

As Amended by House Committee

Session of 2015

SENATE BILL No. 108

By Committee on Commerce

1-28

1 AN ACT concerning real estate brokers and salespersons; relating to
2 license fees; **licensure; technical amendments;** amending **K.S.A. 58-**
3 **30,106 and K.S.A. 2014 Supp. 58-3046a, 58-3050, 58-3062, 58-3063**
4 **and 58-30,103** and repealing the existing section sections.

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

7 **Section 1. K.S.A. 2014 Supp. 58-3046a is hereby amended to read**
8 **as 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**
10 **this state as a salesperson shall submit evidence, satisfactory to the**
11 **commission, of attendance of a principles of real estate course, of not**
12 **less than 30 hours of instruction, approved by the commission and**
13 **received within the 12 months immediately preceding the filing of**
14 **application for salesperson's license. The commission may require the**
15 **evidence to be furnished to the commission with the original**
16 **application for license or it may require the applicant to furnish the**
17 **evidence to the testing service designated by the commission as a**
18 **prerequisite to taking the examination required by K.S.A. 58-3039,**
19 **and amendments thereto. If the evidence is furnished to the testing**
20 **service, the instruction shall have been received within 12 months**
21 **immediately preceding the date of the examination.**

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

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

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

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

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

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

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

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

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

1 than six months after it is issued.

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

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

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

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

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

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

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

17 (i) The commission shall adopt rules and regulations to: (1)
18 Prescribe minimum curricula and standards for all courses offered to
19 fulfill education requirements of this act; (2) designate a course of
20 study to fulfill any specific requirement, which may include a testing
21 requirement; (3) prescribe minimum qualifications for instructors of
22 approved courses; and (4) establish standards and procedures for
23 approval of courses and instructors, monitoring courses, advertising,
24 registration and maintenance of records of courses, and withdrawal of
25 approval of courses and instructors.

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

33 (k) Courses of instruction required by this section shall be
34 courses approved by the commission either before or after their
35 completion. The commission may give credit toward the 12 hours of
36 ~~additional instruction~~ *continuing education* required by subsection (e) or
37 (f) to any licensee who submits an application for course review
38 obtained from the commission and pays the fee prescribed by K.S.A.
39 58-3063, and amendments thereto, if, in the judgment of the
40 commission, the course meets the objectives of continuing education.

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

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

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

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

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

17 (3) the licensee *or applicant* has been finally adjudicated and
18 found to be guilty of violation of the federal fair housing act (42 U.S.C.
19 § 3601 et seq.) or K.S.A. 44-1015 through 44-1029, and amendments
20 thereto;

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

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

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

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

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

35 (1) Is currently licensed under this act;

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

38 (3) has disclosed such plea or conviction in such person's
39 application for any license or renewal thereof on or before July 1,
40 2007, prior to the commission's action on such application.

41 (d) (1) In addition to or in lieu of any other administrative, civil
42 or criminal remedy provided by law, the commission, in accordance
43 with the Kansas administrative procedure act and upon a finding that

1 a licensee has violated a provision of this act or rules and regulations
2 adopted hereunder, or the brokerage relationships in real estate
3 transactions act or rules and regulations adopted thereunder, may
4 impose on such licensee a civil fine not exceeding \$1,000 for each
5 violation.

6 (2) A civil fine not exceeding \$5,000 per violation may be imposed
7 if the commission makes specific findings that aggravating
8 circumstances exist and that the licensee:

9 (A) Misappropriated funds belonging to another person;

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

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

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

18 (E) intentionally failed to disclose to a client or customer all
19 adverse material facts actually known by the licensee regarding
20 environmental hazards affecting the property that are required by law
21 to be disclosed, the physical condition of the property, material defects
22 in the real property, defects in the title to the real property or the
23 client's or customer's ability to perform under the terms of the
24 agreement.

