

FILE

Subject

State Bonds
Real Estate

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

July 15, 1974

Opinion No. 74- 235

Mr. John Ball, Director
Kansas Real Estate Commission
Room 1212
535 Kansas
Topeka, Kansas 66603

Dear Mr. Ball:

K.S.A. 58-3011 states thus:

"Upon written notice to the commission within ten days of any change, and upon surrender of, or satisfactory accounting for the original license and pocket card, the Kansas real estate commission shall issue new license and pocket card when the address of the broker is changed or the salesman terminates his association and becomes associated with a different broker."

You advise that when a real estate salesman transfers his license from one broker to another, or when a real estate broker changes the trade or business name under which he operates, or changes his office address from that shown on his license certificate and pocket card, the Commission requires that the old license certificate and pocket card be returned to the Commission to be reissued. You question whether a licensee is entitled to engage in the real estate business while his license is being transferred or reissued to reflect such a change. K.S.A. 58-3008 provides in pertinent part thus:

"The Kansas real estate commission shall issue a license as real estate broker or real estate salesman to each applicant who shall be duly qualified The form of license shall be prescribed by the Kansas real estate commission. . . . The commission shall prepare and deliver to each licensee a pocket card bearing the same information as appears on the license itself."

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In our opinion, a licensee is entitled to continue to act as a real estate broker or salesman during the period of time while the original license and pocket card are surrendered to the Commission pursuant to K.S.A. 58-3011 and until a new license and pocket card are issued thereunder. A license is but evidence that the holder thereof has in fact been licensed by the Commission. During the period involved here, the license has not been suspended or revoked. The authority of which the license and pocket card are evidence continues, in our view, by virtue of the initial licensure during the period when the physical evidence thereof, the license and card, are in the custody of the Commission and until new ones are issued under this provision.

Secondly, you inquire concerning K.S.A. 58-3022, which provides in pertinent part as follows:

"Every broker shall, at all times, maintain in his name or firm name, a separate trust account designated as such in an insured bank or savings and loan association in which he shall deposit all funds not his own coming into his possession, including funds in which he may have some future interest or claim and including, but not limited to, earnest money deposits. No broker shall commingle his personal funds or other funds in said trust account with the exception that a broker may deposit and keep a sum not to exceed one hundred dollars (\$100) in said account from his personal funds which sum shall be specifically identified and deposited to cover service charges related to said trust account."

You inquire, first, whether a trust account maintained pursuant to this section may be held in either a passbook account or a certificate of deposit. The statute is nonspecific regarding the form in which the account is held, and in our opinion, the account may be held and maintained in such form as is acceptable to the insured bank or savings and loan association, and conforms to accepted fiduciary principles.

Secondly, you inquire whether a real estate broker is entitled to keep the interest that accrues on these funds without the written consent of the buyer and seller in each individual real estate transaction. In our opinion, the real estate broker is not entitled to keep any interest earned on any funds held in the trust account in which at the time the interest accrued the broker has no claim or interest in his own right, without the consent of the party entitled to the funds upon which the interest accrues. The general rule is stated thus at 45 Am. Jur.2d, Interest and Usury, § 39:

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"One receiving money which he is obligated to pay to a third person is not liable to the latter for interest if, being under no obligation to do so, he does not put the money out at interest; but if he does so, the interest is considered to have the same ownership as the principal by which it is produced." [Footnotes omitted.]

If you should have further questions concerning these matters, please do not hesitate to call upon us.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm