

SENATE BILL No. 219

By Committee on Commerce

2-11

1 AN ACT concerning real estate brokers and salespersons; relating to the
2 definition of broker; licensure; requiring licensing for certain patterns
3 of business; exemptions thereto; applications of licensure provisions to
4 trusts; granting the Kansas real estate commission authority to assess
5 civil fines and issue cease and desist orders and subpoenas; amending
6 K.S.A. 58-3036 and 58-3065 and K.S.A. 2020 Supp. 58-3035, 58-3037,
7 58-3042 and 74-4202 and repealing the existing sections.

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. K.S.A. 2020 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~~ *Engages in a*
10 *pattern of business of buying, selling, offering to buy or sell, marketing for*
11 *sale, exchanging or otherwise dealing in contracts, including assignable*
12 *contracts for the purchase or sale of, or options on real estate or*
13 *improvements thereon. An employee, officer, owner or member of an*
14 *association, corporation, limited liability company, limited liability*
15 *partnership, partnership, professional corporation or trust shall be found*
16 *to have engaged in a pattern of business if the person or entity, by itself or*
17 *with any combination of other persons or entities, has engaged in one or*
18 *more of the practices listed in this paragraph on two or more occasions in*
19 *any 12-month period.*
- 20 (7) Assists or directs in the procuring of prospects calculated to result
21 in the sale, exchange or lease of real estate.
- 22 (8) Assists in or directs the negotiation of any transaction calculated
23 or intended to result in the sale, exchange or lease of real estate.
- 24 (9) Engages in the business of charging an advance listing fee.
- 25 (10) Provides lists of real estate as being available for sale or lease,
26 other than lists provided for the sole purpose of promoting the sale or lease
27 of real estate wherein inquiries are directed to the owner of the real estate
28 or to real estate brokers and not to unlicensed persons who publish the list.
- 29 (g) "Commission" means the Kansas real estate commission.
- 30 (h) "Exchange" means a type of sale or purchase of real estate.
- 31 (i) "Interest" means:
 - 32 (1) Having any type of ownership in the real estate involved in the
33 transaction; or
 - 34 (2) an officer, member, partner or shareholder of any entity that owns
35 such real estate excluding an ownership interest of less than 5% in a
36 publicly traded entity.
- 37 (j) "Lease" means rent or lease for nonresidential use.
- 38 (k) "Licensee" means any person licensed under this act as a broker
39 or salesperson.
- 40 (l) (1) "Office" means any permanent location where one or more
41 licensees regularly conduct real estate business as described in subsection
42 (f) or a location that is held out as an office.
- 43 (2) "Office" does not mean a model home office in a new home

1 subdivision if the real estate transaction files are maintained in the primary
2 office or branch office.

3 (m) "Primary office" means a supervising broker's principal place of
4 business for each company created or established by the broker.

5 (n) "Real estate" means any interest or estate in land, including any
6 leasehold or condominium, whether corporeal, incorporeal, freehold or
7 nonfreehold and whether the real estate is situated in this state or
8 elsewhere, but does not include oil and gas leases, royalties and other
9 mineral interests, and rights of way and easements acquired for the
10 purpose of constructing roadways, pipelines, conduits, wires and facilities
11 related to these types of improvement projects for private and public
12 utilities, municipalities, federal and state governments, or any political
13 subdivision. For purpose of this act, any rights of redemption are
14 considered to be an interest in real estate.

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

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

28 Sec. 2. K.S.A. 58-3036 is hereby amended to read as follows: 58-
29 3036. Unless exempt from this act under K.S.A. 58-3037, and amendments
30 thereto, no person *acting individually or as an employee, owner, officer or*
31 *member of an association, corporation, limited liability company, limited*
32 *liability partnership, partnership, professional corporation or trust* shall:

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

37 (b) Directly or indirectly act ~~or represent that such person acts~~ as a
38 broker, associate broker or salesperson within this state unless ~~such person~~
39 ~~is~~ licensed as such a broker, associate broker or salesperson in accordance
40 with this act.

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

1 licensed pursuant to this act.

2 Sec. 3. K.S.A. 2020 Supp. 58-3037 is hereby amended to read as
3 follows: 58-3037. The provisions of this act shall not apply to:

4 (a) Any person, other than a person licensed under this act, who
5 directly performs any of the acts within the scope of this act with reference
6 to such person's own ~~property~~ *real estate, except such person shall not*
7 *engage in a pattern of business of buying, selling, offering to buy or sell,*
8 *marketing for sale, exchanging or otherwise dealing in assignable*
9 *contracts for the purchase or sale of, or options on real estate or*
10 *improvements thereon. A person shall be found to have engaged in a*
11 *pattern of business if the person or any combination of other persons or*
12 *entities, has engaged in one or more of such practices on two or more*
13 *occasions in any 12-month period.*

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

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

21 (d) Any person acting as receiver, trustee in bankruptcy,
22 administrator, executor or guardian, or while acting under a court order or
23 under the authority of a will or a trust instrument or as a witness in any
24 judicial proceeding or other proceeding conducted by the state or any
25 governmental subdivision or agency.

