

1 AN ACT relating to unlawful trade practices and declaring an emergency.

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

3 ➔Section 1. KRS 286.2-685 is repealed, reenacted and amended as a new section
4 of Subtitle 3 of KRS Chapter 286 to read as follows:

5 (1) ***Except as provided in subsection (2) of this section, a*** ~~no~~ person ***doing business***
6 ***in this state shall not*** ~~may~~ use the term "bank," "banker," "banking," "trust," or a
7 similar term, ***which may include without limitation*** ~~or~~ a character, ideogram,
8 phonogram, phrase, or foreign language word, ***including any use of the***
9 ***name on*** stationery ~~,~~ or ***marketing material or in solicitations or*** advertising, ***in a***
10 manner that would imply to the public that the person is engaged in the banking or
11 trust business.

12 (2) ~~{Subsection (1) of this section does not apply to }~~ ***A person may use a term***
13 ***prohibited by subsection (1) of this section if the*** ~~{depository institution or other~~
14 ~~entity organized under the laws of this state, another state, or the United States to~~
15 ~~the extent that the depository institution or }~~ ***person*** ~~{other entity}~~ is ***authorized:***

16 (a) ~~{Authorized }~~ Under its charter, or the laws of this state or the United States, to
17 use ***the*** ~~{a}~~ term ***in its name*** ~~{, word, character, ideogram, phonogram, or phrase~~
18 ~~prohibited by subsection (1) of this section}~~; and

19 (b) ~~{Authorized }~~ By the laws of this state or the United States to conduct the
20 activities in which it is engaged in this state.

21 (3) (a) ***The commissioner shall levy a civil penalty against any person that violates***
22 ***this section.***

23 (b) ***The civil penalty shall be not less than one thousand dollars (\$1,000) nor***
24 ***more than five thousand dollars (\$5,000) per violation, plus the state's costs***
25 ***and expenses for the examination, investigation, and prosecution of the***
26 ***matter, including reasonable attorney's fees and court costs*** ~~{For purposes of~~
27 ~~this section, unless the context requires otherwise, "financial institution"~~

1 means any person or entity operating in the Commonwealth of Kentucky, as
2 permitted under the laws of this state, any other state, or the United States, as
3 a bank, bank holding company, credit union, savings and loan association, or
4 any wholly owned subsidiary thereof.

5 ~~(4) Except as provided in subsection (5) of this section, no person that is not a financial~~
6 ~~institution may use the trade name, trademark, service mark, logo, or symbol, or~~
7 ~~any combination thereof, of any financial institution, or any trade name, trademark,~~
8 ~~service mark, logo, or symbol, or any combination thereof, that is similar to the~~
9 ~~trade name, trademark, service mark, logo, or symbol of such a financial institution,~~
10 ~~in any marketing material, solicitation, or advertising provided or directed to~~
11 ~~another person in a manner such that a reasonable person may be confused,~~
12 ~~mistaken, or deceived that the marketing material, solicitation, or advertising~~
13 ~~originated from, is endorsed by, or has been consented to by the financial~~
14 ~~institution.~~

15 ~~(5) Subsection (4) of this section shall not apply to a person who uses the trade name,~~
16 ~~trademark, service mark, logo, or symbol of a financial institution with the written~~
17 ~~consent of the financial institution.~~

18 ~~(6) The financial institution whose trade name, trademark, service mark, logo, or~~
19 ~~symbol has been used in violation of this section may institute an action in the~~
20 ~~Franklin Circuit Court or any court of competent jurisdiction against any person or~~
21 ~~entity in violation of subsection (4) of this section to enjoin a continuance of any~~
22 ~~activity in violation of subsection (4) of this section and, if injured thereby, for the~~
23 ~~recovery of damages at three (3) times the amount of any actual damages sustained~~
24 ~~and for civil penalties in the amount of one thousand dollars (\$1,000). It shall not be~~
25 ~~necessary that actual damages be alleged or proved in order to recover injunctive~~
26 ~~relief or civil penalties. The penalties prescribed by this subsection shall be~~
27 ~~cumulative}.~~

1 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) As used in this section:

4 (a) 1. "Financial institution" means any bank, bank holding company, trust
5 company, savings and loan association, savings and loan association
6 holding company, credit union, mortgage loan company, mortgage
7 loan broker, consumer loan company, broker-dealer, covered adviser,
8 investment adviser, or wholly owned subsidiary of any of the
9 foregoing, that is organized under the laws of this state, any other
10 state, or the United States.

11 2. As used in this paragraph, "broker-dealer," "covered adviser," and
12 "investment adviser" have the same meaning as in KRS 292.310; and

13 (b) "Person" has the same meaning as in KRS 367.110.

