

ENGROSSED HOUSE
BILL NO. 1134

By: Phillips, Roach, Calvey,
Perry and Winchester of the
House

and

Price of the Senate

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 858-102, as last amended by Section 1, Chapter 26, O.S.L. 1999, 858-208, as last amended by Section 1, Chapter 159, O.S.L. 1996, 858-307.1, as amended by Section 13, Chapter 60, O.S.L. 1998, 858-307.2, as last amended by Section 14, Chapter 60, O.S.L. 1998, 858-312, as last amended by Section 14, Chapter 194, O.S.L. 1999 and 858-602, as amended by Section 21, Chapter 60, O.S.L. 1998 (59 O.S. Supp. 2000, Sections 858-102, 858-208, 858-307.1, 858-307.2, 858-312 and 858-602), which relate to the Oklahoma Real Estate License Code; modifying definitions; modifying powers and duties of the Oklahoma Real Estate Commission; adding certain powers; modifying term of sales associate license; providing for expiration of the date of a license; requiring fees to be set by rule of the Commission; modifying requirements for the renewal and reactivation of licenses; modifying continuing education requirements; requiring such continuing education hours to be set by the Commission; adding reasons for Commission investigations; providing effective dates; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 1991, Section 858-102, as last amended by Section 1, Chapter 26, O.S.L. 1999 (59 O.S. Supp. 2000, Section 858-102), is amended to read as follows:

Section 858-102. When used in this Code, unless the context clearly indicates otherwise, the following words and terms shall be construed as having the meanings ascribed to them in this section:

1. The term "real estate" shall include any interest or estate in real property, within or without the State of Oklahoma, whether vested, contingent or future, corporeal or incorporeal, freehold or nonfreehold, and including leaseholds, options and unit ownership

estates to include condominiums, time-shared ownerships and cooperatives; provided, however, that the term "real estate" shall not include oil, gas or other mineral interests, or oil, gas or other mineral leases; and provided further, that the provisions of this Code shall not apply to any oil, gas, or mineral interest or lease or the sale, purchase or exchange thereof;

2. The term "real estate broker" shall include any person, partnership, association or corporation, foreign or domestic, who for a fee, commission or other valuable consideration, or who with the intention or expectation of receiving or collecting a fee, commission or other valuable consideration, lists, sells or offers to sell, buys or offers to buy, exchanges, rents or leases any real estate, or who negotiates or attempts to negotiate any such activity, or solicits listings of places for rent or lease, or solicits for prospective tenants, purchasers or sellers, or who advertises or holds himself out as engaged in such activities;

3. The term "broker associate" shall include any person who has qualified for a license as a broker and who is employed or engaged by, associated as an independent contractor with, or on behalf of, a broker to do or deal in any act, acts or transaction set out in the definition of a broker;

4. The term "real estate sales associate" shall include any person having a renewable license and employed or engaged by, or associated as an independent contractor with, or on behalf of, a real estate broker to do or deal in any act, acts or transactions set out in the definition of a real estate broker;

5. "Provisional sales associate" shall include any person who has been licensed after June 30, 1993, employed or engaged by, or associated as an independent contractor with, or on behalf of, a real estate broker to do or deal in any act, acts or transactions set out in the definition of a real estate broker and subject to an additional ~~forty-five (45) clock hour~~ forty-five-clock-hour

postlicensing educational requirement to be completed within the first ~~thirty-six (36) month~~ twelve-month license term. The license of a provisional sales associate shall be nonrenewable unless the postlicensing requirement is satisfied prior to the expiration date of the license. Further, the term sales associate and provisional sales associate shall be synonymous in meaning except where specific exceptions are addressed in the Oklahoma Real Estate License Code;

6. The term "successful completion" shall include prelicense, postlicense, and distance education courses in which an approved public or private school entity has examined the individual, to the satisfaction of the entity and standards as established by the Commission, in relation to the course material presented during the offering;

7. The term "renewable license" shall refer to a sales associate who is a holder of such ~~and who has completed the educational requirements and obtained a sales associate license prior to July 1, 1993,~~ or shall refer to a provisional sales associate who has completed both the prelicense and postlicense educational requirements within the required time period as stated in the Code;

8. The term "nonrenewable license" shall refer to a provisional sales associate who is the holder of such license and who has ~~only~~ not completed the ~~prelicense~~ postlicense educational requirement;

9. The term "surrendered license" shall refer to a real estate license which is surrendered, upon the request of the licensee, due to a pending investigation or disciplinary proceedings;