26 (e) Any officer or employee of the federal or state government, or any
27 political subdivision or agency thereof, when performing the official duties
28 of the officer or employee.

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

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

33 (h) Railroads or other public utilities regulated by the state of Kansas,
34 or their subsidiaries, affiliated corporations, officers or regular employees,
35 unless performance of any of the acts described in ~~subsection (f)~~ of K.S.A.
36 58-3035(f), and amendments thereto, is in connection with the sale,
37 purchase, lease or other disposition of real estate or investment therein
38 unrelated to the principal business activity of such railroad or other public
39 utility or affiliated or subsidiary corporation thereof.

40 (i) The sale or lease of real estate by an employee of a person,
41 association, corporation, limited liability company, limited liability
42 partnership, partnership ~~or~~, professional corporation *or trust* which owns
43 or leases such real estate, if such employee owns 5% or greater interest in

1 such association, limited liability company, limited liability partnership,
 2 partnership~~—or~~, professional corporation *or trust* or of the stock of such
 3 corporation, *except such employee shall not engage in a pattern of*
 4 *business of buying, selling, offering to buy or sell, marketing for sale,*
 5 *exchange or otherwise dealing in assignable contracts for the purchase or*
 6 *sale of, or options on real estate or improvements thereon. An employee of*
 7 *a person, association, corporation, limited liability company, limited*
 8 *liability partnership, partnership, professional corporation or trust will be*
 9 *found to have engaged in a pattern of business if the employee individually*
 10 *or with any combination of other persons or entities, has engaged in one*
 11 *or more of such practices on two or more occasions in any 12-month*
 12 *period.*

13 (j) The sale or lease of new homes by a person, association,
 14 corporation, limited liability company, limited liability partnership~~—or~~,
 15 professional corporation *or trust* who constructed such homes, but the
 16 provisions of this act shall apply to the sale or lease of any such homes by
 17 any employee of such person, association, corporation, limited liability
 18 company, limited liability partnership, partnership~~—or~~, professional
 19 corporation *or trust* if such employee owns less than 5% interest in such
 20 association, limited liability company, limited liability partnership,
 21 partnership or professional corporation or by any employee of a
 22 corporation who owns less than 5% of the stock of such corporation.

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

24 Sec. 4. K.S.A. 2020 Supp. 58-3042 is hereby amended to read as
 25 follows: 58-3042. (a) No real estate license shall give authority to any
 26 person other than the person to whom the license is issued.

27 (b) No license shall be granted to an association, corporation, limited
 28 liability company, limited liability partnership, partnership~~—or~~, professional
 29 corporation *or trust*. Each person who is an owner, officer or member of an
 30 association, corporation, limited liability company, limited liability
 31 partnership, partnership~~—or~~, professional corporation *or trust* and who
 32 performs any act described in ~~subsection (f) of~~ K.S.A. 58-3035(f), and
 33 amendments thereto, and each person who is employed by or associated
 34 with an association, corporation, limited liability company, limited liability
 35 partnership, partnership~~—or~~, professional corporation *or trust* and who
 36 performs any act described in ~~subsection (f) of~~ K.S.A. 58-3035(f), and
 37 amendments thereto, shall be a licensed broker or licensed salesperson.

38 (c) If any person who is an owner, officer or member of an
 39 association, corporation, limited liability company, limited liability
 40 partnership~~—or~~, professional corporation *or trust* performs any act described
 41 in ~~subsection (f) of~~ K.S.A. 58-3035(f), and amendments thereto, a primary
 42 office shall be established and a supervising broker shall be designated
 43 pursuant to K.S.A. 58-3060, and amendments thereto, to supervise the

1 office and any employed or associated salespersons or associate brokers
2 and the supervising broker shall obtain approval for the supervising
3 broker's business name or trade name pursuant to K.S.A. 58-3079, and
4 amendments thereto.

5 Sec. 5. K.S.A. 58-3065 is hereby amended to read as follows: 58-
6 3065. (a) Willful violation of any provision of this act or the brokerage
7 relationships in real estate transactions act is a misdemeanor punishable by
8 imprisonment for not more than 12 months or a fine of not less than \$100
9 or more than \$1,000, or both, for the first offense and imprisonment for not
10 more than 12 months or a fine of not less than \$1,000 or more than
11 \$10,000, or both, for a second or subsequent offense.

