

ENROLLED HOUSE
BILL NO. 2328

BY: SULLIVAN, BASTIN, MAXEY,
SADLER, HAMILTON (Jeff)
and VOSKUHL of the HOUSE

and

HANEY, LONG (Ed) and
HERBERT of the SENATE

AN ACT RELATING TO PROFESSIONS AND OCCUPATIONS;
AMENDING 59 O.S. 1991, SECTIONS 858-102, 858-205,
858-303, 858-304, 858-307.2, 858-312, AND 858-601,
WHICH RELATE TO THE OKLAHOMA REAL ESTATE LICENSE
CODE; MODIFYING AND ADDING DEFINITIONS; AUTHORIZING
THE INVESTMENT AND EXPENDITURE OF REVOLVING FUND;
MODIFYING ELIGIBILITY FOR LICENSE AS REAL ESTATE
BROKER; MODIFYING APPLICATION INFORMATION;
MODIFYING EDUCATIONAL BACKGROUND INFORMATION;
SPECIFYING EDUCATIONAL COURSE SYLLABUS;
ESTABLISHING EFFECTIVE DATE FOR CONTINUING
EDUCATION REQUIREMENTS; MODIFYING LICENSEES SUBJECT
TO CONTINUING EDUCATION REQUIREMENTS; ADDING
CONTINUING EDUCATION INSTRUCTION FROM OTHER
JURISDICTIONS; ADDING EXCEPTIONS TO CONTINUING
EDUCATION REQUIREMENT; MODIFYING PROHIBITED ACT;
AUTHORIZING THE INVESTMENT AND EXPENDITURE OF
EDUCATION AND RECOVERY FUNDS; 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, 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; 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 solicits for

prospective tenants, or who advertises or holds himself out as engaged in such activities.

3. 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.

4. "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 ~~who has been licensed after the effective date of this act~~ and subject to an additional forty-five (45) clock hour post-licensing educational requirement to be completed within the first thirty-six (36) month license term. The license of a provisional sales associate shall be nonrenewable unless the post-licensing 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.

5. The term "successful completion" shall include pre-license, post-license and Commission-prescribed continuing education courses in which an approved public or private school entity has evaluated or tested the individual, to the satisfaction of the entity, in relation to the course material presented during the offering.

6. 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 pre-license and post-license educational requirements.

7. The term "nonrenewable license" shall refer to a provisional sales associate who is the holder of such license and who has only completed the pre-license educational requirement.

8. "Licensee" shall include any person licensed under the Oklahoma Real Estate License Code.

~~6.~~ 9. The word "Commission" shall mean the Oklahoma Real Estate Commission.

~~7.~~ 10. The word "person" shall include and mean every individual, partnership, association or corporation, foreign or domestic.

~~8.~~ 11. Masculine words shall include the feminine and neuter, and the singular includes the plural.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 858-205, is amended to read as follows:

Section 858-205. There is hereby created in the State Treasury a revolving fund for the Oklahoma Real Estate Commission, to be designated the "Oklahoma Real Estate Commission Revolving Fund". The fund shall consist of all monies received by the Oklahoma Real Estate Commission other than the Oklahoma Real Estate Education and Recovery Fund fees or appropriated funds. The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the control and management of the Oklahoma Real Estate Commission. The Oklahoma Real Estate Commission may invest all or part of the monies of the fund in securities offered through the "Oklahoma State Treasurer's Cash Management Program". Any interest or dividends accruing from the securities and any monies generated at the time of redemption of the securities shall be deposited in the General Operating Fund of the Oklahoma Real Estate

Commission. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Oklahoma Real Estate Commission. Expenditures from this fund shall be made pursuant to the purposes of this Code and without legislative appropriation. Warrants for expenditures shall be drawn by the State Treasurer based on claims signed by an authorized employee or employees of the Oklahoma Real Estate Commission and approved for payment by the Director of State Finance. The revolving fund shall be audited at least once each year by the State Auditor and Inspector.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 858-303, is amended to read as follows:

Section 858-303. Any person of good moral character, who holds a renewable sales associate license and who shall have had two (2) years' experience, within the previous five (5) years, as a licensed real estate sales associate or provisional sales associate, or its equivalent, and who shall submit to the Commission evidence of successful completion of seventy-five (75) clock hours of advanced real estate instruction in a course of study approved by the Commission, which instruction shall be in addition to any instruction required for securing a license as a real estate sales associate ~~or provisional sales associate, as the case may be,~~ may apply to the Commission to take an examination for the purpose of securing a license as a real estate broker. Application shall be made upon forms prescribed by the Commission and shall be accompanied by any ~~recommendations~~ information and documents the Commission may require. Upon approval by the Commission of the application, and the payment of an examination fee as provided in this Code, the applicant shall appear in person before the Commission for an examination which shall be in the form and shall inquire into the subjects which the Commission shall prescribe. If it shall be determined that the applicant shall have passed the examination, upon the payment of the license fee provided for in this Code along with the Oklahoma Real Estate Education and Recovery Fund fee, the Commission shall issue to the applicant a license which shall authorize the applicant to act as a real estate broker.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 858-304, is amended to read as follows:

Section 858-304. A. A certified transcript from an institution of higher education, accredited by the Oklahoma State Regents for Higher Education or the corresponding accrediting agency of another state, certifying to the successful completion of a three-academic-hour basic course of real estate instruction for which college credit was given, shall be prima facie evidence of successful completion of the clock hours of basic real estate instruction as required in Section 858-302 of this Code; and, in such case, no further evidence shall be required of a ~~sales associate or provisional sales associate~~ applicant's educational background ~~applicant,~~ except the successful completion of the ~~regularly scheduled real estate sales associate's or provisional sales associate's~~ examination.

B. The same three-academic-hour procedural requirements found in subsection A of this section are applicable in fulfilling the post-provisional sales associates' education requirements.

C. A certified transcript from an institution of higher education, accredited by the Oklahoma State Regents for Higher Education or the corresponding agency of another state, certifying to the successful completion of five-academic-hours advanced courses of real estate instruction for which college credit was given, shall be prima facie evidence of successful completion of the clock hours

of advanced real estate instruction as required in Section 858-303 of this Code; and, in such case, no further evidence shall be required of the ~~applicant's educational background~~ applicant, except the completion of two (2) years' experience within the previous five (5) years as a licensed real estate sales associate or provisional sales associate who holds a renewable sales associate license, or a combination thereof, and the successful completion of the ~~regularly scheduled real estate broker's~~ examination.

D. The Commission shall furnish to every approved real estate school, whether public or private, a syllabus outline of ~~the basic and advanced courses~~ each pre-license and post-license course to be taught. Each school, whether public or private other than institutions of higher education, must present the Commission their syllabus of instruction, prior to approval of such school.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 858-307.2, is amended to read as follows:

Section 858-307.2 A. ~~As Beginning July 1, 1996,~~ as a condition of renewal or reactivation of the license, each real estate ~~sales associate licensee and each real estate broker licensee~~ shall submit to the Commission evidence of attendance at twenty-one (21) 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. Each real estate ~~sales associate licensee and real estate broker licensee~~ shall be required to take successfully complete and include as part of said twenty-one (21) clock hours of continuing education ~~nine clock hours~~ nine (9) clock hours of courses conducted in accordance with a syllabus prescribed by the Commission or by an institution of higher education.

~~B. The twenty-one (21) clock hours of continuing education within a thirty-six month period shall not apply to a licensee who holds a provisional sales associate's license.~~

~~C.~~ The continuing education courses required by this section to be attended shall be satisfied by:

1. classroom instruction in courses approved by the Commission and offered by:

- a. the Commission, or
- b. an area vocational-technical school, or
- c. a private school, or
- d. the Oklahoma Association of Realtors, the National Association of Realtors, or any affiliate thereof, or
- e. the Oklahoma Bar Association, American Bar Association, or any affiliate thereof, or
- f. a similar institution or association approved by the Commission; ~~or~~

2. completion of classroom or correspondence instruction in courses offered by an institution accredited by the Oklahoma State Regents for Higher Education; or

3. completion of classroom or correspondence instruction which is approved by another real estate licensing jurisdiction which meets the continuing education requirement of that jurisdiction.

The Commission shall publish a list of the institutions and associations which are approved by the Commission.

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

~~E.~~ D. 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's license; or

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.

