

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 174

93RD GENERAL ASSEMBLY

Reported from the Committee on Professional Registration and Licensing February 24, 2005 with recommendation that House Committee Substitute for House Bill No. 174 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules March 2, 2005 with recommendation that the House Committee Substitute for House Bill No. 174 Do Pass with no time limit for debate.

Taken up for Perfection March 9, 2005. House Committee Substitute for House Bill No. 174 ordered Perfected and printed.

STEPHEN S. DAVIS, Chief Clerk

0554L.02P

AN ACT

To repeal sections 339.100, 339.710, 339.720, and 339.780, RSMo, and to enact in lieu thereof four new sections relating to real estate agents and brokers.

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

Section A. Sections 339.100, 339.710, 339.720, and 339.780, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 339.100, 339.710, 339.720,
3 and 339.780, to read as follows:

339.100. 1. The commission may, upon its own motion, and shall upon receipt of a
2 written complaint filed by any person, investigate any real estate-related activity of a licensee
3 licensed under sections 339.010 to 339.180 and sections 339.710 to 339.860 or an individual or
4 entity acting as or representing themselves as a real estate licensee. In conducting such
5 investigation, if the questioned activity or written complaint involves an affiliated licensee, the
6 commission may forward a copy of the information received to the affiliated licensee's
7 designated broker. The commission shall have the power to hold an investigatory hearing to
8 determine whether there is a probability of a violation of sections 339.010 to 339.180 and
9 sections 339.710 to 339.860. The commission shall have the power to issue a subpoena to
10 compel the production of records and papers bearing on the complaint. The commission shall

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.

11 have the power to issue a subpoena and to compel any person in this state to come before the
12 commission to offer testimony or any material specified in the subpoena. Subpoenas and
13 subpoenas duces tecum issued pursuant to this section shall be served in the same manner as
14 subpoenas in a criminal case. The fees and mileage of witnesses shall be the same as that
15 allowed in the circuit court in civil cases.

16 2. The commission may cause a complaint to be filed with the administrative hearing
17 commission as provided by the provisions of chapter 621, RSMo, against any person or entity
18 licensed under this chapter or any licensee who has failed to renew or has surrendered his or her
19 individual or entity license for any one or any combination of the following acts:

20 (1) Failure to maintain and deposit in a special account, separate and apart from his or
21 her personal or other business accounts, all moneys belonging to others entrusted to him or her
22 while acting as a real estate broker or as the temporary custodian of the funds of others, until the
23 transaction involved is consummated or terminated, unless all parties having an interest in the
24 funds have agreed otherwise in writing;

25 (2) Making substantial misrepresentations or false promises or suppression, concealment
26 or omission of material facts in the conduct of his or her business or pursuing a flagrant and
27 continued course of misrepresentation through agents, salespersons, advertising or otherwise in
28 any transaction;

29 (3) Failing within a reasonable time to account for or to remit any moneys, valuable
30 documents or other property, coming into his or her possession, which belongs to others;

31 (4) Representing to any lender, guaranteeing agency, or any other interested party, either
32 verbally or through the preparation of false documents, an amount in excess of the true and
33 actual sale price of the real estate or terms differing from those actually agreed upon;

34 (5) Failure to timely deliver a duplicate original of any and all instruments to any party
35 or parties executing the same where the instruments have been prepared by the licensee or under
36 his or her supervision or are within his or her control, including, but not limited to, the
37 instruments relating to the employment of the licensee or to any matter pertaining to the
38 consummation of a lease, listing agreement or the purchase, sale, exchange or lease of property,
39 or any type of real estate transaction in which he or she may participate as a licensee;

40 (6) Acting for more than one party in a transaction without the knowledge of all parties
41 for whom he or she acts, or accepting a commission or valuable consideration for services from
42 more than one party in a real estate transaction without the knowledge of all parties to the
43 transaction;

44 (7) Paying a commission or valuable consideration to any person for acts or services
45 performed in violation of sections 339.010 to 339.180 and sections 339.710 to 339.860;

46 (8) Guaranteeing or having authorized or permitted any licensee to guarantee future
47 profits which may result from the resale of real property;

48 (9) Having been finally adjudicated and been found guilty of the violation of any state
49 or federal statute which governs the sale or rental of real property or the conduct of the real estate
50 business as defined in subsection 1 of section 339.010;

51 (10) Obtaining a certificate or registration of authority, permit or license for himself or
52 herself or anyone else by false or fraudulent representation, fraud or deceit;

53 (11) Representing a real estate broker other than the broker with whom associated
54 without the express written consent of the broker with whom associated;

55 (12) Accepting a commission or valuable consideration for the performance of any of
56 the acts referred to in section 339.010 from any person except the broker with whom associated
57 at the time the commission or valuable consideration was earned;