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

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

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

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

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

36 (f) In all matters pending before the commission, the commission
37 shall have the power to revoke the license of any licensee who
38 voluntarily surrenders such licensee's license or who does not renew
39 such license pending investigation of misconduct or while charges of
40 misconduct are pending or anticipated.

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

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

7 **(2) Unless the violation is not reasonably ascertainable,**
8 **complaints alleging violation of subsection (a)(4) or (a)(5) shall be**
9 **commenced within three years from the date of the occurrence of the**
10 **violation. If the violation is not reasonably ascertainable, complaints**
11 **alleging violation of subsection (a)(4) or (a)(5) shall be commenced**
12 **within three years from the date of violation is ascertained by the**
13 **commission.**

14 **(i) All administrative proceedings pursuant to this section shall be**
15 **conducted in accordance with the Kansas administrative procedure**
16 **act.**

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

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

28 **(l) When the real estate license of an individual is revoked and**
29 **that individual's name is included in the trade or business name of a**
30 **real estate brokerage business, the commission may deny continued**
31 **use of the trade or business name if, in the opinion of the commission,**
32 **it would be confusing or misleading to the public.**

33 **(m) The commission shall be authorized to recover from the fine**
34 **imposed the commission's actual costs to investigate and prosecute a**
35 **disciplinary case against a licensee, including attorney fees. The**
36 **portion of the fine amount collected that equals the commission's**
37 **actual costs related to the investigation and prosecution of the case**
38 **and attorney fees, as certified by the executive director of the**
39 **commission to the state treasurer, shall be credited to the real estate**
40 **commission fee fund. The balance of the fine amount collected shall be**
41 **credited to the state general fund.**

42 **Sec. 3. K.S.A. 2014 Supp. 58-3062 is hereby amended to read as**
43 **follows: 58-3062. (a) No licensee, whether acting as an agent,**

1 transaction broker or a principal, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (14) Represent to any lender, guaranteeing agency or any other
43 interested party, either verbally or through the preparation of false

1 documents, an amount in excess of the true and actual sale price of the
2 real estate or terms differing from those actually agreed upon.

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

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

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

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

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

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

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

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

32 (23) Except as provided by K.S.A. 40-2404, and amendments
33 thereto, knowingly receive or accept, directly or indirectly, any rebate,
34 reduction or abatement of any charge, or any special favor or
35 advantage or any monetary consideration or inducement, involving
36 the issuance of a title insurance policy or contract concerning which
37 the licensee is directly or indirectly connected, from a title insurance
38 company or title insurance agent, or any officer, employee, attorney,
39 agent or solicitor thereof.

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

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

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

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

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

25 **(26)** Enter into contracts with persons not licensed by the
26 commission to perform services requiring a license under K.S.A. 58-
27 3034 et seq., and amendments thereto, except as provided by K.S.A.
28 58-3077, and amendments thereto.

29 **(b)** No salesperson or associate broker shall:

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

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

41 **(B)** If a salesperson or associate broker has organized as an
42 association, corporation, limited liability company, limited liability
43 partnership, partnership or professional corporation, the commission

1 or other valuable consideration may be paid by the licensee's broker
2 to such association, corporation, limited liability company, limited
3 liability partnership, partnership or professional corporation. This
4 provision shall not alter any other provisions of this act.

5 (2) Fail to place, as soon after receipt as practicable, any deposit
6 money or other funds entrusted to the salesperson or associate broker
7 in the custody of the broker whom the salesperson or associate broker
8 represents.

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

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

20 (4) Except as provided by subsection (b), pay a commission or
21 compensation to any person for performing any activity for which a
22 license is required under this act.

23 (5) (A) Fail to disclose to such salesperson's or associate broker's
24 supervising broker or branch broker that such salesperson or
25 associate broker is performing any activity for which a license is
26 required under K.S.A. 58-3036, and amendments thereto; or (B)
27 perform any activity for which a license is required under K.S.A. 58-
28 3036, and amendments thereto, outside the supervision of the
29 supervising broker or branch broker. The provisions of this subsection
30 shall not apply to any activity or person exempted from the real estate
31 brokers' and salespersons' license act pursuant to K.S.A. 58-3037, and
32 amendments thereto.

