

## CHAPTER 45

## (SB 244)

AN ACT relating to real estate brokerage.

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

Section 1. 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.
- (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) 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 *pay a referral fee to*~~compensate or split fees with~~ a broker licensed outside of Kentucky *for referring a client to the Kentucky broker.*
- (5) Except as authorized in KRS 324.112(1) and 324.425, no sales associate shall supervise another licensed sales associate or manage a real estate brokerage office.
- (6) 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 2. 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. 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
  - (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. *Proof of the requisite experience as a sales associate shall be either a sworn notarized statement signed by the principal broker or principal brokers 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 ***statement***~~[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 shall not be subject to any educational changes in this chapter or subject to any continuing education requirements.

Section 3. 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 principal broker shall register any branch office with the commission within ten (10) days of the creation of the branch office.***
- (4) The licenses of all licensees shall be kept on file in the office in which they are actively engaged and affiliated.
- (5)~~(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 4. KRS 324.117 is amended to read as follows:

- (1) No real estate advertising shall be intentionally false, misleading, or deceptive.
- (2) The name of a deceased broker may remain a part of the firm name.
- (3) An associate may have his or her name in the firm name after two (2) years' experience with the firm, averaging at least twenty (20) hours per week for twenty-four (24) months.
- (4) ***Whenever any real property is listed, a licensee***~~[Any licensee affiliated with a principal broker]~~ shall ***include***~~[advertise in]~~ the name of the real estate company listed on the licensee's real estate license or the name of the principal broker ***with whom the licensee is affiliated in all advertisements of the listed property, regardless of who places the advertisement,*** unless he or she is selling, renting, leasing, or otherwise dealing in his or her own property. ***If listed property is advertised by a customer or client of a listing licensee, the licensee shall, at a minimum, provide the customer or client with written notification of the requirements of this section. The licensee shall keep in his or her files a copy of the notification and any other documentation that is generated by the licensee as proof of his or her compliance with this section.***

- (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 5. KRS 324.121 is amended to read as follows:

- (1) A principal broker may designate one (1) or more affiliated licensees to act as 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 buyer or lessee, or prospective buyer or lessee to the exclusion of all other licensees affiliated 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. ***The designated agent shall inform and obtain the consent of the seller or lessor to the designation. The principal broker shall not designate himself or herself as a designated agent.***
- (2) If a principal broker designates one (1) or more licensees to represent the seller and one (1) or more other licensees to represent the buyer or the prospective buyer in the same transaction, only the principal broker shall 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 keep confidential information relating to either party in an individual file that shall be maintained and accessed by the principal broker only.*** 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.
- (3) No exchange of information or knowledge between or among consumers, whether the seller, buyer, lessor, or lessee, and the principal broker, the firm, or the licensees shall 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.

Section 6. 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. On the verified written complaint of any person, the commission shall investigate the actions of any person who assumes to act in that capacity, if the complaint, together with any evidence presented in connection with it, alleges a prima facie case that a violation set out in KRS 324.160 has been committed. After the investigation, the commission may order a hearing and, in appropriate cases, take disciplinary action against any licensee who is found in violation of 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 ***books, papers, documents, or other evidence***;
  - (b) Administer oaths;

- (c) *Review evidence;*
- (d) *Enter the office or branch office of any principal broker for the purpose of inspecting all documents required by the commission to be maintained in the principal broker's office or branch office which relate to the allegations of practices violating the provisions of this chapter;*
- (e) Examine witnesses; and
- (f)~~(d)~~ Pay appropriate witness fees.

Section 7. 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;
  - (b) Revocation of any license;
  - (c) Levy of fines not to exceed one thousand dollars (\$1,000);
  - (d) Placing of any licensee on probation for a period of up to twelve (12) months;
  - (e) Requiring 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 a formal or informal reprimand.
- (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;

2. Before a 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;
  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. 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 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 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;
  - (k) Failing to report a conviction, plea of guilty, or an "Alford" plea to a felony or a misdemeanor involving sexual misconduct to the commission;
  - (l) Soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery, contest, or deceptive practice;
  - (m) Offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate;
  - (n) Acting in the dual capacity of licensee and undisclosed principal in any real estate transaction;
  - (o) Guaranteeing, authorizing, or permitting a person to guarantee that future profits shall result from a resale of real property;
  - (p) Negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property, or attempting to obtain a brokerage agreement with a consumer knowing that the consumer had a written outstanding contract granting exclusive agency with another real estate broker;
  - (q) Publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action;

- (r) 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) 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) Paying valuable consideration to any person for the name of potential sellers or buyers, except as otherwise provided in KRS 324.020(4);
  - (u) 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) Any other conduct that constitutes improper, fraudulent, or dishonest dealing; or
  - (w) Gross negligence.
- (5) Any conduct constituting *a violation of the Federal Fair Housing Act*~~[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) of this section.
- (6) 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 failure of a broker or his designated manager to exercise adequate supervision of the licensed affiliates shall constitute a violation of this chapter.
- (7) The practice of obtaining, negotiating, or attempting to negotiate "net listings" shall be considered improper dealing.

Section 8. KRS 324.330 is amended to read as follows:

- (1) Notice in writing shall be given to the commission by each licensee of any change of principal business location, a change of firm name, sales associate's transfer from one (1) principal broker to another, or a change of surname. The commission shall issue a new license for the unexpired period and shall charge the fee as provided in KRS 324.287(6) for effecting the change on its records. This section shall apply to both brokers and sales associates.
- (2) The commission shall be notified *in writing* of a change of a residence address within ten (10) days.
- (3) A fee shall be assessed for certification of a licensee's status with the commission.

Section 9. 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 *annual* premium, not to exceed *two hundred dollars (\$200)*~~one hundred twenty-five dollars (\$125)~~, the insurance requirement mandated by this section shall be void during the applicable contract year.

Section 10. KRS 324.990 is amended to read as follows:

- (1) *Any person engaging in real estate brokerage without a license shall be guilty of a Class A misdemeanor for a first offense and a Class D felony for any subsequent offenses. A person who engages in real estate brokerage without a license due to failure to renew a previously valid Kentucky license shall not be subject to this penalty if the person is entitled to and does avail himself of the remedial provisions of KRS 324.090(3).*
- (2) In addition to the penalties set out in this chapter, a Circuit Court may impose an additional penalty on any person who violates any provision of this chapter by fining them not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoning them for a term not to exceed six (6) months, or both. Upon conviction, in addition to the aforesaid fine, there shall be added to the fine the amount of any real estate brokerage commission paid or received as a result of the violation or violations in question. Each transaction shall be regarded as a separate offense and shall be punished as such.

**Approved April 2, 2004**