10. The term "canceled license" shall refer to a real estate license which is canceled, upon the request of the licensee and approval of the Commission, due to a personal reason or conflict;

11. "Licensee" shall include any person who performs any act, acts or transactions set out in the definition of a broker and licensed under the Oklahoma Real Estate License Code;

12. The word "Commission" shall mean the Oklahoma Real Estate Commission;

13. The word "person" shall include and mean every individual, partnership, association or corporation, foreign or domestic;

14. Masculine words shall include the feminine and neuter, and the singular includes the plural; and

15. The word "associate" shall mean a broker associate, sales associate or provisional sales associate.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 858-208, as last amended by Section 1, Chapter 159, O.S.L. 1996 (59 O.S. Supp. 2000, Section 858-208), is amended to read as follows:

Section 858-208. The Oklahoma Real Estate Commission shall have the following powers and duties:

1. To promulgate rules, prescribe administrative fees by rule, and make orders as it may deem necessary or expedient in the performance of its duties. ~~Administrative fees as referred to in this paragraph do not include the fees enumerated in Sections 858-307.1 and 858-602 of this title;~~

2. To administer examinations to persons who apply for the issuance of licenses;

3. To sell to other entities or governmental bodies, not limited to the State of Oklahoma, computer testing and license applications to recover expended research and development costs;

4. To issue licenses in the form the Commission may prescribe to persons who have passed examinations or who otherwise are entitled to such licenses;

5. To issue licenses to and regulate the activities of real estate brokers, provisional sales associates, sales associates, branch offices, nonresidents, associations, corporations, and partnerships;

6. Upon showing good cause as provided for in The Oklahoma Real Estate License Code, to discipline licensees, instructors and real estate school entities by:

- a. reprimand,
- b. probation for a specified period of time,
- c. requiring education in addition to the educational requirements provided by Section 858-307.2 of this title,
- d. suspending real estate licenses and approvals for specified periods of time,
- e. revoking real estate licenses and approvals,
- f. imposing administrative fines pursuant to Section 858-402 of this title, or
- g. any combination of discipline as provided by subparagraphs a through f of this paragraph;

7. Upon showing good cause, to modify any sanction imposed pursuant to the provisions of this section and to reinstate licenses;

8. To conduct proceedings for discipline, for cause, of licensees and for reinstatement of licenses or modification of sanctions imposed;

9. To prescribe penalties as it may deem proper to be assessed against licensees for the failure to pay the license renewal fees as provided for in this Code;

10. To cause the prosecution of any person who violates any of the provisions of this Code;

11. To approve instructors and organizations offering courses of study in real estate and to further require them to meet standards to remain qualified as is necessary for the administration of this Code;

12. To contract with attorneys and other professionals to carry out the functions and purposes of this Code; ~~and~~

13. To apply for injunctions and restraining orders for violations of the Code or the rules of the Commission;

14. To create an Oklahoma Real Estate Contract Form Committee by rule which will be required to draft and revise residential real estate purchase contracts and any related addenda capable of standardization for use by real estate licensees; and

15. To require real estate licensees to use residential real estate purchase contracts and any related addenda which have been prepared by the Oklahoma Real Estate Contract Form Committee and promulgated by rule; provided, however, that the Commission shall not prohibit a real estate licensee from using forms binding the sale, exchange, option, lease, or rental of any interest in real property which have been prepared by the property owner or prepared by an attorney and required by the property owner.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 858-307.1, as amended by Section 13, Chapter 60, O.S.L. 1998 (59 O.S. Supp. 2000, Section 858-307.1), is amended to read as follows:

Section 858-307.1 A. The Oklahoma Real Estate Commission shall issue every real estate license for a term of thirty-six (36) months with the exception of a provisional sales associate license whose license term shall be for twelve (12) months. ~~The license term~~ License terms shall not be altered except for the purpose of general reassignment of the terms which might be necessitated for maintaining an equitable staggered license term system. The expiration date of the license shall be the end of the twelfth or thirty-sixth month, whichever is applicable, including the month of issuance. ~~The license fees for a thirty-six-month term~~ Fees shall be ~~One Hundred Five Dollars (\$105.00) for a real estate broker's or broker associate's license and Seventy-Five Dollars (\$75.00) for a real estate sales associate's or a provisional sales associate's license promulgated by rule,~~ payable in advance, and nonrefundable.