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

40 (c) No broker shall:

41 (1) Pay a commission or compensation to any person for
42 performing the services of an associate broker or salesperson unless
43 such person is licensed under this act and employed by or associated

1 with the broker.

2 (2) Fail to deliver to the seller in every real estate transaction, at
3 the time the transaction is closed, a complete, detailed closing
4 statement showing all of the receipts and disbursements handled by
5 the broker for the seller, or fail to deliver to the buyer a complete
6 statement showing all money received in the transaction from such
7 buyer and how and for what the same was disbursed, or fail to retain
8 true copies of such statements in the broker's files, except that the
9 furnishing of such statements to the seller and buyer by an escrow
10 agent shall relieve the broker's responsibility to the seller and the
11 buyer.

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

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

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

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

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

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

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

36 (A) Fail to deliver the purchase agreement and earnest money
37 deposit to the escrow agent named in the purchase agreement within
38 five business days after the purchase agreement is signed by all parties
39 unless otherwise specifically provided by written agreement of all
40 parties to the purchase agreement, in which case the broker shall
41 deliver the purchase agreement and earnest money deposit to the
42 escrow agent named in the purchase agreement on the date provided
43 by such written agreement; or

1 **(B) fail to obtain and keep in the transaction file a receipt from**
2 **the escrow agent showing date of delivery of the purchase agreement**
3 **and earnest money deposit.**

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

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

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

19 **The commission may adopt rules and regulations to require that**
20 **such purchase agreement which provides that the earnest money be**
21 **held by an escrow agent other than a real estate broker include: (1)**
22 **Notification of whether or not the escrow agent named in the purchase**
23 **agreement maintains a surety bond;; and (2) notification that statutes**
24 **governing the disbursement of earnest money held in trust accounts of**
25 **real estate brokers do not apply to earnest money deposited with the**
26 **escrow agent named in the purchase agreement.**

27 **(e) No licensee shall:**

28 **(1) Threaten to engage in or engage in physical abuse or engage**
29 **in harassment towards:**

30 **(A) A client or customer or a former client or customer;**

31 **(B) another licensee;**

32 **(C) commission members or staff;**

33 **(D) staff of the office of administrative hearings;**

34 **(E) staff from any real estate trade association or multiple listing**
35 **service; or**

36 **(F) any person from another business or industry whose services**
37 **are requested or required as part of a real estate transaction;;**

38 **(2) threaten to file or file a lien on residential property;**

39 **(3) conduct real estate business with impaired judgment or**
40 **objectivity as the result of mental illness or addiction to alcohol or**
41 **controlled substances;**

42 **(4) be finally adjudicated by a federal or state agency and found**
43 **to be guilty of a violation of a federal or state law regulating the real**

1 estate industry or regulating a closely related industry whose licensees
2 or members are commonly involved in real estate matters;

3 **(5) be finally adjudicated by a federal or state agency and found**
4 **to be guilty of a violation of a federal or state law prohibiting**
5 **discrimination against any client or customer on the basis of color,**
6 **race, gender, religion, national origin, age, disability or familial status;**
7 **or**

8 **(6) intentionally misappropriate or misuse any personal property**
9 **or real property of a client or customer.**

10 **(f) No applicant or licensee shall:**

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

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

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

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

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

24 *(B) destroying evidence;*

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

27 *(D) refusing or failing to respond in a timely manner to any request*
28 *from the commission or the commission's designee for documents or*
29 *information that concerns directly or indirectly any real estate transaction*
30 *or the licensee's real estate business;*

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

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

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

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

40 *(C) comply with the provisions of this subsection.*

41 **(g) A branch broker shall not be employed by or associated with**
42 **more than one supervising broker at any one time unless each**
43 **supervising broker who employs or associates with the branch broker**

1 consents to such multiple employment or association. Such consent
2 shall be on a form provided by the commission and shall not be
3 effective until a signed copy of the completed form has been filed with
4 the commission.

