

ENROLLED SENATE
BILL NO. 1006

By: Rabon of the Senate

and

Martin (Steve) and Sears of
the House

An Act relating to professions and occupations and property; amending 59 O.S. 2001, Sections 858-202, 858-208, as amended by Section 1, Chapter 85, O.S.L. 2005, and Section 3, Chapter 207, O.S.L. 2006 (59 O.S. Supp. 2006, Sections 858-208 and 3022), which relate to the Oklahoma Real Estate License Code and the Elevator Safety Act; modifying terms of the Oklahoma Real Estate Commission; modifying certain power and duty of Commission; making certain materials confidential and not public record; requiring certain national criminal history record check; providing for certain investigation; providing for certain costs; modifying definition; amending 60 O.S. 2001, Section 836, which relates to duties of a real estate licensee; modifying certain duty; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 858-202, is amended to read as follows:

Section 858-202. A. Members of the Oklahoma Real Estate Commission shall be appointed by the Governor with the advice and consent of the Senate.

B. Members of the Commission shall serve until their terms expire. The terms of the Commission members shall be for ~~three (3)~~ four (4) years and until their successors are appointed and qualified.

C. Each successor member and any vacancy which may occur in the membership of the Commission shall be filled by appointment of the Governor with the advice and consent of the Senate.

D. The Governor may select appointees from a list of at least three qualified persons submitted by the Oklahoma Association of Realtors, Incorporated.

E. Each person who shall have been appointed to fill a vacancy shall serve for the remainder of the term for which the member whom he will succeed was appointed and until his successor, in turn, shall have been appointed and shall have qualified.

F. Members of the Commission may be removed from office by the Governor for inefficiency, neglect of duty or malfeasance in office in the manner provided by law for the removal of officers not subject to impeachment.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 858-208, as amended by Section 1, Chapter 85, O.S.L. 2005 (59 O.S. Supp. 2006, 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;

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, for cause, disciplinary proceedings;

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 initiate 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;

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~~ that will be required to draft and revise ~~residential~~ real estate purchase and/or lease contracts and any related addenda for voluntary use by real estate licensees;

15. To enter into contracts and agreements for the payment of food and other reasonable expenses as authorized in the State Travel Reimbursement Act necessary to host, conduct, or participate in meetings or training sessions as is reasonable for the administration of this Code; and

16. To conduct an annual performance review of the Executive Director and submit the report to the Legislature.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-313 of Title 59, unless there is created a duplication in numbering, reads as follows:

The following materials of the Commission are confidential and not public records:

1. Examinations conducted by the Commission and materials related to the examinations; and

2. Educational materials submitted to the Commission by a person or entity seeking approval and/or acceptance of a course of study.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-307.4 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Prior to the issuance of a license pursuant to this Code, each applicant shall submit to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes.

B. Upon receipt by the Commission of criminal history, the Commission shall conduct an investigation in accordance with rules promulgated by the Commission.

C. The costs associated with the national criminal history record check shall be paid by the applicant.

SECTION 5. AMENDATORY Section 3, Chapter 207, O.S.L. 2006 (59 O.S. Supp. 2006, Section 3022), is amended to read as follows:

Section 3022. As used in the Elevator Safety Act:

1. "Agency" means the Oklahoma Department of Labor;
2. "Certificate of operation" means a document issued by the Commissioner and affixed to an elevator that indicates that the elevator has been inspected and tested and found to be in compliance with all applicable standards of operation as determined by the Department of Labor;
3. "Certificate of operation - temporary" means a document issued by the Commissioner that permits temporary use of a noncompliant elevator by the general public for not more than thirty (30) days while minor repairs are being completed;
4. "Commissioner" means the Commissioner of Labor or his/her authorized representative;
5. "Chief elevator inspector" means the chief elevator inspector appointed under the Elevator Safety Act;

6. "Deputy inspector" means an inspector appointed by the chief elevator inspector subject to the approval of the Commissioner under the provisions of the Elevator Safety Act;

