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ATTORNEY GENERAL OPINION NO. 82- 194

Mr. J. Paul Flower, Director
Kansas Real Estate Commission
Room 1212
535 Kansas
Topeka, Kansas 66603

Re: Personal and Real Property -- Real Estate Brokers
and Salespersons -- Licensure of Nonresidents

Synopsis: Kansas residency is a continuing requirement for licensure as a resident real estate broker or salesperson. When a resident licensee moves to another state, such licensee is not eligible for renewal of a resident license, but must instead apply for a nonresident license and, consequently, provide proof of compliance with all provisions of K.S.A. 1981 Supp. 58-3040, including the requirement of licensure by the new state of residence. Cited herein: K.S.A. 1981 Supp. 58-3039, 58-3040, 58-3045.

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Dear Mr. Flower:

As director of the Kansas Real Estate Commission, you have requested our opinion regarding the applicability of certain provisions of K.S.A. 1981 Supp. 58-3045 (dealing with licensure of nonresident real estate brokers and salespersons) to a request for license renewal pursuant to K.S.A. 1981 Supp. 58-3040. Specifically, you ask whether an individual who receives a Kansas license, pursuant to K.S.A. 1981 Supp.

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58-3039, while a Kansas resident and then moves out of the state, may renew the Kansas license even though the individual is not licensed as a broker or salesperson in the new state of residence.

Pertinent to your inquiry are the provisions of K.S.A. 58-3040(a) and (b) which state in relevant part:

"(a) A nonresident of this state may be granted a broker's license if:

"(1) The nonresident is licensed as a broker in the nonresident's state of residence.

. . . .

"(b) A nonresident salesperson or associate broker . . . may be granted a salesperson's or broker's license . . . if:

"(1) The salesperson or associate broker is licensed as a salesperson or associate broker in the salesperson's or associate broker's state of residence"

The relevant language of K.S.A. 1981 Supp. 58-3045 provides: "[A]pplicants for issuance or renewal of a license must satisfy all applicable requirements prior to issuance or renewal of the license."

In examining these statutes, we are mindful of general rules of statutory construction as set forth by the Kansas Supreme Court in Brown v. Keill, 224 Kan. 195 (1978):

"The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute, even though words, phrases or clauses at some place in the statute must be omitted or inserted. [Citations omitted.] In determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished and the effect the statute may have under the various constructions suggested. [Citation omitted.] In order to ascertain

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the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof in pari materia. When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the literal import of words or phrases which conflict with the manifest purpose of the legislature. [Citation omitted.]" Id. at 199-200.

To understand the legislative intent behind passage of this act, it is helpful to look at the act's history. The Real Estate Brokers and Salesmen Act, K.S.A. 1981 Supp. 58-3034 et seq., was passed by the 1980 Legislature, thereby repealing its predecessor, the Real Estate Brokers License Act, K.S.A. 58-3001 (repealed 1980). The new act contained substantial modifications of prior law, some of which are relevant to your inquiry.

For example, prior to passage of the new act, nonresident applicants for licensure were required to provide recommendations of three Kansas citizens and a broker possessing a resident or nonresident Kansas license. However, there was no requirement that a nonresident applicant be employed by or associated with a broker licensed in this state, as there now is for nonresident salespersons and associate brokers. K.S.A. 1981 Supp. 58-3040(b). Furthermore, the old licensing act allowed waiver of examination upon proof of licensure by another state. Such waiver may occur under the new act only where the applicant is licensed by a state which has entered into an agreement with the Commission regarding issuance of reciprocal licenses. K.S.A. 1981 Supp. 58-3040(a)(2), (b)(2). Most significantly, however, the previous law contained no requirement that the applicant for a nonresident license be licensed in the state of residency. K.S.A. 58-3013 (repealed 1980).

Modification of the licensing act to include licensure in the state of residency as a prerequisite to issuance of a Kansas nonresident license, is indicative of a legislative intent to restrict the availability of nonresident licenses. The additional requirement that a nonresident be associated with or employed by a broker licensed in this state further evidences the intent to narrow the category of individuals eligible for nonresident licenses.

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Another licensing requirement unique to nonresidents is set forth in K.S.A. 1981 Supp. 58-3040(c), as follows:

"Prior to the issuance of a license to a nonresident, the applicant shall file with the commission a designation in writing that appoints the director of the commission as the applicant's agent, upon whom all judicial and other process or legal notices directed to the applicant may be served in the event such applicant becomes a licensee."

In evaluating the requirements for nonresident licensure, it is obvious that the legislature has recognized certain characteristics which it apparently believes justifies special licensing requirements in areas such as: employment by or association with a broker licensed by Kansas; appointment of an agent for service of process; and licensure in the state of residency.

Your inquiry involves application of the nonresident licensure requirements of K.S.A. 1981 Supp. 58-3040 to an application for renewal of a license under K.S.A. 1981 Supp. 58-3045. In analyzing these statutes we are aware of the "cardinal rule of statutory construction that the legislature intended a statute be given a reasonable construction so as to avoid unreasonable or absurd consequences." Williams v. Board of Education, 198 Kan. 115, 125 (1967). In our opinion, it is apparent that the legislature has deemed it necessary to provide additional licensing requirements for nonresidents to assure that they are not only qualified to be licensed, but are amenable to judicial process. It would seem unreasonable, and frustrative of legislative purpose, to allow certain nonresidents to avoid compliance with nonresident licensing requirements simply because they previously resided in Kansas and obtained a license while a Kansas resident. The nonresident licensing requirements serve a distinct purpose which can only be fulfilled by requiring that all nonresidents comply with the provisions of K.S.A. 1981 Supp. 58-3040.

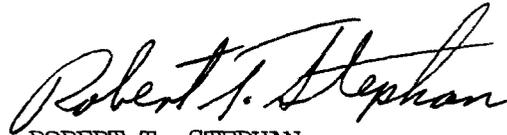
This conclusion does not conflict with the language of K.S.A. 1981 Supp. 58-3045 which states: "[A]pplicants for issuance or renewal of a license must satisfy all applicable requirements for issuance or renewal of the license." In this regard we note that, although K.S.A. 1981 Supp. 58-3039 is a general licensure provision applicable to all prospective licensees, nonresidents are licensed pursuant to K.S.A. 1981 Supp. 58-3040, which makes applicable the provisions of K.S.A. 1981 Supp. 58-3039 but also contains additional requirements for

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nonresident applicants. By implication, we conclude that Kansas residency is an essential requirement for a licensee who obtains a license under K.S.A. 1981 Supp. 58-3039. Accordingly, by virtue of the above-quoted provisions of K.S.A. 1981 Supp. 58-3045, we also believe that Kansas residency is a continuing requirement for a Kansas resident's license including any renewal thereof pursuant to K.S.A. 1981 Supp. 58-3045.

Therefore, it is our opinion that Kansas residency is a continuing requirement for licensure as a resident salesperson or broker. When a resident licensee moves to another state, such licensee is not eligible for renewal of a resident license, but must instead apply for a nonresident license and, consequently, provide proof of compliance with all provisions of K.S.A. 1981 Supp. 58-3040, including the requirement of licensure by the new state of residence.

Very truly yours,



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RTS:JEF:MEM:may