

CHAPTER 488

(HB 677)

AN ACT relating to real estate brokerage.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 324 IS CREATED TO READ AS FOLLOWS:

- (1) *All actively licensed agents except those licensees exempt under subsection (5) of Section 7 of this Act, shall successfully complete six (6) classroom hours of continuing education each year. Three (3) of the six (6) hours shall be in real estate law. The commission shall promulgate administrative regulations to establish procedures for implementing this requirement.*
- (2) *In order to qualify to teach continuing education courses, all continuing education instructors shall maintain a minimum rating as prescribed by the commission by the promulgation of administrative regulations.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 324 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall:*
 - (a) *Solicit or request a referral fee from a real estate licensee unless that person introduced the business to the real estate licensee from whom the referral fee is sought and a contractual referral fee relationship exists between the person and the real estate licensee; or*
 - (b) *Threaten to reduce or withhold employee relocation benefits or to take other action adverse to the interests of a client of a real estate licensee because of an agency relationship.*
- (2) *No real estate licensee, relocation firm, or firm with a corporate relocation policy or benefits, or anyone on behalf of any licensee or firm, shall counsel a client of another real estate licensee regarding the manner in which the client may terminate or amend an existing listing contract, buyer agency agreement, or other agency relationship. Communicating corporate relocation policy or benefits to a transferring employee shall not be considered a violation of this section, as long as the communication does not involve advice or encouragement regarding the manner in which the client may terminate or amend an existing agency relationship.*
- (3) *Violation of this section by a broker or sales associate shall be considered improper conduct as referred to in subsection (4)(w) of Section 17 of this Act. Violation of this section by unlicensed persons shall be subject to the penalties in KRS 324.990.*

Section 3. KRS 324.010 is amended to read as follows:

~~{(1)—}~~As used in this chapter, unless the context requires otherwise:

- (1)~~{(a)}~~ "Real estate brokerage" means a single, multiple, or continuing act of *dealing in time shares or options*, selling or offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, engaging in property management, leasing or offering to lease, renting or offering for rent, or referring or offering to refer for the purpose

of securing prospects, any real estate or the improvements thereon for others for a fee, ~~commission,~~ compensation, or other valuable consideration;

- (2)~~(b)~~—"Commission" means the Kentucky Real Estate Commission;
- (3)~~(c)~~"Net listing" means a listing agreement that provides for a stipulated net price to the owner and the excess over the stipulated net price to be received by the licensee as the *fee compensation or other valuable consideration*~~commission~~;
- (4)~~(d)~~"Principal broker" means a person licensed as a broker under KRS 324.046 who, in addition to performing acts of real estate brokerage or transactions comprehended by that definition, is the single broker responsible for the operation of the company with which he or she is associated;
- (5)~~(e)~~"Real estate" means real estate in its ordinary meaning and includes timeshares, options, leaseholds, and other interests less than leaseholds;
- (6)~~(f)~~"Sales associate" means any person *licensed in accordance with subsection (2) of Section 7 of this Act that is affiliated*~~associated~~ with a Kentucky-licensed principal broker~~who is licensed under KRS 324.046(2)~~ and *who, when engaging in*~~performs acts of~~ real estate brokerage, *does so* under the *supervision*~~direction and control~~ of the principal broker;
- (7)~~(g)~~—"Approved real estate school" means:
- (a)~~1.~~A school that has been given a certificate of approval by the State Board for Proprietary Education *or other regulatory bodies that exercise jurisdiction over accreditation and approval* and the Kentucky Real Estate Commission. The school shall also be currently in good standing with both the State Board for Proprietary Education *or other regulatory bodies that exercise jurisdiction over accreditation and approval* and the commission; or
 - (b)~~2.~~A National Association of Realtors recognized program which has been reviewed by the Kentucky Real Estate Commission and deemed an approved real estate school;
- (8)~~(h)~~"Accredited *institution*~~real estate school~~" means a college or university accredited by appropriately recognized educational associations or chartered and licensed in Kentucky that grants credits toward *a program for either an associate, baccalaureate, graduate, or professional degree*~~an associate degree or a baccalaureate degree to those students successfully completing a course in real estate~~;
- (9)~~(i)~~"Property management" means the overall management of real property for others for a fee, ~~commission,~~ compensation, or other valuable consideration, and may include the marketing of property, the leasing of property, collecting rental payments on the property, payment of notes, mortgages, and other debts on the property, coordinating maintenance for the property, remitting funds and accounting statements to the owner, and other activities that the commission may determine by administrative regulation;~~and~~
- (10)~~(j)~~"Broker" means any person who is licensed under KRS 324.046(1) and performs acts of real estate brokerage;
- (11) "*Regular employee*" means an employee who works for an employer, whose total compensation is subject to withholding of federal and state taxes and FICA payments,

and who receives from the employer a fixed salary governed by federal wage guidelines that is not affected by specific real estate transactions;

- (12) *"Referral fee" means consideration of any kind paid or demanded for the referral of a potential or actual buyer, seller, lessor, or lessee of real estate;*
- (13) *"Designated agency" means a form of agency relationship that exists when a principal broker, in accordance with Section 13 of this Act, identifies different licensees in the same real estate brokerage firm to separately represent more than one (1) party in the same real estate transaction;*
- (14) *"Affiliation" means the relationship agreed upon between a licensee and a principal broker and reported to the commission, where the licensee places his license with the principal broker for supervision of the licensee's real estate brokerage activity;*
- (15) *"Canceled" means the status of a license when a licensee fails to renew a license, writes the commission a check for fees that is not honored, fails to re-affiliate with a principal broker, or fails to complete requirements for continuing education;*
- (16) *"Suspended" means the status of a license when disciplinary action has been ordered against a licensee that prohibits the brokerage of real estate for a specific period of time; and*
- (17) *"Revoked" means the status of a license when disciplinary action has been ordered that removes the licensee's legal authority to broker real estate for a minimum of five (5) years.*

~~[(2) One (1) act for a fee, commission, compensation, or other valuable consideration of buying or selling real estate of or for another; offering for another to buy, sell, or exchange real estate; leasing, renting, or offering to rent real estate; referring or offering to refer real estate for the purpose of securing prospects; or dealing in options or time sharing shall constitute the person performing, offering, or attempting to perform the act as a broker or sales associate.]~~

Section 4. KRS 324.020 is amended to read as follows:

- (1) It shall be unlawful for any person *who is not licensed as a real estate broker or sales associate to hold himself out to the public as a real estate broker or sales associate or use any terms, titles, or abbreviations which express, infer, or imply that the person is licensed as a real estate broker or sales associate*~~[to act as a broker or real estate sales associate or to advertise or assume to act as a broker or sales associate within the Commonwealth of Kentucky, without a license issued by the Kentucky Real Estate Commission].~~
- (2) *No person shall practice real estate brokerage unless the person holds a license to practice real estate brokerage under this chapter.*
- (3) A licensee who is an owner or a builder-developer shall comply with the provisions of this chapter and the administrative regulations applying to real estate brokers and sales associates.
- ~~(4) [(3)]~~ No broker shall split fees with or compensate any person who is not licensed to perform any of the acts regulated by this chapter, except that a broker may *compensate*~~[pay a commission to]~~ or split fees with a broker licensed outside of Kentucky~~[who represents an out-of-state client]~~.
- ~~(5) [(4)]~~ *Except as authorized in subsection (1) of Section 10 and Section 33 of this Act,* no sales associate~~[licensed in Kentucky]~~ shall supervise another licensed sales associate or manage a

~~*real estate brokerage* [an] office[, except by permission of the commission and when acting on the death of the principal broker].~~

- ~~(6)~~⁽⁵⁾ The Kentucky Real Estate Commission may seek and obtain injunctive relief against any unlicensed individual acting in violation of this chapter by filing a civil action in the Circuit Court where the commission is located or where the unlawful activity took place.

Section 5. KRS 324.030 is amended to read as follows:

KRS 324.020(1) *and* (2) shall not apply to:

- (1) Any person who as owner or lessor performs any of the acts defined in KRS 324.010 with reference to property owned or leased by him or to his regular employees, with respect to the property so owned or leased, if the acts are performed in the regular course of, or as an incident to, the management of the property and the investment in it;
- (2) Any person acting as attorney in fact under a duly executed power of attorney from the owner authorizing the final consummation by performance of any contract for the sale, leasing, or exchange of real estate;
- (3) Any attorney-at-law who is performing his duties as attorney-at-law;
- (4) Any receiver, trustee in bankruptcy, administrator, or executor, person selling real estate under order of any court, or a trustee acting under a trust agreement, deed of trust, or will or the regular salaried employees thereof;
- (5) A person engaged in property management, if the person:
 - (a) Is a regular employee of the owner or principal broker of the company engaged in property management; or
 - (b) Receives as his primary compensation the use of a rental unit; *or*
- (6) *A nonlicensed person under the supervision of a licensed real estate broker who contacts the public for the purpose of setting an appointment for the broker to meet with them regarding buying or selling property and giving out general public information specifically authorized by the broker.*

Section 6. KRS 324.045 is amended to read as follows:

- (1) Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a broker or sales associate in a manner to safeguard the interest of the public, and only after satisfactory proof of qualifications has been presented to the commission.
- (2) In addition to proof of honesty, truthfulness, and good reputation of any applicant for a license, each applicant shall pass a written examination conducted by the commission, or its authorized representative. The examination shall be of the scope and wording sufficient in the judgment of the commission to establish the competency of the applicant to act as a broker or sales associate in a manner to protect the interests of the public. However, an examination shall not be required for the renewal of any present or future license, unless the license has been revoked, suspended, or is allowed to expire without renewal for a period of more than one (1) year.
- (3) The commission shall hold examinations at the times and places it determines, and an examination fee shall be collected from each applicant to defray the expenses of holding the examinations.

- (4) *The commission may, by the promulgation of administrative regulations, require all licensure applicants to submit to a criminal record check for which the applicant shall be responsible for the payment of any fees incurred.*

Section 7. KRS 324.046 is amended to read as follows:

- (1) Every applicant for initial licensure as a broker shall have:
- (a) Successfully completed not less than twenty-one (21) academic credit hours or the equivalent *from an accredited institution or approved real estate school.* ~~[with at least]~~ Twelve (12) hours *shall be* in real estate courses, *three (3) hours of which shall be a course in broker management skills. The commission shall, by promulgation of administrative regulations, determine the required course content of broker management skills courses; and* ~~[from an accredited or approved real estate school and shall have]~~
 - (b) Been engaged in the real estate business as a sales associate averaging at least twenty (20) hours per week for a period of twenty-four (24) months prior to application.
- (2) Every applicant for initial licensure as a sales associate shall have successfully completed six (6) academic credit hours or their equivalent in real estate courses from an accredited *institution* or approved real estate school.
- (3) Proof of the academic credit hours shall be an official transcript from the attended university and a sworn notarized affidavit signed by both the applicant and his or her principal broker or other documentation satisfactory to the commission. The applicant may file a complaint with the commission if the principal broker unjustly refuses to sign the affidavit.
- (4) The commission may reduce the two (2) year experience requirement for applicants for a broker's license to one (1) year, if the applicant has an associate degree in real estate or a baccalaureate degree with a major *or minor* in real estate.
- (5) Persons licensed under the real estate laws of this state prior to June 19, 1976~~;~~
- ~~(a) Who have continuously maintained an active license since that date~~ shall not be subject to any educational changes in this chapter or subject to any continuing education requirements~~;~~ and
 - ~~(b) Who have not continuously maintained an active license since that date may be exempted from continuing education requirements if the commission determines their qualifications merit such an exemption~~].

