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MEMORANDUM

To: Chairperson Erickson and Members of the Senate Commerce Committee
From: Charles Reimer, Assistant Revisor of Statutes
Date: 2/9/2022
Subject: SB 382

SB 382 makes three principal changes to the real estate brokers' and salespersons' license act. First, the bill would prohibit individuals or persons acting as employees or owners, officers or members of associations or trusts from dealing in assignable contracts for the purchase or sale of or options on real estate.

Second, the bill makes the provisions of the act applicable to trusts in the same manner as the act currently applies to associations and the business entities of corporations, limited liability companies, limited liability partnerships, partnerships, and professional corporations.

Third, the bill authorizes the real estate commission to issue cease and desist orders for violations of the act.

This bill is similar to SB 219 from the 2021 session. The Senate Commerce Committee held a hearing on that bill on March 11, 2021. SB 219 differs primarily in that it prohibits engaging in a pattern of dealing in assignable contracts and provides for a civil penalty for violations in addition to the authority to issue cease and desist orders.

Section 1 currently defines "broker" with reference to activities regarding real estate transactions that require licensing. The bill adds to such activities engaging in marketing for sale, exchanging or otherwise dealing in assignable contracts for the purchase or sale of, or options on real estate.

Section 2 currently prohibits a person from engaging in activities of a broker without a license. The bill adds language to provide that no person acting individually or as an employee, owner, officer or member of an association, any business entity or trust shall engage in the business of or act as a broker, associate broker or salesperson unless licensed. The bill removes language prohibiting the representation that a person engages in the business of a broker, associate broker or salesperson unless licensed.

Section 3 amends the statute that pertains to exceptions from licensing requirements. It modifies the current exception from licensing requirements for persons who are selling property owned by them by excluding from that exception dealing in assignable contracts for the purchase or sale of, or options on real estate.

This section similarly amends the exception from licensing requirements for the sale or lease of real estate by employees of a business entity or trust that owns or leases such real estate, and who have a 5% or greater interest in the business entity or trust, to exclude dealing in assignable contracts for the purchase or sale of or options on real estate.

The exception from licensing for the sale or lease of new homes by a business entity that constructed such homes is broadened to include new homes constructed by a trust.

Section 4 adds trusts to provisions currently applicable to other business entities that prohibit such entities from being licensed and requiring that the principals or employees of such entities who conduct the activities of a broker be licensed and follow requirements of establishing an office and designating a supervising broker.

Section 5 provides for a criminal penalty for violations of the act. Language is added that grants the real estate commission authority to issue a cease and desist order, in accordance with the Kansas administrative procedure act, against unlicensed persons or associated business entities or trusts.

If passed, the bill would become effective July 1, 2022.