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

17 (c) *The commission, in addition to any other penalty authorized*
18 *under this act, may assess an administrative fine, after notice and*
19 *opportunity to be heard in accordance with the Kansas administrative*
20 *procedure act, against an unlicensed person or against an association,*
21 *corporation, limited liability company, limited liability partnership,*
22 *partnership, professional corporation or trust for a violation by the person*
23 *or employee, officer, owner or member of such business entity, of any*
24 *provision of this act or any rule and regulation under this act in an*
25 *amount not to exceed \$1,000 per violation.*

26 (d) *If the commission determines that a person has practiced without*
27 *a valid broker's or salesperson's license issued by the commission, in*
28 *addition to any other penalties imposed by law, the commission in*
29 *accordance with the Kansas administrative procedure act, may issue a*
30 *cease and desist order against such unlicensed person or associated*
31 *association, corporation, limited liability company, limited liability*
32 *partnership, partnership, professional corporation or trust.*

33 Sec. 6. K.S.A. 2020 Supp. 74-4202 is hereby amended to read as
34 follows: 74-4202. (a) At the first meeting of the commission after January
35 1 of each year, or as required thereafter, the members shall elect a
36 chairperson and a vice-chairperson from its membership. The members
37 elected shall serve for a term of one year or the remainder of the term, as
38 the case may be. The vice-chairperson shall exercise all of the powers of
39 the chairperson in the absence of the chairperson. A majority of the
40 members of the commission shall constitute a quorum for the exercise of
41 the powers or authority conferred upon it.

42 (b) The commission shall receive applications for, and issue licenses
43 to, brokers and salespersons, as provided in the real estate brokers' and

1 salespersons' license act and shall administer the provisions of this act and
2 the brokerage relationships in real estate transactions act. The commission
3 may do all things necessary and convenient for carrying into effect the
4 provisions of the acts and may adopt rules and regulations consistent with
5 the acts. For the purpose of the acts, the commission shall make all
6 necessary investigations, and every licensee shall furnish to the
7 commission such evidence as the licensee may have as to any violation the
8 acts or any rules and regulations adopted under the acts. The commission
9 may enforce any order by an action in the district court of the county
10 where the alleged violator resides or where the violation allegedly
11 occurred.

12 *(c) For the purpose of investigations and proceedings conducted by*
13 *the commission, the commission may issue subpoenas compelling:*

14 *(1) The attendance and testimony of a licensee or an unlicensed*
15 *person; or*

16 *(2) the production for examination or copying of documents or any*
17 *other physical evidence if such evidence relates to the licensee's*
18 *competence, unprofessional conduct, the mental or physical ability of a*
19 *licensee to safely practice as a real estate broker or salesperson, or relates*
20 *to the practice as real estate broker or salesperson by an unlicensed*
21 *person, association, corporation, limited liability company, limited*
22 *liability partnership, partnership, professional corporation or trustee.*
23 *Within five days after the service of the subpoena on any licensee or an*
24 *unlicensed person or upon an entity requiring the production of any*
25 *evidence in the licensee or an unlicensed person or entity's possession or*
26 *control, such licensee or an unlicensed person or entity may petition the*
27 *commission to revoke, limit or modify the subpoena. The commission shall*
28 *revoke, limit or modify such subpoena if in its opinion the evidence*
29 *required does not relate to practices that may be grounds for disciplinary*
30 *action, is not relevant to the charge that is the subject matter of the*
31 *proceeding or investigation or does not describe with sufficient*
32 *particularity the physical evidence that is required to be produced.*

33 *(d) The district court, upon application by the commission or by the*
34 *licensee or the unlicensed person, association, corporation, limited*
35 *liability company, limited liability partnership, partnership, professional*
36 *corporation or trustee subpoenaed, shall have jurisdiction to issue an*
37 *order:*

38 *(1) Requiring such licensees or an unlicensed person or an entity to*
39 *appear before the commission or the commission's duly authorized agent*
40 *to produce evidence relating to the matter under investigation; or*

41 *(2) revoking, limiting or modifying the subpoena if in the court's*
42 *opinion the evidence demanded does not relate to practices that may be*
43 *grounds for disciplinary action, is not relevant to the charge that is the*

1 *subject matter of the hearing or investigation or does not describe with*
2 *sufficient particularity the evidence that is required to be produced.*

3 ~~(e)~~(e) Each member of the commission shall be paid compensation,
4 subsistence allowances, mileage and other expenses as provided in K.S.A.
5 75-3223, and amendments thereto.

6 ~~(d)~~(f) The commission shall hold meetings and hearings in the city of
7 Topeka or at such places as it shall determine at such times as it may
8 designate and on request of two or more of its members.

9 ~~(e)~~(g) The commission shall maintain an office in the city of Topeka.

10 Sec. 7. K.S.A. 58-3036 and 58-3065 and K.S.A. 2020 Supp. 58-3035,
11 58-3037, 58-3042 and 74-4202 are hereby repealed.

12 Sec. 8. This act shall take effect and be in force from and after its
13 publication in the statute book.