Section 8. KRS 324.090 is amended to read as follows:

- (1) Licenses shall expire on the thirty-first day of March of each year. The commission shall renew a license for each ensuing year, in the absence of any reason or condition which might warrant the refusal of the granting of the license, upon receipt of the written request of the applicant and payment of the annual fees required. A new license shall be mailed only if the licensee's name, address, status, or affiliation changes.
- (2) A fine not to exceed two hundred dollars (\$200) shall be assessed for failure to renew on time before a new license is issued. Failure to receive a renewal form shall not constitute an adequate excuse for failure to renew on time nor shall failure of the mail.

- (3) Any license not renewed at the end of the renewal year as prescribed by the commission shall automatically revert to expired status. **An expired**~~The~~ license may be reactivated before a lapse of one (1) year, if delinquent fees are paid by the licensee.

Section 9. KRS 324.111 is amended to read as follows:

- (1) A principal broker shall maintain an escrow account or accounts, separate from the individual or office account, in which all contract deposits and money belonging to others shall be deposited without unreasonable delay. The escrow accounts shall be maintained within the State of Kentucky and shall be identified to the commission in writing.
- (2) The broker may place the deposit in an interest-bearing account or instrument. The interest earned shall accrue to the person agreed to in writing by all parties.
- (3) No checks shall be drawn against uncollected deposits in the escrow account.
- (4) None of the contract deposits shall be withdrawn until the contract has been terminated by performance, by agreement in writing between all parties, or by order of a court of competent jurisdiction, except as permitted in subsection (6) of this section.
- (5) Upon licensure and each renewal, the principal broker shall sign a permit giving the commission the permission to audit all his escrow accounts.
- (6) Upon being notified that one (1) or more parties to a contract intends not to perform, the broker may release the contract deposit as provided in the contract or if no provision is made in the contract, the broker may initiate the release process. The release process shall require the broker to notify all parties at their last known address by certified mail that the contract deposit shall be distributed to the parties specified in the letter **unless all parties**~~if the parties fail to perform,~~ enter into a written mutual release, or **unless one (1) or more of the parties** initiate litigation within sixty (60) days of the mailing date of the certified letter. If neither buyer nor seller initiates litigation or enters into a written release within sixty (60) days of the mailing date of the certified letter, the broker may release the deposit **to the party identified in the certified letter** without penalty under this section **and without civil liability in the courts of the Commonwealth of Kentucky**.
- (7) All principal brokers whose companies engage in property management shall maintain property management accounts separate from all other accounts **or specifically indicate in all escrow records if funds are property management funds**.
- (8) A broker or sales associate who owns rental property shall not be required to use the principal broker's management account for the rental property, unless required by the principal broker.

Section 10. KRS 324.112 is amended to read as follows:

- (1) No principal broker shall maintain a branch office outside a fifty (50) mile radius of the main office without having a broker managing the branch office.
- (2) A sales associate with two (2) years experience in the real estate business, averaging at least twenty (20) hours per week for a period of twenty-four (24) months prior, may manage a branch office inside a fifty (50) mile radius of the main office.
- (3) The licenses of all **licensees**~~brokers and sales associates~~ shall be kept on file in the office in which they are actively engaged and affiliated.

- (4) *A principal broker in the process of closing a real estate brokerage business may affiliate temporarily with another principal broker if:*
- (a) *No other licensee is affiliated with the former principal broker;*
 - (b) *Both the former and the latter principal brokers represent to the commission that the affiliation is for the purpose of closing the former principal broker's business; and*
 - (c) *Both the former and the latter principal brokers give assurances satisfactory to the commission that no consumer will be adversely affected by the affiliation or the closing of the former principal broker's business.*

Section 11. KRS 324.115 is amended to read as follows:

- (1) *Except as provided in subsection (2) of this section,* every broker licensed under KRS 324.045 shall maintain a definite place of business in this state.
- (2) ~~A~~_[, except a] broker who is a nonresident shall not be required to maintain an active place of business in this state if:
 - (a) He or she maintains a business place in the state of original licensure;
 - (b) *The state of original licensure, in accordance with its reciprocity agreement with the commission, does not require Kentucky licensees holding licenses in that state to maintain an office in that state; and*
 - (c) *Paragraphs (a) and (b) of this subsection do not conflict*~~[, unless this provision conflicts]~~ with the commission's agreement of reciprocity with the state of original licensure.

Section 12. KRS 324.117 is amended to read as follows:

- (1) ~~No real estate advertising shall be intentionally false, misleading, or deceptive. All real estate advertising shall specify the names of the real estate company listed on the licensee's real estate license or the name of the principal broker and a designation indicating that the licensee is engaged in the real estate business. The commission shall promulgate administrative regulations to define false, misleading, or deceptive advertising.~~
[Real estate advertising shall not be false, misleading, or deceptive. All real estate advertising shall specify the names of the real estate company listed on the licensee's real estate license or the name of the principal broker and a designation indicating that the licensee is engaged in the real estate business. The commission shall promulgate administrative regulations to define false, misleading, or deceptive advertising].
- (2) The name of a deceased broker may remain a part of the firm name.
- (3) No associate may have his or her name in the firm name.
- (4) Any *licensees*~~[sales associate or broker]~~ affiliated with a principal broker shall advertise in the name of the real estate company listed on the *licensee's*~~[associate's or broker's]~~ real estate license or the name of the principal broker, unless he or she is selling, renting, leasing, or otherwise dealing in his or her own property.
- (5) *The commission shall, by the promulgation of administrative regulations, define false, misleading, or deceptive advertising.*
- (6) *The commission shall, by the promulgation of administrative regulations, define the manner in which licensees may utilize any internet electronic communication for advertising or marketing.*

Section 13. KRS 324.121 is amended to read as follows:

