

HOUSE BILL No. 2389

By Committee on Commerce, Labor and Economic Development

2-9

1 AN ACT concerning real estate brokers and salespersons; application of
2 licensure provisions to trusts; authorizing the Kansas real estate
3 commission to issue cease and desist orders; providing that dealing in
4 assignable contracts for the purchase or sale of, or options on real estate
5 requires licensure; amending K.S.A. 58-3036 and 58-3065 and K.S.A.
6 2022 Supp. 58-3035, 58-3037 and 58-3042 and repealing the existing
7 sections.
8

9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. K.S.A. 2022 Supp. 58-3035 is hereby amended to read as
11 follows: 58-3035. As used in this act, unless the context otherwise
12 requires:

13 (a) "Act" means the real estate brokers' and salespersons' license act.

14 (b) "Advance listing fee" means any fee charged for services related
15 to promoting the sale or lease of real estate and paid in advance of the
16 rendering of such services, including any fees charged for listing,
17 advertising or offering for sale or lease any real estate, but excluding any
18 fees paid solely for advertisement or for listing in a publication issued for
19 the sole purpose of promoting the sale or lease of real estate wherein
20 inquiries are directed to the owner of the real estate or to real estate
21 brokers and not to unlicensed persons who publish the listing.

22 (c) "Associate broker" means ~~an individual who has a broker's license~~
23 ~~and a broker licensee~~ who is employed by another broker or is associated
24 with another broker as an independent contractor and participates in any
25 activity described in subsection (f).

26 (d) "Branch broker" means ~~an individual who has a broker's license~~
27 ~~and a broker licensee~~ who has been designated to supervise a branch office
28 and the activities of salespersons and associate brokers assigned to the
29 branch office.

30 (e) "Branch office" means a place of business other than the principal
31 place of business of a broker.

32 (f) "Broker" means ~~an individual~~ a licensee, other than a salesperson,
33 who advertises or represents that such individual engages in the business
34 of buying, selling, exchanging or leasing real estate or who, for
35 compensation, engages in any of the following activities as an employee
36 of, or on behalf of, the owner, purchaser, lessor or lessee of real estate:

- 1 (1) Sells, exchanges, purchases or leases real estate.
- 2 (2) Offers to sell, exchange, purchase or lease real estate.
- 3 (3) Negotiates or offers, attempts or agrees to negotiate the sale,
4 exchange, purchase or leasing of real estate.
- 5 (4) Lists or offers, attempts or agrees to list real estate for sale, lease
6 or exchange.
- 7 (5) Auctions or offers, attempts or agrees to auction real estate or
8 assists an auctioneer by procuring bids at a real estate auction.
- 9 (6) Buys, sells, offers to buy or sell ~~or otherwise deals in options on~~
10 ~~real estate, markets for sale, exchanges or otherwise deals in assignable~~
11 *contracts for the purchase or sale of, or options on real estate or*
12 *improvements thereon.*
- 13 (7) Assists or directs in the procuring of prospects calculated to result
14 in the sale, exchange or lease of real estate.
- 15 (8) Assists in or directs the negotiation of any transaction calculated
16 or intended to result in the sale, exchange or lease of real estate.
- 17 (9) Engages in the business of charging an advance listing fee.
- 18 (10) Provides lists of real estate as being available for sale or lease,
19 other than lists provided for the sole purpose of promoting the sale or lease
20 of real estate wherein inquiries are directed to the owner of the real estate
21 or to real estate brokers and not to unlicensed persons who publish the list.
- 22 (g) "Commission" means the Kansas real estate commission.
- 23 (h) "Exchange" means a type of sale or purchase of real estate.
- 24 (i) "Interest" means:
 - 25 (1) Having any type of ownership in the real estate involved in the
26 transaction; or
 - 27 (2) an officer, member, partner or shareholder of any entity that owns
28 such real estate excluding an ownership interest of less than 5% in a
29 publicly traded entity.
- 30 (j) "Lease" means rent or lease for nonresidential use.
- 31 (k) "Licensee" means any person licensed under this act as a broker
32 or salesperson.
- 33 (l) (1) "Office" means any permanent location where one or more
34 licensees regularly conduct real estate business as described in subsection
35 (f) or a location that is held out as an office.
- 36 (2) "Office" does not mean a model home office in a new home
37 subdivision if the real estate transaction files are maintained in the primary
38 office or branch office.
- 39 (m) "Primary office" means a supervising broker's principal place of
40 business for each company created or established by the broker.
- 41 (n) "Real estate" means any interest or estate in land, including any
42 leasehold or condominium, whether corporeal, incorporeal, freehold or
43 nonfreehold and whether the real estate is situated in this state or

