

SECOND REGULAR SESSION

HOUSE BILL NO. 1692

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SMITH (150).

4506L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 339.010, 339.020, 339.030, 339.040, 339.080, 339.110, 339.160, 339.170, and 339.710, RSMo, and to enact in lieu thereof ten new sections relating to real estate brokers and salespersons, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 339.010, 339.020, 339.030, 339.040, 339.080, 339.110, 339.160, 2 339.170, and 339.710, RSMo, are repealed and ten new sections enacted in lieu thereof, to be 3 known as sections 339.010, 339.020, 339.030, 339.040, 339.080, 339.110, 339.160, 339.170, 4 339.710, and 339.845, to read as follows:

339.010. 1. A "real estate broker" is any person, partnership, **limited partnership**, 2 **limited liability company**, association, or corporation, foreign or domestic who, for another, and 3 for a compensation or valuable consideration, does, or attempts to do, any or all of the following:

4 (1) Sells, exchanges, purchases, rents, or leases real estate;

5 (2) Offers to sell, exchange, purchase, rent or lease real estate;

6 (3) Negotiates or offers or agrees to negotiate the sale, exchange, purchase, rental or 7 leasing of real estate;

8 (4) Lists or offers or agrees to list real estate for sale, lease, rental or exchange;

9 (5) Buys, sells, offers to buy or sell or otherwise deals in options on real estate or 10 improvements thereon;

11 (6) Advertises or holds himself or herself out as a licensed real estate broker while 12 engaged in the business of buying, selling, exchanging, renting, or leasing real estate;

13 (7) Assists or directs in the procuring of prospects, calculated to result in the sale, 14 exchange, leasing or rental of real estate;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (8) Assists or directs in the negotiation of any transaction calculated or intended to result
16 in the sale, exchange, leasing or rental of real estate;

17 (9) Engages in the business of charging to an unlicensed person an advance fee in
18 connection with any contract whereby the real estate broker undertakes to promote the sale of
19 that person's real estate through its listing in a publication issued for such purpose intended to
20 be circulated to the general public;

21 (10) Performs any of the foregoing acts on behalf of the owner of real estate, or interest
22 therein, or improvements affixed thereon, for compensation.

23 2. A "real estate salesperson" is any person, **single member limited liability company,**
24 **or corporation,** who for a compensation or valuable consideration becomes associated, either
25 as an independent contractor or employee, either directly or indirectly, with a real estate broker
26 to do any of the things above mentioned. The provisions of sections 339.010 to 339.180 and
27 sections 339.710 to 339.860 shall not be construed to deny a real estate salesperson who is
28 compensated solely by commission the right to be associated with a broker as an independent
29 contractor.

30 3. The term "commission" as used in sections 339.010 to 339.180 and sections 339.710
31 to 339.860 means the Missouri real estate commission.

32 4. "Real estate" for the purposes of sections 339.010 to 339.180 and sections 339.710
33 to 339.860 shall mean, and include, leaseholds, as well as any other interest or estate in land,
34 whether corporeal, incorporeal, freehold or nonfreehold, and the real estate is situated in this
35 state.

36 5. "Advertising" shall mean any communication, whether oral or written, between a
37 licensee or other entity acting on behalf of one or more licensees and the public, and shall
38 include, but not be limited to, business cards, signs, insignias, letterheads, radio, television,
39 newspaper and magazine ads, Internet advertising, websites, display or group ads in telephone
40 directories, and billboards.

