

HOUSE BILL No. 2344

By Committee on Commerce and Labor

2-1

9 AN ACT concerning real estate; relating to the real estate recovery re-
10 volving fund; issuance of licenses; trade or business name; fees ;
11 amending K.S.A. 58-3047, 58-3067 and 58-3068 and K.S.A. 2006 Supp.
12 58-3063 and repealing the existing sections.
13

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

15 New Section 1. (a) Each supervising broker who desires to do busi-
16 ness under a trade name or business name other than the supervising
17 broker's own name shall register with and obtain approval from the com-
18 mission for use of the trade name or business name. The use of the trade
19 name or business name may be disapproved by the commission if, in the
20 judgment of the commission, the use of the trade name or business name
21 would be misleading or confusing to the public. The reasons for disap-
22 proval may include the following:

23 (1) The requested trade name or business name or a similar name is
24 currently in use, or has been in use during the past two years, in the same
25 marketing area.

26 (2) Terms are used in the trade name or business name that are mis-
27 leading or confusing.

28 (b) A branch office shall use the same trade name or business name
29 as that used by the primary office.

30 (c) The provisions of this section shall be a part of and supplemental
31 to the real estate brokers' and salespersons' license act.

32 Sec. 2. K.S.A. 58-3047 is hereby amended to read as follows: 58-
33 3047. (a) The commission shall issue a license as broker or salesperson
34 to each applicant who is qualified under and complies with all provisions
35 of this act and rules and regulations adopted hereunder. The form of
36 license shall be prescribed by the commission.

37 (b) A salesperson's or associate broker's license shall be delivered or
38 mailed to the supervising broker or branch broker, if applicable, and shall
39 be kept in the custody and control of such broker until canceled or until
40 the salesperson or associate broker leaves employment by or association
41 with the broker.

42 (c) Immediately upon the termination of a salesperson or associate
43 broker from employment by or association with a broker, the supervising

1 broker or branch broker, if applicable, shall return such salesperson's or
2 associate broker's license to the commission for cancellation. A license
3 canceled but not suspended or revoked may be reinstated at any time
4 during the period for which it was issued upon receipt of the fee for
5 reinstatement prescribed by K.S.A. 58-3063 and amendments thereto and
6 an application therefor. Such application shall be made on a form pro-
7 vided by the commission and shall be signed by the licensee and the
8 licensee's supervising broker or branch broker, if applicable.

9 ~~(d) Except as provided in subsection (c), upon a change in the name~~
10 ~~under which a broker is licensed or a change in the location of a broker's~~
11 ~~office, the broker shall, within 10 days, return to the commission, for~~
12 ~~cancellation and reinstatement under the new name or location of the~~
13 ~~broker, the broker's license, together with the reinstatement fee pre-~~
14 ~~scribed by K.S.A. 58-3063 and amendments thereto.~~

15 ~~—(e) Upon a change in the name under which a supervising broker is~~
16 ~~licensed~~ *broker's name, business name or trade name for the primary*
17 *office* or a change in the location of a supervising broker's office, the
18 supervising broker shall, within 10 days, return to the commission to-
19 gether with the reinstatement fee prescribed by K.S.A. 58-3063 and
20 amendments thereto, for cancellation and reinstatement under the new
21 name or location of the supervising broker: (1) The license of the super-
22 vising broker; (2) the license of any other broker who is associated with
23 the supervising broker and whose license requires reinstatement under
24 the new name or location; and (3) the licenses of all salespersons and
25 associate brokers employed by or associated with the supervising broker.

