

## CHAPTER 135

## ( HB 436 )

AN ACT relating to professions licensed by the Real Estate Authority.

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

➔Section 1. KRS 324.085 is amended to read as follows:

- (1) (a) All actively licensed agents, except those licensees exempt under KRS 324.046(5) **and those licensees satisfying the educational requirement in subsection (2) of this section**, shall successfully complete **twelve (12)**~~six (6)~~ classroom or online hours of continuing education **for the biennial license period**~~each year~~. **Six (6) of the twelve (12) hours shall be completed in the first year of the biennial license period or the license shall be automatically cancelled.**
  - (b) **Six (6)**~~Three (3)~~ of the **twelve (12)**~~six (6)~~ hours of **continuing education** shall be in real estate law.
  - (c) **A licensee may accumulate additional continuing education hours for the biennial period in the first year of the biennial term.**
  - (d) **Six (6) of the twelve (12) hours of continuing education may be in real estate-related courses approved by the commission and other real property boards pursuant to KRS Chapters 324A and 330 and KRS 198B.700 to 198B.738.**
- (2) A licensee who is issued an initial sales associate license after January 1, 2016, shall complete forty-eight (48) classroom or online hours of commission-approved post-license education:
  - (a) Provided by one (1) or a combination of the following:
    1. An accredited institution; or
    2. A commission-approved:
      - a. Real estate school; or
      - b. Broker-affiliated training program; and
  - (b) Within two (2) years of receiving or activating his or her license unless extended by the commission for good cause shown.
- (3) The license held by any licensee failing to complete his or her sales associate post-license education requirements in accordance with subsection (2) of this section shall be automatically canceled, in accordance with administrative regulations establishing compliance and delinquency procedures.
- (4) The commission shall promulgate administrative regulations to establish procedures for implementing the requirements in this section.
- (5) In order to qualify to teach continuing education or post-license courses, all continuing education and post-license instructors shall maintain a minimum rating as prescribed by the commission by the promulgation of administrative regulations.

➔Section 2. KRS 324.090 is amended to read as follows:

- (1) Licenses shall expire **biennially**~~annually~~ and shall be renewed **every two (2) years**~~each year~~ on the date determined by the commission by administrative regulation. The commission shall renew a license for **two (2) years**~~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 **biennial**~~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 *biennial license period*~~[renewal year]~~ as prescribed by the commission shall automatically revert to expired status. An expired license may be reactivated before a lapse of one (1) year, if delinquent fees are paid by the licensee.

➔Section 3. KRS 324.281 is amended to read as follows:

- (1) There is hereby created the Kentucky Real Estate Commission. The Governor shall appoint *seven (7)*~~[five (5)]~~ persons, at least *six (6)*~~[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 three (3) years and until their successors are appointed and qualify, except as provided in subsections (2) and (3) of this section. A majority of the commission shall constitute a quorum for the transaction of business.
- (2) All appointments shall be for the specified three (3) year term. No person appointed after July 14, 2000, shall serve more than two (2) consecutive terms.
- (3) For each appointment or vacancy, the Kentucky Association of Realtors shall within sixty (60) days 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 reject the list of three (3) names and request that the Kentucky Association of Realtors submit a new list of three (3) names within sixty (60) days of the Governor's request. If the Kentucky Association of Realtors fails to timely submit this list to the Governor, the Governor may immediately appoint a qualified person to fill this vacancy. The Governor may otherwise 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 *four (4)*~~[three (3)]~~ members of any one (1) political party serving on the commission at the same time. No member of the commission shall reside in the same county as another member. Appointees to fill vacancies shall be appointed for the unexpired term.
- (5) It shall be the duty of the commission to:
- (a) Promulgate administrative regulations, with the approval of the executive director of the Kentucky Real Estate Authority;
  - (b) Hold disciplinary hearings concerning matters in controversy as provided by this chapter;
  - (c) Conduct examinations for applicants eligible under this chapter or alternatively to contract with an entity to conduct examinations;
  - (d) Conduct necessary educational seminars and courses directed toward continuing education within the real estate field;
  - (e) Investigate or cause to be investigated any irregularities in violation of this chapter or the promulgated and authorized administrative regulations of the commission; and
  - (f) 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.
- (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.
- (9) The Governor shall set the compensation of the members of the commission, but voting members of the commission shall be compensated no less than three hundred dollars (\$300) per day for official business, subject to an annual maximum of six thousand dollars (\$6,000). Members shall be reimbursed for all expenses