41 6. The provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860 shall
42 not apply to:

43 (1) Any person, partnership, **limited partnership, limited liability company,**
44 association, or corporation who as owner, lessor, or lessee shall perform any of the acts described
45 in subsection 1 of this section with reference to property owned or leased by them, or to the
46 regular employees thereof;

47 (2) Any licensed attorney-at-law;

48 (3) An auctioneer employed by the owner of the property;

49 (4) Any person acting as receiver, trustee in bankruptcy, administrator, executor, or
50 guardian or while acting under a court order or under the authority of a will, trust instrument or

51 deed of trust or as a witness in any judicial proceeding or other proceeding conducted by the state
52 or any governmental subdivision or agency;

53 (5) Any person employed or retained to manage real property by, for, or on behalf of the
54 agent or the owner of any real estate shall be exempt from holding a license, if the person is
55 limited to one or more of the following activities:

56 (a) Delivery of a lease application, a lease, or any amendment thereof, to any person;

57 (b) Receiving a lease application, lease, or amendment thereof, a security deposit, rental
58 payment, or any related payment, for delivery to, and made payable to, a broker or owner;

59 (c) Showing a rental unit to any person, as long as the employee is acting under the direct
60 instructions of the broker or owner, including the execution of leases or rental agreements;

61 (d) Conveying information prepared by a broker or owner about a rental unit, a lease, an
62 application for lease, or the status of a security deposit, or the payment of rent, by any person;

63 (e) Assisting in the performance of brokers' or owners' functions, administrative, clerical
64 or maintenance tasks;

65 (f) If the person described in this section is employed or retained by, for, or on behalf of
66 a real estate broker, the real estate broker shall be subject to discipline under this chapter for any
67 conduct of the person that violates this chapter or the regulations promulgated thereunder;

68 (6) Any officer or employee of a federal agency or the state government or any political
69 subdivision thereof performing official duties;

70 (7) Railroads and other public utilities regulated by the state of Missouri, or their
71 subsidiaries or affiliated corporations, or to the officers or regular employees thereof, unless
72 performance of any of the acts described in subsection 1 of this section is in connection with the
73 sale, purchase, lease or other disposition of real estate or investment therein unrelated to the
74 principal business activity of such railroad or other public utility or affiliated or subsidiary
75 corporation thereof;

76 (8) Any bank, trust company, savings and loan association, credit union, insurance
77 company, mortgage banker, or farm loan association organized under the laws of this state or of
78 the United States when engaged in the transaction of business on its own behalf and not for
79 others;

80 (9) Any newspaper, magazine, periodical, Internet site, Internet communications, or any
81 form of communications regulated or licensed by the Federal Communications Commission or
82 any successor agency or commission whereby the advertising of real estate is incidental to its
83 operation;

84 (10) Any developer selling Missouri land owned by the developer;

85 (11) Any employee acting on behalf of a nonprofit community, or regional economic
86 development association, agency or corporation which has as its principal purpose the general
87 promotion and economic advancement of the community at large, provided that such entity:

88 (a) Does not offer such property for sale, lease, rental or exchange on behalf of another
89 person or entity;

90 (b) Does not list or offer or agree to list such property for sale, lease, rental or exchange;
91 or

92 (c) Receives no fee, commission or compensation, either monetary or in kind, that is
93 directly related to sale or disposal of such properties. An economic developer's normal annual
94 compensation shall be excluded from consideration as commission or compensation related to
95 sale or disposal of such properties; or

96 (12) Any neighborhood association, as that term is defined in section 441.500, RSMo,
97 that without compensation, either monetary or in kind, provides to prospective purchasers or
98 lessors of property the asking price, location, and contact information regarding properties in and
99 near the association's neighborhood, including any publication of such information in a
100 newsletter, Internet site, or other medium.

339.020. It shall be unlawful for any person, partnership, **limited partnership, limited liability company**, association, or corporation, foreign or domestic, to act as a real estate broker or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission.