58 (13) Using prizes, money, gifts or other valuable consideration as inducement to secure
59 customers or clients to purchase, lease, sell or list property when the awarding of such prizes,
60 money, gifts or other valuable consideration is conditioned upon the purchase, lease, sale or
61 listing; or soliciting, selling or offering for sale real property by offering free lots, or conducting
62 lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective
63 purchaser of real property;

64 (14) Placing a sign on or advertising any property offering it for sale or rent without the
65 written consent of the owner or his or her duly authorized agent;

66 (15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling
67 any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to
68 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections
69 339.710 to 339.860;

70 (16) Committing any act which would otherwise be grounds for the commission to
71 refuse to issue a license under section 339.040;

72 (17) Failure to timely inform seller of all written offers unless otherwise instructed in
73 writing by the seller;

74 (18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo
75 contendere, in a criminal prosecution under the laws of this state or any other state or of the
76 United States, for any offense reasonably related to the qualifications, functions or duties of any
77 profession licensed or regulated under this chapter, for any offense an essential element of which
78 is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether
79 or not sentence is imposed;

80 (19) Any other conduct which constitutes untrustworthy, improper or fraudulent business
81 dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

82 (20) Disciplinary action against the holder of a license or other right to practice any
83 profession regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860 granted
84 by another state, territory, federal agency, or country upon grounds for which revocation,
85 suspension, or probation is authorized in this state;

86 (21) Been found by a court of competent jurisdiction of having used any controlled
87 substance, as defined in chapter 195, RSMo, to the extent that such use impairs a person's ability
88 to perform the work of any profession licensed or regulated by sections 339.010 to 339.180 and
89 sections 339.710 to 339.860;

90 (22) Been finally adjudged insane or incompetent by a court of competent jurisdiction;

91 (23) Assisting or enabling any person to practice or offer to practice any profession
92 licensed or regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860 who
93 is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections
94 339.710 to 339.860;

95 (24) Use of any advertisement or solicitation which is knowingly false, misleading or
96 deceptive to the general public or persons to whom the advertisement or solicitation is primarily
97 directed.

98 3. After the filing of such complaint, the proceedings will be conducted in accordance
99 with the provisions of law relating to the administrative hearing commission. A finding of the
100 administrative hearing commissioner that the licensee has performed or attempted to perform one
101 or more of the foregoing acts shall be grounds for the suspension or revocation of his license by
102 the commission, or the placing of the licensee on probation on such terms and conditions as the
103 real estate commission shall deem appropriate.

104 4. The commission may prepare a digest of the decisions of the administrative hearing
105 commission which concern complaints against licensed brokers or salespersons and cause such
106 digests to be mailed to all licensees periodically. Such digests may also contain reports as to new
107 or changed rules adopted by the commission and other information of significance to licensees.

108 **5. Notwithstanding other provisions of this section, a broker or salesperson's license**
109 **shall be revoked, or in the case of an applicant, shall not be issued, if the licensee or**
110 **applicant has pleaded guilty to or been found guilty of any of the following offenses or**
111 **offenses of a similar nature established under the laws of this, any other state, the United**
112 **States, or any other country, notwithstanding whether sentence is imposed:**

113 (1) **Any dangerous felony as defined under section 556.061, RSMo, or murder in**
114 **the first degree;**

115 (2) **Any of the following sexual offenses: rape; statutory rape in the first degree;**
116 **statutory rape in the second degree; sexual assault, forcible sodomy; statutory sodomy in**
117 **the first degree; statutory sodomy in the second degree; child molestation in the first**

118 **degree; child molestation in the second degree; deviate sexual assault; sexual misconduct**
119 **involving a child; sexual misconduct in the first degree; sexual abuse; enticement of a child;**
120 **or attempting to entice a child;**

121 **(3) Any of the following offenses against the family and related offenses: incest;**
122 **abandonment of a child in the first degree; abandonment of a child in the second degree;**
123 **endangering the welfare of a child in the first degree; abuse of a child; using a child in a**
124 **sexual performance; promoting sexual performance by a child; or trafficking in children;**
125 **and**

126 **(4) Any of the following offenses involving child pornography and related offenses:**
127 **promoting obscenity in the first degree; promoting obscenity in the second degree when the**
128 **penalty is enhanced to a class D felony; promoting child pornography in the first degree;**
129 **promoting child pornography in the second degree; possession of child pornography in the**
130 **first degree; possession of child pornography in the second degree; furnishing child**
131 **pornography to a minor; furnishing pornographic materials to minors; or coercing**
132 **acceptance of obscene material.**

