

HOUSE BILL No. 2654

By Committee on Transportation

1-23

9 AN ACT relating to real estate brokers and salespersons; concerning cer-
10 tain prohibited acts; amending K.S.A. 2007 Supp. 58-3062 and re-
11 pealing the existing section.
12

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

14 Section 1. K.S.A. 2007 Supp. 58-3062 is hereby amended to read as
15 follows: 58-3062. (a) No licensee, whether acting as an agent, transaction
16 broker or a principal, shall:

17 (1) Intentionally use advertising that is misleading or inaccurate in
18 any material particular or that in any way misrepresents any property,
19 terms, values, policies or services of the business conducted, or uses the
20 trade name, collective membership mark, service mark or logo of any
21 organization owning such name, mark or logo without being authorized
22 to do so.

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

25 (3) Misappropriate moneys required to be deposited in a trust ac-
26 count pursuant to K.S.A. 58-3061, and amendments thereto, convert such
27 moneys to the licensee's personal use or commingle the money or other
28 property of the licensee's principals with the licensee's own money or
29 property, except that nothing herein shall prohibit a broker from having
30 funds in an amount not to exceed \$100 in the broker's trust account to
31 pay expenses for the use and maintenance of such account.

32 (4) Accept, give or charge any rebate or undisclosed commission.

33 (5) Pay a referral fee to a person who is properly licensed as a broker
34 or salesperson in Kansas or another jurisdiction or who holds a corporate
35 real estate license in another jurisdiction if the licensee knows that the
36 payment of the referral fee will result in the payment of a rebate by the
37 Kansas or out-of-state licensee.

38 (6) Represent or attempt to represent a broker without the broker's
39 express knowledge and consent.

40 (7) Guarantee or authorize any person to guarantee future profits that
41 may result from the resale of real property.

42 (8) Place a sign on any property offering it for sale or lease without
43 the written consent of the owner or the owner's authorized agent.

- 1 (9) Offer real estate for sale or lease without the knowledge and con-
2 sent of the owner or the owner's authorized agent or on terms other than
3 those authorized by the owner or the owner's authorized agent.
- 4 (10) Induce any party to break any contract of sale or lease.
- 5 (11) Pay a commission or compensation to any person, not licensed
6 under this act, for performing any activity for which a license is required
7 under this act.
- 8 (12) Fail to see that financial obligations and commitments between
9 the parties to an agreement to sell, exchange or lease real estate are in
10 writing, expressing the exact agreement of the parties or to provide, within
11 a reasonable time, copies thereof to all parties involved.
- 12 (13) Procure a signature to a purchase contract which has no definite
13 purchase price, method of payment, description of property or method
14 of determining the closing date.
- 15 (14) Engage in fraud or make any substantial misrepresentation.
- 16 (15) Represent to any lender, guaranteeing agency or any other in-
17 terested party, either verbally or through the preparation of false docu-
18 ments, an amount in excess of the true and actual sale price of the real
19 estate or terms differing from those actually agreed upon.
- 20 (16) Fail to make known to any purchaser or lessee any interest the
21 licensee has in the real estate the licensee is selling or leasing or to make
22 known to any seller or lessor any interest the licensee will have in the real
23 estate the licensee is purchasing or leasing.
- 24 (17) Fail to inform both the buyer, at the time an offer is made, and
25 the seller, at the time an offer is presented, that certain closing costs must
26 be paid and the approximate amount of such costs.
- 27 (18) Fail without just cause to surrender any document or instrument
28 to the rightful owner.
- 29 (19) Accept anything other than cash as earnest money unless that
30 fact is communicated to the owner prior to the owner's acceptance of the
31 offer to purchase, and such fact is shown in the purchase agreement.
- 32 (20) Fail to deposit any check or cash received as an earnest money
33 deposit or as a deposit on the purchase of a lot within five business days
34 after the purchase agreement or lot reservation agreement is signed by
35 all parties, unless otherwise specifically provided by written agreement of
36 all parties to the purchase agreement or lot reservation agreement, in
37 which case the licensee shall deposit the check or cash received on the
38 date provided by such written agreement.
- 39 (21) Fail in response to a request by the commission or the director
40 to produce any document, book or record in the licensee's possession or
41 under the licensee's control that concerns, directly or indirectly, any real
42 estate transaction or the licensee's real estate business.
- 43 (22) Refuse to appear or testify under oath at any hearing held by

1 the commission.