14 (2) Except as provided in subsection (3) of this section, a person that is not a
15 financial institution shall not use the following in any marketing material,
16 solicitation, or advertising distributed in this state:

17 (a) The name, trade name, trademark, service mark, logo, or symbol, or any
18 combination thereof, of any financial institution; or

19 (b) Any name, trade name, trademark, service mark, logo, or symbol, or any
20 combination thereof, that is similar to the name, trade name, trademark,
21 service mark, logo, or symbol of any financial institution.

22 (3) Subsection (2) of this section shall not apply if:

23 (a) The marketing material, solicitation, or advertising is distributed with the
24 consent of the financial institution, which may be provided by the financial
25 institution in written or electronic format; or

26 (b) 1. The person includes the following notice in the marketing material,
27 solicitation, or advertising:

1 "This marketing material, solicitation, or advertising did not originate
2 from, is not endorsed by, and has not been consented to by [insert
3 name of financial institution and any affiliated trade name,
4 trademark, service mark, logo, or symbol used in the marketing
5 material, solicitation, or advertising]."

6 2. The notice required under subparagraph 1. of this paragraph shall be:

7 a. In boldface type that is not smaller than the type for any use
8 referenced in subsection (2) of this section; and

9 b. In a conspicuous location:

10 i. On the face of the marketing material, solicitation, or
11 advertising; and

12 ii. In any other area of the marketing material, solicitation, or
13 advertising where any use referenced in subsection (2) of
14 this section is visible or printed.

15 (4) (a) A violation of this section shall be deemed to be an unfair, false, misleading,
16 or deceptive act or practice in the conduct of trade or commerce in violation
17 of KRS 367.170.

18 (b) All of the remedies, powers, and duties provided to the Attorney General or
19 any other person under KRS 367.110 to 367.300, and the penalties provided
20 in KRS 367.990, pertaining to acts and practices declared unlawful by KRS
21 367.170, shall apply with equal force and effect to a violation of this section.

22 (5) (a) The Attorney General may institute an action in any court of competent
23 jurisdiction against any person alleged to have violated this section.

24 (b) A trade organization representing one (1) or more financial institution
25 industries may institute an action in any court of competent jurisdiction
26 against any person alleged to have violated this section with respect to two
27 (2) or more financial institutions that are members of the represented

1 industry or industries.

2 (c) A financial institution may institute an action in any court of competent
3 jurisdiction against any person alleged to have used the following in
4 violation of this section:

5 1. The financial institution's name, trade name, trademark, service
6 mark, logo, or symbol, or any combination thereof; or

7 2. Any name, trade name, trademark, service mark, logo, or symbol, or
8 any combination thereof, that is similar to the financial institution's
9 name, trade name, trademark, service mark, logo, or symbol.

10 (d) In any action brought under this subsection, if the court finds that the
11 person has violated this section:

12 1. The plaintiff may:

13 a. Obtain an injunction to enjoin a continuance of the unlawful
14 activity;

15 b. Recover damages at three (3) times the amount of any actual
16 damages sustained, which shall be paid to the injured person or
17 persons; and

18 c. Be awarded reasonable attorney's fees and costs; and

19 2. In addition to the remedies and penalties provided under
20 subparagraph 1. of this paragraph:

21 a. A plaintiff who is a trade organization or financial institution
22 may recover a statutory penalty in the amount of five thousand
23 dollars (\$5,000) per violation; and

24 b. The Attorney General may recover civil penalties in the amount
25 of five thousand dollars (\$5,000) per violation.

26 (e) It shall not be necessary that actual damages be alleged or proved in order
27 to recover injunctive relief, attorney's fees and costs, or the statutory penalty

1 or civil penalties referenced in paragraph (d)2. of this subsection.

2 (6) (a) The remedies and penalties prescribed in this section shall be cumulative.

3 (b) Nothing in this section shall be construed to limit or restrict the powers,
 4 duties, remedies, or penalties available to the Attorney General, the
 5 Commonwealth, or any other person under any other statutory or common
 6 law.

7 (7) The Attorney General may promulgate administrative regulations in accordance
 8 with KRS Chapter 13A necessary to effectuate, or as an aid to the effectuation of,
 9 the proper enforcement of this section.

10 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
 11 READ AS FOLLOWS:

12 (1) As used in this section:

13 (a) "Residential real property" means real property located in this state that is:

14 1. Used primarily for personal, family, or household purposes; and

15 2. Improved by one (1) to four (4) dwelling units;

16 (b) "Service agreement" means an agreement under which an owner of
 17 residential real property is required, in connection with the purchase or sale
 18 of the property, to:

19 1. Pay a real estate sales commission to a specified service provider;

20 2. Use a specified service provider to list the property for sale; or

21 3. Receive other real estate brokerage services from a specified service
 22 provider; and

23 (c) "Service provider" means a person, as defined in KRS 367.110, that:

24 1. Is entitled to a real estate sales commission or other payment for real
 25 estate brokerage services under a service agreement; or

26 2. Is required or entitled to:

27 a. List residential real property for sale under a service agreement;

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b. Otherwise provide real estate brokerage services under a service agreement.

