

Summary of HB 2746 – Kansas Real Estate Commission’s Proposed Changes to the Real Estate License Law

Background Information

- After nearly a year’s worth of negotiations with the Kansas Real Estate Commission, KAR supported this legislation that made several major changes to the real estate license act. **HB 2746** passed the House on a vote of 118 to 0 and the Senate on a vote of 39 to 0. The Governor signed this legislation on May 16, 2008.
- During the course of these negotiations, KAR had major problems with a provision in the legislation that would have punished real estate licensees who engaged in “attempted mortgage fraud.” Since we were concerned that this term was not sufficiently defined in the legislation, the Commission agreed to delete this provision from the legislation.

The Term “Interest” Has Been Defined for the Purposes of Enforcing K.A.R. 86-3-19

- Under K.A.R. 86-3-19, real estate licensees must provide a disclosure in the real estate sales contract when they have an “interest” in the property subject to the real estate transaction. However, the term “interest” is not defined in the regulation and there has been some discussion in past years on how to apply this term when enforcing the regulation.
- In order to resolve any uncertainties, **HB 2746** defines the term “interest” as “any type of ownership in the real estate involved in the transaction” or service as “an officer, member, partner or shareholder of any entity that owns such real estate excluding an ownership interest of less than 5% in a publicly traded entity.”
- The Senate tried to amend this definition by expanding the definition of “interest” to include any lease or easement on the property. Due to concerns that this would unduly broaden the application of the regulation, the Commission helped KAR remove this language in the conference committee.

Technical Changes to Ensure Commission Has the Authority to Not Renew the Licenses of Real Estate Licensees Who Are Convicted of a Felony

- In 2007, KAR passed legislation (**HB 2295**) that restricted the ability of the Commission to grant licenses to applicants with a history of felony convictions. Unfortunately, an Attorney General’s Opinion issued in December 2007 seemed to question whether this law affected the ability of the Commission to deny the renewal of a license when a current real estate licensee is convicted of a felony.
- In order to ensure that the Commission has the authority to deny the renewal of licenses in these situations, this legislation inserted technical cleanup language into the statute to provide the Commission with the explicit authority to deny license renewals in cases where the real estate licensee had been convicted of a felony while licensed.

New Requirements for the Handling of Affiliated Licenses Upon Closure of an Office

- Under this provision, a supervising or branch broker must notify the Commission of the closure of any office within 10 days and return all licenses affiliated with that office, including the license of the supervising broker or branch broker, to the Commission for cancellation, reinstatement with another broker or placement on inactive status.

Maximum Fine for Basic Violations of the Real Estate License Law Will Increase to \$1,000

- This legislation also increases the maximum fine for basic violations of the real estate license law from \$500 to \$1,000 per violation. While this was not an easy concept to support, the Governmental Affairs Committee agreed that the maximum fine amount needed to be increased in order to give the Commission more authority to punish serious violations of the license law.
- While the Commission was unable to provide us with a list of violations this fine increase will affect, they have stated in the past that they do not intend to increase fines for minor violations. Instead, the Commission will most likely increase fines for violations that are considered more serious such as forgery, misrepresentation and other very serious violations.

New Class of License Law Violations Created With Maximum Fine of \$5,000 Per Violation

- This legislation also creates a new class of real estate license law violations for very serious misconduct. While this was also not an easy concept to support, the Governmental Affairs Committee agreed that the Commission needed more authority to punish these extremely serious violations of the license law.
- In order to qualify under this new class of violations, the real estate licensee must have committed one of the following acts:
 - (1) Misappropriation of funds belonging to another person;
 - (2) Engaging in fraud or making any substantial misrepresentations;
 - (3) Representing to a lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sales price of the real estate or terms differing from those actually agreed upon;
 - (4) Committing forgery or signing or initialing a contractual agreement on behalf of another person in a real estate transaction unless authorized to do so by a duly executed power of attorney; or
 - (5) Intentionally failing to disclose to a client or customer all adverse material facts actually known by the licensee regarding environmental hazards affecting the property that are required by law to be disclosed, the physical condition of the property, material defects in the real property, defects in the title to the real property or the client's or customer's ability to perform under the terms of the agreement.
- In addition, the Commission must also make specific findings that the following aggravating circumstances existed in the real estate licensee's actions for the increased maximum fine to apply:
 - (1) The licensee's conduct involved fraud or deceit; and
 - (2) the licensee's conduct directly resulted in substantial loss or created a significant risk of substantial loss to a customer or client;
 - (3) the licensee's conduct resulted in substantial financial gain to the licensee; or
 - (4) the licensee has a history of prior disciplinary actions involving violations similar to these serious violations.

