

HOUSE BILL No. 2345

By Committee on Commerce and Labor

2-1

9 AN ACT relating to real estate; concerning real estate brokers and sa-
10 lespersons; relating to expiration, suspension or revocation of licenses
11 and civil fines; concerning contracts for sale of residential real estate;
12 amending K.S.A. 58-3050 and repealing the existing section.
13

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

15 New Section 1. (a) When the license of a supervising broker or
16 branch broker expires, the licenses of all licensees associated with or em-
17 ployed by the supervising broker or branch broker shall automatically be
18 placed on inactive status within five calendar days after written notice is
19 issued by the commission to the associated or employed licensee unless
20 notification is provided to the commission prior to the expiration date of
21 the license that another broker will assume the role as the supervising
22 broker or branch broker or the licensee transfers to another supervising
23 broker or branch broker.

24 (b) If notification is not received by the commission prior to the ex-
25 piration date of the supervising broker's or branch broker's license that
26 another broker will act as supervising broker or branch broker, the su-
27 pervising broker or branch broker whose license expires shall return to
28 the commission the licenses of all licensees associated or employed by
29 the supervising broker or branch broker before or immediately upon the
30 expiration date of the supervising broker's or branch broker's license.

31 New Sec. 2. (a) When the license of a supervising broker or branch
32 broker is suspended or revoked, the licenses of all licensees associated
33 with or employed by the supervising broker or branch broker shall au-
34 tomatically be placed on inactive status within five calendar days after
35 written notice is issued by the commission to the associated or employed
36 licensee for the duration of the suspension or revocation, unless the li-
37 censee transfers to another supervising broker or branch broker. If
38 deemed in the public interest until pending transactions are closed, the
39 commission may authorize another broker to act as the supervising or
40 branch broker during any period of suspension or revocation.

41 (b) If another broker is not authorized by the commission to act as
42 the supervising broker or branch broker during the period of suspension
43 or revocation, the supervising broker or branch broker whose license is

1 suspended or revoked shall return to the commission the licenses of all
2 licensees associated or employed by the supervising broker or branch
3 broker within five calendar days of the effective date of the order of
4 suspension or revocation.

5 New Sec. 3. A licensee whose license is suspended or revoked may
6 receive any personally earned commission during the period of suspen-
7 sion or revocation only for those acts performed and for which commis-
8 sion was personally earned when the person was actively licensed prior
9 to the effective date of the suspension or revocation. This statute is not
10 intended to determine if a licensee is entitled to compensation; such
11 entitlement would depend upon the terms of the licensee's written em-
12 ployment or independent contractor agreement with their former super-
13 vising broker or branch broker and is a matter of contract law.

14 New Sec. 4. (a) Unless notification is provided to the commission
15 prior to the expiration date of the supervising broker's or branch broker's
16 license that another broker will act as the supervising broker or branch
17 broker, the supervising broker or branch broker whose license expires,
18 on or before the expiration date of the license, shall advise all clients and
19 customers that the supervising broker or branch broker and any licensees
20 that are employed by or associated with the supervising broker or branch
21 broker will be unable to perform the terms and conditions contained in
22 the listing or brokerage agreement with the client or customer after the
23 expiration of the supervising broker's or branch broker's license. Upon
24 receipt of notice from the supervising broker or branch broker or the
25 expiration date of the supervising broker's or branch broker's license,
26 whichever is earlier, the client or customer may enter into a listing or
27 brokerage agreement with another broker of their choice.

28 (b) Unless the commission notifies the supervising broker or branch
29 broker in writing that the commission has authorized another broker to
30 act as the supervising broker or branch broker during the period of sus-
31 pension or revocation, the supervising broker or branch broker whose
32 license is suspended or revoked, within five calendar days after the ef-
33 fective date of the order of suspension or revocation, shall advise all clients
34 and customers that the supervising broker or branch broker and any li-
35 censees that are employed by or associated with the supervising broker
36 or branch broker will be unable to perform the terms and conditions
37 contained in the listing or brokerage agreement with the client or cus-
38 tomer after the effective date of the suspension or revocation. Upon re-
39 ceipt of notice from the supervising broker or branch broker, or upon the
40 effective date of the order of suspension or revocation if notice is not
41 properly given, the client or customer may enter into a listing or broker-
42 age agreement with another broker of their choice.