7. a. "Elevator" means any device for lifting or moving people, cargo, or freight within, or adjacent and connected to, a structure or excavation, and includes any escalator, power-driven stairway, moving walkway or stairway chair lift.

b. The term "elevator" does not mean any:

(1) amusement ride or device subject to inspection and regulation under the provisions of Section 460 et seq. of Title 40 of the Oklahoma Statutes,

(2) mining equipment subject to inspection and regulation by the Department of Mines,

(3) aircraft, railroad car, boat, barge, ship, truck, or other self-propelled vehicle or component thereof,

(4) ~~any~~ boiler grate stoker or other similar firing mechanism subject to inspection under the provisions of the Oklahoma Boiler and Pressure Vessel Safety Act, ~~or~~

(5) a dumbwaiter, conveyor, chain or bucket hoist, construction hoist or similar devices used for the primary purpose of elevating or lowering materials, or

(6). elevator, conveyance, manlift or similar device in grain elevators, grain warehouses, seed processing facilities, feed mills and/or flour mills which is used by employees, but is not accessible to or used by customers or members of the general public. This list is not exhaustive;

8. "Elevator apprentice" means an unlicensed person registered with the Department of Labor who works under the direct supervision

of a licensed elevator mechanic, licensed elevator contractor, or licensed elevator inspector;

9. "Licensed elevator contractor" means a person or business entity that possesses a valid elevator contractor's license issued by the Department of Labor pursuant to the provisions of the Elevator Safety Act and is thus entitled to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators;

10. "Licensed elevator inspector" means a person who possesses a valid elevator inspector's license issued by the Department of Labor pursuant to the provisions of the Elevator Safety Act and is thus entitled to engage in the business of inspecting elevators;

11. "Licensed elevator mechanic" means a person who possesses a valid elevator mechanic's license issued by the Department of labor in accordance with the provisions of the Elevator Safety Act and is thus, when employed by a licensed elevator contractor, entitled to install, construct, alter, service, repair, perform electrical work on, test, and maintain elevators; and

12. "Private residence" means a separate dwelling or a separate apartment in a multiple dwelling that is occupied by members of a single-family unit.

SECTION 6. AMENDATORY 60 O.S. 2001, Section 836, is amended to read as follows:

Section 836. A. A real estate licensee representing or assisting a seller has the duty to obtain from the seller a disclaimer statement or a disclosure statement and any amendment required by ~~this act~~ the Residential Property Condition Disclosure Act and to make such statement available to potential purchasers prior to acceptance of an offer to purchase.

B. A real estate licensee representing or assisting a purchaser has the duty to obtain and make available to the purchaser a disclaimer statement or a disclosure statement and any amendment required by ~~this act~~ the Residential Property Condition Disclosure Act prior to the acceptance of an offer to purchase.

C. A real estate licensee has the duty to disclose to the purchaser any defects in the property actually known to the licensee which are not included in the disclosure statement or any amendment.

D. A real estate licensee who has complied with the requirements of subsections A, B and C of this section, as applicable, shall have no further duties to the seller or the purchaser regarding any disclosures required under ~~this act~~ the Residential Property Condition Disclosure Act.

A real estate licensee who has not complied with the requirements of subsections A, B and C of this section shall be subject to disciplinary action by the Oklahoma Real Estate Commission as set forth in paragraph 6 of Section 858-208 of Title 59 of the Oklahoma Statutes.

E. A real estate licensee has no duty to the seller or the purchaser to conduct an independent inspection of the property and has no duty to independently verify the accuracy or completeness of any statement made by the seller in the disclaimer statement or the disclosure statement and any amendment.

SECTION 7. This act shall become effective January 1, 2008.

Passed the Senate the 1st day of March, 2007.

Presiding Officer of the Senate

Passed the House of Representatives the 16th day of April, 2007.

Presiding Officer of the House
of Representatives