

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 1411

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SMITH (150) (Sponsor), WOOD AND KRATKY (Co-sponsors).

Read 1st time January 17, 2006 and copies ordered printed.

Read 2nd time January 18, 2006 and referred to the Committee on Professional Registration and Licensing January 26, 2006.

Reported from the Committee on Professional Registration and Licensing March 16, 2006 with recommendation that the bill Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules March 27, 2006 with recommendation that the bill Do Pass by Consent.

Perfected by Consent April 3, 2006.

STEPHEN S. DAVIS, Chief Clerk

4281L.01P

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## AN ACT

To repeal sections 339.010 and 339.100, RSMo, and to enact in lieu thereof two new sections relating to real estate brokers.

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

Section A. Sections 339.010 and 339.100, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 339.010 and 339.100, to read as follows:

339.010. 1. A "real estate broker" is any person, partnership, association, or corporation,  
2 foreign or domestic who, for another, and for a compensation or valuable consideration, does,  
3 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;

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.

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;

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 as an employee of, or on behalf of, the owner of  
22 real estate, or interest therein, or improvements affixed thereon, for compensation.

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

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

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

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

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

42 (1) Any person, partnership, association, or corporation who as owner, lessor, or lessee  
43 shall perform any of the acts described in subsection 1 of this section with reference to property

44 owned or leased by them, or to the regular employees thereof, provided such owner, lessor, or  
45 lessee is not engaged in the real estate business;

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

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

48 (4) Any person acting as receiver, trustee in bankruptcy, administrator, executor, or  
49 guardian or while acting under a court order or under the authority of a will, trust instrument or  
50 deed of trust or as a witness in any judicial proceeding or other proceeding conducted by the state  
51 or any governmental subdivision or agency;

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

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

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

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

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

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

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

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

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

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

79 (9) Any newspaper, magazine, periodical, [or] Internet site [whereby the advertising of  
80 real estate is incidental to its operation], **Internet communications**, or [to] any form of  
81 communications regulated or licensed by the Federal Communications Commission or any  
82 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.

339.100. 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  
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 shall  
109 be revoked, or in the case of an applicant, shall not be issued, if the licensee or applicant has  
110 pleaded guilty to or been found guilty of any of the following offenses or offenses of a similar  
111 nature established under the laws of this, any other state, the United States, or any other country,  
112 notwithstanding whether sentence is imposed:

113 (1) Any dangerous felony as defined under section 556.061, RSMo, or murder in the first  
114 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 the first  
117 degree, statutory sodomy in the second degree, child molestation in the first degree, child  
118 molestation in the second degree, deviate sexual assault, sexual misconduct involving a child,

119 sexual misconduct in the first degree, sexual abuse, enticement of a child, or attempting to entice  
120 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 sexual  
124 performance, promoting sexual performance by a child, or trafficking in children; and

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

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

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