

As Amended by House Committee

Session of 2022

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; **providing that dealing in**  
4 **assignable contracts for the purchase or sale of, or options on real**  
5 **estate requires licensure; clarifying that attorneys are not subject**  
6 **to licensure requirements under the real estate brokers' and**  
7 **salespersons' license act;** amending K.S.A. 58-3036 and 58-3065 and  
8 K.S.A. 2021 Supp. 58-3035, 58-3037 and 58-3042 and repealing the  
9 existing sections.

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

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

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

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

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

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

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

34 (f) "Broker" means ~~an individual~~ a licensee, other than a salesperson,  
35 who advertises or represents that such individual engages in the business  
36 of buying, selling, exchanging or leasing real estate or who, for

- 1 compensation, engages in any of the following activities as an employee  
2 of, or on behalf of, the owner, purchaser, lessor or lessee of real estate:
- 3 (1) Sells, exchanges, purchases or leases real estate.
  - 4 (2) Offers to sell, exchange, purchase or lease real estate.
  - 5 (3) Negotiates or offers, attempts or agrees to negotiate the sale,  
6 exchange, purchase or leasing of real estate.
  - 7 (4) Lists or offers, attempts or agrees to list real estate for sale, lease  
8 or exchange.
  - 9 (5) Auctions or offers, attempts or agrees to auction real estate or  
10 assists an auctioneer by procuring bids at a real estate auction.
  - 11 (6) Buys, sells, offers to buy or sell ~~or otherwise deals in options on~~  
12 ~~real estate, markets for sale, exchanges or otherwise deals in assignable~~  
13 ~~contracts for the purchase or sale of, or options on real estate or~~  
14 ~~improvements thereon.~~
  - 15 (7) Assists or directs in the procuring of prospects calculated to result  
16 in the sale, exchange or lease of real estate.
  - 17 (8) Assists in or directs the negotiation of any transaction calculated  
18 or intended to result in the sale, exchange or lease of real estate.
  - 19 (9) Engages in the business of charging an advance listing fee.
  - 20 (10) Provides lists of real estate as being available for sale or lease,  
21 other than lists provided for the sole purpose of promoting the sale or lease  
22 of real estate wherein inquiries are directed to the owner of the real estate  
23 or to real estate brokers and not to unlicensed persons who publish the list.
  - 24 (g) "Commission" means the Kansas real estate commission.
  - 25 (h) "Exchange" means a type of sale or purchase of real estate.
  - 26 (i) "Interest" means:
    - 27 (1) Having any type of ownership in the real estate involved in the  
28 transaction; or
    - 29 (2) an officer, member, partner or shareholder of any entity that owns  
30 such real estate excluding an ownership interest of less than 5% in a  
31 publicly traded entity.
  - 32 (j) "Lease" means rent or lease for nonresidential use.
  - 33 (k) "Licensee" means any person licensed under this act as a broker  
34 or salesperson.
  - 35 (l) (1) "Office" means any permanent location where one or more  
36 licensees regularly conduct real estate business as described in subsection  
37 (f) or a location that is held out as an office.
  - 38 (2) "Office" does not mean a model home office in a new home  
39 subdivision if the real estate transaction files are maintained in the primary  
40 office or branch office.
  - 41 (m) "Primary office" means a supervising broker's principal place of  
42 business for each company created or established by the broker.
  - 43 (n) "Real estate" means any interest or estate in land, including any

1 leasehold or condominium, whether corporeal, incorporeal, freehold or  
2 nonfreehold and whether the real estate is situated in this state or  
3 elsewhere, but does not include oil and gas leases, royalties and other  
4 mineral interests, and rights of way and easements acquired for the  
5 purpose of constructing roadways, pipelines, conduits, wires and facilities  
6 related to these types of improvement projects for private and public  
7 utilities, municipalities, federal and state governments, or any political  
8 subdivision. For purpose of this act, any rights of redemption are  
9 considered to be an interest in real estate.

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

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

23 Sec. 2. K.S.A. 58-3036 is hereby amended to read as follows: 58-  
24 3036. Unless exempt from this act under K.S.A. 58-3037, and amendments  
25 thereto, no person *acting individually or as an employee, owner, officer or*  
26 *member of an association, corporation, limited liability company, limited*  
27 *liability partnership, partnership, professional corporation or trust* shall:

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

32 (b) Directly or indirectly act ~~or represent that such person acts~~ as a  
33 broker, associate broker or salesperson within this state unless ~~such person~~  
34 is licensed as ~~such~~ a broker, associate broker or salesperson in accordance  
35 with this act.

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

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

42 (a) Any person, other than a person licensed under this act, who  
43 directly performs any of the acts within the scope of this act with reference

1 to such person's own ~~property~~ *real estate, except such person shall not*  
2 *buy, sell, offer to buy or sell, market for sale, exchange or otherwise deal*  
3 *in assignable contracts for the purchase or sale of or options on real*  
4 *estate or improvements thereon.*

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

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

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

17 (e) Any officer or employee of the federal or state government, or any  
18 political subdivision or agency thereof, when performing the official duties  
19 of the officer or employee.

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

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

24 (h) Railroads or other public utilities regulated by the state of Kansas,  
25 or their subsidiaries, affiliated corporations, officers or regular employees,  
26 unless performance of any of the acts described in ~~subsection (f)~~ of K.S.A.  
27 58-3035(f), and amendments thereto, is in connection with the sale,  
28 purchase, lease or other disposition of real estate or investment therein  
29 unrelated to the principal business activity of such railroad or other public  
30 utility or affiliated or subsidiary corporation thereof.

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

41 (j) The sale or lease of new homes by a person, association,  
42 corporation, limited liability company, limited liability partnership ~~or~~,  
43 professional corporation *or trust* who constructed such homes, but the

1 provisions of this act shall apply to the sale or lease of any such homes by  
2 any employee of such person, association, corporation, limited liability  
3 company, limited liability partnership, partnership—~~or~~, professional  
4 corporation *or trust* if such employee owns less than 5% interest in such  
5 association, limited liability company, limited liability partnership,  
6 partnership—~~or~~, professional corporation *or trust* or by any employee of a  
7 corporation who owns less than 5% of the stock of such corporation.

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

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

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

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

33 Sec. 5. K.S.A. 58-3065 is hereby amended to read as follows: 58-  
34 3065. (a) Willful violation of any provision of this act or the brokerage  
35 relationships in real estate transactions act is a misdemeanor punishable by  
36 imprisonment for not more than 12 months or a fine of not less than \$100  
37 or more than \$1,000, or both, for the first offense and imprisonment for not  
38 more than 12 months or a fine of not less than \$1,000 or more than  
39 \$10,000, or both, for a second or subsequent offense.

40 (b) Nothing in this act or the brokerage relationships in real estate  
41 transactions act shall be construed as requiring the commission or the  
42 director to report minor violations of the acts for criminal prosecution  
43 whenever the commission or the director believes that the public interest

1 will be adequately served by other administrative action.

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

9       Sec. 6. K.S.A. 58-3036 and 58-3065 and K.S.A. 2021 Supp. 58-3035,  
10 58-3037 and 58-3042 are hereby repealed.

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