B. If a license is issued for a period of less than thirty-six (36) months, the license fee shall be prorated to the nearest dollar and month. If a real estate sales associate or a provisional sales associate shall qualify for a license as a real estate broker, then the real estate provisional sales associate's or sales associate's license fee for the remainder of the license term shall be prorated to the nearest dollar and month and credited to such person's real estate broker's license fee.

~~C. For each duplicate license, where the original license is lost or destroyed, and an affidavit made thereof, a fee of Five Dollars (\$5.00) shall be charged.~~

~~D. The broker examination fee shall be Fifty Dollars (\$50.00), and the provisional sales associate/sales associate examination fee shall be Forty Dollars (\$40.00).~~

SECTION 4. AMENDATORY 59 O.S. 1991, Section 858-307.2, as last amended by Section 14, Chapter 60, O.S.L. 1998 (59 O.S. Supp. 2000, Section 858-307.2), is amended to read as follows:

Section 858-307.2 A. 1. ~~Prior to July 1, 1996, as a condition of renewal or reactivation of the license, each licensee with the exception of those exempt as set out in this section shall submit to the Commission evidence of completion of twenty-one (21) clock hours or its equivalent as determined by the Commission of continuing education courses approved by the Commission, within the thirty-six (36) months immediately preceding the term for which the license is to be issued. Each licensee shall be required to complete and include as part of said twenty-one (21) clock hours of continuing education a three-clock-hour course conducted on required subjects as prescribed by the Commission.~~

~~2. Beginning July 1, 1996, as a condition of renewal or reactivation of the license, each licensee, with the exception of those exempt as set out in this section, shall submit to the Commission evidence of completion of ~~twenty-one (21) clock hours or~~~~

~~its equivalent as determined by the Commission~~ the specified number of clock hours of continuing education courses approved by the Commission, within the thirty-six (36) months immediately preceding the term for which the license is to be issued. The number of hours, or its equivalent, required for each licensed term shall be determined by the Commission and promulgated by rule. Each licensee shall be required to complete and include as part of said ~~twenty-one (21) clock hours of continuing education~~ nine (9) clock hours of courses conducted on a certain number of required subjects as prescribed by ~~the Commission~~ rule.

2. Beginning July 1, 2004, as a condition of renewal or reactivation of the license, each licensee with the exception of those exempt as set out in this section shall submit to the Commission evidence of completion of a specified number of hours of continuing education courses approved by the Commission, within the thirty-six (36) months immediately preceding the term for which the license is to be issued. The number of hours, or its equivalent, required for each licensed term shall be determined by the Commission and promulgated by rule. Each licensee shall be required to complete and include as part of said continuing education a certain number of required subjects as prescribed by rule.

B. The continuing education courses required by this section shall be satisfied by courses approved by the Commission and offered by:

1. The Commission;
2. An area vocational-technical school;
3. A college or university;
4. A private school;
5. The Oklahoma Association of Realtors, the National Association of Realtors, or any affiliate thereof;
6. The Oklahoma Bar Association, American Bar Association, or any affiliate thereof; or

7. An education provider.

C. The Commission shall maintain a list of courses which are approved by the Commission.

D. The Commission shall not issue a an active renewal license or reactivate a license unless the continuing education requirement set forth in this section is satisfied within the prescribed time period.

E. The provisions of this section do not apply:

1. During the period a license is on inactive status;

2. To a licensee who holds a provisional sales associate license;

3. To a nonresident licensee licensed in this state if the licensee maintains a current license in another state and has satisfied the continuing education requirement for license renewal in that state; or

4. To a corporation, association, partnership or branch office.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 858-312, as last amended by Section 14, Chapter 194, O.S.L. 1999 (59 O.S. Supp. 2000, Section 858-312), is amended to read as follows:

Section 858-312. The Oklahoma Real Estate Commission may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any real estate licensee, and may, upon showing good cause, impose sanctions as provided for in Section 858-208 of this title. Cause shall be established upon the showing that any licensee has performed, is performing, has attempted to perform, or is attempting to perform any of the following acts:

1. Making a materially false or fraudulent statement in an application for a license;

2. Making substantial misrepresentations or false promises in the conduct of business, or through real estate licensees, or

advertising, which are intended to influence, persuade, or induce others;

3. Failing to comply with the requirements of Sections ~~±~~ 858-351 through ~~13~~ 858-363 of this ~~act~~ title;

4. Accepting a commission or other valuable consideration as a real estate associate for the performance of any acts as an associate, except from the real estate broker with whom the associate is associated;

