

Substitute for HOUSE BILL No. 2598

By Committee on Commerce, Labor and Economic Development

2-15

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

10

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

12 New Section 1. (a) Sections 1 through 4, and amendments thereto,
13 shall be known and may be cited as the Kansas contract for deed act.

14 (b) As used in sections 1 through 4, and amendments thereto:

15 (1) "Buyer" means a person who purchases property subject to a
16 contract for deed or any legal successor in interest to the buyer.

17 (2) "Contract for deed" means an executory agreement in which the
18 seller agrees to convey title to real property to the buyer and the buyer
19 agrees to pay the purchase price in five or more subsequent payments
20 exclusive of the down payment, if any, while the seller retains title to the
21 property as security for the buyer's obligation. Option contracts for the
22 purchase of real property are not contracts for deed.

23 (3) "Property" means real property located in this state upon which
24 there is located or will be located a structure designed principally for
25 occupancy of one to four families that is or will be occupied by the buyer
26 as the buyer's principal place of residence.

27 (4) "Seller" means any person who makes a sale of property by means
28 of a contract for deed or any legal successor in interest to the seller.

29 New Sec. 2. Any contract for deed or affidavit of equitable interest
30 may be recorded in the office of the county register of deeds where the
31 property is located by any interested person.

32 New Sec. 3. (a) A seller shall not execute a contract for deed with a
33 buyer if the seller does not hold title to the property. Except as provided
34 further, a seller shall maintain fee simple title to the property free from any
35 mortgage, lien or other encumbrance for the duration of the contract for
36 deed. This subsection shall not apply to a mortgage, lien or encumbrance

1 placed on the property:

2 (1) Due to the conduct of the buyer;

3 (2) with the agreement of the buyer as a condition of a loan obtained
4 to make improvements on the property; or

5 (3) by the seller prior to the execution of the contract for deed if:

6 (A) The seller disclosed the mortgage, lien or encumbrance to the
7 buyer;

8 (B) the seller continues to make timely payments on the outstanding
9 mortgage, lien or other encumbrance;

10 (C) the seller disclosed the contract for deed to the mortgagee,
11 lienholder or other party of interest; and

12 (D) the seller satisfies and obtains a release of the mortgage, lien or
13 other encumbrance not later than the date the buyer makes final payment
14 on the contract for deed unless the buyer assumes the mortgage, lien or
15 other encumbrance as part of the contract for deed.

16 (b) Any violation of this section is a deceptive act or practice under
17 the provisions of the Kansas consumer protection act and shall be subject
18 to any and all of the enforcement provisions of the Kansas consumer
19 protection act.

20 New Sec. 4. (a) A buyer's rights under a contract for deed shall not be
21 forfeited or canceled except as provided in this section, notwithstanding
22 any provision in the contract providing for forfeiture of buyer's rights.
23 Nothing in this section shall be construed to limit the power of the district
24 court to require proceedings in equitable foreclosure.

25 (b) The buyer's rights under a contract for deed shall not be forfeited
26 until the buyer has been notified of the intent to forfeit as provided in
27 subsection (c) and has been given a right to cure the default, and such
28 buyer has failed to do so within the time period allowed. A timely tender of
29 cure shall reinstate the contract for deed.

30 (c) A notice of default and intent to forfeit shall:

31 (1) Reasonably identify the contract and describe the property
32 covered by it;

33 (2) specify the terms and conditions of the contract with which the
34 buyer has not complied; and

35 (3) notify the buyer that the contract will be forfeited unless the buyer
36 performs the terms and conditions within the following periods of time:

37 (A) If the buyer has paid less than 50% of the purchase price, 30 days
38 from completed service of notice; or

39 (B) if the buyer has paid 50% or more of the purchase price, 90 days
40 from completed service of notice.

41 (d) A notice of default and intent to forfeit shall be served on the
42 buyer in person, or by leaving a copy at the buyer's usual place of
43 residence with someone of suitable age and discretion who resides at such

1 place of residence, or by certified mail or priority mail, return receipt
2 requested, addressed to the buyer at the buyer's usual place of residence.

3 (e) Nothing in this section shall be construed to preclude the buyer or
4 the seller from pursuing any other remedy at law or equity.

5 Sec. 5. K.S.A. 2023 Supp. 58-3062 is hereby amended to read as
6 follows: 58-3062. (a) No licensee, whether acting as an agent, transaction
7 broker or a principal, shall:

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

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

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

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

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

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

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

29 (8) Offer real estate for sale or lease without the knowledge and
30 consent of the owner or the owner's authorized agent or on terms other
31 than those authorized by the owner or the owner's authorized agent.

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

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

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

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

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

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

5 (15) Fail to make known to any purchaser or lessee any interest the
6 licensee has in the real estate the licensee is selling or leasing or to make
7 known to any seller or lessor any interest the licensee will have in the real
8 estate the licensee is purchasing or leasing.