1 elsewhere, but does not include oil and gas leases, royalties and other
2 mineral interests, and rights of way and easements acquired for the
3 purpose of constructing roadways, pipelines, conduits, wires and facilities
4 related to these types of improvement projects for private and public
5 utilities, municipalities, federal and state governments, or any political
6 subdivision. For purpose of this act, any rights of redemption are
7 considered to be an interest in real estate.

8 (o) "Salesperson" means ~~an individual~~ a licensee, other than an
9 associate broker, who is employed by a broker or is associated with a
10 broker as an independent contractor and participates in any activity
11 described in subsection (f).

12 (p) "Supervising broker" means ~~an individual~~ a broker licensee, other
13 than a branch broker, ~~who has a broker's license and~~ who has been
14 designated as the broker who is responsible for the supervision of the
15 primary office of a broker and the activities of salespersons and associate
16 brokers who are assigned to such office and all of whom are licensed
17 pursuant to ~~subsection (b) of~~ K.S.A. 58-3042(b), and amendments thereto.
18 "Supervising broker" also means a broker who operates a sole
19 proprietorship and with whom associate brokers or salespersons are
20 affiliated as employees or independent contractors.

21 Sec. 2. K.S.A. 58-3036 is hereby amended to read as follows: 58-
22 3036. Unless exempt from this act under K.S.A. 58-3037, and amendments
23 thereto, no person *acting individually or as an employee, owner, officer or*
24 *member of an association, corporation, limited liability company, limited*
25 *liability partnership, partnership, professional corporation or trust* shall:

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

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

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

38 Sec. 3. K.S.A. 2022 Supp. 58-3037 is hereby amended to read as
39 follows: 58-3037. The provisions of this act shall not apply to:

40 (a) Any person, other than a person licensed under this act, who
41 directly performs any of the acts within the scope of this act with reference
42 to such person's own ~~property~~ real estate, *except such person shall not*
43 *buy, sell, offer to buy or sell, market for sale, exchange or otherwise deal*

1 *in assignable contracts for the purchase or sale of, or options on, real*
2 *estate or improvements thereon.*

3 (b) Any person who directly performs any of the acts within the
4 scope of this act with reference to property that such person is authorized
5 to transfer in any way by a power of attorney from the owner, provided
6 that such person receives no commission or other compensation, direct or
7 indirect, for performing any such act.

8 (c) Services rendered by an attorney licensed to practice in this state
9 in performing such attorney's professional duties as an attorney.

10 (d) Any person acting as receiver, trustee in bankruptcy,
11 administrator, executor or guardian, or while acting under a court order or
12 under the authority of a will or a trust instrument or as a witness in any
13 judicial proceeding or other proceeding conducted by the state or any
14 governmental subdivision or agency.

15 (e) Any officer or employee of the federal or state government, or any
16 political subdivision or agency thereof, when performing the official duties
17 of the officer or employee.

18 (f) Any multiple listing service wholly owned by a nonprofit
19 organization or association of brokers.

20 (g) Any nonprofit referral system or organization of brokers formed
21 for the purpose of referral of prospects for the sale or listing of real estate.

22 (h) Railroads or other public utilities regulated by the state of Kansas,
23 or their subsidiaries, affiliated corporations, officers or regular employees,
24 unless performance of any of the acts described in ~~subsection (f)~~ of K.S.A.
25 58-3035(f), and amendments thereto, is in connection with the sale,
26 purchase, lease or other disposition of real estate or investment therein
27 unrelated to the principal business activity of such railroad or other public
28 utility or affiliated or subsidiary corporation thereof.