(2) A service agreement shall not:

(a) Provide for performance under the agreement, or contain any rights or obligations that may be exercised or performed, more than two (2) years after the date the agreement becomes effective, except this paragraph shall not bar enforcement of an otherwise valid agreement in accordance with KRS 413.160 or another applicable statute of limitations;

(b) Except as otherwise provided under KRS 376.075 and 426.720:

1. Be binding on future owners of interests in the residential real property or otherwise purport to run with the land;

2. Create or impose a lien, encumbrance, or other real property interest on the residential real property; or

3. Require or permit recording of the agreement or any notice or memorandum of the agreement;

(c) To the extent permitted under federal law, restrict the resolution of any disputes, claims, or controversies to binding arbitration or any other form of binding alternative dispute resolution;

(d) Include a waiver by the residential real property owner or owners of any rights to class action relief; or

(e) Allow for assignment of the service provider's rights under, or interest in, the agreement without notice to, and written agreement of, the residential real property owner or owners.

(3) (a) Any provision of a service agreement or a notice or memorandum of a service agreement, whether or not recorded, that violates subsection (2) of this section shall:

- 1 1. Be void and unenforceable; and
2 2. Not bind title to residential real property or run with the land.

3 (b) This subsection shall be:

- 4 1. Retroactively applied to service agreements, and notices or
5 memorandums of service agreements, entered or recorded prior to the
6 effective date of this Act; and
7 2. Prospectively applied to service agreements, and notices or
8 memorandums of service agreements, entered or recorded on or after
9 the effective date of this Act.

10 (4) (a) A service provider shall not, on or after the effective date of this Act, record,
11 or cause to be recorded, a service agreement or a notice or memorandum of
12 a service agreement, except as otherwise provided in KRS 376.075 and
13 426.720.

14 (b) 1. Any service provider who violates this subsection shall be guilty of a
15 Class B misdemeanor, unless the conduct prohibited by this subsection
16 constitutes another crime that provides for greater punishment.

17 2. This paragraph may be enforced by the Attorney General or any
18 Commonwealth's attorney or county attorney of appropriate
19 jurisdiction.

20 (c) Any person with an interest in residential real property that is subject to a
21 service agreement, or a notice or memorandum of a service agreement,
22 recorded in violation of this subsection may institute an action against the
23 service provider in any court of competent jurisdiction to recover:

- 24 1. Actual damages arising from the recording; and
25 2. Attorney fees and costs incurred in the action.

26 (5) (a) A violation of this section on or after the effective date of this Act shall be
27 deemed to be an unfair, false, misleading, or deceptive act or practice in the

1 conduct of trade or commerce in violation of KRS 367.170.

2 (b) All of the remedies, powers, and duties provided to the Attorney General or
 3 any other person under KRS 367.110 to 367.300, and the penalties provided
 4 in KRS 367.990, pertaining to acts and practices declared unlawful by KRS
 5 367.170, shall apply with equal force and effect to a violation of this section.

6 (6) (a) The remedies and penalties prescribed in this section shall be cumulative.

7 (b) Nothing in this section shall be construed to limit or restrict the powers,
 8 duties, remedies, or penalties available to the Attorney General, the
 9 Commonwealth, or any other person under any other statutory or common
 10 law.

11 (7) The Attorney General may promulgate administrative regulations in accordance
 12 with KRS Chapter 13A necessary to effectuate, or as an aid to the effectuation of,
 13 the proper enforcement of this section.

14 ➔Section 4. KRS 324.160 is amended to read as follows:

15 (1) The commission may order any or all of the following sanctions for violation of
 16 subsections (4) to (7) of this section:

17 (a) Suspension of any license;

18 (b) Revocation of any license;

19 (c) Levy of fines not to exceed one thousand dollars (\$1,000);

20 (d) Placing of any licensee on probation for a period of up to twelve (12) months;

21 (e) Requiring successful completion of academic credit hours or additional credit
 22 hours in real estate courses from an accredited institution or approved real
 23 estate school; or

24 (f) Issuing a formal or informal reprimand.

25 (2) A canceled license may be renewed if the licensee pays all necessary fees and meets
 26 all other active licensure requirements within one (1) year of the cancellation date.

27 No licensee whose license is canceled shall engage in real estate brokerage during

1 the period of cancellation or receive any compensation for real estate brokerage
2 unless the compensation was earned prior to the effective date of the cancellation.