- (1) A principal broker may *designate one (1) or more affiliated licensees*~~[appoint himself or herself or a licensee with which he or she is associated]~~ to act as~~[an]~~ agent for a seller *or lessor, to the exclusion of all other licensees affiliated with the principal broker. A principal broker may designate one (1) or more affiliated licensees to act as agent for a~~[or]~~ buyer *or lessee*, or prospective buyer *or lessee* to the exclusion of all other licensees *affiliated*~~[associated]~~ with the principal broker. *The designation procedure shall be made in writing and communicated to all licensees affiliated with the principal broker. The designated agent shall inform and obtain the consent of the buyer or lessee, or prospective buyer or lessee to the designation.**
- (2) If a principal broker *designates*~~[appoints]~~ one (1) *or more licensees*~~[licensee]~~ to represent the seller and *one (1) or more other licensees*~~[another licensee]~~ to represent the buyer or the prospective buyer in the same transaction, *only* the principal broker~~[, the firm, or the licensees]~~ shall~~[not]~~ be deemed to be *a dual agent representing the seller and buyer in a limited fiduciary capacity. As a dual agent, the principal broker shall not disclose to either party confidential information learned relative to the other party. Except as set forth in subsection (3) of this section, this designation shall not affect the principal broker's agency relationships in cooperative sales between consumers separately represented by nonaffiliated principal brokers*~~[agents]~~.
- (3) *No exchange of information or*~~[If the licensees are appointed in accordance with subsection (1) of this section,]~~ knowledge between or among *consumers, whether* the seller,~~[the]~~ buyer, *lessor, or lessee, and* the principal broker, the firm, or the licensees shall~~[not]~~ be imputed *as a matter of law in any real estate transaction.*
- (4) Nothing in this section shall prevent a real estate brokerage firm or licensee from entering into a dual agency relationship with *consumers in a real estate transaction*~~[the seller and the buyer or the prospective buyer if the firm or licensee complies with the provisions of this chapter and administrative regulations promulgated by the commission on agency disclosure. Any licensee who, after such compliance, personally represents both the seller and the buyer in a particular transaction shall be deemed a disclosed dual agent]~~.

Section 14. KRS 324.142 is amended to read as follows:

Any licensee who *engages*~~[proposes to engage]~~ in~~[sales of a]~~ promotional *activities*~~[nature]~~ in this Commonwealth for property located outside of this Commonwealth shall first apply to the commission for its approval before so doing, and shall comply with administrative regulations, restrictions, and conditions the commission may impose as well as those provisions set forth in this chapter.

Section 15. KRS 324.150 is amended to read as follows:

- (1) The commission or its staff may on its own initiative *investigate the actions of any licensee or any person who acts in that capacity.*~~[, and shall]~~ On the verified written complaint of any person, *the commission shall* investigate the actions of any~~[broker or sales associate or any]~~ person who assumes to act in *that*~~[such]~~ capacity, if the complaint,~~[or complaint]~~ together with *any*~~[other]~~ evidence presented in connection with it, *alleges*~~[makes out]~~ a prima facie case *that a violation set out in Section 17 of this Act has been committed. After the investigation, the commission*~~[. It]~~ may *order a hearing and, in appropriate cases, take disciplinary action against*~~[suspend or revoke]~~ any *licensee who is found in violation of*~~[license for grounds stated in]~~ KRS 324.160.

- (2) To investigate allegations of practices violating the provisions of this chapter, the commission may:
- (a) Issue subpoenas to compel attendance of witnesses and the production of documents;
 - (b) Administer oaths;
 - (c) Examine witnesses; and
 - (d) Pay appropriate witness fees.

Section 16. KRS 324.151 is amended to read as follows:

- (1) All complaints against licensees shall be submitted to the commission on forms furnished by the commission. The complaint shall state facts which, if true, would **constitute**~~make out~~ a prima facie case **that the licensee has violated the provisions of Section 17 of this Act**~~against the licensee~~. **If the complaint does not constitute a prima facie case, the commission shall allow the complainant ten (10) days to revise and supplement the complaint in order to cure any defect. If the complainant fails to respond within ten (10) days or if the revised and supplemented complaint does not constitute a prima facie case that the licensee has violated the provisions of Section 17 of this Act, the commission shall dismiss the matter without requiring the licensee to file or serve a response.**
- (2) **If the complaint constitutes a prima facie case that a licensee has violated the provisions of Section 17 of this Act**, a copy of the complaint, exhibits attached thereto, and any subsequent pleadings, shall be served on the licensee~~defendant~~, by the commission, at the licensee's last known address and shall show certification that there has been service by writing to the last known address.
- (3) **If the commission serves the complaint upon the licensee**, the~~defendant~~ licensee shall file with the commission an answer to the complaint,~~and~~ properly notarized, on forms secured from commission offices. The answer shall be returned to the commission within twenty (20) days. **The licensee shall deliver to the complainant at his last known address**~~and~~ a copy of the answer, exhibits attached thereto, **and**~~as well as~~ any subsequent pleadings~~, shall be served on complainant and shall show certification that there has been service by writing to the last known address~~. All further pleadings in the matter filed with the commission by either party shall show that a copy has been furnished to the opposing party or parties.

Section 17. KRS 324.160 is amended to read as follows:

- (1) The commission may **order any or all of the following sanctions for violation of subsections (4) to (7) of this section:**
 - (a) **Suspension of any license;**~~suspend or~~
 - (b) **Revocation of**~~revoke~~ any license;~~or~~
 - (c) Levy of fines not to exceed **one thousand dollars (\$1,000)**~~five hundred dollars (\$500)~~~~or both, and~~
 - (d) **Placing of**~~place~~ any licensee on probation for a period of up to twelve (12) months;~~or~~
 - (e) **Requiring**~~require~~ successful completion of academic credit hours **or additional credit hours** in real estate courses from an accredited **institution** or approved real estate school; or

(f) ~~Issuing~~~~[issue]~~ a formal *or informal* reprimand.~~[or order a licensee to pay restitution in an amount to be determined by the commission after a hearing, as a condition of continued licensure, for any of the following causes:]~~