339.030. A corporation, partnership, **limited partnership, limited liability company**, or association shall be granted a **broker's or salesperson's** license when **the required fee is paid and:**

4 (1) **For a real estate broker** individual licenses have been issued to every member, general partner, **associate, manager**, or officer of such partnership, **limited partnership, limited liability company**, association, or corporation who actively participates in its brokerage business and to every person, **single member limited liability company, or corporation** who acts as a salesperson for such partnership, **limited partnership, limited liability company**, association, or corporation [and when the required fee is paid] ; or

10 (2) **For a real estate salesperson when licenses have been issued to the member or officer of such single member limited liability company or corporation who act as salesperson.**

339.040. 1. Licenses shall be granted only to persons who present, and corporations, associations, [or] partnerships, **limited partnerships, and limited liability companies** whose officers, **managers**, associates, [or] **general partners, or members who actively participate in such entity's brokerage business** who present, satisfactory proof to the commission that they:

5 (1) Are persons of good moral character; and
6 (2) Bear a good reputation for honesty, integrity, and fair dealing; and
7 (3) Are competent to transact the business of a broker or salesperson in such a manner
8 as to safeguard the interest of the public.

9 2. In order to determine an applicant's qualifications to receive a license under sections
10 339.010 to 339.180 and sections 339.710 to 339.860, the commission shall hold oral or written
11 examinations at such times and places as the commission may determine.

12 3. Each applicant for a broker or salesperson license shall be at least eighteen years of
13 age and shall pay the broker examination fee or the salesperson examination fee.

14 4. Each applicant for a broker license shall be required to have satisfactorily completed
15 the salesperson license examination prescribed by the commission. For the purposes of this
16 section only, the commission may permit a person who is not associated with a licensed broker
17 to take the salesperson examination.

18 5. Each application for a broker license shall include a certificate from the applicant's
19 broker or brokers that the applicant has been actively engaged in the real estate business as a
20 licensed salesperson for at least two years immediately preceding the date of application, and
21 shall include a certificate from a school accredited by the commission under the provisions of
22 section 339.045 that the applicant has, within six months prior to the date of application,
23 successfully completed the prescribed broker curriculum or broker correspondence course
24 offered by such school, except that the commission may waive all or part of the requirements set
25 forth in this subsection when an applicant presents proof of other educational background or
26 experience acceptable to the commission.

27 6. Each application for a salesperson license shall include a certificate from a school
28 accredited by the commission under the provisions of section 339.045 that the applicant has,
29 within six months prior to the date of application, successfully completed the prescribed
30 salesperson curriculum or salesperson correspondence course offered by such school, except that
31 the commission may waive all or part of the educational requirements set forth in this subsection
32 when an applicant presents proof of other educational background or experience acceptable to
33 the commission.

34 7. The commission may issue a temporary work permit pending final review and printing
35 of the license to an applicant who appears to have satisfied the requirements for licenses. The
36 commission may, at its discretion, withdraw the work permit at any time.

37 8. Every active broker, salesperson, officer, **manager**, **general** partner, **member**, or
38 associate shall provide upon request to the commission evidence that during the two years
39 preceding he or she has completed twelve hours of real estate instruction in courses approved by

40 the commission. The commission may, by rule and regulation, provide for individual waiver of
41 this requirement.

42 9. Each entity that provides continuing education required under the provisions of
43 subsection 8 of this section may make available instruction courses that the entity conducts
44 through means of distance delivery. The commission shall by rule set standards for such courses.
45 The commission may by regulation require the individual completing such distance-delivered
46 course to complete an examination on the contents of the course. Such examination shall be
47 designed to ensure that the licensee displays adequate knowledge of the subject matter of the
48 course, and shall be designed by the entity producing the course and approved by the
49 commission.

50 10. In the event of the death or incapacity of a licensed broker, or of one or more of the
51 licensed **general** partners, officers, **managers, members,** or associates of a real estate
52 partnership, **limited partnership, limited liability company,** corporation, or association
53 whereby the affairs of the broker, partnership, [or] **limited partnership, limited liability**
54 **company, corporation, or association** cannot be carried on, the commission may issue, without
55 examination or fee, to the legal representative or representatives of the deceased or incapacitated
56 individual, or to another individual approved by the commission, a temporary broker license
57 which shall authorize such individual to continue for a period to be designated by the
58 commission to transact business for the sole purpose of winding up the affairs of the broker,
59 partnership [or] , **limited partnership, limited liability company,** corporation, **or association**
60 under the supervision of the commission.