26 *(e) The supervising broker of the primary office shall be responsible*
27 *for ensuring that the branch broker complies with subsection (f).*

28 ~~(f) Upon a change in the name under which a branch broker is li-~~
29 ~~icensed~~ *a supervising broker's name, business name or trade name for the*
30 *primary office* or a change in the location of a branch broker's office, the
31 branch broker shall, within 10 days, return to the commission, for can-
32 cellation and reinstatement under the new name *for the primary office*
33 *and branch office* or location of the branch ~~broker~~ *office*, the license of
34 the branch broker and the licenses of all salespersons and associate bro-
35 kers assigned to the branch office, together with the reinstatement fee
36 prescribed by K.S.A. 58-3063 and amendments thereto. ~~Upon a change~~
37 ~~in~~

38 *(g) (1) To change* the broker designated as the branch broker or super-
39 vising broker of an office, the supervising broker shall, within 10 days,
40 *notify the commission on a form approved by the commission. Except as*
41 *provided in paragraphs (2), (3) or (4), the supervising broker shall return*
42 *to the commission, for cancellation and reinstatement, the licenses of the*
43 *brokers who are affected by the change* ~~current broker and new broker,~~

1 together with the reinstatement fee prescribed by K.S.A. 58-3063 and
2 amendments thereto.

3 ~~(f) When any salesperson or associate broker is discharged for a vi-~~
4 ~~olation of any of the provisions of this act, a certified written statement~~
5 ~~of the facts with reference thereto shall be filed forthwith with the com-~~
6 ~~mission by the supervising broker.~~

7 (2) *The license of a broker is not required to be returned to the com-*
8 *mission for cancellation and reinstatement if the broker is:*

9 (A) *An associate broker in the primary office and will function as the*
10 *supervising broker; or*

11 (B) *an associate broker in the branch office and will function as the*
12 *branch broker.*

13 (3) *The license of a supervising broker is not required to be returned*
14 *to the commission for cancellation and reinstatement if the broker will*
15 *continue to be associated or employed by the primary office as an associate*
16 *broker.*

17 (4) *The license of a branch broker is not required to be returned to*
18 *the commission for cancellation and reinstatement if the broker will con-*
19 *tinue to be associated or employed by the branch office as an associate*
20 *broker.*

21 (h) *If a salesperson's or associate broker's employment or association*
22 *with a supervising broker is terminated by the supervising broker for*
23 *violation of this act or rules and regulations adopted hereunder, or the*
24 *brokerage relationships in real estate transactions act or rules and regu-*
25 *lations adopted thereunder, the supervising broker shall submit a written*
26 *statement to the commission, within 10 days, setting forth the alleged facts*
27 *that were involved.*

28 (i) *If a salesperson's or associate broker's employment or association*
29 *with a branch broker is terminated by the branch broker for violation of*
30 *this act or rules and regulations adopted hereunder, or the brokerage*
31 *relationships in real estate transactions act or rules and regulations*
32 *adopted thereunder, the branch broker shall submit a written statement*
33 *to the commission, within 10 days, setting forth the alleged facts that were*
34 *involved.*

35 (j) *When a termination occurs pursuant to subsections (h) or (i) and*
36 *a real estate transaction is involved, the duty to report shall apply whether*
37 *the salesperson or associate broker acted as an agent, transaction broker*
38 *or as a principal in the transaction.*

39 Sec. 3. K.S.A. 2006 Supp. 58-3063 is hereby amended to read as
40 follows: 58-3063. (a) The commission shall adopt rules and regulations
41 fixing the amounts of the fees provided for by this act, subject to the
42 following:

43 (1) For any examination required for licensure, a fee in an amount

- 1 equal to the actual cost of the examination and the administration thereof.
- 2 (2) For submission of an application for an original salesperson's li-
3 cense, an amount not exceeding \$25.
- 4 (3) For submission of an application for an original broker's license,
5 an amount not exceeding \$50.
- 6 (4) For an original salesperson's license, a prorated fee based on a
7 two-year amount not exceeding \$100.
- 8 (5) For an original broker's license, a prorated fee based on a two-
9 year amount not exceeding \$150.
- 10 (6) For renewal of a salesperson's license, a fee based on a two-year
11 amount not exceeding \$100.
- 12 (7) For renewal of a broker's license, a fee based on a two-year
13 amount not exceeding \$150.
- 14 (8) For reinstatement of a license which has been deactivated or
15 which has been canceled pursuant to subsection ~~(d)~~ (c) of K.S.A. 58-3047
16 and amendments thereto, or by reason of termination of a salesperson,
17 an amount not exceeding \$15.
- 18 (9) For reinstatement of all licenses canceled pursuant to subsection
19 ~~(e)~~ (f) of K.S.A. 58-3047 and amendments thereto, an amount not ex-
20 ceeding \$7.50 for each license canceled.
- 21 (10) For issuance of a duplicate license, an amount not exceeding
22 \$10.
- 23 (11) For certification of licensure to another jurisdiction, an amount
24 not exceeding \$10.
- 25 (12) For approval of a course of instruction submitted by a course
26 provider pursuant to K.S.A. 58-3046a and amendments thereto, an
27 amount not exceeding \$75.
- 28 (13) For renewal of an approved course of instruction pursuant to
29 K.S.A. 58-3046a and amendments thereto, an amount not exceeding \$15.
- 30 (14) For approval of a course of instruction submitted by any licensee
31 for credit toward the 12 hours of additional instruction required by K.S.A.
32 58-3046a and amendments thereto, an amount not less than \$10 nor more
33 than \$20, as determined by the commission.
- 34 (15) For a temporary salesperson's license, an amount not exceeding
35 \$25.
- 36 (16) For each branch office opened or established after July 1, 2006,
37 an amount not exceeding \$100.
- 38 (17) For each primary office of a company created or established by
39 a supervising broker after July 1, 2006, an amount not exceeding \$100.
- 40 (18) For certification of a licensee's education history under K.S.A.
41 58-3046a, and amendments thereto, an amount not exceeding \$25.
- 42 (19) For certification of licensure of a professional corporation, an
43 amount not exceeding \$25.

1 (20) For each additional primary or branch office at which a sales-
2 person or an associate, supervising or branch broker is associated or em-
3 ployed, if such person is associated or employed by more than one pri-
4 mary or branch office, an amount not exceeding \$50, to be paid by such
5 salesperson or broker.

6 (b) For each prorated fee, the commission shall establish a monthly
7 amount, rounded off to the nearest dollar, and shall compute the fee from
8 the last calendar day of the month in which the license is issued to the
9 expiration date of the license.

10 (c) Subject to the limitations of this section, the commission shall fix
11 the fees provided for by this section in the amounts necessary to admin-
12 ister and enforce this act.

13 (d) The fees provided for by this section shall be applicable regardless
14 of the type of license.

15 Sec. 4. K.S.A. 58-3067 is hereby amended to read as follows: 58-
16 3067. *Except as provided in subsection (d) of K.S.A. 58-3068, and amend-*
17 *ments thereto*, payments from the real estate recovery revolving fund
18 under the provisions of this act shall be subject to the following conditions
19 and limitations:

20 (a) Payments shall be made only pursuant to an order of a court of
21 competent jurisdiction, as provided in K.S.A. 58-3071 and amendments
22 thereto, and in the manner prescribed by this act.

23 (b) Payments for claims arising out of the same transaction shall be
24 limited in the aggregate to \$15,000, irrespective of the number of claim-
25 ants or parcels of real estate involved in the transaction.

26 (c) Payments for claims based upon judgments against any one li-
27 censed broker or salesperson shall not exceed in the aggregate \$30,000
28 within any calendar year, but in no event shall payments for claims based
29 upon judgments against any one licensed broker or salesperson exceed in
30 the aggregate \$50,000.

