

SENATE BILL No. 435

By Committee on Federal and State Affairs

3-1

1 AN ACT concerning real estate brokers and salespersons; relating to
2 rebates; amending K.S.A. 2017 Supp. 58-3035 and 58-3062 and
3 repealing the existing sections.
4

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

6 Section 1. K.S.A. 2017 Supp. 58-3035 is hereby amended to read as
7 follows: 58-3035. As used in this act, unless the context otherwise
8 requires:

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

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

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

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

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

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

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

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

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

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

1 or exchange.

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

4 (6) Buys, sells, offers to buy or sell or otherwise deals in options on
5 real estate.

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

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

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

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

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

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

17 (i) "Interest" means: (1) Having any type of ownership in the real
18 estate involved in the transaction; or (2) an officer, member, partner or
19 shareholder of any entity that owns ~~such~~ *the real estate involved in the*
20 *transaction*, excluding an ownership interest of less than 5% in a publicly
21 traded entity.

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

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

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

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

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

33 (n) "Real estate" means any interest or estate in land, including any
34 leasehold or condominium, whether corporeal, incorporeal, freehold or
35 nonfreehold and whether the real estate is situated in this state or
36 elsewhere, but does not include oil and gas leases, royalties and other
37 mineral interests, and rights of way and easements acquired for the
38 purpose of constructing roadways, pipelines, conduits, wires and facilities
39 related to these types of improvement projects for private and public
40 utilities, municipalities, federal and state governments, or any political
41 subdivision. For purpose of this act, any rights of redemption are
42 considered to be an interest in real estate.

43 (o) "*Rebate*" means the return of all or part of the purchase price of

1 *real estate, whether by cash or cash equivalent, that is promised or agreed*
2 *to by a licensee and a client or customer before closing and is contingent*
3 *on the transaction closing.*

4 *"Rebate" includes the return of all or part of any commission or*
5 *compensation paid to a licensee in any transaction that has as its purpose*
6 *the purchase of real estate at a price different from the price specified in*
7 *the closing statement. For the purposes of defining "rebate," "cash*
8 *equivalent" means gift cards, prepaid credit cards and any other item with*
9 *a value equal to a specific amount of money that can be used in the same*
10 *manner as cash.*

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

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

24 Sec. 2. K.S.A. 2017 Supp. 58-3062 is hereby amended to read as
25 follows: 58-3062. (a) No licensee, whether acting as an agent, transaction
26 broker or a principal, shall:

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

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

36 (3) Accept, give or charge any rebate *that is not disclosed within, or*
37 *by addendum to, the purchase contract or listing agreement* or undisclosed
38 commission.

39 (4) Pay a referral fee to a person who is properly licensed as a broker
40 or salesperson in Kansas or another jurisdiction or who holds a corporate
41 real estate license in another jurisdiction if the licensee knows that the
42 payment of the referral fee will result in the payment of a rebate *that is not*
43 *disclosed within, or by addendum to, the purchase contract or listing*

1 *agreement* by the Kansas or out-of-state licensee, *unless that rebate is*
2 *disclosed within, or by addendum to, the purchase contract or listing*
3 *agreement.*

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

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

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

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

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

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

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

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

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

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

29 (15) Fail to make known to any purchaser or lessee any interest the
30 licensee has in the real estate the licensee is selling or leasing or to make
31 known to any seller or lessor any interest the licensee will have in the real
32 estate the licensee is purchasing or leasing.

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

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

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

41 (19) Fail to deposit any check or cash received as an earnest money
42 deposit or as a deposit on the purchase of a lot within five business days
43 after the purchase agreement or lot reservation agreement is signed by all

1 parties, unless otherwise specifically provided by written agreement of all
2 parties to the purchase agreement or lot reservation agreement, in which
3 case the licensee shall deposit the check or cash received on the date
4 provided by ~~such~~ the written agreement.

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

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

11 (22) Demonstrate incompetency to act as a broker, associate broker or
12 salesperson.

