

FIRST REGULAR SESSION

# HOUSE BILL NO. 310

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES WOOD (Sponsor), KRATKY, SCHNEIDER, WHORTON, VIEBROCK, WILSON (119), WALLACE, WRIGHT-JONES, SMITH (150), WETER, SPRENG, RUZICKA, TILLEY, RUESTMAN, SHIVELY AND SCHAD (Co-sponsors).

Read 1st time January 10, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1052L.01I

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### AN ACT

To repeal section 339.100, RSMo, and to enact in lieu thereof two new sections relating to real estate licenses, with penalty provisions.

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

Section A. Section 339.100 is repealed and two new sections enacted in lieu thereof, to be known as sections 339.100 and 339.200, to read as follows:

339.100. 1. The commission may, upon its own motion, and shall upon receipt of a written complaint filed by any person, investigate any real estate-related activity of a licensee licensed under sections 339.010 to 339.180 and sections 339.710 to 339.860 or an individual or entity acting as or representing themselves as a real estate licensee. In conducting such investigation, if the questioned activity or written complaint involves an affiliated licensee, the commission may forward a copy of the information received to the affiliated licensee's designated broker. The commission shall have the power to hold an investigatory hearing to determine whether there is a probability of a violation of sections 339.010 to 339.180 and sections 339.710 to 339.860. The commission shall have the power to issue a subpoena to compel the production of records and papers bearing on the complaint. The commission shall have the power to issue a subpoena and to compel any person in this state to come before the commission to offer testimony or any material specified in the subpoena. Subpoenas and subpoenas duces tecum issued pursuant to this section shall be served in the same manner as

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.

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, **or the imposition of a civil penalty not to**  
104 **exceed two thousand five hundred dollars for each offense. Each day of a continued**  
105 **violation shall constitute a separate offense.**

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

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

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

117 (2) Any of the following sexual offenses: rape, statutory rape in the first degree,  
118 statutory rape in the second degree, sexual assault, forcible sodomy, statutory sodomy in the first  
119 degree, statutory sodomy in the second degree, child molestation in the first degree, child

120 molestation in the second degree, deviate sexual assault, sexual misconduct involving a child,  
121 sexual misconduct in the first degree, sexual abuse, enticement of a child, or attempting to entice  
122 a child;

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

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

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

**339.200. 1. It shall be unlawful for any person or entity not licensed under this  
2 chapter to perform any act for which a real estate license is required. The commission may  
3 cause a complaint to be filed with the administrative hearing commission, as provided in  
4 chapter 621, RSMo, against any unlicensed person engaging in, or offering to engage in,  
5 the performance of any acts or practices for which a permit or license is required by this  
6 chapter upon a showing that such acts or practices were performed or offered to be  
7 performed without a permit or license.**

8 **2. The proceedings before the administrative hearing commission shall be  
9 conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the  
10 administrative hearing commission that the person or entity engaged in, or offered to  
11 engage in, the performance of any acts or practices for which a permit or license is  
12 required by this chapter, and that such acts or practices were performed or offered to be  
13 performed without a permit or license, the commission may impose a civil penalty in an  
14 amount not to exceed two thousand five hundred dollars for each offense. Each day of a  
15 continued violation shall constitute a separate offense.**

16           **3. Any action brought under this chapter shall be in addition to and not in lieu of**  
17 **any penalty provided by this chapter and may be brought concurrently with other actions**  
18 **to enforce this chapter.**

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