2 (23) Demonstrate incompetency to act as a broker, associate broker
3 or salesperson.

4 (24) Except as provided by K.S.A. 40-2404, and amendments thereto,
5 knowingly receive or accept, directly or indirectly, any rebate, reduction
6 or abatement of any charge, or any special favor or advantage or any
7 monetary consideration or inducement, involving the issuance of a title
8 insurance policy or contract concerning which the licensee is directly or
9 indirectly connected, from a title insurance company or title insurance
10 agent, or any officer, employee, attorney, agent or solicitor thereof.

11 (25) Engage in the purchase of one-, two-, three- or four-family
12 dwellings, including condominiums and cooperatives, or the acquisition
13 of any right, title or interest therein, including any equity or redemption
14 interests, if:

15 (A) (i) At the time of such purchase, the dwellings are subject to a
16 right of redemption pursuant to foreclosure of a mortgage on such dwell-
17 ings; (ii) the licensee fails to give written notice of the purchase, within
18 20 days thereafter, to the mortgage holder or judgment creditor who held
19 such mortgage; and (iii) the licensee, unless otherwise required by law or
20 court order, fails to apply any rent proceeds from the dwellings to the
21 judgment lien arising from the foreclosure of such mortgage, as payments
22 become due under the loan, regardless of whether the licensee is obli-
23 gated to do so;

24 (B) (i) the dwellings are subject to a loan which is secured by a mort-
25 gage and which is in default at the time of such purchase or in default
26 within one year after such purchase; (ii) the licensee fails to give written
27 notice of the purchase, within 20 days thereafter, to the mortgage holder;
28 and (iii) the licensee, unless otherwise required by law or court order,
29 fails to apply any rent proceeds from the dwellings to the mortgage as the
30 payments come due, regardless of whether the licensee is obligated on
31 the loan; or

32 (C) the licensee fails to notify, at the time of rental, any person rent-
33 ing any such dwelling of the extent and nature of the licensee's interest
34 in such dwelling and the probable time until possession will be taken by
35 the mortgage holder or judgment creditor.

36 (26) Commit forgery or, unless authorized to do so by a duly executed
37 power of attorney, sign or initial any contractual agreement on behalf of
38 another person in a real estate transaction.

39 (27) Enter into contracts with persons not licensed by the commission
40 to perform services requiring a license under K.S.A. 58-3034 et seq., and
41 amendments thereto, except as provided by K.S.A. 58-3077, and amend-
42 ments thereto.

43 (28) *Fail to inform both the buyer, at the time an offer is made, and*

1 *the seller, at the time an offer is presented, that the real estate subject to*
2 *sale or lease has direct access only by a private road and not a public*
3 *road.*

4 (b) No salesperson or associate broker shall:

5 (1) Except as provided in paragraph (A) or (B), accept a commission
6 or other valuable consideration from anyone other than the broker by
7 whom the licensee is employed or with whom the licensee is associated
8 as an independent contractor.

9 (A) A salesperson or associate broker may accept a commission or
10 other valuable consideration from a licensee who employs the salesperson
11 or associate broker as a personal assistant provided that: (i) the licensee
12 and the salesperson or associate broker who is employed as a personal
13 assistant are licensed under the supervision of the same broker, and (ii)
14 the supervising broker agrees in writing that the personal assistant may
15 be paid by the licensee.

16 (B) If a salesperson or associate broker has (i) organized as a profes-
17 sional corporation pursuant to K.S.A. 17-2706 et seq., and amendments
18 thereto, (ii) incorporated under the Kansas general corporation code con-
19 tained in K.S.A. 17-6001 et seq., and amendments thereto, (iii) organized
20 under the Kansas limited liability company act contained in K.S.A. 17-
21 7662 et seq., and amendments thereto, or (iv) has organized as a limited
22 liability partnership as defined in K.S.A. 56a-101, and amendments
23 thereto, the commission or other valuable consideration may be paid by
24 the licensee's broker to such professional corporation, corporation, lim-
25 ited liability company or limited liability partnership. This provision shall
26 not alter any other provisions of this act.