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

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

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

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

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

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

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

36 (2) If the real estate which is to be offered for sale is owned by
37 any agency of the federal government, a broker may, on behalf of the
38 owner, engage in activities enumerated in subsection ~~(f)~~ of K.S.A. 58-
39 3035(f), and amendments thereto, after obtaining verbal authorization
40 from the federal agency for which services are to be performed.

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

1 lease.

2 (f) An agency agreement or written transaction brokerage
3 agreement shall set forth the terms and conditions of the relationship,
4 including a fixed date of expiration, any limitation on the duty of
5 confidentiality and the terms of compensation, and shall refer to the
6 duties and obligations pursuant to K.S.A. 58-30,106, 58-30,107 or 58-
7 30,113, and amendments thereto. The agreement shall be signed by the
8 party to be represented and by the broker or a licensee affiliated with
9 the broker. A copy of the agreement shall be furnished to the customer
10 or client at the time the customer or client signs the agreement. If, at
11 the time the customer or client signs the agreement, the agreement is
12 not signed by the broker or a licensee affiliated with the broker, the
13 broker or a licensee affiliated with the broker shall furnish a copy of
14 the agreement to the customer or client within a reasonable time after
15 the agreement is signed by the broker or a licensee affiliated with the
16 broker.

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

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

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

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

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

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

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

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

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

1 proceeds to the owner.

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

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

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

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

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

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

41 Sec. 5. K.S.A. 58-30,106 is hereby amended to read as follows: 58-
42 30,106. (a) A seller's agent or a landlord's agent shall be a statutory
43 agent with the duty and obligation to:

1 **(1) Perform the terms of the written agreement made with the**
2 **client;**

3 **(2) promote the interests of the client with the utmost good faith,**
4 **loyalty and fidelity, including:**

5 **(A) presenting in a timely manner all offers to and from the**
6 **client, when such offer is received prior to the closing of the sale unless**
7 **the seller instructs the broker in the agency agreement not to submit**
8 **offers after an offer has been accepted by the seller;**

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

11 **(C) advising the client to obtain expert advice as to material**
12 **matters about which the licensee knows but the specifics of which are**
13 **beyond the expertise of the licensee;**

14 **(3) account in a timely manner for all money and property**
15 **received;**

16 **(4) comply with all requirements of this act and rules and**
17 **regulations adopted hereunder; and**

18 **(5) comply with any applicable federal, state and local laws, rules**
19 **and regulations and ordinances, including fair housing and civil rights**
20 **statutes and rules and regulations.**

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

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

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

36 **(A) Any environmental hazards affecting the property which are**
37 **required by law to be disclosed;**

38 **(B) the physical condition of the property;**

39 **(C) any material defects in the property;**

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

41 **(E) any material limitation on the client's ability to perform**
42 **under the terms of the contract.**

43 **(2) A seller's or landlord's agent owes no duty to conduct an**

1 independent inspection of the property for the benefit of the customer
2 and owes no duty to independently verify the accuracy or
3 completeness of any statement made by the client or any qualified
4 third party.

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

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

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

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

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

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

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

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

39 (j) If the seller or landlord has authorized the broker to offer
40 cooperation with other licensees pursuant to subsection (g), (h) or (i)
41 the broker shall not refuse permission to another licensee to show a
42 listed property or refuse to receive and transmit to the seller or
43 landlord a written offer ~~or~~ on a listed property from another licensee

1 *unless specifically instructed by the seller in writing. The broker shall*
2 **provide a copy of the written instructions to another licensee upon**
3 **request.**

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

9 ~~Section 1.~~ **Sec. 6.** K.S.A. 2014 Supp. 58-3063 is hereby amended to
10 read as follows: 58-3063. (a) The commission shall adopt rules and
11 regulations fixing the amounts of the fees provided for by this act, subject
12 to the following:

13 (1) For any examination required for licensure, a fee in an amount
14 equal to the actual cost of the examination and the administration thereof.