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

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

24 (A) (i) At the time of ~~such~~ the purchase, the dwellings are subject to a
25 right of redemption pursuant to foreclosure of a mortgage on ~~such~~ the
26 dwellings; (ii) the licensee fails to give written notice of the purchase,
27 within 20 days thereafter, to the mortgage holder or judgment creditor who
28 held ~~such~~ the mortgage; and (iii) the licensee, unless otherwise required by
29 law or court order, fails to apply any rent proceeds from the dwellings to
30 the judgment lien arising from the foreclosure of ~~such~~ the mortgage, as
31 payments become due under the loan, regardless of whether the licensee is
32 obligated to do so;

33 (B) (i) the dwellings are subject to a loan which is secured by a
34 mortgage and which is in default at the time of ~~such~~ the purchase or in
35 default within one year after ~~such~~ the purchase; (ii) the licensee fails to
36 give written notice of the purchase, within 20 days thereafter, to the
37 mortgage holder; and (iii) the licensee, unless otherwise required by law or
38 court order, fails to apply any rent proceeds from the dwellings to the
39 mortgage as the payments come due, regardless of whether the licensee is
40 obligated on the loan; or

41 (C) the licensee fails to notify, at the time of rental, any person
42 renting any ~~such~~ the dwelling of the extent and nature of the licensee's
43 interest in ~~such~~ the dwelling and the probable time until possession will be

1 taken by the mortgage holder or judgment creditor.

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

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

9 (b) No salesperson or associate broker shall:

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

14 (A) A salesperson or associate broker may accept a commission or
15 other valuable consideration from a licensee who employs the salesperson
16 or associate broker as a personal assistant provided that: (i) The licensee
17 and the salesperson or associate broker who is employed as a personal
18 assistant are licensed under the supervision of the same broker; and (ii) the
19 supervising broker agrees in writing that the personal assistant may be paid
20 by the licensee.

21 (B) If a salesperson or associate broker has organized as an
22 association, corporation, limited liability company, limited liability
23 partnership, partnership or professional corporation, the commission or
24 other valuable consideration may be paid by the licensee's broker to ~~such~~
25 *the* association, corporation, limited liability company, limited liability
26 partnership, partnership or professional corporation. This provision shall
27 not alter any other provisions of this act.

28 (2) Fail to place, as soon after receipt as practicable, any deposit
29 money or other funds entrusted to the salesperson or associate broker in
30 the custody of the broker whom the salesperson or associate broker
31 represents.

32 (3) (A) Except as provided by subparagraph (B), be employed by or
33 associated with a licensee at any one time other than the supervising
34 broker who employs ~~such~~ *the* salesperson or associate broker or with who
35 the salesperson or associate broker is associated as an independent
36 contractor.

37 (B) An associate broker may be employed by or associated with more
38 than one supervising broker at any one time if each supervising broker
39 who employs or associates with the associate broker consents to ~~such~~ *the*
40 multiple employment or association. ~~Such~~ *The* consent shall be on a form
41 provided by the commission and shall not be effective until a signed copy
42 of the completed form has been filed with the commission.

43 (4) Except as provided by subsection (b), pay a commission or

1 compensation to any person for performing any activity for which a
2 license is required under this act.

3 (5) (A) Fail to disclose to ~~such the~~ salesperson's or associate broker's
4 supervising broker or branch broker that ~~such the~~ salesperson or associate
5 broker is performing any activity for which a license is required under
6 K.S.A. 58-3036, and amendments thereto; or (B) perform any activity for
7 which a license is required under K.S.A. 58-3036, and amendments
8 thereto, outside the supervision of the supervising broker or branch broker.
9 The provisions of this subsection shall not apply to any activity or person
10 exempted from the real estate brokers' and salespersons' license act
11 pursuant to K.S.A. 58-3037, and amendments thereto.

12 (6) Fail to submit to the supervising broker or branch broker, within
13 10 business days, any document that must be maintained in the supervising
14 broker's or branch broker's business records for each real estate
15 transaction. The ten-day period shall commence when the document is
16 executed by the client or customer or, if a signature is not required or is not
17 obtained, upon presentation of a document to the client or customer.

18 (c) No broker shall:

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

22 (2) Fail to deliver to the seller in every real estate transaction, at the
23 time the transaction is closed, a complete, detailed closing statement
24 showing all of the receipts and disbursements handled by the broker for
25 the seller, or fail to deliver to the buyer a complete statement showing all
26 money received in the transaction from ~~such the~~ buyer and how and for
27 what the same was disbursed, or fail to retain true copies of ~~such the~~
28 statements in the broker's files, except that the furnishing of ~~such the~~
29 statements to the seller and buyer by an escrow agent shall relieve the
30 broker's responsibility to the seller and the buyer.