27 (2) Fail to place, as soon after receipt as practicable, any deposit
28 money or other funds entrusted to the salesperson or associate broker in
29 the custody of the broker whom the salesperson or associate broker
30 represents.

31 (3) (A) Except as provided by paragraph (B), be employed by or as-
32 sociated with a licensee at any one time other than the supervising broker
33 who employs such salesperson or associate broker or with who the sales-
34 person or associate broker is associated as an independent contractor.

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

41 (4) Except as provided by subsection (b), pay a commission or com-
42 pensation to any person for performing any activity for which a license is
43 required under this act.

- 1 (5) (A) Fail to disclose to such salesperson's or associate broker's su-
2 pervising broker or branch broker that such salesperson or associate bro-
3 ker is performing any activity for which a license is required under K.S.A.
4 58-3036, and amendments thereto; or (B) perform any activity for which
5 a license is required under K.S.A. 58-3036, and amendments thereto,
6 outside the supervision of the supervising broker or branch broker. The
7 provisions of this subsection shall not apply to any activity or person ex-
8 empted from the real estate brokers' and salespersons' license act pur-
9 suant to K.S.A. 58-3037, and amendments thereto.
- 10 (6) *Fail to inform both the buyer, at the time an offer is made, and*
11 *the seller, at the time an offer is presented, that the real estate subject to*
12 *sale or lease has direct access only by a private road and not a public*
13 *road.*
- 14 (c) No broker shall:
- 15 (1) Pay a commission or compensation to any person for performing
16 the services of an associate broker or salesperson unless such person is
17 licensed under this act and employed by or associated with the broker.
- 18 (2) Fail to deliver to the seller in every real estate transaction, at the
19 time the transaction is closed, a complete, detailed closing statement
20 showing all of the receipts and disbursements handled by the broker for
21 the seller, or fail to deliver to the buyer a complete statement showing
22 all money received in the transaction from such buyer and how and for
23 what the same was disbursed, or fail to retain true copies of such state-
24 ments in the broker's files, except that the furnishing of such statements
25 to the seller and buyer by an escrow agent shall relieve the broker's re-
26 sponsibility to the seller and the buyer.
- 27 (3) Fail to properly supervise the activities of an associated or em-
28 ployed salesperson or associate broker.
- 29 (4) Lend the broker's license to a salesperson, or permit a salesperson
30 to operate as a broker.
- 31 (5) Fail to provide to the principal a written report every 30 days,
32 along with a final report, itemizing disbursements made by the broker
33 from advance listing fees.
- 34 (6) *Fail to inform both the buyer, at the time an offer is made, and*
35 *the seller, at the time an offer is presented, that the real estate subject to*
36 *sale or lease has direct access only by a private road and not by a public*
37 *road.*
- 38 (d) (1) If a purchase agreement provides that the earnest money be
39 held by an escrow agent other than a real estate broker, no listing broker
40 shall:
- 41 (A) Fail to deliver the purchase agreement and earnest money de-
42 posit to the escrow agent named in the purchase agreement within five
43 business days after the purchase agreement is signed by all parties unless

1 otherwise specifically provided by written agreement of all parties to the
2 purchase agreement, in which case the broker shall deliver the purchase
3 agreement and earnest money deposit to the escrow agent named in the
4 purchase agreement on the date provided by such written agreement; or

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

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

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

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

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

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

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

34 The commission may adopt rules and regulations to require that such
35 purchase agreement which provides that the earnest money be held by
36 an escrow agent other than a real estate broker include: (1) notification
37 of whether or not the escrow agent named in the purchase agreement
38 maintains a surety bond, and (2) notification that statutes governing the
39 disbursement of earnest money held in trust accounts of real estate bro-
40 kers do not apply to earnest money deposited with the escrow agent
41 named in the purchase agreement.

42 (e) A branch broker shall not be employed by or associated with more
43 than one supervising broker at any one time unless each supervising bro-

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

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

8 Sec. 2. K.S.A. 2007 Supp. 58-3062 is hereby repealed.

9 Sec. 3. This act shall take effect and be in force from and after its
10 publication in the statute book.