

HOUSE BILL No. 2598

By Committee on Commerce, Labor and Economic Development

Requested by Mark Tomb on behalf of Kansas Association of Realtors

1-25

1 AN ACT concerning real estate; relating to brokers and salespersons and
2 real estate transactions; authorizing the Kansas real estate commission
3 to issue cease and desist orders; prohibiting dealing in assignable
4 contracts for the purchase or sale of or options on real estate or
5 improvements thereon for certain residential housing; providing that
6 certain violations thereof are subject to penalties and remedies under
7 the Kansas consumer protection act; amending K.S.A. 58-3065 and
8 K.S.A. 2023 Supp. 58-3062 and repealing the existing sections.
9

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

11 Section 1. K.S.A. 2023 Supp. 58-3062 is hereby amended to read as
12 follows: 58-3062. (a) No licensee, whether acting as an agent, transaction
13 broker or a principal, shall:

14 (1) Fail to account for and remit any money which comes into the
15 licensee's possession and which belongs to others.

16 (2) Misappropriate moneys required to be deposited in a trust account
17 pursuant to K.S.A. 58-3061, and amendments thereto, convert such
18 moneys to the licensee's personal use or commingle the money or other
19 property of the licensee's principals with the licensee's own money or
20 property, except that nothing herein shall prohibit a broker from having
21 funds in an amount not to exceed \$100 in the broker's trust account to pay
22 expenses for the use and maintenance of such account.

23 (3) Accept, give or charge any rebate or undisclosed commission.

24 (4) Pay a referral fee to a person who is properly licensed as a broker
25 or salesperson in Kansas or another jurisdiction or who holds a corporate
26 real estate license in another jurisdiction if the licensee knows that the
27 payment of the referral fee will result in the payment of a rebate by the
28 Kansas or out-of-state licensee.

29 (5) Represent or attempt to represent a broker without the broker's
30 express knowledge and consent.

31 (6) Guarantee or authorize any person to guarantee future profits that
32 may result from the resale of real property.

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

35 (8) Offer real estate for sale or lease without the knowledge and

1 consent of the owner or the owner's authorized agent or on terms other
2 than those authorized by the owner or the owner's authorized agent.

3 (9) Induce any party to break any contract of sale or lease.

4 (10) Pay a commission or compensation to any person, not licensed
5 under this act, for performing any activity for which a license is required
6 under this act.

7 (11) Fail to see that financial obligations and commitments between
8 the parties to an agreement to sell, exchange or lease real estate are in
9 writing, expressing the exact agreement of the parties or to provide, within
10 a reasonable time, copies thereof to all parties involved.

11 (12) Procure a signature to a purchase contract which has no definite
12 purchase price, method of payment, description of property or method of
13 determining the closing date.

14 (13) Engage in fraud or make any substantial misrepresentation.

15 (14) Represent to any lender, guaranteeing agency or any other
16 interested party, either verbally or through the preparation of false
17 documents, an amount in excess of the true and actual sale price of the real
18 estate or terms differing from those actually agreed upon.

19 (15) Fail to make known to any purchaser or lessee any interest the
20 licensee has in the real estate the licensee is selling or leasing or to make
21 known to any seller or lessor any interest the licensee will have in the real
22 estate the licensee is purchasing or leasing.

23 (16) Fail to inform both the buyer, at the time an offer is made, and
24 the seller, at the time an offer is presented, that certain closing costs must
25 be paid and the approximate amount of such costs.

26 (17) Fail without just cause to surrender any document or instrument
27 to the rightful owner.

28 (18) Accept anything other than cash as earnest money unless that
29 fact is communicated to the owner prior to the owner's acceptance of the
30 offer to purchase, and such fact is shown in the purchase agreement.

31 (19) Fail to deposit any check or cash received as an earnest money
32 deposit or as a deposit on the purchase of a lot within five business days
33 after the purchase agreement or lot reservation agreement is signed by all
34 parties, unless otherwise specifically provided by written agreement of all
35 parties to the purchase agreement or lot reservation agreement, in which
36 case the licensee shall deposit the check or cash received on the date
37 provided by such written agreement.

38 (20) Fail to respond in a timely manner to any request from the
39 commission or the commission's designee for documents or information
40 that concerns directly or indirectly any real estate transaction or the
41 licensee's real estate business.

42 (21) Refuse to appear or testify under oath at any hearing held by the
43 commission.

1 (22) Demonstrate incompetency to act as a broker, associate broker or
2 salesperson.

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

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

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

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

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

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

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

42 (b) No salesperson or associate broker shall:

43 (1) Except as provided in subparagraph (A) or (B), accept a

1 commission or other valuable consideration from anyone other than the
2 broker by whom the licensee is employed or with whom the licensee is
3 associated as an independent contractor.