(2) *A canceled license may be renewed if the licensee pays all necessary fees and meets all other active licensure requirements within one (1) year of the cancellation date. No licensee whose license is canceled shall engage in real estate brokerage during the period of cancellation or receive any compensation for real estate brokerage unless the compensation was earned prior to the effective date of the cancellation.*

(3) *No licensee whose license is suspended shall engage in real estate brokerage or receive any compensation for real estate brokerage unless the compensation was earned prior to the suspension period.*

(4) *The commission shall impose sanctions set out in subsection (1) of this section against a licensee for:*

(a) Obtaining a license through false or fraudulent representation;

(b) Making any substantial misrepresentation or failing to disclose known defects which substantially affect the value of the property;

(c) Making any false promises of a character likely to influence, persuade, or induce;

(d) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;

(e) Acting for more than one (1) party in a transaction without the knowledge of all parties for whom the licensee acts;

1. A real estate licensee shall not directly or indirectly buy property listed with him or her *or with the broker with whom the licensee is affiliated*, nor acquire an interest therein, without *first indicating in writing on the offer to purchase his or her status as a licensee*~~[making his or her true position clearly known in writing on the sales contract or offer to purchase];~~

2. Before a~~[real estate]~~ licensee *becomes a party to a contract to purchase real property, the licensee shall disclose his or her status as a licensee to all parties to the transaction, in writing, on the sales contract or on the offer to purchase;*~~[buys.];~~

3. *Before a licensee* sells, or receives compensation for property in which the licensee owns an interest, the licensee shall disclose, *in writing*, any interest in the property to all parties to the transaction;

(f) Accepting valuable consideration for the performance of any of the acts specified in this chapter, from any person, except from his or her principal broker *in accordance with a compensation agreement between them*~~[at the time the brokerage agreement was obtained]~~. When acting as an agent in the management of property, a real estate licensee shall not accept any commission, rebate, or profit on expenditures made for a client without the full knowledge and consent of the client;

(g) Representing or attempting to represent a broker other than a principal broker, without the express knowledge and consent of ~~the~~~~[that]~~ principal broker *with whom the licensee is affiliated*;

- (h) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession. When acting as a property manager, the licensee shall render an accounting and remit all moneys to his or her client strictly in accordance with the contract of employment;
- (i) Paying valuable consideration to any person for services performed in violation of this chapter;
- (j) Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of, a felony *or of a misdemeanor involving sexual misconduct*~~and~~ the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction~~,~~ suspending the imposition of sentence;~~;~~~~or~~
- (k) Failing to report a ~~felony~~ conviction,~~or~~ plea of guilty~~to a felony~~, or an "Alford" plea to a felony *or a misdemeanor involving sexual misconduct* to the commission;~~or~~
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- (l) Soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery, contest, or deceptive practice;~~;~~~~or~~
- (m) Offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate;~~;~~~~or~~
- (n) Acting in the dual capacity of *licensee*~~broker~~ and undisclosed principal in *any real estate*~~the~~ transaction;
- ~~(o)(k)~~ Guaranteeing, authorizing, or permitting a person to guarantee that future profits shall result from a resale of real property;
- ~~(p)(4)~~ Negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property, or attempting to obtain a brokerage agreement with *a consumer*~~an owner or lessor~~ knowing that the *consumer*~~owner or lessor~~ had a written outstanding contract granting exclusive agency *with*~~in connection with the property to~~ another real estate broker;
- ~~(q)(m)~~ Publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action;
- ~~(r)(n)~~ Failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document;
- ~~(s)(o)~~ Failing, within a reasonable time, to provide information requested by the commission as a result of a formal or informal complaint to the commission which may indicate a violation of this chapter;
- ~~(t)(p)~~ Paying valuable consideration to any person for the name of potential sellers or buyers, except as otherwise provided in *subsection (4) of Section 4 of this Act*~~KRS 324.020(3)~~;
- ~~(u)(q)~~ Violating any of the provisions in this chapter or any lawful order, rule, or administrative regulation made or issued under the provisions of this chapter; ~~(v)(r)~~ Any

other conduct that constitutes improper, fraudulent, or dishonest dealing; or ~~(w)(s)~~ Gross negligence.

- ~~(5)(2)~~ Any conduct constituting an act of discrimination regarding a person's race, color, creed, sex, or national origin, including use of scare tactics or blockbusting, shall be considered improper conduct as referred to in subsection ~~(4)(v)(1)(r)~~ of this section.
- ~~(6)(3)~~ No unlawful act or violation of any provision of this chapter by any affiliated licensee of the principal broker shall be cause for holding the principal broker primarily liable, unless the broker has knowledge of the unlawful violation and did not prevent it. The principal broker and his or her designated manager, if any, shall exercise adequate supervision over the activities of licensed affiliates and all company employees to ensure that violations of this chapter do not occur. ~~The~~ ~~A principal broker's~~ failure **of a broker or his designated manager** to exercise adequate supervision of the licensed affiliates shall constitute a violation of this chapter.
- ~~(7)(4)~~ The practice of obtaining, negotiating, or attempting to negotiate "net listings" shall be considered improper dealing.

Section 18. KRS 324.170 is amended to read as follows:

- (1) The commission shall, before denying an application for license or before **ordering any disciplinary action against a licensee**, ~~suspending or revoking any license, set the matter down for~~ **order** a hearing. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B. If the applicant or licensee is a sales associate, the commission shall also notify the principal broker of the hearing by mailing notice by certified mail, return receipt requested, to the broker's last known business address. The commission shall order the presence of the principal broker **or his designated representative** at the hearing.
- (2) All hearings shall be conducted by a quorum of the commission or by a hearing officer appointed by the commission. Hearing officers shall not **order any disciplinary action against a licensee** ~~suspend, revoke, or fine any licensee or place any licensee on probation~~. The function of hearing officers appointed to conduct hearings shall be to preside at the hearing and to prepare a recommended order to be submitted to the commission.

