

58-3050. Refusal to grant or renew; revocation, suspension or restriction of license; censure of licensee; disciplinary actions; civil fines; aggravating circumstances; procedures; recovery of actual costs and attorney fees. (a) Except as provided in subsection (b) and (c), the commission may refuse to grant or renew a license and the license of any licensee may be revoked, suspended, conditioned or restricted or a licensee may be censured, if:

- (1) The licensee or applicant has committed a violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder;
- (2) the licensee or applicant has entered a plea of guilty or nolo contendere to, or has been convicted of any misdemeanor which reflects on the licensee's or applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate;
- (3) the licensee or applicant has been finally adjudicated and found to be guilty of violation of the federal fair housing act (42 U.S.C. § 3601 et seq.) or K.S.A. 44-1015 through 44-1029, and amendments thereto;
- (4) the licensee or applicant has obtained or reinstated, or attempted to obtain or reinstate, a license by false or fraudulent representation;
- (5) the licensee or applicant has violated any lawful order or directive of the commission; or
- (6) the licensee or applicant has committed a violation in another state and disciplinary action taken against such licensee or applicant resulted in the suspension, probation or revocation of such licensee's or applicant's real estate license in such other state.

(b) Except as provided in subsection (c), the commission shall suspend or revoke the license of any licensee who has entered a plea of guilty or nolo contendere to, or has been convicted of any felony.

(c) The provisions of subsection (b) shall not apply to any person who:

- (1) Is currently licensed under this act;
- (2) has entered a plea of guilty or nolo contendere to, or has been convicted of any offense specified in subsection (b); and
- (3) has disclosed such plea or conviction in such person's application for any license or renewal thereof on or before July 1, 2007, prior to the commission's action on such application.

(d)(1) In addition to or in lieu of any other administrative, civil or criminal remedy provided by law, the commission, in accordance with the Kansas administrative procedure act and upon a finding that a licensee has violated a provision of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, may impose on such licensee a civil fine not exceeding \$1,000 for each violation.

(2) A civil fine not exceeding \$5,000 per violation may be imposed if the commission makes specific findings that aggravating circumstances exist and that the licensee:

- (A) Misappropriated funds belonging to another person;
- (B) engaged in fraud or made any substantial misrepresentation;
- (C) represented 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 sale price of the real estate or terms differing from those actually agreed upon;
- (D) committed forgery or signed or initialed 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
- (E) intentionally failed 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.

(e) For the purposes of subsection (d), the term "aggravating circumstances" means:

- (1) The licensee's conduct involved fraud or deceit; and
- (2)(A) the licensee's conduct directly resulted in substantial loss or created a significant risk of substantial loss to a customer or client; or
- (B) the licensee's conduct resulted in substantial financial gain to the licensee; or
- (C) the licensee has a history of prior disciplinary actions involving violations similar to the violations described in subsection (d)(2).

(f) In all matters pending before the commission, the commission shall have the power to revoke the license of any licensee who voluntarily surrenders such licensee's license or who does not renew such license pending investigation of misconduct or while charges of misconduct are pending or anticipated.

(g) If a broker or salesperson has been declared incompetent by a court of competent jurisdiction, the commission shall suspend the broker's or salesperson's license for the period of disability.

(h)(1) Except as provided by paragraph (2) of this subsection, no complaint alleging violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, shall be commenced more than three years from the date of the occurrence which is the subject of the complaint.

(2) Unless the violation is not reasonably ascertainable, complaints alleging violation of subsection (a)(4) or (a)(5) shall be commenced within three years from the date of the occurrence of the violation. If the violation is not reasonably ascertainable, complaints alleging violation of subsection (a)(4) or (a)(5) shall be commenced within three years from the date of violation is ascertained by the commission.

(i) All administrative proceedings pursuant to this section shall be conducted in accordance with the Kansas administrative procedure act.

(j) Notwithstanding any provision of this act or the brokerage relationships in real estate transactions act to the contrary, the commission may use emergency adjudicative proceedings, as provided by K.S.A. 77-536, and amendments thereto, to summarily suspend the license of any licensee if the commission has reasonable cause to believe that the licensee's trust account is in unsound condition or that the licensee is misappropriating funds belonging to other persons.

(k) If a licensee has entered a plea of guilty or nolo contendere to, or has been convicted of, any felony charge, the commission may use emergency adjudicative proceedings, as provided by K.S.A. 77-536, and amendments thereto, to suspend or revoke the licensee's license.

(l) When the real estate license of an individual is revoked and that individual's name is included in the trade or business name of a real estate brokerage business, the commission may deny continued use of the trade or business name if, in the opinion of the commission, it would be confusing or misleading to the public.

(m) The commission shall be authorized to recover from the fine imposed the commission's actual costs to investigate and prosecute a disciplinary case against a licensee, including attorney fees. The portion of the fine amount collected that equals the commission's actual costs related to the investigation and prosecution of the case and attorney fees, as certified by the executive director of the commission to the state treasurer, shall be credited to the real estate commission fee fund. The balance of the fine amount collected shall be credited to the state general fund.

History: L. 1980, ch. 164, § 17; L. 1984, ch. 313, § 88; L. 1986, ch. 209, § 10; L. 1988, ch. 197, § 3; L. 1991, ch. 163, § 3; L. 1995, ch. 252, § 19; L. 1996, ch. 212, § 6; Revived, L. 1997, ch. 65, § 11; L. 1997, ch. 65, § 12; L. 2002, ch. 82, § 6; L. 2004, ch. 82, § 2; L. 2007, ch. 88, § 3; L. 2008, ch. 155, § 4; L. 2009, ch. 7, § 3; L. 2015, ch. 21, § 2; July 1.