339.080. 1. The commission may refuse to examine or issue a license to any person
2 known by it to be guilty of any of the acts or practices specified in subsection 2 of section
3 339.100, or to any person previously licensed whose license has been revoked, or may refuse to
4 issue a license to any association [or] , partnership, **limited partnership, or limited liability**
5 **company** of which such person is a [member] **manager, officer, or general partner or in**
6 **which as a member, partner, or associate such person has or exercises a controlling interest**
7 **either directly or indirectly,** or to any corporation of which such person is an officer or in
8 which as a stockholder such person has or exercises a controlling interest either directly or
9 indirectly.

10 2. Any person denied a license or the right to be examined shall be so notified by the
11 commission in writing stating the reasons for denial or refusal to examine and informing the
12 person so denied of his right to file a complaint with the administrative hearing commission in
13 accordance with the applicable provisions of sections 621.015 to 621.198, RSMo, and the rules
14 promulgated thereunder. All notices hereunder shall be sent by registered or certified mail to the
15 last known address of the applicant.

339.110. The commission may refuse to issue a license to any person who is known by
2 it to have been found guilty of forgery, embezzlement, obtaining money under false pretenses,
3 extortion, criminal conspiracy to defraud, or other like offense, or to any association [or] ,
4 partnership, **limited partnership, or limited liability company** of which [the person is a
5 member] **such person is a manager, officer, or general partner, or in which as a member,**
6 **partner, or associate such person has or exercises a controlling interest either directly or**
7 **indirectly**, or to any corporation of which [the] **such** person is an officer or in which as a
8 stockholder [the] **such** person has or exercises a controlling interest either directly or indirectly.

339.160. No person, partnership, **limited partnership, limited liability**
2 **company**, corporation, or association engaged within this state in the business or acting in the
3 capacity of a real estate broker or real estate salesperson shall bring or maintain an action in any
4 court in this state for the recovery of compensation for services rendered in the buying, selling,
5 exchanging, leasing, renting or negotiating a loan upon any real estate without alleging and
6 proving that such person, partnership, **limited partnership, limited liability company,**
7 corporation, or association, **or its member, manager, officer, general partner or associate,**
8 **as applicable**, was a licensed real estate broker or salesperson at the time when the alleged cause
9 of action arose.

339.170. Any person or corporation, **partnership, limited partnership, limited liability**
2 **company, or association** knowingly violating any provision of sections 339.010 to 339.180 and
3 sections 339.710 to 339.860 shall be guilty of a class B misdemeanor. Any officer or agent of
4 a corporation, or **any member, manager, officer, associate, general partner**, or agent of a
5 partnership [or] , association, **limited partnership, or limited liability company who actively**
6 **participates in such entity's brokerage business**, who shall knowingly and personally
7 participate in or be an accessory to any violation of sections 339.010 to 339.180 and sections
8 339.710 to 339.860, shall be guilty of a class B misdemeanor. This section shall not be
9 construed to release any person from civil liability or criminal prosecution under any other law
10 of this state. The commission may cause complaint to be filed for violation of section 339.020
11 in any court of competent jurisdiction, and perform such other acts as may be necessary to
12 enforce the provisions hereof.