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

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

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

17 (19) Fail to deposit any check or cash received as an earnest money
18 deposit or as a deposit on the purchase of a lot within five business days
19 after the purchase agreement or lot reservation agreement is signed by all
20 parties, unless otherwise specifically provided by written agreement of all
21 parties to the purchase agreement or lot reservation agreement, in which
22 case the licensee shall deposit the check or cash received on the date
23 provided by such written agreement.

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

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

30 (22) Demonstrate incompetency to act as a broker, associate broker or
31 salesperson.

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

39 (24) Engage in the purchase of ~~one, two, three~~ *one-family, two-*
40 *family, three-family* or four-family dwellings, including condominiums and
41 cooperatives, or the acquisition of any right, title or interest therein,
42 including any equity or redemption interests, if:

43 (A) (i) At the time of such purchase, the dwellings are subject to a

1 right of redemption pursuant to foreclosure of a mortgage on such
2 dwellings; (ii) the licensee fails to give written notice of the purchase,
3 within 20 days thereafter, to the mortgage holder or judgment creditor who
4 held such mortgage; and (iii) the licensee, unless otherwise required by
5 law or court order, fails to apply any rent proceeds from the dwellings to
6 the judgment lien arising from the foreclosure of such mortgage, as
7 payments become due under the loan, regardless of whether the licensee is
8 obligated to do so;

9 (B) (i) the dwellings are subject to a loan which is secured by a
10 mortgage and which is in default at the time of such purchase or in default
11 within one year after such purchase; (ii) the licensee fails to give written
12 notice of the purchase, within 20 days thereafter, to the mortgage holder;
13 and (iii) the licensee, unless otherwise required by law or court order, fails
14 to apply any rent proceeds from the dwellings to the mortgage as the
15 payments come due, regardless of whether the licensee is obligated on the
16 loan; or

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

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

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

28 (b) No salesperson or associate broker shall:

29 (1) Except as provided in subparagraph (A) or (B), accept a
30 commission or other valuable consideration from anyone other than the
31 broker by whom the licensee is employed or with whom the licensee is
32 associated as an independent contractor.

33 (A) A salesperson or associate broker may accept a commission or
34 other valuable consideration from a licensee who employs the salesperson
35 or associate broker as a personal assistant provided that: (i) The licensee
36 and the salesperson or associate broker who is employed as a personal
37 assistant are licensed under the supervision of the same broker; and (ii) the
38 supervising broker agrees in writing that the personal assistant may be paid
39 by the licensee.

40 (B) If a salesperson or associate broker has organized as an
41 association, corporation, limited liability company, limited liability
42 partnership, partnership or professional corporation, the commission or
43 other valuable consideration may be paid by the licensee's broker to such

1 association, corporation, limited liability company, limited liability
2 partnership, partnership or professional corporation. This provision shall
3 not alter any other provisions of this act.

4 (2) Fail to place, as soon after receipt as practicable, any deposit
5 money or other funds entrusted to the salesperson or associate broker in
6 the custody of the broker whom the salesperson or associate broker
7 represents.

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

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

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

21 (5) (A) Fail to disclose to such salesperson's or associate broker's
22 supervising broker or branch broker that such salesperson or associate
23 broker is performing any activity for which a license is required under
24 K.S.A. 58-3036, and amendments thereto; or (B) perform any activity for
25 which a license is required under K.S.A. 58-3036, and amendments
26 thereto, outside the supervision of the supervising broker or branch broker.
27 The provisions of this subsection shall not apply to any activity or person
28 exempted from the real estate brokers' and salespersons' license act
29 pursuant to K.S.A. 58-3037, and amendments thereto.

30 (6) Fail to submit to the supervising broker or branch broker, within
31 10 business days, any document that must be maintained in the supervising
32 broker's or branch broker's business records for each real estate
33 transaction. The ten-day period shall commence when the document is
34 executed by the client or customer or, if a signature is not required or is not
35 obtained, upon presentation of a document to the client or customer.

36 (c) No broker shall:

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

40 (2) Fail to deliver to the seller in every real estate transaction, at the
41 time the transaction is closed, a complete, detailed closing statement
42 showing all of the receipts and disbursements handled by the broker for
43 the seller, or fail to deliver to the buyer a complete statement showing all

1 money received in the transaction from such buyer and how and for what
2 the same was disbursed, or fail to retain true copies of such statements in
3 the broker's files, except that the furnishing of such statements to the seller
4 and buyer by an escrow agent shall relieve the broker's responsibility to
5 the seller and the buyer.

