

SENATE BILL No. 382

By Committee on Federal and State Affairs

1-24

1 AN ACT concerning real estate brokers and salespersons; application of
2 licensure provisions to trusts; authorizing the Kansas real estate
3 commission to issue cease and desist orders; amending K.S.A. 58-3036
4 and 58-3065 and K.S.A. 2021 Supp. 58-3035, 58-3037 and 58-3042
5 and repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2021 Supp. 58-3035 is hereby amended to read as
9 follows: 58-3035. As used in this act, unless the context otherwise
10 requires:

11 (a) "Act" means the real estate brokers' and salespersons' license act.

12 (b) "Advance listing fee" means any fee charged for services related
13 to promoting the sale or lease of real estate and paid in advance of the
14 rendering of such services, including any fees charged for listing,
15 advertising or offering for sale or lease any real estate, but excluding any
16 fees paid solely for advertisement or for listing in a publication issued for
17 the sole purpose of promoting the sale or lease of real estate wherein
18 inquiries are directed to the owner of the real estate or to real estate
19 brokers and not to unlicensed persons who publish the listing.

20 (c) "Associate broker" means ~~an individual who has a broker's license~~
21 ~~and a broker licensee~~ who is employed by another broker or is associated
22 with another broker as an independent contractor and participates in any
23 activity described in subsection (f).

24 (d) "Branch broker" means ~~an individual who has a broker's license~~
25 ~~and a broker licensee~~ who has been designated to supervise a branch office
26 and the activities of salespersons and associate brokers assigned to the
27 branch office.

28 (e) "Branch office" means a place of business other than the principal
29 place of business of a broker.

30 (f) "Broker" means ~~an individual~~ *a licensee*, other than a salesperson,
31 who advertises or represents that such individual engages in the business
32 of buying, selling, exchanging or leasing real estate or who, for
33 compensation, engages in any of the following activities as an employee
34 of, or on behalf of, the owner, purchaser, lessor or lessee of real estate:

35 (1) Sells, exchanges, purchases or leases real estate.

36 (2) Offers to sell, exchange, purchase or lease real estate.

1 (3) Negotiates or offers, attempts or agrees to negotiate the sale,
2 exchange, purchase or leasing of real estate.

3 (4) Lists or offers, attempts or agrees to list real estate for sale, lease
4 or exchange.

5 (5) Auctions or offers, attempts or agrees to auction real estate or
6 assists an auctioneer by procuring bids at a real estate auction.

7 (6) Buys, sells, offers to buy or sell ~~or otherwise deals in options on~~
8 ~~real estate, markets for sale, exchanges or otherwise deals in assignable~~
9 *contracts for the purchase or sale of, or options on real estate or*
10 *improvements thereon.*

11 (7) Assists or directs in the procuring of prospects calculated to result
12 in the sale, exchange or lease of real estate.

13 (8) Assists in or directs the negotiation of any transaction calculated
14 or intended to result in the sale, exchange or lease of real estate.

15 (9) Engages in the business of charging an advance listing fee.

16 (10) Provides lists of real estate as being available for sale or lease,
17 other than lists provided for the sole purpose of promoting the sale or lease
18 of real estate wherein inquiries are directed to the owner of the real estate
19 or to real estate brokers and not to unlicensed persons who publish the list.

20 (g) "Commission" means the Kansas real estate commission.

21 (h) "Exchange" means a type of sale or purchase of real estate.

22 (i) "Interest" means:

23 (1) Having any type of ownership in the real estate involved in the
24 transaction; or

25 (2) an officer, member, partner or shareholder of any entity that owns
26 such real estate excluding an ownership interest of less than 5% in a
27 publicly traded entity.

28 (j) "Lease" means rent or lease for nonresidential use.

29 (k) "Licensee" means any person licensed under this act as a broker
30 or salesperson.

31 (l) (1) "Office" means any permanent location where one or more
32 licensees regularly conduct real estate business as described in subsection
33 (f) or a location that is held out as an office.

34 (2) "Office" does not mean a model home office in a new home
35 subdivision if the real estate transaction files are maintained in the primary
36 office or branch office.

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

39 (n) "Real estate" means any interest or estate in land, including any
40 leasehold or condominium, whether corporeal, incorporeal, freehold or
41 nonfreehold and whether the real estate is situated in this state or
42 elsewhere, but does not include oil and gas leases, royalties and other
43 mineral interests, and rights of way and easements acquired for the

1 purpose of constructing roadways, pipelines, conduits, wires and facilities
2 related to these types of improvement projects for private and public
3 utilities, municipalities, federal and state governments, or any political
4 subdivision. For purpose of this act, any rights of redemption are
5 considered to be an interest in real estate.

6 (o) "Salesperson" means ~~an individual~~ *a licensee*, other than an
7 associate broker, who is employed by a broker or is associated with a
8 broker as an independent contractor and participates in any activity
9 described in subsection (f).

10 (p) "Supervising broker" means ~~an individual~~ *a broker licensee*, other
11 than a branch broker, ~~who has a broker's license and~~ who has been
12 designated as the broker who is responsible for the supervision of the
13 primary office of a broker and the activities of salespersons and associate
14 brokers who are assigned to such office and all of whom are licensed
15 pursuant to ~~subsection (b) of~~ K.S.A. 58-3042(b), and amendments thereto.
16 "Supervising broker" also means a broker who operates a sole
17 proprietorship and with whom associate brokers or salespersons are
18 affiliated as employees or independent contractors.