4 (A) A salesperson or associate broker may accept a commission or
5 other valuable consideration from a licensee who employs the salesperson
6 or associate broker as a personal assistant provided that: (i) The licensee
7 and the salesperson or associate broker who is employed as a personal
8 assistant are licensed under the supervision of the same broker; and (ii) the
9 supervising broker agrees in writing that the personal assistant may be paid
10 by the licensee.

11 (B) If a salesperson or associate broker has organized as an
12 association, corporation, limited liability company, limited liability
13 partnership, partnership or professional corporation, the commission or
14 other valuable consideration may be paid by the licensee's broker to such
15 association, corporation, limited liability company, limited liability
16 partnership, partnership or professional corporation. This provision shall
17 not alter any other provisions of this act.

18 (2) Fail to place, as soon after receipt as practicable, any deposit
19 money or other funds entrusted to the salesperson or associate broker in
20 the custody of the broker whom the salesperson or associate broker
21 represents.

22 (3) (A) Except as provided by subparagraph (B), be employed by or
23 associated with a licensee at any one time other than the supervising
24 broker who employs such salesperson or associate broker or with who the
25 salesperson or associate broker is associated as an independent contractor.

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

32 (4) Except as provided by subsection (b), pay a commission or
33 compensation to any person for performing any activity for which a
34 license is required under this act.

35 (5) (A) Fail to disclose to such salesperson's or associate broker's
36 supervising broker or branch broker that such salesperson or associate
37 broker is performing any activity for which a license is required under
38 K.S.A. 58-3036, and amendments thereto; or (B) perform any activity for
39 which a license is required under K.S.A. 58-3036, and amendments
40 thereto, outside the supervision of the supervising broker or branch broker.
41 The provisions of this subsection shall not apply to any activity or person
42 exempted from the real estate brokers' and salespersons' license act
43 pursuant to K.S.A. 58-3037, and amendments thereto.

1 (6) Fail to submit to the supervising broker or branch broker, within
2 10 business days, any document that must be maintained in the supervising
3 broker's or branch broker's business records for each real estate
4 transaction. The ten-day period shall commence when the document is
5 executed by the client or customer or, if a signature is not required or is not
6 obtained, upon presentation of a document to the client or customer.

7 (c) No broker shall:

8 (1) Pay a commission or compensation to any person for performing
9 the services of an associate broker or salesperson unless such person is
10 licensed under this act and employed by or associated with the broker.

11 (2) Fail to deliver to the seller in every real estate transaction, at the
12 time the transaction is closed, a complete, detailed closing statement
13 showing all of the receipts and disbursements handled by the broker for
14 the seller, or fail to deliver to the buyer a complete statement showing all
15 money received in the transaction from such buyer and how and for what
16 the same was disbursed, or fail to retain true copies of such statements in
17 the broker's files, except that the furnishing of such statements to the seller
18 and buyer by an escrow agent shall relieve the broker's responsibility to
19 the seller and the buyer.

20 (3) Fail to properly supervise the activities of an associated or
21 employed salesperson or associate broker.

22 (4) Lend the broker's license to a salesperson, or permit a salesperson
23 to operate as a broker.

24 (5) Fail to provide to the principal a written report every 30 days,
25 along with a final report, itemizing disbursements made by the broker
26 from advance listing fees.

27 (d) (1) If a purchase agreement provides that the earnest money be
28 held by an escrow agent other than a real estate broker, no listing broker
29 shall:

30 (A) Fail to deliver the purchase agreement and earnest money deposit
31 to the escrow agent named in the purchase agreement within five business
32 days after the purchase agreement is signed by all parties unless otherwise
33 specifically provided by written agreement of all parties to the purchase
34 agreement, in which case the broker shall deliver the purchase agreement
35 and earnest money deposit to the escrow agent named in the purchase
36 agreement on the date provided by such written agreement; or

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

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

43 (A) Fail to deliver the purchase agreement and earnest money deposit

1 to the escrow agent named in the purchase agreement within five business
2 days after the purchase agreement is signed by all parties unless otherwise
3 specifically provided by written agreement of all parties to the purchase
4 agreement, in which case the broker shall deliver the purchase agreement
5 and earnest money deposit to the escrow agent named in the purchase
6 agreement on the date provided by such written agreement; or

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

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

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

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

23 The commission may adopt rules and regulations to require that such
24 purchase agreement which provides that the earnest money be held by an
25 escrow agent other than a real estate broker include: (1) Notification of
26 whether or not the escrow agent named in the purchase agreement
27 maintains a surety bond; and (2) notification that statutes governing the
28 disbursement of earnest money held in trust accounts of real estate brokers
29 do not apply to earnest money deposited with the escrow agent named in
30 the purchase agreement.