paid and incurred in the discharge of official business consistent with the reimbursement policy for state employees. With the approval of the executive director of the Kentucky Real Estate Authority within the Department of Professional Licensing, commission members and commission staff may attend and travel to and from meetings and events relevant to the commission or to the industry the commission represents.

➔Section 4. 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);~~[-]~~
- (2) Broker's and sales associate's original *biennial* license fee, not to exceed *sixty dollars (\$60)*; ~~thirty dollars (\$30).~~
- (3) Broker's and sales associate's *biennial* renewal fee, not to exceed *sixty dollars (\$60)*; ~~thirty dollars (\$30).~~
- (4) (a) Transfer from one (1) principal broker to another, not to exceed ten dollars (\$10).  
(b) *If the transfer is initiated by the principal broker for twenty (20) or more licensees, the transfer fee shall not exceed two hundred dollars (\$200);*
- (5) *Reactivation fee, not to exceed ten dollars (\$10);*
- (6) Certification of status with the commission, ten dollars (\$10);~~[-]~~
- ~~(7) [(6)]~~ Request for any change, not to exceed ten dollars (\$10);~~[-]~~
- ~~(8) [(7)]~~ *Biennial recovery fund fee* ~~[Recovery fund]~~, not to exceed *sixty dollars (\$60)*; ~~thirty dollars (\$30).~~
- ~~(9) [(8)]~~ *Prelicensing education course review fee, not to exceed two hundred dollars (\$200);*
- (10) *Continuing and postlicensing education course review fee, not to exceed fifty dollars (\$50); and*
- (11) *Distance education course review fee, not to exceed seventy-five dollars (\$75)* ~~[Broker's and associate's applicant license criminal record check fee, not to exceed thirty dollars (\$30)].~~

➔Section 5. 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 KRS 324.312, 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 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 *inactive status* ~~[eserow]~~ with the commission provided that:
  - (a) The licensee does not engage in any real estate activity for others during the term of *inactive status* ~~[eserow]~~ of the license; ~~and~~
  - (b) The licensee pays the *biennial* ~~[annual]~~ license renewal fees for each *biennial renewal period* ~~[year]~~ the license is in *inactive status*; ~~and~~ ~~[eserow]~~
  - (c) *The licensee obtains extended reporting period coverage insurance for one (1) year at the current minimum requirements then in effect prior to entering inactive status.*
- (3) At the request of the licensee, *after complying with subsection (4) of this section and* upon the meeting of requirements applicable to active licensees, *the commission shall reactivate a license placed in inactive status, in the absence of any reason or condition which might warrant the refusal of the granting of a license* ~~and completion of all continuing education requirements, a license placed in eserow shall be automatically converted to an active license upon payment of the established change fee].~~
- (4) *To reactivate a license, a licensee shall:*
  - (a) *Submit an acceptable criminal record check consistent with KRS 324.045(4);*
  - (b) *Complete all continuing education requirements required by the commission; and*

(c) *Pay the applicable reactivation fees.*

➔Section 6. 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(7)~~(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.
- (4) The commission shall, by the promulgation of administrative regulations, require all licensees to file with the commission, at *biennial*~~annual~~ renewal, their telephone numbers and, if applicable, their electronic mail addresses.