133 **6. A person whose license was revoked under subsection 5 of this section may**
134 **appeal such revocation to the commission. Notice of such appeal must be received by the**
135 **commission within ninety days of notice of revocation. Failure of a person whose license**
136 **was revoked to notify the commission of his or her intent to appeal waives all rights to**
137 **appeal the revocation. Upon notice of such person's intent to appeal, a hearing shall be**
138 **held before the administrative hearing commissioner.**

339.710. For purposes of **sections 339.010 to 339.180, RSMo, and sections 339.710 to**
2 **339.860, 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, real estate on which no buildings or structures are located, or real estate
30 classified as agricultural and horticultural property for assessment purposes pursuant to section
31 137.016, RSMo. Commercial real estate does not include single family residential units
32 including condominiums, townhouses, or homes in a subdivision when that real estate is sold,
33 leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a
34 larger building or parcel of real estate containing more than four units;

35 (8) "Commission", the Missouri real estate commission;

36 (9) "Confidential information", information obtained by the licensee from the client and
37 designated as confidential by the client, information made confidential by sections 339.710 to
38 339.860 or any other statute or regulation, or written instructions from the client unless the
39 information is made public or becomes public by the words or conduct of the client to whom the
40 information pertains or by a source other than the licensee;

41 (10) "Customer", an actual or potential seller, landlord, buyer, or tenant in a real estate
42 transaction in which a licensee is involved but who has not entered into a brokerage relationship
43 with the licensee;

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

46 (12) "Designated broker", any individual licensed as a broker who is operating pursuant
47 to the definition of "real estate broker" as defined in section 339.010, or any individual licensed
48 as a broker who is appointed by a partnership, association, limited liability corporation, or a
49 corporation engaged in the real estate brokerage business to be responsible for the acts of the

50 partnership, association, limited liability corporation, or corporation. Every real estate
51 partnership, association, or limited liability corporation, or corporation shall appoint a designated
52 broker;

53 (13) "Designated transaction broker", a licensee named by a designated broker or deemed
54 appointed by a designated broker as the transaction broker for a client pursuant to section
55 339.820;

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

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

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

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

67 [(17)] (18) "Limited agent", a licensee whose duties and obligations to a client are those
68 set forth in sections 339.730 to 339.750;

69 [(18)] (19) "Ministerial acts", those acts that a licensee may perform for a person or
70 entity that are informative in nature and do not rise to the level which requires the creation of a
71 brokerage relationship. Examples of these acts include, but are not limited to:

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

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

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

78 (d) Setting an appointment to view property;

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

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

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

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

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

87 [(19)] **(20)** "Residential real estate", all real property improved by a structure that is used
88 or intended to be used primarily for residential living by human occupants and that contains not
89 more than four dwelling units or that contains single dwelling units owned as a condominium
90 or in a cooperative housing association, and vacant land classified as residential property. The
91 term "cooperative housing association" means an association, whether incorporated or
92 unincorporated, organized for the purpose of owning and operating residential real property in
93 Missouri, the shareholders or members of which, by reason of their ownership of a stock or
94 membership certificate, a proprietary lease, or other evidence of membership, are entitled to
95 occupy a dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement;

96 [(20)] **(21)** "Single agent", a licensee who has entered into a brokerage relationship with
97 and therefore represents only one party in a real estate transaction. A single agent may be one
98 of the following:

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

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

103 (c) "Landlord's agent", which shall mean a licensee who represents a landlord in a leasing
104 transaction;

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

107 [(21)] **(22)** "Subagent", a designated broker, together with the broker's affiliated
108 licensees, engaged by another designated broker, together with the broker's affiliated or
109 appointed affiliated licensees, to act as a limited agent for a client, or a designated broker's
110 unappointed affiliated licensees engaged by the designated broker, together with the broker's
111 appointed affiliated licensees, to act as a limited agent for a client. A subagent owes the same
112 obligations and responsibilities to the client pursuant to sections 339.730 to 339.740 as does the
113 client's designated broker;

114 [(22)] **(23)** "Transaction broker", any licensee acting pursuant to sections 339.710 to
115 339.860, who:

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

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

121 (c) Assists another party to the same transaction either solely or through licensee
122 affiliates.

123

124 Such licensee shall be deemed to be a transaction broker and not a dual agent, provided that,
125 notice of assumption of transaction broker status is provided to the buyer and seller immediately
126 upon such default to transaction broker status, to be confirmed in writing prior to execution of
127 the contract.

339.720. 1. A licensee's general duties and obligations arising from the limited agency
2 relationship shall be disclosed in writing to the seller and the buyer or to the landlord and the
3 tenant pursuant to sections 339.760 to 339.780. Alternatively, when engaged in any of the
4 activities enumerated in section 339.010, a licensee may act as an agent in any transaction in
5 accordance with a written agreement as described in section 339.780.

