

## CHAPTER 58

## (HB 401)

AN ACT relating to real estate brokerage.

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

➔Section 1. 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However, an examination shall not be required for the renewal of any present or future license, unless the license has been revoked, suspended, or is allowed to expire without renewal for a period of more than one (1) year.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.
- (5) ***Applicants shall be subject to a national criminal history check through the Federal Bureau of Investigation. The applicant shall request the criminal history check and shall provide the applicant's fingerprints to either the Federal Bureau of Investigation or the Kentucky State Police for submission to the Federal Bureau of Investigation to search for information regarding the applicant in the National Crime Information Center or its successor entity. The results of the criminal history check shall be sent to the commission, and shall be sent to the applicant at the applicant's request. The applicant shall:***
  - (a) ***Authorize release of the results of the criminal history check to the commission;***
  - (b) ***Pay the actual cost of the fingerprinting and criminal history check, if any;***
  - (c) ***Complete the criminal history check within the ninety (90) calendar days prior to the date the license application is received by the commission; and***
  - (d) ***Complete and return to the commission within one hundred twenty (120) days a signed affidavit verifying that there is nothing on record to prohibit the applicant from licensure.***

➔Section 2. 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. ***Each principal broker shall advise the commission, in writing, if any overdraft occurs in the escrow account for any reason other than service charges instituted by the bank, and which is not corrected within seventy-two (72) hours of the broker receiving notice.***
- (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 ***or her*** 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 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.
- (9) ***If any licensee is alleged to have committed an escrow account violation that warrants emergency action, the commission may conduct an emergency hearing as authorized by subsection (1)(b) of Section 5 of this Act.***

➔Section 3. 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) ***A sales***~~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 shall include 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 4. KRS 324.141 is amended to read as follows:

- (1) (a) ***An individual who holds an active real estate license issued by another jurisdiction within the United States may apply for a Kentucky license by first:***
1. ***Completing the application forms;***
  2. ***Passing the state law portion of the licensing examination; and***
  3. ***Fulfilling all other pre-license qualifications as outlined in this chapter.***
- (b) ***The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish the procedures for implementing paragraph (a) of this subsection***~~If the commission enters into an agreement of reciprocity with the appropriate state or territory, and upon payment of the established application fees, any person who holds a real estate license in good standing issued by any state or territory which has licensing and educational standards deemed by the commission to be sufficient for minimal competence as a real estate licensee may be licensed without examination if the state or territory extends similar reciprocity to licensees of this state.~~

- (2) *All individuals who have held a real estate license in another jurisdiction, whether the license is currently active or canceled, shall be required to furnish, as part of his or her application for a Kentucky license, a certification of good standing, issued by the jurisdiction. The document shall include the individual's license history and any disciplinary information available from that jurisdiction.*
- (3) Every nonresident applicant shall file an irrevocable consent stating that legal actions may be commenced against the applicant in the proper court of any county of this state in which a cause of action may arise in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state on the commission, the consent stipulating and agreeing that service of process or pleadings on the commission shall be taken and held in all courts to be as valid and binding as if service had been made upon the applicant in the State of Kentucky. Any process or pleadings served upon the commission shall be by duplicate copies, one (1) of which shall be filed in the office of the commission and the other immediately forwarded by certified mail, return receipt requested, to the main office of the applicant against which the process or pleadings are directed.

➔Section 5. KRS 324.150 is amended to read as follows:

- (1) (a) 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.
- (b) *The commission may conduct an emergency hearing when alleged escrow account violations warrant emergency action. The commission shall promulgate administrative regulations to describe the specific circumstances and allegations that authorize emergency action. The emergency hearing shall be conducted in accordance with KRS Chapter 13B, as it relates to emergency orders and emergency hearings.*
- (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) Pay appropriate witness fees.

➔Section 6. 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 a prima facie case that the licensee has violated the provisions of KRS 324.160. 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 KRS 324.160, 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 KRS 324.160, a copy of the complaint, exhibits attached thereto, and any subsequent pleadings, shall be served on the licensee, 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 licensee shall file with the commission an answer to the complaint, 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 *or her* last known address a copy of the answer, exhibits attached thereto, and any subsequent pleadings. 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.
- (4) ***If any licensee is alleged to have committed an escrow account violation that warrants emergency action, the commission may conduct an emergency hearing as authorized by subsection (1)(b) of Section 5 of this Act.***

➔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;~~
  - ~~(n){(o)}~~ Guaranteeing, authorizing, or permitting a person to guarantee that future profits shall result from a resale of real property;
  - ~~(o){(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;
  - ~~(p){(q)}~~ Publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action;
  - ~~(q){(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;
  - ~~(r){(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;
  - ~~(s){(t)}~~ Paying valuable consideration to any person for the name of potential sellers or buyers, except as otherwise provided in KRS 324.020(4);
  - ~~(t){(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;
  - ~~(u){(v)}~~ Any other conduct that constitutes improper, fraudulent, or dishonest dealing; or
  - ~~(v){(w)}~~ Gross negligence.
- (5) Any conduct constituting a violation of the Federal Fair Housing Act, including use of scare tactics or blockbusting, shall be considered improper conduct as referred to in subsection (4)(u){(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 *or her* 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 324.165 is amended 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 KRS 324.160(4)(u)~~(+)~~. Violation of this section by unlicensed persons shall be subject to the penalties in KRS 324.990.