15 (2) For any criminal history record check required for licensure, a fee
16 in the amount necessary to reimburse the commission for the cost of
17 administering the criminal history record check.

18 (3) For submission of an application for an original salesperson's
19 license, an amount not exceeding \$25.

20 (4) For submission of an application for an original broker's license,
21 an amount not exceeding \$50.

22 (5) For an original salesperson's license, a prorated fee based on a
23 two-year amount not exceeding ~~\$100~~ \$150.

24 (6) For an original broker's license, a prorated fee based on a two-
25 year amount not exceeding ~~\$150~~ \$200.

26 (7) For renewal of a salesperson's license, a fee based on a two-year
27 amount not exceeding ~~\$100~~ \$150.

28 (8) For renewal of a broker's license, a fee based on a two-year
29 amount not exceeding ~~\$150~~ \$200.

30 (9) For reinstatement of a license which has been deactivated or
31 which has been canceled pursuant to ~~subsection (e) of~~ K.S.A. 58-3047(c),
32 and amendments thereto, or by reason of termination of a salesperson, an
33 amount not exceeding \$15.

34 (10) For reinstatement of all licenses canceled pursuant to ~~subsections~~
35 ~~(d) or (f) of~~ K.S.A. 58-3047(d) or (f), and amendments thereto, an amount
36 not exceeding \$7.50 for each license canceled.

37 (11) For issuance of a duplicate license, an amount not exceeding
38 \$10.

39 (12) For certification of licensure to another jurisdiction, an amount
40 not exceeding \$10.

41 (13) For approval of a course of instruction submitted by a course
42 provider pursuant to K.S.A. 58-3046a, and amendments thereto, an
43 amount not exceeding \$75.

1 (14) For renewal of an approved course of instruction pursuant to
2 K.S.A. 58-3046a, and amendments thereto, an amount not exceeding \$15.

3 (15) For approval of a course of instruction submitted by any licensee
4 for credit toward the 12 hours of additional instruction required by K.S.A.
5 58-3046a, and amendments thereto, an amount not less than \$10 nor more
6 than \$20, as determined by the commission.

7 (16) For a temporary salesperson's license, an amount not exceeding
8 \$25.

9 (17) For each branch office opened or established after July 1, 2006,
10 an amount not exceeding \$100.

11 (18) For each primary office of a company created or established by a
12 supervising broker after July 1, 2006, an amount not exceeding \$100.

13 (19) For certification of a licensee's education history under K.S.A.
14 58-3046a, and amendments thereto, an amount not exceeding \$25.

15 (20) For certification of licensure of a professional corporation, an
16 amount not exceeding \$25.

17 (21) For each additional primary or branch office at which a
18 salesperson or an associate, supervising or branch broker is associated or
19 employed, if such person is associated or employed by more than one
20 primary or branch office, an amount not exceeding \$50, to be paid by such
21 salesperson or broker.

22 (b) For each prorated fee, the commission shall establish a monthly
23 amount, rounded off to the nearest dollar, and shall compute the fee from
24 the last calendar day of the month in which the license is issued to the
25 expiration date of the license.

26 (c) Subject to the limitations of this section, the commission shall fix
27 the fees provided for by this section in the amounts necessary to
28 administer and enforce this act.

29 (d) The fees provided for by this section shall be applicable
30 regardless of the type of license.

31 ~~Sec. 2. 7. K.S.A. 58-30,106 and K.S.A. 2014 Supp. 58-3046a, 58-~~
32 ~~3050, 58-3062, 58-3063 is and 58-30,103 are hereby repealed.~~

33 ~~Sec. 3. 8. This act shall take effect and be in force from and after its~~
34 ~~publication in the statute book.~~