Section 19. KRS 324.200 is amended to read as follows:

- (1) If the commission **determines** ~~shall determine~~ after a hearing that any applicant is not entitled to receive a license, a license shall not be granted to the applicant, and if the commission **determines** ~~shall determine~~ after a hearing that any licensee **has violated** ~~is guilty of a violation of~~ any of the provisions of this chapter, the **disciplinary measures in subsection (1) of Section 17 of this Act may be ordered** ~~license shall be suspended or revoked~~.
- (2) Any party aggrieved by the action of the commission in refusing to grant a license or in **ordering any disciplinary action** ~~suspending or revoking a license~~ may appeal to the Circuit Court where the licensee has his principal place of business or where the applicant resides in accordance with KRS Chapter 13B. Disciplinary action imposed by the commission shall be automatically stayed during the pendency of an appeal to a circuit or appellate court, unless otherwise indicated in the final order of the commission.

Section 20. KRS 324.220 is amended to read as follows:

No person who has had a broker's or sales associate's license revoked shall be issued another license for five (5) years from the date of revocation. All persons seeking issuance of another license after **the five (5) year period of** revocation may do so only at the discretion of the commission and shall retake the appropriate examination and meet all of the contemporary licensing requirements.

Section 21. KRS 324.230 is amended to read as follows:

The revocation **or suspension** of a principal broker's license shall automatically **render inactive**~~[suspend]~~ every license granted to any person by virtue of association with the principal broker whose license has been revoked **or suspended**, pending a change of principal broker and the issuance of a new license. Such new license shall be issued without charge, if granted during the same year in which the original license was granted.

Section 22. KRS 324.281 is amended to read as follows:

- (1) There is hereby created the Kentucky Real Estate Commission. The Governor shall appoint five (5) persons, at least four (4) of whom, immediately prior to the date of their appointment have been residents of the state for ten (10) years and whose vocation for a period of at least ten (10) years shall have been that of an active real estate licensee. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The term of the members of the commission shall be for four (4) years and until their successors are appointed and qualify, except as provided in subsections (2) and (3) of this section.
- (2) ~~All~~~~Vacancies occurring in 1984 shall be filled by one (1) appointment for a three (3) year term and one (1) appointment for a four (4) year term; all subsequent~~ appointments shall be for the specified four (4) year term. **No person appointed after the effective date of this Act shall serve more than two (2) consecutive terms.**
- (3) For each appointment or vacancy, the Kentucky Association of Realtors shall supply a list of not less than three (3) names of licensees to the Governor each year from which the broker or sales associate appointments shall be made. The Governor may fill vacancies arising in the middle of the year from those remaining on the list or from a new list supplied by the association.
- (4) There shall not be more than three (3) of any one (1) political party serving on the commission at the same time. Appointees to fill vacancies shall be appointed for the unexpired term.
- (5) It shall be the duty of the commission to **promulgate**~~[draft]~~ administrative regulations; to hold disciplinary hearings concerning matters in controversy as provided by this chapter; to conduct examinations for applicants eligible under this chapter **or alternatively to contract with an entity to conduct examinations**; to conduct necessary educational seminars and courses directed toward continuing education within the real estate field; to investigate or cause to be investigated any irregularities in violation of this chapter or the promulgated and authorized administrative regulations of the commission; to participate with any other agency of the Commonwealth or the authorized agency of another state for the betterment or improvement of the administration of the statutes or administrative regulations governing this commission. Any action taken by the commission under this subsection shall be appealable as are other actions of the commission under this chapter.

- (6) The commission, at its discretion, may use the funds necessary to purchase liability insurance for members and executive officers of the commission, inspectors, and for members of the staff exempted from classified service of the state by KRS 18A.115.
- (7) The commission shall require all actively-licensed agents, except for those agents who were licensed prior to June 19, 1976, to successfully complete mandatory continuing education as a condition of license renewal. ~~The commission shall implement this provision by promulgating an administrative regulation. The classroom hours of mandatory continuing education shall be six (6) hours per year. Two (2) of the six (6) hours shall pertain to the study of real estate law.~~
- (8) *The commission shall, by the promulgation of administrative regulations, develop a review process by which continuing education courses may be approved for credit. An applicant may seek the commission's approval for credit for courses not previously approved by the commission by submitting sufficient information describing the course to the commission for review.*

Section 23. KRS 324.2811 is amended to read as follows:

A member shall be automatically removed from the commission and a vacancy shall be created if:

- (1) A licensee of the commission ceases to be a broker or sales associate;
- (2) A consumer member of the commission acquires a license or *financial* interest in the practice of real estate;
- (3) A member enters a plea of guilty to, or has been found guilty of, a felony in which fraud is an essential element or to any crime involving moral turpitude and the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal; or
- (4) A member ceases to be a bona fide resident of this Commonwealth.

Section 24. KRS 324.282 is amended to read as follows:

The commission, immediately upon qualification of the member appointed in each year, shall organize by selecting from its members a chairperson~~, and may do all things necessary and convenient for carrying into effect the provisions of this chapter~~. The commission *shall*~~may from time to time~~ promulgate~~necessary~~ administrative regulations *in accordance with KRS Chapter 13A and this chapter to effectively carry out and enforce the provisions of this chapter*, but the commission shall not promulgate any administrative regulation which in any way fixes prices, *establishes fees, or sets the rate at which licensees are compensated*~~or commissions~~.

Section 25. KRS 324.287 is amended to read as follows:

The commission shall *set*, charge, and collect the following fees:

- (1) Examination fee, not to exceed *one hundred dollars (\$100)*~~seventy five dollars (\$75)~~.
- (2) Broker's and sales associate's original license fee, not to exceed thirty dollars (\$30).
- (3) Broker's and sales associate's renewal fee, not to exceed thirty dollars (\$30).
- (4) Transfer from one (1) principal broker to another, not to exceed ten dollars (\$10).
- (5) Certification of status with the commission, ten dollars (\$10).
- (6) Request for any change, not to exceed ten dollars (\$10).