6 2. A licensee shall be considered a transaction broker unless:

7 (1) The designated broker enters into a written seller's agent or landlord's agent
8 agreement with the party or parties to be represented pursuant to subsection 2 of section 339.780;

9 (2) The designated broker enters into a subagency agreement with another designated
10 broker pursuant to subsection 5 of section 339.780;

11 (3) The designated broker establishes a buyer's or tenant's agency relationship pursuant
12 to subsection 3 of section 339.780;

13 (4) The designated broker enters into a written agency agreement pursuant to subsection
14 [7] **8** of section 339.780;

15 (5) The designated broker and the affiliated licensees are performing ministerial acts;

16 (6) The designated broker enters into a written dual agency agreement with the parties
17 pursuant to subsection 4 of section 339.780;

18 (7) The designated broker is acting in a manner described in paragraph (c) of subdivision
19 [(22)] **(23)** of section 339.710 without proper notice of assumption of transaction broker status;
20 or

21 (8) The licensee is making a listing presentation, which may include pricing and
22 marketing advice about a potential future transaction, to a customer in anticipation of entering
23 into a signed agency brokerage service agreement as a direct result of the presentation.

24 3. Sections 339.710 to 339.860 do not obligate any buyer or tenant to pay compensation
25 to a designated broker unless the buyer or tenant has entered into a written agreement with the
26 designated broker specifying the compensation terms in accordance with subsection 3 of section
27 339.780.

28 4. A licensee may work with a single party in separate transactions pursuant to different
29 relationships, including, but not limited to, selling one property as a transaction broker or a

30 seller's agent working with that seller in buying another property as a buyer's agent, as a subagent
31 or as a transaction broker if the licensee complies with sections 339.710 to 339.860 in
32 establishing the relationships for each transaction.

339.780. 1. All written agreements for brokerage services on behalf of a seller, landlord,
2 buyer, or tenant shall be entered into by the designated broker on behalf of that broker and
3 affiliated licensees, except that the designated broker may authorize affiliated licensees in writing
4 to enter into the written agreements on behalf of the designated broker.

5 2. Before engaging in any of the activities enumerated in section 339.010, a designated
6 broker intending to establish a limited agency relationship with a seller or landlord shall enter
7 into a written agency agreement with the party to be represented. The agreement shall include
8 a licensee's duties and responsibilities specified in section 339.730 and the terms of
9 compensation and shall specify whether an offer of subagency may be made to any other
10 designated broker.

11 3. Before or while engaging in any acts enumerated in section 339.010, except
12 ministerial acts defined in section 339.710, a designated broker acting as a single agent for a
13 buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The
14 agreement shall include a licensee's duties and responsibilities specified in section 339.740 and
15 the terms of compensation.

16 4. Before engaging in any of the activities enumerated in section 339.010, a designated
17 broker intending to act as a dual agent shall enter into a written agreement with the seller and
18 buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The
19 agreement shall include a licensee's duties and responsibilities specified in section 339.750 and
20 the terms of compensation.

21 5. Before engaging in any of the activities enumerated in section 339.010, a designated
22 broker intending to act as a subagent shall enter into a written agreement with the designated
23 broker for the client. If a designated broker has made a unilateral offer of subagency, another
24 designated broker can enter into the subagency relationship by the act of disclosing to the
25 customer that he or she is a subagent of the client. If a designated broker has made an
26 appointment pursuant to section 339.820, an affiliated licensee that has been excluded by such
27 appointment may enter into the subagency relationship by the act of disclosing to the customer
28 that he or she is a subagent of the client.

29 6. A designated broker who intends to act as a transaction broker and who expects to
30 receive compensation from the party he or she assists shall enter into a written transaction
31 brokerage agreement with such party or parties contracting for the broker's service. The
32 transaction brokerage agreement shall include a licensee's duties and responsibilities specified
33 in section 339.755 and the terms of compensation.

34 **7. All exclusive brokerage agreements shall specify that the broker, through the**
35 **broker or through one or more affiliated licensees, shall provide, at a minimum, the**
36 **following services:**

37 **(1) Accepting delivery of and presenting to the client or customer offers and**
38 **counteroffers to buy, sell, or lease the client's or customer's property or the property the**
39 **client or customer seeks to purchase or lease;**

40 **(2) Assisting the client or customer in developing, communicating, negotiating, and**
41 **presenting offers, counteroffers, and notices that relate to the offers and the counteroffers**
42 **until a lease or purchase agreement is signed and all contingencies are satisfied or waived;**
43 **and**

44 **(3) Answering the client's or customer's questions relating to the offers,**
45 **counteroffers, notices, and contingencies.**

46 **8. Nothing contained in this section shall prohibit the public from entering into written**
47 **contracts with any broker which contain duties, obligations, or responsibilities which are in**
48 **addition to those specified in this section.**