43 (c) A supervising broker or branch broker whose license expires or is

1 suspended or revoked may not sell or assign listings and brokerage agree-
2 ments to another broker without the written consent of the owner of the
3 property, and any sale or assignment of a listing or brokerage agreement
4 must be completed prior to the expiration of the supervising broker's or
5 branch broker's license or the effective date of the order of suspension
6 or revocation.

7 New Sec. 5. (a) A supervising broker or branch broker whose license
8 is expired or is suspended or revoked may not personally finalize any
9 pending closings. This responsibility must be given to another broker, an
10 attorney, a financial institution or an escrow company.

11 (b) If the commission has not authorized another broker to act as the
12 supervising broker or branch broker, transfer of the responsibility for
13 finalizing a pending closing shall be done with the written approval of all
14 parties to the transaction.

15 (c) If the commission has not authorized another broker to act as the
16 supervising broker or branch broker, all parties to the transaction shall
17 be advised of the facts concerning the situation concerning the status of
18 the license of the supervising broker or branch broker and shall be pro-
19 vided the name, address and telephone number of the responsible entity
20 where all trust and escrow moneys will be held in accordance with the
21 written agreement of the parties to the transaction.

22 New Sec. 6. If the commission has not authorized another broker to
23 act as the supervising broker or branch broker, all advertising under the
24 supervising broker's or branch broker's name or trade name, including,
25 but not limited to, signage, must be removed or covered within five cal-
26 endar days after the expiration date of the supervising broker's or branch
27 broker's license or the effective date of the order of suspension or
28 revocation.

29 New Sec. 7. On and after January 1, 2008, each contract for the sale
30 of residential real estate shall contain as part of such contract the following
31 language: "Kansas law requires persons who are convicted of certain sex-
32 ually violent crimes after April 14, 1994, to register with the sheriff of the
33 county in which they reside. If you as the buyer desire information re-
34 garding those registrants, you may find information on the homepage of
35 the Kansas bureau of investigation at <http://www.Kansas.gov/kbi> or by
36 contacting the local sheriff's office."

37 Sec. 8. K.S.A. 58-3050 is hereby amended to read as follows: 58-
38 3050. (a) The commission may refuse to grant or renew a license and the
39 license of any licensee may be revoked, suspended, conditioned or re-
40 stricted or a licensee may be censured, if:

41 (1) The licensee has committed a violation of this act or rules and
42 regulations adopted hereunder, or the brokerage relationships in real es-
43 tate transactions act or rules and regulations adopted thereunder, whether

- 1 the licensee acted as an agent or a principal in the real estate transaction;
- 2 (2) the licensee has entered a plea of guilty or nolo contendere to, or
- 3 has been convicted of: (A) Forgery, embezzlement, obtaining money un-
- 4 der false pretenses, larceny, extortion, conspiracy to defraud or any other
- 5 similar offense; (B) a crime involving moral turpitude; or (C) any felony
- 6 charge;
- 7 (3) the licensee has been finally adjudicated and found to be guilty
- 8 of violation of the federal fair housing act (42 U.S.C. 3601 et seq.) or
- 9 K.S.A. 44-1015 through 44-1029, and amendments thereto;
- 10 (4) the licensee has obtained a license by false or fraudulent
- 11 representation;
- 12 (5) the licensee has violated any lawful order or directive of the com-
- 13 mission; or
- 14 (6) the licensee has committed a violation in another state and dis-
- 15 disciplinary action taken against such licensee resulted in the suspension,
- 16 probation or revocation of such licensee's real estate license in such other
- 17 state.
- 18 (b) In addition to or in lieu of any other administrative, civil or crim-
- 19 inal remedy provided by law, the commission, in accordance with the
- 20 Kansas administrative procedure act and upon a finding that a licensee
- 21 has violated a provision of this act or rules and regulations adopted here-
- 22 under, or the brokerage relationships in real estate transactions act or
- 23 rules and regulations adopted thereunder, may impose on such licensee
- 24 a civil fine not exceeding ~~\$500~~ \$1,000 for each violation. *A civil fine not*
- 25 *exceeding \$10,000 per violation may be imposed if the commission makes*
- 26 *specific findings that aggravating circumstances exist and that the*
- 27 *licensee:*
- 28 (1) *Misappropriated funds belonging to another person;*
- 29 (2) *engaged in fraud or made any substantial misrepresentation;*
- 30 (3) *represented to a lender, guaranteeing agency or any other inter-*
- 31 *ested party, either verbally or through the preparation of false documents,*
- 32 *an amount in excess of the true and actual sale price of the real estate or*
- 33 *terms differing from those actually agreed upon;*
- 34 (4) *committed forgery or signed or initialed a contractual agreement*
- 35 *on behalf of another person in a real estate transaction unless authorized*
- 36 *to do so by a duly executed power of attorney; or*
- 37 (5) *intentionally failed to disclose to a customer all adverse material*
- 38 *facts actually known by the licensee regarding environmental hazards*
- 39 *affecting the property that are required by law to be disclosed, the phys-*
- 40 *ical condition of the property, material defects in the real property, defects*
- 41 *in the title to the real property or the client's ability to perform under the*
- 42 *terms of the agreement.*
- 43 (c) *In all matters pending before the Kansas real estate commission,*