- (7) Recovery fund, not to exceed thirty dollars (\$30).
- (8) ***Broker's and associate's applicant license criminal record check fee, not to exceed thirty dollars (\$30).***

Section 26. KRS 324.288 is amended to read as follows:

No affiliation fee shall be charged in any year to a licensee. As used in this section, "affiliation *fee*"~~{ fee}~~ means any fee or compensation paid by a licensee, to any person, for the privilege of listing his license with a particular principal broker, in records submitted to the commission.

Section 27. KRS 324.310 is amended to read as follows:

- (1) If any sales associate is discharged or terminates his association with the principal broker, it shall be the duty of the broker to immediately deliver or mail to the commission the sales associate's license with the release statement signed by the principal broker. The broker shall, at the time of mailing the sales associate's license to the commission, address a communication to the last known residence address of the sales associate, which shall advise the sales associate that his license has been delivered or mailed to the commission. A copy of the communication to the sales associate shall accompany the license when mailed or delivered to the commission. It shall be unlawful for any sales associate to perform any of the acts contemplated by this chapter either directly or indirectly under authority of his license from and after the date of receipt of the license from the broker by the commission.
- (2) A licensee may place his license in escrow with the commission provided that:
 - (a) The licensee does not engage in any real estate activity for others during the term of escrow of the license; and
 - (b) The licensee pays the annual license renewal fees for each year the license is in escrow.
- (3) At the request of the licensee,~~{and}~~ upon the meeting of requirements applicable to active licensees ***and completion of all continuing education requirements***, a license placed in escrow shall be automatically converted to an active license upon payment of the established change fee.

Section 28. KRS 324.312 is amended to read as follows:

A principal broker shall return an associate's license to the commission upon request. A principal broker that fails to return a license to the commission upon request shall be in violation of ***subsection (4)(v) of KRS 324.160***~~{(1)(e)}~~.

Section 29. KRS 324.360 is amended to read as follows:

- (1) This section shall apply to sales and purchases involving ***single-family*** residential real estate ***dwellings*** if any person licensed under this chapter receives compensation.
- (2) The commission shall promulgate an administrative regulation authorizing a "seller's disclosure of conditions form."
- (3) The form shall provide for disclosure by the seller of the following:
 - (a) Basement condition and whether it leaks;
 - (b) Roof condition and whether it leaks;
 - (c) Source and condition of water supply;

- (d) Source and condition of sewage service; (e) Working condition of component systems; and
- (f) Other matters the commission deems appropriate.
- (4) ***The seller of the property shall complete and sign the form at the time he or she executes any listing agreement or similar agreement by which a licensee intends to market the property. A copy of the form shall be provided by the listing agent to any prospective buyer or a buyer's authorized representative upon request. A copy of the form shall be delivered by the listing agent to any prospective purchaser or his representative within seventy-two (72) hours of the listing agent's receipt of a written and signed offer to purchase. The listing agent shall solicit the signature of the buyer on a copy of the form which the listing agent shall retain in the principal broker's records. The signature shall evidence the listing agent's compliance with the provisions of this section. Should the buyer refuse to sign the form, the licensee shall record the buyer's refusal to sign on the form and retain a copy in his principal broker's records.***~~The form shall be completed and signed by the seller at the time of listing for sale or, for property not listed for sale, completed and signed by the seller within five (5) business days of any executory contract for sale of the residential real estate. The form shall not be required for residential purchases of new homes if a written warranty is offered, for a sale of real estate at auction, or for a court supervised foreclosure.~~
- (5) ***If the subject property is offered for sale by the property's owner without a listing agreement, any licensee involved in the transaction shall provide a blank form to the property's owner and shall request that the property's owner complete and sign the form. If the property's owner completes and signs the form, the licensee shall deliver the form to the buyer or potential buyer not later than one hundred twenty (120) hours after the creation of any executory contract for sale of the property. The licensee shall solicit the signature of the buyer on a copy of the form as delivered to the buyer or prospective buyer and shall retain the copy in his or her principal broker's records. The signature of the buyer or prospective buyer shall evidence the listing agent's compliance with the provisions of this section. Should the buyer refuse to sign the form, the licensee shall record the buyer's refusal to sign on the form and retain a copy in his or her principal broker's records.***~~An accurate copy of the completed form shall be retained by the licensed broker or sales associate who receives compensation in the transaction. An accurate copy shall be delivered to any prospective purchaser upon request and to any prospective purchaser making a signed written offer to purchase, without unreasonable delay. Delivery shall be the responsibility of the broker or sales associate who anticipates being compensated in the transaction.~~
- (6) ***The original of the form shall be retained by the listing broker or by the broker of any licensee who presents an offer on a property not subject to a listing agreement.***
- (7) ***The form shall not be required for residential purchases of new homes if a warranty is offered, for a sale of real estate at an auction, or for a court supervised foreclosure.***
- (8) If the seller refuses to complete and sign the form, his refusal shall be communicated in writing by the broker or sales associate who *is involved*~~anticipates being compensated~~ in the transaction to the purchaser or prospective purchaser, without unreasonable delay.
- (9) ***It shall be a violation of this chapter for a licensee to complete any portion of the form unless the licensee is the owner of the property or has been requested by the owner to***

complete the form. The request shall be acknowledged in writing on the form and the licensee shall be held harmless for any representation that appears on the form.