5. Representing or attempting to represent a real estate broker other than the broker with whom the associate is associated without the express knowledge and consent of the broker with whom the associate is associated;

6. Failing, within a reasonable time, to account for or to remit any monies, documents, or other property coming into possession of the licensee which belong to others;

7. Paying a commission or valuable consideration to any person for acts or services performed in violation of the Oklahoma Real Estate License Code;

8. Any other conduct which constitutes untrustworthy, improper, fraudulent, or dishonest dealings;

9. Disregarding or violating any provision of the Oklahoma Real Estate License Code or rules promulgated by the Commission;

10. Guaranteeing or having authorized or permitted any real estate licensee to guarantee future profits which may result from the resale of real estate;

11. Advertising or offering for sale, rent or lease any real estate, or placing a sign on any real estate offering it for sale, rent or lease without the consent of the owner or the owner's authorized representative;

12. Soliciting, selling, or offering for sale real estate by offering "free lots", conducting lotteries or contests, or offering

prizes for the purpose of influencing a purchaser or prospective purchaser of real estate;

13. Accepting employment or compensation for appraising real estate contingent upon the reporting of a predetermined value or issuing any appraisal report on real estate in which the licensee has an interest unless the licensee's interest is disclosed in the report. All appraisals shall be in compliance with the Oklahoma real estate appraisal law, and the person performing the appraisal or report shall disclose to the employer whether the person performing the appraisal or report is licensed or certified by the Oklahoma Real Estate Appraiser Board;

14. Paying a commission or any other valuable consideration to any person for performing the services of a real estate licensee as defined in the Oklahoma Real Estate License Code who has not first secured a real estate license pursuant to the Oklahoma Real Estate License Code;

15. Unworthiness to act as a real estate licensee, whether of the same or of a different character as specified in this section, or because the real estate licensee has been convicted of a crime involving moral turpitude;

16. Commingling with the licensee's own money or property the money or property of others which is received and held by the licensee, unless the money or property of others is received by the licensee and held in an escrow account that contains only money or property of others;

17. Conviction in a court of competent jurisdiction of having violated any provision of the federal fair housing laws, 42 U.S.C. Section 3601 et seq.;

18. Failure by a real estate broker, after the receipt of a commission, to render an accounting to and pay to a real estate licensee the licensee's earned share of the commission received;

19. Conviction in a court of competent jurisdiction in this or any other state of the crime of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, fraud, or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;

20. Advertising to buy, sell, rent, or exchange any real estate without disclosing that the licensee is a real estate licensee;

21. Paying any part of a fee, commission, or other valuable consideration received by a real estate licensee to any person not licensed;

22. Offering, loaning, paying, or making to appear to have been paid, a down payment or earnest money deposit for a purchaser or seller in connection with a real estate transaction; ~~and~~

23. Violation of the Residential Property Condition Disclosure Act; and

24. Failing to utilize a residential real estate purchase contract or related addenda as required by the Commission pursuant to the Code and rules.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 858-602, as amended by Section 21, Chapter 60, O.S.L. 1998 (59 O.S. Supp. 2000, Section 858-602), is amended to read as follows:

Section 858-602. A. An additional, nonrefundable fee ~~of Fifteen Dollars (\$15.00)~~ as promulgated by rule by the Commission shall be added to and payable with the license fee for both new licenses and renewals of licenses for each licensee as provided in Section 858-307.1 of this title. Such additional fee shall be deposited in the Oklahoma Real Estate Education and Recovery Fund.

B. If a license is issued for a period of less than thirty-six (36) months, such additional fee shall be prorated to the nearest dollar and month.

C. If a real estate sales associate or provisional sales associate shall qualify for a license as a real estate broker, the

additional fee for the remainder of the term shall be prorated to the nearest dollar and month and credited to the additional fee added to and payable with the real estate broker license fee.

D. At the close of each fiscal year, the Commission shall transfer into the Oklahoma Real Estate Commission Revolving Fund any money in excess of that amount required to be retained in the Oklahoma Real Estate Education and Recovery Fund and that amount authorized to be expended as provided within this Code that is remaining in the Oklahoma Education and Recovery Fund and unexpended.

SECTION 7. Sections 1, 2, 3, 5 and 6 of this act shall become effective July 1, 2001.

SECTION 8. Section 4 of this act shall become effective November 1, 2001.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 27th day of February, 2001.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2001.

Presiding Officer of the Senate