Commission Will Be Able to Recover the Costs of Investigation from Collected Fines

- This legislation also allows the Commission to recover their actual costs of investigation and prosecution from the fines levied against real estate licensees before submitting the balance of that money to the State General Fund. Under current law, the Commission was required to submit the entire balance of the fine to the State General Fund and pay the costs of investigation out of the real estate fee fund.
- This change will allow ensure that real estate licensees who are fined under the real estate license law have to reimburse the Commission for the costs of investigating that violation. Under the current system, all real estate licensees are forced to subsidize the cost of investigating these violations.

Commission Will Be Able to Discipline Real Estate Licensees for Unprofessional Conduct

- This legislation allows the Commission to discipline real estate licensees for certain acts of unprofessional conduct that is harmful to consumers and degrades public perception of the real estate industry. While this was also a difficult choice for the Governmental Affairs Committee, we concluded that the Commission needs this authority to help protect consumers from unprofessional individuals.
- In order to be disciplined under this new authority, the Commission will have to prove that the real estate licensee committed one of the following acts:
 - (1) Failure to respond in a timely manner to any request from the Commission for documents or information that pertain to a real estate transaction under investigation by the Commission;
 - (2) Failure by affiliated licensee to submit all transaction records that must be maintained in the supervising broker's transaction files within 10 days;
 - (3) Threaten to engage in or engage in physical abuse towards a client, customer or another real estate licensee;
 - (4) Threaten to file or file a lien on residential real property;
 - (5) Engage in harassment towards a client, customer or another real estate licensee;
 - (6) Conduct the real estate business with impaired judgment or objectivity as the result of mental illness or addiction to alcohol or controlled substances;
 - (7) Be found guilty by a state or federal agency of a violation of a federal or state law regulating the real estate industry or other closely-related industry relating to real estate (i.e. RESPA);
 - (8) Be found guilty by a state or federal agency of a violation of a federal or state law prohibiting discrimination against any client or customer on the basis of color, race, gender, religion, national origin, age, disability or familial status (i.e. Fair Housing); or
 - (9) Intentionally misappropriating or misusing any personal or real property of a client or customer.

Codifies the Current Advertising Regulation into Statute and Enacts New Requirements for Advertising by Real Estate Salespersons and Salesperson Teams

- This legislation also takes the text of the current Commission regulation on advertising (K.A.R. 86-3-7) and places it into statute to ensure that it is enforceable. The new language in statute is exactly similar to the current language in the regulation that governs advertising by real estate licensees with one major exception.
- As part of this legislation, the Commission also enacted new requirements for advertising by real estate salespersons and salesperson teams to ensure that the same of the supervising brokerage is prominently displayed on all advertising. These requirements include the following:
 - (1) All advertising conducted by real estate licensees must:
 - (A) Be conducted under the direct supervision of the supervising or branch broker;
 - (B) Include the name of the supervising broker's trade or business name by prominently and conspicuously displaying or announcing the supervising broker's trade or business name in a readable and identifiable manner; and
 - (C) Include any other information that the supervising or branch broker considers necessary.
 - (2) If authorized by the supervising or branch broker, an affiliated salesperson, associate broker or salesperson team may include in the advertisement:
 - (A) The contact information for the affiliated salesperson, associate broker or salesperson team;
 - (B) A name or team name that cannot be construed as a supervising broker's trade or business name;

- (C) A slogan that does not include terms that are confusing to the public and cannot be construed as a supervising broker's trade or business name; and
- (D) A domain name or website that does not include terms that are confusing to the public and cannot be construed as a supervising broker's trade or business name.

Allows the Commission to Make Expenditures from the Real Estate Recovery Fund for Certain Items That Benefit Real Estate Licensees and Consumers

- Finally, this legislation allows the Commission to make expenditures from the real estate recovery fund for certain items that benefit real estate licensees and consumers. The current balance of the fund is in excess of \$500,000 and the Commission has been concerned that this money could be swept by the Kansas Legislature for other uses.
- At any time that the balance remaining in the real estate recovery fund is greater than \$250,000, any amount over \$250,000 may be used the Commission for the following purposes that benefit real estate licensees and consumers:
 - (1) Production and distribution of an agency newsletter;
 - (2) Monitoring education courses;
 - (3) Expansion of materials available for consumers; and
 - (4) Education grants to high schools and universities for course materials on money management and home ownership.