~~
- 29 ~~authorized to do so by a duly executed power of attorney;~~
- 30 ~~(4) fail to respond in a timely manner to any request from the~~
- 31 ~~commission or the commission's designee for documents or information~~
- 32 ~~that concerns directly or indirectly any real estate transaction or the~~
- 33 ~~licensee's real estate business;~~
- 34 ~~(5) fail without just cause to surrender any document or instrument to~~
- 35 ~~the rightful owner; or~~
- 36 ~~(6) demonstrate incompetency to act as a broker, associate broker or~~
- 37 ~~salesperson.:~~
- 38 **(1) Engage in fraud or make any substantial misrepresentation to**
- 39 **the commission;**
- 40 **(2) commit forgery in any representation or document submitted**
- 41 **to the commission;**
- 42 **(3) sign or initial on behalf of another person any application,**
- 43 **form or accompanying document submitted to the commission unless**

1 authorized to do so by a duly executed power of attorney;

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

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

8 (B) destroying evidence;

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

11 (D) refusing or failing to respond in a timely manner to any
12 request from the commission or the commission's designee for
13 documents or information that concerns directly or indirectly any real
14 estate transaction or the licensee's real estate business;

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

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

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

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

24 (C) comply with the provisions of this subsection.

25 (g) A branch broker shall not be employed by or associated with more
26 than one supervising broker at any one time unless each supervising broker
27 who employs or associates with the branch broker consents to such
28 multiple employment or association. Such consent shall be on a form
29 provided by the commission and shall not be effective until a signed copy
30 of the completed form has been filed with the commission.

31 ~~(g)~~ (h) Nothing in this section shall be construed to grant any person a
32 private right of action for damages or to eliminate any right of action
33 pursuant to other statutes or common law.

34 Sec. 4. K.S.A. 2012 Supp. 58-30,103 is hereby amended to read as
35 follows: 58-30,103. (a) Except when acting as a transaction broker or
36 solely as a seller, buyer, landlord or tenant, a broker shall act only as a
37 statutory agent in any real estate transaction. A licensee shall not act as a
38 dual agent or in a dual capacity of agent and undisclosed principal in any
39 transaction.

40 (b) A broker may work with a single party in separate transactions
41 pursuant to different relationships, including, but not limited to, selling one
42 property as a seller's agent and working with that seller in buying another
43 property as a buyer's agent if the broker complies with this act in

1 establishing the relationships for each transaction. A broker who has been
2 working with a seller, landlord, buyer or tenant as a transaction broker may
3 act as an agent for the seller, landlord, buyer or tenant if the broker
4 complies with this act in establishing the agency relationship.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (o) If a licensee knows that a buyer or tenant has an agency
39 agreement or written transaction brokerage agreement granting an
40 exclusive brokerage relationship to another broker, the licensee shall not
41 contact the buyer or tenant and shall not initiate negotiations for the sale,
42 exchange or lease of real estate with the buyer or tenant. The licensee may
43 negotiate the sale, exchange or lease of real estate directly with the buyer

1 or tenant with the informed consent of the buyer or tenant. The informed
2 consent shall be evidenced by a consent agreement signed by the buyer or
3 tenant prior to any such direct negotiation. The consent agreement shall
4 acknowledge the buyer or tenant agency agreement or written transaction
5 brokerage agreement and that the buyer or tenant may be liable for
6 compensation under the terms of the agency agreement or written
7 transaction brokerage agreement. The commission, by rules and
8 regulations, shall adopt a consent agreement to be used by licensees
9 pursuant to this subsection.

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

17 Sec. 5. K.S.A. 58-30,106 is hereby amended to read as follows: 58-
18 30,106. (a) A seller's agent or a landlord's agent shall be a statutory agent
19 with the duty and obligation to:

20 (1) Perform the terms of the written agreement made with the client;
21 (2) promote the interests of the client with the utmost good faith,
22 loyalty and fidelity, including:

23 (A) Presenting in a timely manner all offers to and from the client,
24 when such offer is received prior to the closing of the sale unless the seller
25 instructs the broker in the agency agreement not to submit offers after an
26 offer has been accepted by the seller;

27 (B) disclosing to the client all adverse material facts actually known
28 by the licensee about the buyer or tenant; and

29 (C) advising the client to obtain expert advice as to material matters
30 about which the licensee knows but the specifics of which are beyond the
31 expertise of the licensee;

32 (3) account in a timely manner for all money and property received;

33 (4) comply with all requirements of this act and rules and regulations
34 adopted hereunder; and

35 (5) comply with any applicable federal, state and local laws, rules and
36 regulations and ordinances, including fair housing and civil rights statutes
37 and rules and regulations.

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

43 (c) A seller's or landlord's agent shall not disclose any confidential

1 information about the client unless disclosure is required by statute or rule
2 and regulation or failure to disclose the information would constitute
3 fraudulent misrepresentation. No cause of action for any person shall arise
4 against a licensee acting as a seller's or landlord's agent for making any
5 required or permitted disclosure.

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

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

11 (B) the physical condition of the property;

12 (C) any material defects in the property;

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

14 (E) any material limitation on the client's ability to perform under the
15 terms of the contract.

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

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

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

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

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

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

43 (g) A seller or landlord may agree in writing with a seller's or

1 landlord's agent that the broker may offer subagency and pay
2 compensation to other brokers.

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

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

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

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

22 Sec. 6. K.S.A. 58-30,106 and K.S.A. 2012 Supp. 58-3046a, 58-3050,
23 58-3062 and 58-30,103 are hereby repealed.

24 Sec. 7. This act shall take effect and be in force from and after its
25 publication in the statute book.