SECTION 6. AMENDATORY 59 O.S. 1991, 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 broker or real estate sales associate, 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 his business, or through agents, sales associates, or advertising, which are intended to influence, persuade, or induce others;
3. Acting for more than one party in a transaction without the knowledge of all parties for whom he acts;
4. Accepting a commission or other valuable consideration as a real estate sales associate for the performance of any acts as a real estate sales associate, except from the real estate broker with whom he is associated;
5. Representing or attempting to represent a real estate broker other than the broker with whom he is associated without the express knowledge and consent of the broker with whom he is associated;
6. Failing, within a reasonable time, to account for or to remit any monies, documents, or other property coming into his possession which belong to others;
7. Paying a commission or valuable consideration to any person for acts or services performed in violation of this Code;
8. Any other conduct which constitutes untrustworthy, improper, fraudulent, or dishonest dealings;
9. Disregarding or violating any provision of this Code;
10. Guaranteeing or having authorized or permitted any real estate broker or real estate sales associate to guarantee future profits which may result from the resale of real estate;
11. Placing a sign on any real estate offering it for sale or for rent without the consent of the owner or his authorized agent;
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 he has an interest unless his interest is disclosed in the report;
14. Paying a commission or any other valuable consideration to any person for performing the services of a real estate broker or real estate sales associate who has not first secured a real estate license pursuant to this Code;
15. Unworthiness to act as a real estate broker or real estate sales associate, whether of the same or of a different character as specified in this section, or because the real estate broker or real estate sales associate has been convicted of a crime involving moral turpitude;

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

17. Having been convicted in a court of competent jurisdiction of having solicited or induced the sale, lease, or the listing for sale or lease of any residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of quality of schools, or for any other reason, due to the present or prospective entry into the neighborhood of any person or persons of any race, color, ~~creed~~, religion, ~~ancestry~~ sex, familial status, handicap, or national origin;

18. Failing, within a reasonable time after the receipt of a commission by a real estate broker, to render an accounting to and pay to a real estate associate his earned share of the commission received;

19. Having been convicted 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 he is a real estate broker or real estate sales associate;

21. Paying any part of a fee, commission, or other valuable consideration received by a real estate broker or real estate sales associate licensed pursuant to this Code for services performed by him in buying, selling, exchanging, leasing, or renting of any real estate, to any person not licensed as a real estate broker or real estate sales associate.

SECTION 7. AMENDATORY 59 O.S. 1991, Section 858-601, is amended to read as follows:

Section 858-601. A. There is hereby created in the State Treasury a revolving fund for the Oklahoma Real Estate Commission to be designated "Oklahoma Real Estate Education and Recovery Fund". The fund shall consist of monies received by the Oklahoma Real Estate Commission as fees assessed for the Oklahoma Real Estate Education and Recovery Fund under the provisions of this act. The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the administrative direction of the Oklahoma Real Estate Commission. The Oklahoma Real Estate Commission may invest all or part of the monies of the fund in securities offered through the "Oklahoma State Treasurer's Cash Management Program". Any interest or dividends accruing from the securities and any monies generated at the time of redemption of the securities shall be deposited in the Oklahoma Real Estate Education and Recovery Fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Oklahoma Real Estate Commission for the purposes specified in Section 858-605 of this title. Expenditures from said fund shall be made pursuant to the laws of this state and the statutes relating to the said Commission, and without legislative appropriation. Warrants for expenditures from said fund shall be drawn by the State Auditor, based on claims signed by an authorized employee or employees of the said Commission and approved for payment by the Director of State Finance.

B. Monies in the fund shall be used to reimburse any person who has been adjudged by a court of competent jurisdiction to have suffered monetary damages by a person required to have a license under the Oklahoma Real Estate License Code in any transaction for

which a license is required under the Oklahoma Real Estate License Code because of the acquisition of money or property by fraud, misrepresentation, deceit, false pretenses, artifice, trickery or by any other act which would constitute a violation of the Oklahoma Real Estate License Code.

SECTION 8. Sections 2 and 7 of this act shall become effective July 1, 1992. Sections 1, 3, 4, 5 and 6 of this act shall become effective July 1, 1993.

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 25th day of February,
1992.

Speaker of the House of
Representatives

Passed the Senate the 14th day of April, 1992.

President of the Senate