

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 695
101ST GENERAL ASSEMBLY

1515H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 339.100 and 339.150, RSMo, and to enact in lieu thereof two new sections relating to real estate licensees.

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

Section A. Sections 339.100 and 339.150, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 339.100 and 339.150, 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
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 against any person or entity licensed

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.

18 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, or for any offense an essential element of
78 which is fraud, dishonesty or an act of violence, whether or not sentence is imposed;

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

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

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

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

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

94 (24) Use of any advertisement or solicitation which:

95 (a) Is knowingly false, misleading, or deceptive to the general public or persons to whom
96 the advertisement or solicitation is primarily directed; or

97 (b) **Includes a name or team name that uses the term "realty", "brokerage",**
98 **"company", or any other term that could be construed as a real estate company separate**
99 **from the associated broker's company. The context of an advertisement may be considered**
100 **by the commission when determining whether the licensee committed a violation under the**
101 **provisions of this paragraph;**

102 (25) Making any material misstatement, misrepresentation, or omission with regard to
103 any application for licensure or license renewal. As used in this section, "material" means
104 important information about which the commission should be informed and which may influence
105 a licensing decision;

106 (26) Engaging in, committing, or assisting any person in engaging in or committing
107 mortgage fraud, as defined in section 443.930.

108 3. After the filing of such complaint, the proceedings will be conducted in accordance
109 with the provisions of law relating to the administrative hearing commission. A finding of the
110 administrative hearing commissioner that the licensee has performed or attempted to perform one
111 or more of the foregoing acts shall be grounds for the suspension or revocation of his license by
112 the commission, or the placing of the licensee on probation on such terms and conditions as the
113 real estate commission shall deem appropriate, or the imposition of a civil penalty by the
114 commission not to exceed two thousand five hundred dollars for each offense. Each day of a
115 continued violation shall constitute a separate offense.

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

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

125 (1) Any dangerous felony as defined under section 556.061 or murder in the first degree;

126 (2) Any of the following sexual offenses: rape in the first degree, forcible rape, rape,
127 statutory rape in the first degree, statutory rape in the second degree, rape in the second degree,
128 sexual assault, sodomy in the first degree, forcible sodomy, statutory sodomy in the first degree,
129 statutory sodomy in the second degree, child molestation in the first degree, child molestation
130 in the second degree, sodomy in the second degree, deviate sexual assault, sexual misconduct
131 involving a child, sexual misconduct in the first degree under section 566.090 as it existed prior
132 to August 28, 2013, sexual abuse under section 566.100 as it existed prior to August 28, 2013,
133 sexual abuse in the first or second degree, enticement of a child, or attempting to entice a child;

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

138 (4) Any of the following offenses involving child pornography and related offenses:
139 promoting obscenity in the first degree, promoting obscenity in the second degree when the
140 penalty is enhanced to a class E felony, promoting child pornography in the first degree,
141 promoting child pornography in the second degree, possession of child pornography in the first
142 degree, possession of child pornography in the second degree, furnishing child pornography to
143 a minor, furnishing pornographic materials to minors, or coercing acceptance of obscene
144 material; and

145 (5) Mortgage fraud as defined in section 570.310.

146 6. A person whose license was revoked under subsection 5 of this section may appeal
147 such revocation to the administrative hearing commission. Notice of such appeal must be
148 received by the administrative hearing commission within ninety days of mailing, by certified
149 mail, the notice of revocation. Failure of a person whose license was revoked to notify the
150 administrative hearing commission of his or her intent to appeal waives all rights to appeal the
151 revocation. Upon notice of such person's intent to appeal, a hearing shall be held before the
152 administrative hearing commission.

339.150. 1. No real estate broker shall knowingly employ or engage any person to
2 perform any service to the broker for which licensure as a real estate broker or a real estate
3 salesperson is required pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860,
4 unless such a person is:

5 (1) A licensed real estate salesperson or a licensed real estate broker as required by
6 section 339.020; or

7 (2) For a transaction involving commercial real estate as defined in section 339.710, a
8 person regularly engaged in the real estate brokerage business outside the state of Missouri who
9 has, in such forms as the commission may adopt by rule:

- 10 (a) Executed a brokerage agreement with the Missouri real estate broker;
11 (b) Consented to the jurisdiction of Missouri and the commission;
12 (c) Consented to disciplinary procedures under section 339.100; and
13 (d) Appointed the commission as his or her agent for service of process regarding any
14 administrative or legal actions relating to the conduct in Missouri; or

15 (3) For any other transaction, a person regularly engaged in the real estate brokerage
16 business outside of the state of Missouri.

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18 Any such action shall be unlawful as provided by section 339.100 and shall be grounds for
19 investigation, complaint, proceedings and discipline as provided by section 339.100.

20 2. No real estate licensee shall pay any part of a fee, commission or other compensation
21 received by the licensee to any person for any service rendered by such person to the licensee in
22 buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate, unless
23 such a person is a licensed real estate salesperson regularly associated with such a broker, or a
24 licensed real estate broker, or a person regularly engaged in the real estate brokerage business
25 outside of the state of Missouri.

26 3. Notwithstanding the provisions of subsections 1 and 2 of this section, any real estate
27 broker who shall refuse to pay any person for services rendered by such person to the broker,
28 with the consent, knowledge and acquiescence of the broker that such person was not licensed
29 as required by section 339.020, in buying, selling, exchanging, leasing, renting or negotiating a
30 loan upon any real estate for which services a license is required, and who is employed or
31 engaged by such broker to perform such services, shall be liable to such person for the reasonable
32 value of the same or similar services rendered to the broker, regardless of whether or not the
33 person possesses or holds any particular license, permit or certification at the time the service
34 was performed. Any such person may bring a civil action for the reasonable value of his services
35 rendered to a broker notwithstanding the provisions of section 339.160.

36 **4. Notwithstanding any provision of law to the contrary, a real estate broker may**
37 **pay compensation directly to a business entity owned by a licensee that has been formed**
38 **for the purpose of receiving compensation earned by such licensee. A business entity that**
39 **receives compensation from a real estate broker as provided for in this subsection shall not**
40 **be required to be licensed under this chapter and shall be owned:**

41 **(1) Solely by the licensee;**

42 **(2) By the licensee together with the licensee's spouse, but only if the spouse and**
43 **licensee are both licensed and associated with the same real estate broker, or the spouse is**
44 **not also licensed; or**

45 **(3) By the licensee and one or more other licensees, but only if all such owners are**
46 **licensees which are associated with the same real estate broker.**

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48 **For purposes of this subsection, the term "licensee" shall mean any real estate**
49 **broker-salesperson or real estate salesperson, as such terms are defined under section**
50 **339.010, and the term "business entity", shall mean any corporation, partnership, limited**
51 **partnership, limited liability company, professional corporation, or association.**

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