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

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

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

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

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

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

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

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

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

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

42 (A) Fail to deliver the purchase agreement and earnest money deposit
43 to the escrow agent named in the purchase agreement within five business

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

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

9 The commission may adopt rules and regulations to require that such
10 purchase agreement which provides that the earnest money be held by an
11 escrow agent other than a real estate broker include: (1) Notification of
12 whether or not the escrow agent named in the purchase agreement
13 maintains a surety bond; and (2) notification that statutes governing the
14 disbursement of earnest money held in trust accounts of real estate brokers
15 do not apply to earnest money deposited with the escrow agent named in
16 the purchase agreement.

17 (e) No licensee shall:

18 (1) Threaten to engage in or engage in physical abuse or engage in
19 harassment towards:

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

21 (B) another licensee;

22 (C) commission members or staff;

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

24 (E) staff from any real estate trade association or multiple listing
25 service; or

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

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

29 (3) conduct real estate business with impaired judgment or objectivity
30 as the result of mental illness or addiction to alcohol or controlled
31 substances;

32 (4) be finally adjudicated by a federal or state agency and found to be
33 guilty of a violation of a federal or state law regulating the real estate
34 industry or regulating a closely related industry whose licensees or
35 members are commonly involved in real estate matters;

36 (5) be finally adjudicated by a federal or state agency and found to be
37 guilty of a violation of a federal or state law prohibiting discrimination
38 against any client or customer on the basis of color, race, gender, religion,
39 national origin, age, disability or familial status; or

40 (6) intentionally misappropriate or misuse any personal property or
41 real property of a client or customer.

42 (f) No applicant or licensee shall:

43 (1) Engage in fraud or make any substantial misrepresentation to the

- 1 commission;
- 2 (2) commit forgery in any representation or document submitted to
3 the commission;
- 4 (3) sign or initial, on behalf of another person, any application, for or
5 accompanying document submitted to the commission unless authorized to
6 do so by a duly executed power of attorney;
- 7 (4) interfere with any investigation, administrative proceeding, quasi-
8 judicial proceeding or any other disciplinary matter of the commission,
9 including, but not limited to:
- 10 (A) Threatening to engage in or engaging in physical abuse or
11 harassment toward any witness, complainant or individual listed in
12 subsection (e)(1);
- 13 (B) destroying evidence;
- 14 (C) refusing or failing to appear or testify under oath at any hearing;
15 or
- 16 (D) refusing or failing to respond in a timely manner to any request
17 from the commission or the commission's designee for documents or
18 information that concerns directly or indirectly any real estate transaction
19 or the licensee's real estate business;
- 20 (5) fail without just cause to surrender any document or instrument to
21 the rightful owner; or
- 22 (6) demonstrate incompetency to act as a broker, associate broker or
23 salesperson in dealings with the commission, including the repeated failure
24 to:
- 25 (A) Submit required forms to the commission in a timely and
26 complete manner;
- 27 (B) make available to the commission all records relating to the real
28 estate business; or
- 29 (C) comply with the provisions of this subsection.
- 30 (g) A branch broker shall not be employed by or associated with more
31 than one supervising broker at any one time unless each supervising broker
32 who employs or associates with the branch broker consents to such
33 multiple employment or association. Such consent shall be on a form
34 provided by the commission and shall not be effective until a signed copy
35 of the completed form has been filed with the commission.
- 36 (h) *(1) No person, association, corporation, limited liability*
37 *company, limited liability partnership, partnership, professional*
38 *corporation or trust shall buy, sell, offer to buy or sell, market for sale,*
39 *exchange or otherwise deal in assignable contracts for the purchase or*
40 *sale of or options on real estate or improvements thereon for single family*
41 *residential housing and multifamily residential housing of four units or*
42 *less.*
- 43 (2) *Any violation of paragraph (1) constitutes a deceptive act or*

1 *practice under the Kansas consumer protection act pursuant to K.S.A.*
2 *2023 Supp. 50-626, and amendments thereto, and shall be subject to a*
3 *civil penalty as provided in K.S.A. 50-636(a), and amendments thereto,*
4 *and any other remedy or penalty as provided by the Kansas consumer*
5 *protection act. Each unlawful transaction shall constitute a separate*
6 *violation.*

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

10 Sec. 6. K.S.A. 58-3065 is hereby amended to read as follows: 58-
11 3065. (a) Willful violation of any provision of this act or the brokerage
12 relationships in real estate transactions act is a misdemeanor punishable by
13 imprisonment for not more than 12 months or a fine of not less than \$100
14 or more than \$1,000, or both, for the first offense and imprisonment for not
15 more than 12 months or a fine of not less than \$1,000 or more than
16 \$10,000, or both, for a second or subsequent offense.

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

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

29 Sec. 7. K.S.A. 58-3065 and K.S.A. 2023 Supp. 58-3062 are hereby
30 repealed.

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