1 *the commission shall have the power to revoke the license of any licensee*
2 *who voluntarily surrenders such licensee's license or who does not renew*
3 *their license pending investigation of misconduct or while charges of mis-*
4 *conduct against the licensee are pending or anticipated.*

5 ~~(e)~~ (d) If a broker or salesperson has been declared disabled by a
6 court of competent jurisdiction, the commission shall suspend the bro-
7 ker's or salesperson's license for the period of disability.

8 ~~(f)~~ (e) (1) Except as provided by paragraph (2) of this subsection, no
9 complaint alleging violation of this act or rules and regulations adopted
10 hereunder, or the brokerage relationships in real estate transactions act
11 or rules and regulations adopted thereunder, shall be commenced more
12 than three years from the date of the occurrence which is the subject of
13 the complaint.

14 (2) Unless the violation is not reasonably ascertainable, complaints
15 alleging violation of subsection (a)(4) or (a)(5) shall be commenced within
16 three years from the date of the occurrence of the violation. If the vio-
17 lation is not reasonably ascertainable, complaints alleging violation of sub-
18 section (a)(4) or (a)(5) shall be commenced within three years from the
19 date of violation is ascertained by the commission.

20 ~~(g)~~ (f) All administrative proceedings pursuant to this section shall be
21 conducted in accordance with the Kansas administrative procedure act.

22 ~~(h)~~ (g) Notwithstanding any provision of this act or the brokerage
23 relationships in real estate transactions act to the contrary, the commis-
24 sion may use emergency adjudicative proceedings, as provided by K.S.A.
25 77-536, and amendments thereto, to summarily suspend the license of
26 any licensee if the commission has reasonable cause to believe that the
27 licensee's trust account is in unsound condition or that the licensee is
28 misappropriating funds belonging to other persons.

29 ~~(i)~~ (h) If a licensee has entered a plea of guilty or nolo contendere
30 to, or has been convicted of, any felony charge, the commission may use
31 emergency adjudicative proceedings, as provided by K.S.A. 77-536, and
32 amendments thereto, to suspend, revoke, condition or restrict the li-
33 censee's license.

34 ~~(j)~~ (i) When the real estate license of an individual is revoked and
35 that individual's name is included in the trade or business name of a real
36 estate brokerage business, the commission may deny continued use of
37 the trade or business name if, in the opinion of the commission, it would
38 be confusing or misleading to the public.

39 If the revocation of the individual's license is appealed to district court
40 and a stay of the commission's order is granted by the court, the com-
41 mission may not deny continued use of the trade or business name until
42 such time as the district court upholds the order of the commission.

43 (j) *For the purposes of this section, "aggravating circumstances"*

1 *means:*

2 (1) *The licensee's conduct involved fraud or deceit;*

3 (2) *the licensee's conduct directly resulted in substantial loss or cre-*
4 *ated a significant risk or substantial loss to a customer or client;*

5 (3) *the licensee's conduct resulted in substantial financial gain to the*
6 *licensee; or*

7 (4) *the licensee has a history of prior disciplinary actions.*

8 Sec. 9. K.S.A. 58-3050 is hereby repealed.

9 Sec. 10. This act shall take effect and be in force from and after its
10 publication in the statute book.