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

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

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

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

41 (A) Fail to deliver the purchase agreement and earnest money deposit
42 to the escrow agent named in the purchase agreement within five business
43 days after the purchase agreement is signed by all parties unless otherwise

1 specifically provided by written agreement of all parties to the purchase
2 agreement, in which case the broker shall deliver the purchase agreement
3 and earnest money deposit to the escrow agent named in the purchase
4 agreement on the date provided by ~~such~~ *the* written agreement; or

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

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

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

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

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

24 (A) Fail to deliver the purchase agreement and earnest money deposit
25 to the escrow agent named in the purchase agreement within five business
26 days after the purchase agreement is signed by all parties unless otherwise
27 specifically provided by written agreement of all parties to the purchase
28 agreement, in which case the broker shall deliver the purchase agreement
29 and earnest money deposit to the escrow agent named in the purchase
30 agreement on the date provided by ~~such~~ *the* written agreement; or

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

34 The commission may adopt rules and regulations to require that ~~such~~
35 *the* purchase agreement ~~which~~ *that* provides that the earnest money be held
36 by an escrow agent other than a real estate broker include: (1) Notification
37 of whether or not the escrow agent named in the purchase agreement
38 maintains a surety bond; and (2) notification that statutes governing the
39 disbursement of earnest money held in trust accounts of real estate brokers
40 do not apply to earnest money deposited with the escrow agent named in
41 the purchase agreement.

42 (e) No licensee shall:

43 (1) Threaten to engage in or engage in physical abuse or engage in

- 1 harassment towards:
- 2 (A) A client or customer or a former client or customer;
- 3 (B) another licensee;
- 4 (C) commission members or staff;
- 5 (D) staff of the office of administrative hearings;
- 6 (E) staff from any real estate trade association or multiple listing
7 service; or
- 8 (F) any person from another business or industry whose services are
9 requested or required as part of a real estate transaction;
- 10 (2) threaten to file or file a lien on residential property;
- 11 (3) conduct real estate business with impaired judgment or objectivity
12 as the result of mental illness or addiction to alcohol or controlled
13 substances;
- 14 (4) be finally adjudicated by a federal or state agency and found to be
15 guilty of a violation of a federal or state law regulating the real estate
16 industry or regulating a closely related industry whose licensees or
17 members are commonly involved in real estate matters;
- 18 (5) be finally adjudicated by a federal or state agency and found to be
19 guilty of a violation of a federal or state law prohibiting discrimination
20 against any client or customer on the basis of color, race, gender, religion,
21 national origin, age, disability or familial status; or
- 22 (6) intentionally misappropriate or misuse any personal property or
23 real property of a client or customer.
- 24 (f) No applicant or licensee shall:
- 25 (1) Engage in fraud or make any substantial misrepresentation to the
26 commission;
- 27 (2) commit forgery in any representation or document submitted to
28 the commission;
- 29 (3) sign or initial, on behalf of another person, any application, for or
30 accompanying document submitted to the commission unless authorized to
31 do so by a duly executed power of attorney;
- 32 (4) interfere with any investigation, administrative proceeding, quasi-
33 judicial proceeding or any other disciplinary matter of the commission,
34 including, but not limited to:
- 35 (A) Threatening to engage in or engaging in physical abuse or
36 harassment toward any witness, complainant or individual listed in
37 subsection (e)(1);
- 38 (B) destroying evidence;
- 39 (C) refusing or failing to appear or testify under oath at any hearing;
40 or
- 41 (D) refusing or failing to respond in a timely manner to any request
42 from the commission or the commission's designee for documents or
43 information that concerns directly or indirectly any real estate transaction

1 or the licensee's real estate business;

2 (5) fail without just cause to surrender any document or instrument to
3 the rightful owner; or

4 (6) demonstrate incompetency to act as a broker, associate broker or
5 salesperson in dealings with the commission, including the repeated failure
6 to:

7 (A) Submit required forms to the commission in a timely and
8 complete manner;

9 (B) make available to the commission all records relating to the real
10 estate business; or

11 (C) comply with the provisions of this subsection.

12 (g) A branch broker shall not be employed by or associated with more
13 than one supervising broker at any one time unless each supervising broker
14 who employs or associates with the branch broker consents to ~~such~~ *the*
15 multiple employment or association. ~~Such~~ *The* 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 (h) Nothing in this section shall be construed to grant any person a
19 private right of action for damages or to eliminate any right of action
20 pursuant to other statutes or common law.

21 Sec. 3. K.S.A. 2017 Supp. 58-3035 and 58-3062 are hereby repealed.

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