29 (i) The sale or lease of real estate by an employee of a person,
30 association, corporation, limited liability company, limited liability
31 partnership, partnership ~~or~~, professional corporation ~~which~~ or trust that
32 owns or leases such real estate, if such employee owns 5% or greater
33 interest in such association, limited liability company, limited liability
34 partnership, partnership ~~or~~, professional corporation or trust or of the stock
35 of such corporation, *except such employee shall not buy, sell, offer to buy*
36 *or sell, market for sale, exchange or otherwise deal in assignable*
37 *contracts for the purchase or sale of or options on real estate or*
38 *improvements thereon.*

39 (j) The sale or lease of new homes by a person, association,
40 corporation, limited liability company, limited liability partnership ~~or~~,
41 professional corporation or trust who constructed such homes, but the
42 provisions of this act shall apply to the sale or lease of any such homes by
43 any employee of such person, association, corporation, limited liability

1 company, limited liability partnership, partnership~~—or~~, professional
2 corporation *or trust* if such employee owns less than 5% interest in such
3 association, limited liability company, limited liability partnership,
4 partnership~~—or~~, professional corporation *or trust* or by any employee of a
5 corporation who owns less than 5% of the stock of such corporation.

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

7 Sec. 4. K.S.A. 2022 Supp. 58-3042 is hereby amended to read as
8 follows: 58-3042. (a) No real estate license shall give authority to any
9 person other than the person to whom the license is issued.

10 (b) No license shall be granted to an association, corporation, limited
11 liability company, limited liability partnership, partnership~~—or~~, professional
12 corporation *or trust*. Each person who is an owner, officer or member of an
13 association, corporation, limited liability company, limited liability
14 partnership, partnership~~—or~~, professional corporation *or trust* and who
15 performs any act described in ~~subsection (f)~~ of K.S.A. 58-3035(f), and
16 amendments thereto, and each person who is employed by or associated
17 with an association, corporation, limited liability company, limited liability
18 partnership, partnership~~—or~~, professional corporation *or trust* and who
19 performs any act described in ~~subsection (f)~~ of K.S.A. 58-3035(f), and
20 amendments thereto, shall be a licensed broker or licensed salesperson.

21 (c) If any person who is an owner, officer or member of an
22 association, corporation, limited liability company, limited liability
23 partnership~~—or~~, professional corporation *or trust* performs any act described
24 in ~~subsection (f)~~ of K.S.A. 58-3035(f), and amendments thereto, a primary
25 office shall be established and a supervising broker shall be designated
26 pursuant to K.S.A. 58-3060, and amendments thereto, to supervise the
27 office and any employed or associated salespersons or associate brokers
28 and the supervising broker shall obtain approval for the supervising
29 broker's business name or trade name pursuant to K.S.A. 58-3079, and
30 amendments thereto.

31 Sec. 5. K.S.A. 58-3065 is hereby amended to read as follows: 58-
32 3065. (a) Willful violation of any provision of this act or the brokerage
33 relationships in real estate transactions act is a misdemeanor punishable by
34 imprisonment for not more than 12 months or a fine of not less than \$100
35 or more than \$1,000, or both, for the first offense and imprisonment for not
36 more than 12 months or a fine of not less than \$1,000 or more than
37 \$10,000, or both, for a second or subsequent offense.

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

43 (c) *If the commission determines that a person, acting individually or*

1 *as an employee, owner, officer or member of an association, corporation,*
2 *limited liability company, limited liability partnership, partnership,*
3 *professional corporation or trust, has practiced without a valid broker's or*
4 *salesperson's license issued by the commission, in addition to any other*
5 *penalties imposed by law, the commission, in accordance with the Kansas*
6 *administrative procedure act, may issue a cease and desist order against*
7 *such unlicensed person or associated association, corporation, limited*
8 *liability company, limited liability partnership, partnership, professional*
9 *corporation or trust.*

10 Sec. 6. K.S.A. 58-3036 and 58-3065 and K.S.A. 2022 Supp. 58-3035,
11 58-3037 and 58-3042 are hereby repealed.

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