

FIRST REGULAR SESSION

SENATE BILL NO. 441

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time February 12, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1237S.011

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Section A. Section 339.010, RSMo, is repealed and one new section
2 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
2 partnership, limited liability company, association, professional corporation, or
3 corporation, foreign or domestic who, for another, and for a compensation or
4 valuable consideration, does, or attempts to do, any or all of the following:

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

21 advance fee in connection with any contract whereby the real estate broker
22 undertakes to promote the sale of that person's real estate through its listing in
23 a publication issued for such purpose intended to be circulated to the general
24 public;

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

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

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

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

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

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

57 billboards.

58 7. **"Correspondence" shall mean any written or electronic**
59 **communication but shall exclude any communication that is ephemeral**
60 **in nature. Ephemeral information includes text messages, instant**
61 **message, and any other information or communication which is not**
62 **designed to be retained or create a permanent record for use in any**
63 **transaction calculated or intended to result in the sale, exchange,**
64 **leasing, or rental of real estate.**

65 8. The provisions of sections 339.010 to 339.180 and sections 339.710 to
66 339.860 shall not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

101 (7) Railroads and other public utilities regulated by the state of Missouri,
102 or their subsidiaries or affiliated corporations, or to the officers or regular
103 employees thereof, unless performance of any of the acts described in subsection
104 1 of this section is in connection with the sale, purchase, lease or other
105 disposition of real estate or investment therein unrelated to the principal
106 business activity of such railroad or other public utility or affiliated or subsidiary
107 corporation thereof;

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

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

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

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

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

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

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

129 (12) Any neighborhood association, as that term is defined in section
130 441.500, that without compensation, either monetary or in-kind, provides to
131 prospective purchasers or lessors of property the asking price, location, and
132 contact information regarding properties in and near the association's
133 neighborhood, including any publication of such information in a newsletter,
134 internet site, or other medium.



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