➔Section 7. KRS 324.395 is amended to read as follows:

- (1) All real estate licensees, except those whose licenses are in *inactive status*~~es row~~ in accordance with KRS 324.310(2), shall carry errors and omissions insurance to cover all activities contemplated under this chapter. ***Inactive licensees shall obtain extended reporting period coverage insurance for one (1) year at the current minimum requirements then in effect prior to entering inactive status.***
- (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 ***the required***~~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 *biennial*~~annual~~ policy at least thirty (30) days prior to the *biennial*~~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 *biennial*~~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 ~~the~~errors and omissions insurance coverage ***required by subsection (1) of this section*** 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) ***per year for required insurance coverage and not to exceed two hundred dollars (\$200) per year for extended reporting period coverage***, then the insurance requirement mandated by this section shall be void during the applicable contract year.

➔Section 8. 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 KRS 324.287, 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 *biennial*~~annual~~ renewal date thereafter, the commission shall charge each of the aforesaid licensees an amount not to exceed ***sixty dollars (\$60)***~~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 ***not to exceed sixty dollars (\$60)***~~of thirty dollars (\$30)~~ to be deposited in the real estate education, research, and recovery fund and shall also be subjected thereafter to a *biennial*~~an annual~~ renewal fee as of the regular renewal period.

~~(3) In addition to the license fees provided for in KRS 324.287, 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 9. 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 *one (1) year*~~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) 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) 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 10. KRS 413.140 is amended to read as follows:

- (1) The following actions shall be commenced within one (1) year after the cause of action accrued:
- (a) An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice, or servant;
  - (b) An action for injuries to persons, cattle, or other livestock by railroads or other corporations, with the exception of hospitals licensed pursuant to KRS Chapter 216;
  - (c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal conversation, or breach of promise of marriage;
  - (d) An action for libel or slander;
  - (e) An action against a physician, surgeon, dentist, or hospital licensed pursuant to KRS Chapter 216, for negligence or malpractice;
  - (f) A civil action, arising out of any act or omission in rendering, or failing to render, professional services for others, whether brought in tort or contract, against a real estate appraiser holding a certificate or license issued under KRS Chapter 324A *or a real estate broker or sales associate holding a license issued under KRS Chapter 324*;
  - (g) An action for the escape of a prisoner, arrested or imprisoned on civil process;
  - (h) An action for the recovery of usury paid for the loan or forbearance of money or other thing, against the loaner or forbearer or assignee of either;
  - (i) An action for the recovery of stolen property, by the owner thereof against any person having the same in his possession;
  - (j) An action for the recovery of damages or the value of stolen property, against the thief or any accessory;
  - (k) An action arising out of a detention facility disciplinary proceeding, whether based upon state or federal law;
  - (l) An action for damages arising out of a deficiency, defect, omission, error, or miscalculation in any survey or plat, whether brought in tort or contract, against a licensed professional land surveyor holding a license under KRS Chapter 322; and
  - (m) An action for violating KRS 311.782.
- (2) In respect to the action referred to in paragraph (e) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the injury is first discovered or in the exercise of reasonable care should have been discovered; provided that such action shall be commenced within five (5) years from the date on which the alleged negligent act or omission is said to have occurred.
- (3) In respect to the action referred to in paragraph (f) or (l) of subsection (1) of this section, the cause of action shall be deemed to accrue within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured.
- (4) In respect to the action referred to in paragraph (h) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of payment. This limitation shall apply to all payments made on all demands, whether evidenced by writing or existing only in parol.
- (5) In respect to the action referred to in paragraph (i) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the property is found by its owner.
- (6) In respect to the action referred to in paragraph (j) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of discovery of the liability.
- (7) In respect to the action referred to in paragraph (k) of subsection (1) of this section, the cause of action shall be deemed to accrue on the date an appeal of the disciplinary proceeding is decided by the institutional warden.
- (8) In respect to the action referred to in subsection (1)(m) of this section, the cause of action shall be deemed to accrue after the performance or inducement or attempt to perform or induce the abortion.

➔Section 11. The following KRS section is repealed:

324A.060 Goods and services -- Administrative coordinator.

➔ Section 12. Sections 1, 2, and 4 of this Act shall be effective January 1, 2020.

**Signed by Governor March 26, 2019.**