339.710. For purposes of sections 339.010 to 339.180, and sections 339.710 to 339.860,
2 the following terms mean:

3 (1) "Adverse material fact", a fact related to the property not reasonably ascertainable
4 or known to a party which negatively affects the value of the property. Adverse material facts
5 may include matters pertaining to:

6 (a) Environmental hazards affecting the property;

7 (b) Physical condition of the property which adversely affects the value of the property;

- 8 (c) Material defects in the property;
- 9 (d) Material defects in the title to the property;
- 10 (e) Material limitation of the party's ability to perform under the terms of the contract;
- 11 (2) "Affiliated licensee", any broker or salesperson who works under the supervision of
- 12 a designated broker;
- 13 (3) "Agent", a person or entity acting pursuant to the provisions of this chapter;
- 14 (4) "Broker disclosure form", the current form prescribed by the commission for
- 15 presentation to a seller, landlord, buyer or tenant who has not entered into a written agreement
- 16 for brokerage services;
- 17 (5) "Brokerage relationship", the relationship created between a designated broker, the
- 18 broker's affiliated licensees, and a client relating to the performance of services of a broker as
- 19 defined in section 339.010, and sections 339.710 to 339.860. If a designated broker makes an
- 20 appointment of an affiliated licensee or affiliated licensees pursuant to section 339.820, such
- 21 brokerage relationships are created between the appointed licensee or licensees and the client.
- 22 Nothing in this subdivision shall:
- 23 (a) Alleviate the designated broker from duties of supervision of the appointed licensee
- 24 or licensees; or
- 25 (b) Alter the designated broker's underlying contractual agreement with the client;
- 26 (6) "Client", a seller, landlord, buyer, or tenant who has entered into a brokerage
- 27 relationship with a licensee pursuant to sections 339.710 to 339.860;
- 28 (7) "Commercial real estate", any real estate other than real estate containing one to four
- 29 residential units or real estate classified as agricultural and horticultural property for assessment
- 30 purposes pursuant to section 137.016, RSMo. Commercial real estate does not include single
- 31 family residential units including condominiums, townhouses, or homes in a subdivision when
- 32 that real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though the
- 33 units may be part of a larger building or parcel of real estate containing more than four units;
- 34 (8) "Commission", the Missouri real estate commission;
- 35 (9) "Confidential information", information obtained by the licensee from the client and
- 36 designated as confidential by the client, information made confidential by sections 339.710 to
- 37 339.860 or any other statute or regulation, or written instructions from the client unless the
- 38 information is made public or becomes public by the words or conduct of the client to whom the
- 39 information pertains or by a source other than the licensee;
- 40 (10) "Customer", an actual or potential seller, landlord, buyer, or tenant in a real estate
- 41 transaction in which a licensee is involved but who has not entered into a brokerage relationship
- 42 with the licensee;

43 (11) "Designated agent", a licensee named by a designated broker as the limited agent
44 of a client as provided for in section 339.820;

45 (12) "Designated broker", any individual licensed as a broker who is operating pursuant
46 to the definition of real estate broker as defined in section 339.010, or any individual licensed
47 as a broker who is appointed by a partnership, **limited partnership**, association, limited liability
48 corporation, or a corporation engaged in the real estate brokerage business to be responsible for
49 the acts of the partnership, **limited partnership**, association, limited liability [corporation,]
50 **company** or corporation. Every real estate partnership, **limited partnership**, association, [or]
51 limited liability [corporation,] **company** or corporation shall appoint a designated broker;

52 (13) "Designated transaction broker", a licensee named by a designated broker or deemed
53 appointed by a designated broker as the transaction broker for a client pursuant to section
54 339.820;

55 (14) "Dual agency", a form of agency which may result when an agent licensee or
56 someone affiliated with the agent licensee represents another party to the same transaction;

57 (15) "Dual agent", a limited agent who, with the written consent of all parties to a
58 contemplated real estate transaction, has entered into an agency brokerage relationship, and not
59 a transaction brokerage relationship, with and therefore represents both the seller and buyer or
60 both the landlord and tenant;

61 (16) "Exclusive brokerage agreement", means a written brokerage agreement which
62 provides that the broker has the sole right, through the broker or through one or more affiliated
63 licensees, to act as the exclusive limited agent, representative, or transaction broker of the client
64 or customer that meets the requirements of section 339.780;