Section 30. KRS 324.395 is amended to read as follows:

- (1) All real estate licensees, except those whose licenses are in escrow in accordance with KRS 324.310(2), shall carry errors and omissions insurance to cover all activities contemplated under this chapter.
- (2) The commission shall make the insurance mandated under this section available to all licensees by contracting with an insurance provider for a group policy, after competitive, sealed bidding in accordance with KRS Chapter 45A.
- (3) Any policy obtained by the commission shall be available to all licensees with no right on the part of the insurance provider to cancel any licensee.
- (4) Licensees shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in the policy and the financial condition of the insurance company complies with the minimum requirements established by the commission.
- (5) The commission shall determine the terms and conditions of coverage mandated under this section, including, but not limited to, the minimum limits of coverage, the permissible deductible, and permissible exemptions.
- (6) Each licensee shall be notified of the required terms and conditions of coverage for the annual policy at least thirty (30) days prior to the annual license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the annual license renewal date by each licensee who opts not to participate in the group insurance program administered by the commission.
- (7) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group insurance program at a reasonable premium, not to exceed one hundred twenty-five dollars (\$125), the insurance requirement mandated by this section shall be void during the applicable contract year.
- ~~(8) The errors and omissions insurance mandated by this section shall become effective April 1, 1987.~~

Section 31. KRS 324.400 is amended to read as follows:

- (1) There is hereby created and established in the State Treasury the real estate education, research, and recovery fund.
- (2) In addition to the license fees provided for in *Section 25 of this Act* ~~[KRS 324.070]~~, upon renewal of every broker's and sales associate's license, as well as any and all other types of licenses, if any, issued by the commission, as of June 30, 1972, and every regular annual renewal date thereafter, the commission shall charge each of the aforesaid licensees an amount not to exceed thirty dollars (\$30) per year to be included in the real estate education, research, and recovery fund. Each and every original applicant for a license after July 1, 1972, shall likewise submit to the commission an additional fee of thirty dollars (\$30) to be deposited in the real estate education, research, and recovery fund and shall also be subjected thereafter to an annual renewal fee as of the regular renewal period.
- (3) In addition to the license fees provided for in *Section 25 of this Act* ~~[KRS 324.070]~~, the commission, based upon its own discretion as to need, may assess each licensee upon renewal

an amount less than thirty dollars (\$30) per year, or nothing, but not more. Each original applicant must pay the original amount of thirty dollars (\$30), but on renewal will be subjected to the same renewal amount as other licensees.

Section 32. KRS 324.420 is amended to read as follows:

- (1) An aggrieved party ~~may~~^{shall} commence an *administrative* action which may result in collection from the recovery fund by first filing *a complaint* with the commission on a form prepared by the commission. *The complaint shall constitute a prima facie case that a licensee is in violation of Section 17 of this Act and is subject to the same conditions set forth in Section 15 of this Act. If the complaint constitutes a prima facie case and the matter is not settled,* the commission shall hold a hearing pursuant to the requirements set forth in the provisions of this chapter and KRS Chapter 13B to determine if a violation of this chapter has in fact occurred. If a violation of fraud is so found, the commission shall determine if the violation resulted in damages to complainant and in what amount. If damages cannot be accurately determined, then the amount of damages shall be determined by a Circuit Court in the county where the violation took place. In the event the question of damages is referred to the Circuit Court, the decision of the commission will not be final and appealable until the question of damages is certifiable.
- (2) Upon final order by the commission or upon certification to the commission by the Circuit Court on the issue of damages, and after the licensee has refused to pay the claim within a period of twenty (20) days of entry of a final order, the aggrieved party or parties shall be paid the amount or amounts by the commission from the recovery fund.
- (3) The license of the licensee against whom the claim was made by the aggrieved party shall be suspended or may be permanently revoked until such time as the licensee has reimbursed the recovery fund in full for all amounts paid, plus interest at the rate of ten percent (10%) per annum.
- (4) Any party aggrieved by a final order of the commission may appeal to the Circuit Court where the licensee has his principal place of business or where the applicant resides in accordance with KRS Chapter 13B.
- (5) Upon the final order of the court, and after the commission has paid from the real estate education, research, and recovery fund any sum to the aggrieved party, the commission shall be subrogated to all of the rights of the aggrieved party to the extent of the payment. The aggrieved party shall to the extent of the payment assign his right, title and interest in the judgment to the commission. After such assignment, the commission may challenge in bankruptcy court any attempt by a former licensee to discharge the debt, if proper notice is given. Any funds recovered by the commission shall be deposited in the real estate education, research, and recovery fund.
- (6) No aggrieved party shall be entitled to recover compensation from the real estate education, research, and recovery fund unless the action against the licensee is commenced within two (2) years from actual knowledge of the cause of action or from the time when circumstances should reasonably have put the aggrieved party on notice of the cause of action.
- (7) For purposes of this section, an "aggrieved party" shall mean either:
 - (a) A member of the consumer public who stands in a direct relationship to the licensee, i.e., one who demonstrates an interest in purchasing, leasing, renting, or otherwise

securing an interest in real estate through a licensee *and who believes that the licensee is in violation of the provisions of this chapter*; or

- (b) *A member of the consumer public*~~{One}~~ who directly engages the services of a licensee for purposes of selling, leasing, renting, or otherwise dealing in *his or her*~~{their}~~ own property.
- (8) If at any time the money on deposit in the real estate education, research and recovery fund is insufficient to satisfy any duly-authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the real estate education, research, and recovery fund, satisfy such unpaid claim or portions thereof, in the order that such claims or portions were originally filed, plus accumulated interest at the rate of ten percent (10%) per annum.
- (9) Any funds in excess of the four hundred thousand dollar (\$400,000) level which are not being currently used, may be invested and reinvested as set forth in subsection (2) of KRS 324.410.

Section 33. KRS 324.425 is amended to read as follows:

In case of death *or other incapacity* of a principal broker having a licensed sales associate or sales associates affiliated at the time of death *or other incapacity*, the commission reserves the right in its discretion, based upon the merits of each case, to permit one (1) of the sales associates to complete and close the then existing business of the deceased *or incapacitated* broker for a temporary period not to exceed six (6) months.

Section 34. The following KRS sections are repealed:

324.070 License fees.

324.340 Power of cities to regulate brokers not affected.

Approved April 21, 2000