

**SENATE BILL No. 42**

By Committee on Commerce

1-24

1 AN ACT concerning real estate brokers and salespersons; relating to the  
2 definitions of rebate and interest for purposes of real estate  
3 transactions; amending K.S.A. 2018 Supp. 58-3035 and repealing the  
4 existing section.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2018 Supp. 58-3035 is hereby amended to read as  
8 follows: 58-3035. As used in this act, unless the context otherwise  
9 requires:

10 (a) "Act" means the real estate brokers' and salespersons' license act.

11 (b) "Advance listing fee" means any fee charged for services related  
12 to promoting the sale or lease of real estate and paid in advance of the  
13 rendering of ~~such~~ the services, including any fees charged for listing,  
14 advertising or offering for sale or lease any real estate, but excluding any  
15 fees paid solely for advertisement or for listing in a publication issued for  
16 the sole purpose of promoting the sale or lease of real estate wherein  
17 inquiries are directed to the owner of the real estate or to real estate  
18 brokers and not to unlicensed persons who publish the listing.

19 (c) "Associate broker" means an individual who has a broker's license  
20 and who is employed by another broker or is associated with another  
21 broker as an independent contractor and participates in any activity  
22 described in subsection (f).

23 (d) "Branch broker" means an individual who has a broker's license  
24 and who has been designated to supervise a branch office and the activities  
25 of salespersons and associate brokers assigned to the branch office.

26 (e) "Branch office" means a place of business other than the principal  
27 place of business of a broker.

28 (f) "Broker" means an individual, other than a salesperson, who  
29 advertises or represents that ~~such~~ the individual engages in the business of  
30 buying, selling, exchanging or leasing real estate or who, for  
31 compensation, engages in any of the following activities as an employee  
32 of, or on behalf of, the owner, purchaser, lessor or lessee of real estate:

33 (1) Sells, exchanges, purchases or leases real estate.

34 (2) Offers to sell, exchange, purchase or lease real estate.

35 (3) Negotiates or offers, attempts or agrees to negotiate the sale,  
36 exchange, purchase or leasing of real estate.

1 (4) Lists or offers, attempts or agrees to list real estate for sale, lease  
2 or exchange.

3 (5) Auctions or offers, attempts or agrees to auction real estate or  
4 assists an auctioneer by procuring bids at a real estate auction.

5 (6) Buys, sells, offers to buy or sell or otherwise deals in options on  
6 real estate.

7 (7) Assists or directs in the procuring of prospects calculated to result  
8 in the sale, exchange or lease of real estate.

9 (8) Assists in or directs the negotiation of any transaction calculated  
10 or intended to result in the sale, exchange or lease of real estate.

11 (9) Engages in the business of charging an advance listing fee.

12 (10) Provides lists of real estate as being available for sale or lease,  
13 other than lists provided for the sole purpose of promoting the sale or lease  
14 of real estate wherein inquiries are directed to the owner of the real estate  
15 or to real estate brokers and not to unlicensed persons who publish the list.

16 (g) "Commission" means the Kansas real estate commission.

17 (h) "Exchange" means a type of sale or purchase of real estate.

18 (i) "Interest" means: (1) Having any type of ownership in the real  
19 estate involved in the transaction; or (2) an officer, member, partner or  
20 shareholder of any entity that owns ~~such~~ *the real estate involved in the*  
21 *transaction*, excluding an ownership interest of less than 5% in a publicly  
22 traded entity.

23 (j) "Lease" means rent or lease for nonresidential use.

24 (k) "Licensee" means any person licensed under this act as a broker  
25 or salesperson.

26 (l) (1) "Office" means any permanent location where one or more  
27 licensees regularly conduct real estate business as described in subsection  
28 (f) or a location that is held out as an office.

29 (2) "Office" does not mean a model home office in a new home  
30 subdivision if the real estate transaction files are maintained in the primary  
31 office or branch office.

32 (m) "Primary office" means a supervising broker's principal place of  
33 business for each company created or established by the broker.

34 (n) "Real estate" means any interest or estate in land, including any  
35 leasehold or condominium, whether corporeal, incorporeal, freehold or  
36 nonfreehold and whether the real estate is situated in this state or  
37 elsewhere, but does not include oil and gas leases, royalties and other  
38 mineral interests, and rights of way and easements acquired for the  
39 purpose of constructing roadways, pipelines, conduits, wires and facilities  
40 related to these types of improvement projects for private and public  
41 utilities, municipalities, federal and state governments, or any political  
42 subdivision. For purpose of this act, any rights of redemption are  
43 considered to be an interest in real estate.

1       (o) *"Rebate" means the return of all or part of the purchase price of*  
2 *real estate, whether by cash or cash equivalent, that is promised or agreed*  
3 *to by a licensee and a client or customer before closing and is contingent*  
4 *on the transaction closing. "Rebate" includes the return of all or part of*  
5 *any commission or compensation paid to a licensee in any transaction that*  
6 *has as its purpose the purchase of real estate at a price different from the*  
7 *price specified in the closing statement. For the purposes of defining*  
8 *"rebate," "cash equivalent" means gift cards, prepaid credit cards and any*  
9 *other item with a value equal to a specific amount of money that can be*  
10 *used in the same manner as cash.*

11       (p) "Salesperson" means an individual, other than an associate broker,  
12 who is employed by a broker or is associated with a broker as an  
13 independent contractor and participates in any activity described in  
14 subsection (f).

15       ~~(p)~~(q) "Supervising broker" means an individual, other than a branch  
16 broker, who has a broker's license and who has been designated as the  
17 broker who is responsible for the supervision of the primary office of a  
18 broker and the activities of salespersons and associate brokers who are  
19 assigned to ~~such~~ *the* office and all of whom are licensed pursuant to  
20 ~~subsection (b) of K.S.A. 58-3042(b), and amendments thereto.~~  
21 "Supervising broker" also means a broker who operates a sole  
22 proprietorship and with whom associate brokers or salespersons are  
23 affiliated as employees or independent contractors.

24       Sec. 2. K.S.A. 2018 Supp. 58-3035 is hereby repealed.

25       Sec. 3. This act shall take effect and be in force from and after its  
26 publication in the statute book.