65 (17) "Licensee", a real estate broker or salesperson as defined in section 339.010;

66 (18) "Limited agent", a licensee whose duties and obligations to a client are those set
67 forth in sections 339.730 to 339.750;

68 (19) "Ministerial acts", those acts that a licensee may perform for a person or entity that
69 are informative in nature and do not rise to the level which requires the creation of a brokerage
70 relationship. Examples of these acts include, but are not limited to:

71 (a) Responding to telephone inquiries by consumers as to the availability and pricing of
72 brokerage services;

73 (b) Responding to telephone inquiries from a person concerning the price or location of
74 property;

75 (c) Attending an open house and responding to questions about the property from a
76 consumer;

77 (d) Setting an appointment to view property;

78 (e) Responding to questions of consumers walking into a licensee's office concerning
79 brokerage services offered on particular properties;

80 (f) Accompanying an appraiser, inspector, contractor, or similar third party on a visit to
81 a property;

82 (g) Describing a property or the property's condition in response to a person's inquiry;

83 (h) Showing a customer through a property being sold by an owner on his or her own
84 behalf; or

85 (i) Referral to another broker or service provider;

86 (20) "Residential real estate", all real property improved by a structure that is used or
87 intended to be used primarily for residential living by human occupants and that contains not
88 more than four dwelling units or that contains single dwelling units owned as a condominium
89 or in a cooperative housing association, and vacant land classified as residential property. The
90 term "cooperative housing association" means an association, whether incorporated or
91 unincorporated, organized for the purpose of owning and operating residential real property in
92 Missouri, the shareholders or members of which, by reason of their ownership of a stock or
93 membership certificate, a proprietary lease, or other evidence of membership, are entitled to
94 occupy a dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement;

95 (21) "Single agent", a licensee who has entered into a brokerage relationship with and
96 therefore represents only one party in a real estate transaction. A single agent may be one of the
97 following:

98 (a) "Buyer's agent", which shall mean a licensee who represents the buyer in a real estate
99 transaction;

100 (b) "Landlord's agent", which shall mean a licensee who represents a landlord in a
101 leasing transaction;

102 (c) "Seller's agent", which shall mean a licensee who represents the seller in a real estate
103 transaction; and

104 (d) "Tenant's agent", which shall mean a licensee who represents the tenant in a leasing
105 transaction;

106 (22) "Subagent", a designated broker, together with the broker's affiliated licensees,
107 engaged by another designated broker, together with the broker's affiliated or appointed affiliated
108 licensees, to act as a limited agent for a client, or a designated broker's unappointed affiliated
109 licensees engaged by the designated broker, together with the broker's appointed affiliated
110 licensees, to act as a limited agent for a client. A subagent owes the same obligations and
111 responsibilities to the client pursuant to sections 339.730 to 339.740 as does the client's
112 designated broker;

113 (23) "Transaction broker", any licensee acting pursuant to sections 339.710 to 339.860,
114 who:

115 (a) Assists the parties to a transaction without an agency or fiduciary relationship to
116 either party and is, therefore, neutral, serving neither as an advocate or advisor for either party
117 to the transaction;

118 (b) Assists one or more parties to a transaction and who has not entered into a specific
119 written agency agreement to represent one or more of the parties; or

120 (c) Assists another party to the same transaction either solely or through licensee
121 affiliates. Such licensee shall be deemed to be a transaction broker and not a dual agent,
122 provided that, notice of assumption of transaction broker status is provided to the buyer and
123 seller immediately upon such default to transaction broker status, to be confirmed in writing prior
124 to execution of the contract.

**339.845. If the commission receives a notice of delinquent taxes from the director
2 of revenue under the provisions of section 324.010 regarding a real estate broker or
3 salesperson, the commission shall immediately send a copy of such notice to the real estate
4 broker with which the real estate broker or salesperson is associated.**

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