31 (e) No licensee shall:

32 (1) Threaten to engage in or engage in physical abuse or engage in
33 harassment towards:

34 (A) A client or customer or a former client or customer;

35 (B) another licensee;

36 (C) commission members or staff;

37 (D) staff of the office of administrative hearings;

38 (E) staff from any real estate trade association or multiple listing
39 service; or

40 (F) any person from another business or industry whose services are
41 requested or required as part of a real estate transaction;

42 (2) threaten to file or file a lien on residential property;

43 (3) conduct real estate business with impaired judgment or objectivity

- 1 as the result of mental illness or addiction to alcohol or controlled
2 substances;
- 3 (4) be finally adjudicated by a federal or state agency and found to be
4 guilty of a violation of a federal or state law regulating the real estate
5 industry or regulating a closely related industry whose licensees or
6 members are commonly involved in real estate matters;
- 7 (5) be finally adjudicated by a federal or state agency and found to be
8 guilty of a violation of a federal or state law prohibiting discrimination
9 against any client or customer on the basis of color, race, gender, religion,
10 national origin, age, disability or familial status; or
- 11 (6) intentionally misappropriate or misuse any personal property or
12 real property of a client or customer.
- 13 (f) No applicant or licensee shall:
- 14 (1) Engage in fraud or make any substantial misrepresentation to the
15 commission;
- 16 (2) commit forgery in any representation or document submitted to
17 the commission;
- 18 (3) sign or initial, on behalf of another person, any application, for or
19 accompanying document submitted to the commission unless authorized to
20 do so by a duly executed power of attorney;
- 21 (4) interfere with any investigation, administrative proceeding, quasi-
22 judicial proceeding or any other disciplinary matter of the commission,
23 including, but not limited to:
- 24 (A) Threatening to engage in or engaging in physical abuse or
25 harassment toward any witness, complainant or individual listed in
26 subsection (e)(1);
- 27 (B) destroying evidence;
- 28 (C) refusing or failing to appear or testify under oath at any hearing;
- 29 or
- 30 (D) refusing or failing to respond in a timely manner to any request
31 from the commission or the commission's designee for documents or
32 information that concerns directly or indirectly any real estate transaction
33 or the licensee's real estate business;
- 34 (5) fail without just cause to surrender any document or instrument to
35 the rightful owner; or
- 36 (6) demonstrate incompetency to act as a broker, associate broker or
37 salesperson in dealings with the commission, including the repeated failure
38 to:
- 39 (A) Submit required forms to the commission in a timely and
40 complete manner;
- 41 (B) make available to the commission all records relating to the real
42 estate business; or
- 43 (C) comply with the provisions of this subsection.

1 (g) A branch broker shall not be employed by or associated with more
2 than one supervising broker at any one time unless each supervising broker
3 who employs or associates with the branch broker consents to such
4 multiple employment or association. Such consent shall be on a form
5 provided by the commission and shall not be effective until a signed copy
6 of the completed form has been filed with the commission.

7 (h) *(1) No person, association, corporation, limited liability*
8 *company, limited liability partnership, partnership, professional*
9 *corporation or trust shall buy, sell, offer to buy or sell, market for sale,*
10 *exchange or otherwise deal in assignable contracts for the purchase or*
11 *sale of or options on real estate or improvements thereon for single family*
12 *residential housing and multifamily residential housing of four units or*
13 *less.*

14 *(2) Any violation of paragraph (1) constitutes a deceptive act or*
15 *practice under the Kansas consumer protection act pursuant to K.S.A.*
16 *2023 Supp. 50-626, and amendments thereto, and shall be subject to a*
17 *civil penalty as provided in K.S.A. 50-636(a), and amendments thereto,*
18 *and any other remedy or penalty as provided by the Kansas consumer*
19 *protection act. Each unlawful transaction shall constitute a separate*
20 *violation.*

21 (i) Nothing in this section shall be construed to grant any person a
22 private right of action for damages, *except a violation of subsection (h),* or
23 to eliminate any right of action pursuant to other statutes or common law.

24 Sec. 2. K.S.A. 58-3065 is hereby amended to read as follows: 58-
25 3065. (a) Willful violation of any provision of this act or the brokerage
26 relationships in real estate transactions act is a misdemeanor punishable by
27 imprisonment for not more than 12 months or a fine of not less than \$100
28 or more than \$1,000, or both, for the first offense and imprisonment for not
29 more than 12 months or a fine of not less than \$1,000 or more than
30 \$10,000, or both, for a second or subsequent offense.

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

36 (c) *If the commission determines that a person has practiced without*
37 *a valid broker's or salesperson's license issued by the commission, in*
38 *addition to any other penalties imposed by law, the commission, in*
39 *accordance with the Kansas administrative procedure act, may issue a*
40 *cease and desist order against such unlicensed person or associated*
41 *association, corporation, limited liability company, limited liability*
42 *partnership, partnership, professional corporation or trust.*

43 Sec. 3. K.S.A. 58-3065 and K.S.A. 2023 Supp. 58-3062 are hereby

1 repealed.

2 Sec. 4. This act shall take effect and be in force from and after its
3 publication in the statute book.