

FIRST REGULAR SESSION

HOUSE BILL NO. 385

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WALKER.

1185H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 339.010, RSMo, and to enact in lieu thereof one new section relating to real estate broker correspondence.

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

Section A. Section 339.010, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 339.010, to read as follows:

339.010. 1. A "real estate broker" is any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic who, for another, and for a compensation or valuable consideration, does, or attempts to do, any or all of the following:

- (1) Sells, exchanges, purchases, rents, or leases real estate;
- (2) Offers to sell, exchange, purchase, rent or lease real estate;
- (3) Negotiates or offers or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
- (4) Lists or offers or agrees to list real estate for sale, lease, rental or exchange;
- (5) Buys, sells, offers to buy or sell or otherwise deals in options on real estate or improvements thereon;
- (6) Advertises or holds himself or herself out as a licensed real estate broker while engaged in the business of buying, selling, exchanging, renting, or leasing real estate;
- (7) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;
- (8) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;

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 (9) Engages in the business of charging to an unlicensed person an advance fee in
19 connection with any contract whereby the real estate broker undertakes to promote the sale of
20 that person's real estate through its listing in a publication issued for such purpose intended to
21 be circulated to the general public;

22 (10) Performs any of the foregoing acts on behalf of the owner of real estate, or interest
23 therein, or improvements affixed thereon, for compensation.

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

31 3. A "real estate broker-salesperson" is any person, partnership, limited partnership,
32 limited liability company, association, professional corporation, or corporation, domestic or
33 foreign, who has a real estate broker license in good standing, who for a compensation or
34 valuable consideration becomes associated, either as an independent contractor or employee,
35 either directly or indirectly, with a real estate broker to do any of the things above mentioned.
36 A real estate broker-salesperson may not also operate as a real estate broker. The provisions of
37 sections 339.010 to 339.180 and sections 339.710 to 339.860 shall not be construed to deny a
38 real estate salesperson who is compensated solely by commission the right to be associated with
39 a broker as an independent contractor.

40 4. The term "commission" as used in sections 339.010 to 339.180 and sections 339.710
41 to 339.860 means the Missouri real estate commission.

42 5. "Real estate" for the purposes of sections 339.010 to 339.180 and sections 339.710
43 to 339.860 shall mean, and include, leaseholds, as well as any other interest or estate in land,
44 whether corporeal, incorporeal, freehold or nonfreehold, and the real estate is situated in this
45 state.

46 6. "Advertising" shall mean any communication, whether oral or written, between a
47 licensee or other entity acting on behalf of one or more licensees and the public, and shall
48 include, but not be limited to, business cards, signs, insignias, letterheads, radio, television,
49 newspaper and magazine ads, internet advertising, websites, display or group ads in telephone
50 directories, and billboards.

51 7. **"Correspondence" shall mean any written or electronic communication but shall**
52 **exclude any communication that is ephemeral in nature. Ephemeral information includes**
53 **text messages, instant message, and any other information or communication which is not**

54 **designed to be retained or create a permanent record for use in any transaction calculated**
55 **or intended to result in the sale, exchange, leasing, or rental of real estate.**

56 **8.** The provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860 shall
57 not apply to:

58 (1) Any person, partnership, limited partnership, limited liability company, association,
59 professional corporation, or corporation who as owner, lessor, or lessee shall perform any of the
60 acts described in subsection 1 of this section with reference to property owned or leased by them,
61 or to the regular employees thereof;

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

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

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

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

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

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

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

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

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

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

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

85 (7) Railroads and other public utilities regulated by the state of Missouri, or their
86 subsidiaries or affiliated corporations, or to the officers or regular employees thereof, unless
87 performance of any of the acts described in subsection 1 of this section is in connection with the
88 sale, purchase, lease or other disposition of real estate or investment therein unrelated to the

89 principal business activity of such railroad or other public utility or affiliated or subsidiary
90 corporation thereof;

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

95 (9) Any newspaper, magazine, periodical, internet site, internet communications, or any
96 form of communications regulated or licensed by the Federal Communications Commission or
97 any successor agency or commission whereby the advertising of real estate is incidental to its
98 operation;

99 (10) Any developer selling Missouri land owned by the developer;

100 (11) Any employee acting on behalf of a nonprofit community, or regional economic
101 development association, agency or corporation which has as its principal purpose the general
102 promotion and economic advancement of the community at large, provided that such entity:

103 (a) Does not offer such property for sale, lease, rental or exchange on behalf of another
104 person or entity;

105 (b) Does not list or offer or agree to list such property for sale, lease, rental or exchange;
106 or

107 (c) Receives no fee, commission or compensation, either monetary or in kind, that is
108 directly related to sale or disposal of such properties. An economic developer's normal annual
109 compensation shall be excluded from consideration as commission or compensation related to
110 sale or disposal of such properties; or

111 (12) Any neighborhood association, as that term is defined in section 441.500, that
112 without compensation, either monetary or in-kind, provides to prospective purchasers or lessors
113 of property the asking price, location, and contact information regarding properties in and near
114 the association's neighborhood, including any publication of such information in a newsletter,
115 internet site, or other medium.

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