

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Commerce, Labor and Economic Development** recommends **SB 108** be amended on page 1, following line 5, by inserting:

"Section 1. K.S.A. 2014 Supp. 58-3046a is hereby amended to read as follows: 58-3046a. (a) Except as provided in K.S.A. 58-3040, and amendments thereto, any person who applies for an original license in this state as a salesperson shall submit evidence, satisfactory to the commission, of attendance of a principles of real estate course, of not less than 30 hours of instruction, approved by the commission and received within the 12 months immediately preceding the filing of application for salesperson's license. The commission may require the evidence to be furnished to the commission with the original application for license or it may require the applicant to furnish the evidence to the testing service designated by the commission as a prerequisite to taking the examination required by K.S.A. 58-3039, and amendments thereto. If the evidence is furnished to the testing service, the instruction shall have been received within 12 months immediately preceding the date of the examination.

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

the testing service designated by the commission as a prerequisite to taking the examination provided in K.S.A. 58-3039, and amendments thereto. If the evidence is furnished to the testing service, the instruction shall have been received within 12 months immediately preceding the date of the examination.

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

(d) Any person who applies for an original license in this state as a broker on or after July 1, 2007, who is a nonresident of Kansas or who is a resident of Kansas applying for licensure pursuant to ~~subsection (e) of~~ K.S.A. 58-3040(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 received within the six months immediately preceding the filing of the application for licensure. Such course shall be approved by the commission and shall be specific to Kansas law with primary emphasis on issues that arise under the brokerage relationships in real estate transactions act, K.S.A. 58-30,101 et seq., and amendments thereto, and rules or regulations adopted thereunder.

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

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

(1) No later than ten days prior to the expiration date of the temporary license, 30 hours of

instruction received after the date of licensure.

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

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

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

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

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

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

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

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

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

(6) an entity, approved by the commission, to provide continuing education.

(i) The commission shall adopt rules and regulations to: (1) Prescribe minimum curricula and

standards for all courses offered to fulfill education requirements of this act; (2) designate a course of study to fulfill any specific requirement, which may include a testing requirement; (3) prescribe minimum qualifications for instructors of approved courses; and (4) establish standards and procedures for approval of courses and instructors, monitoring courses, advertising, registration and maintenance of records of courses, and withdrawal of approval of courses and instructors.

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

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

(l) The commission shall publish annually a list of educational institutions and entities and the courses offered by them in this state which are approved by the commission.

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

Sec. 2. K.S.A. 2014 Supp. 58-3050 is hereby amended to read as follows: 58-3050. (a) Except as provided in subsection (b) and (c), the commission may refuse to grant or renew a license and the license of any licensee may be revoked, suspended, conditioned or restricted or a licensee may be censured, if:

(1) The licensee 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.

Sec. 3. K.S.A. 2014 Supp. 58-3062 is hereby amended to read as follows: 58-3062. (a) No licensee, whether acting as an agent, transaction broker or a principal, shall:

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

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

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

(4) Pay a referral fee to a person who is properly licensed as a broker or salesperson in Kansas or another jurisdiction or who holds a corporate real estate license in another jurisdiction if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the Kansas or out-of-state licensee.

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

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

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

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

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

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

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

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

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

(14) Represent to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale

price of the real estate or terms differing from those actually agreed upon.

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

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

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

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

(19) Fail to deposit any check or cash received as an earnest money deposit or as a deposit on the purchase of a lot within five business days after the purchase agreement or lot reservation agreement is signed by all parties, unless otherwise specifically provided by written agreement of all parties to the purchase agreement or lot reservation agreement, in which case the licensee shall deposit the check or cash received on the date provided by such written agreement.

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

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

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

(23) Except as provided by K.S.A. 40-2404, and amendments thereto, knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement, involving the issuance of a title insurance policy or contract concerning which the licensee is directly or indirectly connected, from a title

insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof.

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

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

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

(C) the licensee fails to notify, at the time of rental, any person renting any such dwelling of the extent and nature of the licensee's interest in such dwelling and the probable time until possession will be taken by the mortgage holder or judgment creditor.

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

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

K.S.A. 58-3077, and amendments thereto.

(b) No salesperson or associate broker shall:

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

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

(B) If a salesperson or associate broker has 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.

~~(g)~~(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.

Sec. 4. K.S.A. 2014 Supp. 58-30,103 is hereby amended to read as follows: 58-30,103. (a) Except when acting as a transaction broker or solely as a seller, buyer, landlord or tenant, a broker shall act only as a statutory agent in any real estate transaction. A licensee shall not act as a dual agent or in a dual capacity of agent and undisclosed principal in any transaction.

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

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

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

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

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

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

Sec. 5. K.S.A. 58-30,106 is hereby amended to read as follows: 58-30,106. (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 ~~or~~ 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.";

On page 2, in line 35, before "K.S.A" by inserting "K.S.A. 58-30,106 and"; also in line 35, after "Supp." by inserting "58-3046a, 58-3050, 58-3062"; also in line 35, by striking "is" and inserting "and 58-30,103 are";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, after "fees;" by inserting "licensure; technical amendments;"; also in line 2, after "amending" by inserting "K.S.A. 58-30,106 and"; also in line 2, after "Supp." by inserting "58-3046a, 58-3050, 58-3062,"; also in line 2, after "58-3063" by inserting "and 58-30,103"; in line 3 by striking "section" and inserting "sections"; and the bill be passed as amended.

Chairperson