31 (d) If, at any time, the moneys in the real estate recovery revolving
32 fund are insufficient to satisfy any valid claim, or portion thereof, the
33 director of the commission shall satisfy such unpaid claim or portion
34 thereof, as soon as a sufficient amount of money has been credited to the
35 fund as provided in subsection (b) of K.S.A. 58-3066 and amendments
36 thereto. If there is more than one such claim outstanding, such claims
37 shall be paid in the order that they were made. Any such unsatisfied claim,
38 or portion thereof, shall accrue interest at the rate of 4% per annum.

39 Sec. 5. K.S.A. 58-3068 is hereby amended to read as follows: 58-
40 3068. (a) *Except as provided in subsection (d)*, moneys in the real estate
41 recovery revolving fund shall be used in the manner provided by this act
42 to reimburse persons who suffer monetary damages by reason of any of
43 the following acts committed in connection with any transaction involving

1 the sale of real estate in this state by any broker or salesperson who was
2 licensed under the laws of this state at the time the act was committed
3 or by any unlicensed employee of such broker or salesperson:

4 (1) Violation of any of the following provisions of this act:

5 (A) K.S.A. 58-3061 and amendments thereto; or

6 (B) subsection (a)(2), (3), (14), (19) ~~or~~, (20) *or* (26) or subsection
7 (b)(2) of K.S.A. 58-3062 and amendments thereto; or

8 (2) violation of any provision of the brokerage relationships in real
9 estate transactions act; or

10 (3) obtaining money or property by any act which would constitute
11 any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, ~~21-3706~~, 21-
12 3707, 21-3710, 21-3711 or 21-3712, and amendments thereto.

13 (b) Any person may seek recovery from the real estate recovery re-
14 volving fund under the following conditions:

15 (1) Such person has received final judgment in a court of competent
16 jurisdiction of this state in any action wherein the cause of action was
17 based on any of the acts described in subsection (a);

18 (2) the claim is made within two years after the date that final judg-
19 ment is entered;

20 (3) such person has caused to be issued a writ of execution upon such
21 judgment, and the officer executing the same has made a return showing
22 that no personal or real property of the judgment debtor liable to be
23 levied upon in satisfaction of the judgment could be found, or that the
24 amount realized on the sale of the judgment debtor's property pursuant
25 to such execution was insufficient to satisfy the judgment;

26 (4) such person has made all reasonable searches and inquiries to
27 ascertain whether the judgment debtor is possessed of real or personal
28 property or other assets, subject to being sold or applied in satisfaction
29 of the judgment, and by such search such person has discovered no such
30 property or assets, or that such person has discovered such property and
31 assets and that such person has taken all necessary action and proceedings
32 for the application thereof to the judgment and that the amount thereby
33 realized was insufficient to satisfy the judgment;

34 (5) any amounts recovered by such person from the judgment debtor,
35 or from any other source, has been applied to the damages awarded by
36 the court; and

37 (6) such person is not a person who is precluded by subsection (c)
38 from making a claim for recovery.

39 (c) A person shall not be qualified to make a claim for recovery from
40 the real estate recovery revolving fund, if:

41 (1) The person is the spouse of the judgment debtor or a personal
42 representative of such spouse;

43 (2) the person acted as principal or agent in the real estate transaction

1 which is the subject of the claim and is a licensed broker or salesperson
2 or is a partnership, association, limited liability company or corporation
3 whose partners, members, officers and employees are licensed as pro-
4 vided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or

5 (3) such person's claim is based upon a real estate transaction in
6 which the licensed broker or salesperson was acting on the broker's or
7 salesperson's own behalf with respect to property owned or controlled by
8 such broker or salesperson.

9 (d) *At any time that the balance remaining in the real estate recovery*
10 *revolving fund is greater than \$200,000, any amount over \$200,000 may*
11 *be used by the commission for education projects that benefit members of*
12 *the public or improve the qualifications and training of brokers and sa-*
13 *lespersons.*

14 Sec. 6. K.S.A. 58-3047, 58-3067 and 58-3068 and K.S.A. 2006 Supp.
15 58-3063 are hereby repealed.

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