19 Sec. 2. K.S.A. 58-3036 is hereby amended to read as follows: 58-
20 3036. Unless exempt from this act under K.S.A. 58-3037, and amendments
21 thereto, no person *acting individually or as an employee, owner, officer or*
22 *member of an association, corporation, limited liability company, limited*
23 *liability partnership, partnership, professional corporation or trust* shall:

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

28 (b) Directly or indirectly act ~~or represent that such person acts~~ as a
29 broker, associate broker or salesperson within this state unless ~~such person~~
30 ~~is~~ licensed as ~~such~~ a broker, associate broker or salesperson in accordance
31 with this act.

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

36 Sec. 3. K.S.A. 2021 Supp. 58-3037 is hereby amended to read as
37 follows: 58-3037. The provisions of this act shall not apply to:

38 (a) Any person, other than a person licensed under this act, who
39 directly performs any of the acts within the scope of this act with reference
40 to such person's own ~~property~~ *real estate, except such person shall not*
41 *buy, sell, offer to buy or sell, market for sale, exchange or otherwise deal*
42 *in assignable contracts for the purchase or sale of or options on real*
43 *estate or improvements thereon.*

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

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

8 (d) Any person acting as receiver, trustee in bankruptcy,
9 administrator, executor or guardian, or while acting under a court order or
10 under the authority of a will or a trust instrument or as a witness in any
11 judicial proceeding or other proceeding conducted by the state or any
12 governmental subdivision or agency.

13 (e) Any officer or employee of the federal or state government, or any
14 political subdivision or agency thereof, when performing the official duties
15 of the officer or employee.

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

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

20 (h) Railroads or other public utilities regulated by the state of Kansas,
21 or their subsidiaries, affiliated corporations, officers or regular employees,
22 unless performance of any of the acts described in ~~subsection (f) of K.S.A.~~
23 ~~58-3035(f)~~, and amendments thereto, is in connection with the sale,
24 purchase, lease or other disposition of real estate or investment therein
25 unrelated to the principal business activity of such railroad or other public
26 utility or affiliated or subsidiary corporation thereof.

27 (i) The sale or lease of real estate by an employee of a person,
28 association, corporation, limited liability company, limited liability
29 partnership, partnership ~~or~~, professional corporation ~~which~~ *or trust that*
30 owns or leases such real estate, if such employee owns 5% or greater
31 interest in such association, limited liability company, limited liability
32 partnership, partnership ~~or~~, professional corporation *or trust* or of the stock
33 of such corporation, *except such employee shall not buy, sell, offer to buy*
34 *or sell, market for sale, exchange or otherwise deal in assignable*
35 *contracts for the purchase or sale of or options on real estate or*
36 *improvements thereon.*

37 (j) The sale or lease of new homes by a person, association,
38 corporation, limited liability company, limited liability partnership ~~or~~,
39 professional corporation *or trust* who constructed such homes, but the
40 provisions of this act shall apply to the sale or lease of any such homes by
41 any employee of such person, association, corporation, limited liability
42 company, limited liability partnership, partnership ~~or~~, professional
43 corporation *or trust* if such employee owns less than 5% interest in such

1 association, limited liability company, limited liability partnership,
2 partnership~~or~~, professional corporation *or trust* or by any employee of a
3 corporation who owns less than 5% of the stock of such corporation.

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

5 Sec. 4. K.S.A. 2021 Supp. 58-3042 is hereby amended to read as
6 follows: 58-3042. (a) No real estate license shall give authority to any
7 person other than the person to whom the license is issued.

8 (b) No license shall be granted to an association, corporation, limited
9 liability company, limited liability partnership, partnership~~or~~, professional
10 corporation *or trust*. Each person who is an owner, officer or member of an
11 association, corporation, limited liability company, limited liability
12 partnership, partnership~~or~~, professional corporation *or trust* and who
13 performs any act described in ~~subsection (f)~~ of K.S.A. 58-3035(f), and
14 amendments thereto, and each person who is employed by or associated
15 with an association, corporation, limited liability company, limited liability
16 partnership, partnership~~or~~, professional corporation *or trust* and who
17 performs any act described in ~~subsection (f)~~ of K.S.A. 58-3035(f), and
18 amendments thereto, shall be a licensed broker or licensed salesperson.

19 (c) If any person who is an owner, officer or member of an
20 association, corporation, limited liability company, limited liability
21 partnership~~or~~, professional corporation *or trust* performs any act described
22 in ~~subsection (f)~~ of K.S.A. 58-3035(f), and amendments thereto, a primary
23 office shall be established and a supervising broker shall be designated
24 pursuant to K.S.A. 58-3060, and amendments thereto, to supervise the
25 office and any employed or associated salespersons or associate brokers
26 and the supervising broker shall obtain approval for the supervising
27 broker's business name or trade name pursuant to K.S.A. 58-3079, and
28 amendments thereto.

29 Sec. 5. K.S.A. 58-3065 is hereby amended to read as follows: 58-
30 3065. (a) Willful violation of any provision of this act or the brokerage
31 relationships in real estate transactions act is a misdemeanor punishable by
32 imprisonment for not more than 12 months or a fine of not less than \$100
33 or more than \$1,000, or both, for the first offense and imprisonment for not
34 more than 12 months or a fine of not less than \$1,000 or more than
35 \$10,000, or both, for a second or subsequent offense.

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

41 (c) *If the commission determines that a person has practiced without*
42 *a valid broker's or salesperson's license issued by the commission, in*
43 *addition to any other penalties imposed by law, the commission, in*

1 *accordance with the Kansas administrative procedure act, may issue a*
2 *cease and desist order against such unlicensed person or associated*
3 *association, corporation, limited liability company, limited liability*
4 *partnership, partnership, professional corporation or trust.*

5 Sec. 6. K.S.A. 58-3036 and 58-3065 and K.S.A. 2021 Supp. 58-3035,
6 58-3037 and 58-3042 are hereby repealed.

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