➔Section 9. 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, 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 *or her* 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. 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.
- (3) ***If any licensee is alleged to have committed an escrow account violation that warrants emergency action, the commission may conduct an emergency hearing as authorized by subsection (1)(b) of Section 5 of this Act.***

➔Section 10. KRS 324.310 is amended to read as follows:

- (1) If any sales associate is discharged or terminates his *or her* 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 ***in a manner that complies with Section 11 of this Act, along*** 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 *or her* 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 ***the sales associate's***~~his~~ license from and after the date of receipt of the license from the broker by the commission.
- (2) A licensee may place his *or her* 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, 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 11. KRS 324.312 is amended to read as follows:

- (1) A principal broker shall return an associate's license to the commission *immediately*:
- (a) *Upon the written termination of the association between the broker and the associate; or*
- (b) *At any time upon the commission's*~~upon~~ request.
- (2) *If a principal broker*~~that~~ fails to return a license to the commission *as required by subsection (1) of this section within five (5) business days, the commission shall consider the license as released, and the principal broker*~~upon request~~ shall be in violation of KRS 324.160(4)(u)~~(v)~~.

➔Section 12. KRS 324.420 is amended to read as follows:

- (1) An aggrieved party may 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 KRS 324.160 and is subject to the same conditions set forth in KRS 324.150. 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) *An aggrieved party shall not be entitled to recover compensation from the real estate education, research, and recovery fund, unless the compensation is for the actual financial harm suffered by the aggrieved party, and this financial harm is specifically and directly related to the property.*
- (8) 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 who directly engages the services of a licensee for purposes of selling, leasing, renting, or otherwise dealing in his or her own property.
- ~~(9)~~~~(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.

~~(10)(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 13. KRS 324.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "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, compensation, or other valuable consideration;
- (2) "Commission" means the Kentucky Real Estate Commission;
- (3) "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;
- (4) "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) "Real estate" means real estate in its ordinary meaning and includes timeshares, options, leaseholds, and other interests less than leaseholds;
- (6) "Sales associate" means any person licensed in accordance with KRS 324.046(2) that is affiliated with a Kentucky-licensed principal broker and who, when engaging in real estate brokerage, does so under the supervision of the principal broker;
- (7) "Approved real estate school" means:
  - (a) 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) 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) "Accredited institution" 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;
- (9) "Property management" means the overall management of real property for others for a fee, 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;
- (10) "Broker" means any person who is licensed under KRS 324.046(1) and performs acts of real estate brokerage;
- (11) ***"Designated manager" means a licensed sales associate or broker who manages a main or branch office for the principal broker, at the principal broker's direction, and has managing authority over the activities of the sales associates at that office:***
- (12) "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;



- ~~(13)~~~~(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;
- ~~(14)~~~~(13)~~ "Designated agency" means a form of agency relationship that exists when a principal broker, in accordance with KRS 324.121, identifies different licensees in the same real estate brokerage firm to separately represent more than one (1) party in the same real estate transaction;
- ~~(15)~~~~(14)~~ "Affiliation" means the relationship agreed upon between a licensee and a principal broker and reported to the commission, where the licensee places his *or her* license with the principal broker for supervision of the licensee's real estate brokerage activity;
- ~~(16)~~~~(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;
- ~~(17)~~~~(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
- ~~(18)~~~~(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.

➔Section 14. 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 *or a designated manager working under the principal broker's direction* 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 *or designated manager* shall keep confidential information relating to either party in an individual file that shall be maintained and accessed by the principal broker *or designated manager* only. As a dual agent, the principal broker *or designated manager* 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 *or designated manager's* agency relationships in cooperative sales between consumers separately represented by nonaffiliated principal brokers *or designated manager*.
- (3) No exchange of information or knowledge between or among consumers, whether the seller, buyer, lessor, or lessee, and the principal broker, *the designated manager*, 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 15. A NEW SECTION OF KRS CHAPTER 324 IS CREATED TO READ AS FOLLOWS:

*Nothing in this chapter or the administrative regulations promulgated under the authority of this chapter shall extend the jurisdiction of the Kentucky Real Estate Commission to community association managers and the management or business activities of not-for-profit community associations, which includes townhouse, condominium, homeowner, or neighborhood associations.*

Signed by the Governor March 20, 2009.