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

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

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

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

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

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

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

17 1. A real estate licensee shall not directly or indirectly buy property listed
18 with him or her or with the broker with whom the licensee is affiliated,
19 nor acquire an interest therein, without first indicating in writing on the
20 offer to purchase his or her status as a licensee;

21 2. Before a licensee becomes a party to a contract to purchase real
22 property, the licensee shall disclose his or her status as a licensee to all
23 parties to the transaction, in writing, on the sales contract or on the offer
24 to purchase;

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

- 1 (f) Accepting valuable consideration for the performance of any of the acts
2 specified in this chapter, from any person, except from his or her principal
3 broker in accordance with a compensation agreement between them. When
4 acting as an agent in the management of property, a real estate licensee shall
5 not accept any commission, rebate, or profit on expenditures made for a client
6 without the full knowledge and consent of the client;
- 7 (g) Representing or attempting to represent a broker other than a principal broker,
8 without the express knowledge and consent of the principal broker with whom
9 the licensee is affiliated;
- 10 (h) Failing to account for or remit, within a reasonable time, any money
11 belonging to others that comes into the licensee's possession. When acting as
12 a property manager, the licensee shall render an accounting and remit all
13 moneys to his or her client strictly in accordance with the contract of
14 employment;
- 15 (i) Paying valuable consideration to any person for services performed in
16 violation of this chapter;
- 17 (j) Entering a plea of guilty or an ~~Alford~~ plea to, or having been found
18 guilty of, or having been convicted of, a felony or of a misdemeanor involving
19 sexual misconduct the time for appeal has lapsed or the judgment or
20 conviction has been affirmed on appeal, irrespective of an order granting
21 probation following the conviction suspending the imposition of sentence;
- 22 (k) Failing to report a conviction, plea of guilty, or an ~~Alford~~ plea to a
23 felony or a misdemeanor involving sexual misconduct to the commission;
- 24 (l) Soliciting, selling, or offering for sale real property under a scheme or
25 program that constitutes a lottery, contest, or deceptive practice;
- 26 (m) Acting in the dual capacity of licensee and undisclosed principal in any real
27 estate transaction;

- 1 (n) Guaranteeing, authorizing, or permitting a person to guarantee that future
 2 profits shall result from a resale of real property;
- 3 (o) Negotiating or attempting to negotiate the sale, exchange, lease, or rental of
 4 real property, or attempting to obtain a brokerage agreement with a consumer
 5 knowing that the consumer had a written outstanding contract granting
 6 exclusive agency with another real estate broker;
- 7 (p) Publishing or circulating an unjustified or unwarranted threat of legal
 8 proceedings or other action;
- 9 (q) Failing or refusing on demand to furnish copies of a document pertaining to a
 10 transaction dealing with real estate to a person whose signature is affixed to
 11 the document;
- 12 (r) Failing, within a reasonable time, to provide information requested by the
 13 commission as a result of a formal or informal complaint to the commission
 14 which may indicate a violation of this chapter;
- 15 (s) Paying valuable consideration to any person for the name of potential sellers
 16 or buyers, except as otherwise provided in KRS 324.020(4);
- 17 (t) Violating any of the provisions in this chapter or any lawful order, rule, or
 18 administrative regulation made or issued under the provisions of this chapter;
- 19 (u) Any other conduct that constitutes improper, fraudulent, or dishonest dealing;
 20 or
- 21 (v) Gross negligence.
- 22 (5) **Any of the following**~~[Any conduct constituting a violation of the Federal Fair~~
 23 ~~Housing Act, including use of scare tactics or blockbusting,]~~ shall be considered
 24 improper conduct as referred to in subsection (4)(u) of this section;
 25 **(a) Conduct constituting a violation of the Federal Fair Housing Act, including**
 26 **use of scare tactics or blockbusting; or**
 27 **(b) Conduct constituting a violation of Section 3 of this Act.**

1 (6) No unlawful act or violation of any provision of this chapter by any affiliated
2 licensee of the principal broker shall be cause for holding the principal broker
3 primarily liable, unless the broker has knowledge of the unlawful violation and did
4 not prevent it. The principal broker and his or her designated manager, if any, shall
5 exercise adequate supervision over the activities of licensed affiliates and all
6 company employees to ensure that violations of this chapter do not occur. The
7 failure of a broker or his or her designated manager to exercise adequate
8 supervision of the licensed affiliates shall constitute a violation of this chapter.

9 (7) The practice of obtaining, negotiating, or attempting to negotiate "net listings" shall
10 be considered improper dealing.

11 ➔Section 5. If any provision of this Act, or this Act's application to any person or
12 circumstance, is held invalid, the invalidity shall not affect other provisions or
13 applications of the Act, which shall be given effect without the invalid provision or
14 application, and to this end the provisions and applications of this Act are severable.

15 ➔Section 6. Whereas there is a significant and legitimate need to protect the
16 public from unfair, false, misleading, and deceptive trade practices, an emergency is
17 declared to exist, and this Act takes effect upon its passage and approval by the Governor
18 or upon its otherwise becoming a law.