

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1433

BY: ROBERTS (Walt)

AS INTRODUCED

AN ACT RELATING TO PROFESSIONS AND OCCUPATIONS;

AMENDING 59 O.S. 1981, SECTIONS 858-201, AS LAST AMENDED BY SECTION 1, CHAPTER 231, O.S.L. 1985, 858-102, 858-302, 858-303, AS AMENDED BY SECTION 5, CHAPTER 194, O.S.L. 1982, 858-304, 858-306, 858-307.1, AS LAST AMENDED BY SECTION 3, CHAPTER 235, O.S.L. 1989, 858-307.2, AS LAST AMENDED BY SECTION 1, CHAPTER 16, O.S.L. 1984, 858-603, AS AMENDED BY SECTION 4, CHAPTER 324, O.S.L. 1988 AND 858-604, AS AMENDED BY SECTION 5, CHAPTER 324, O.S.L. 1988 (59 O.S. SUPP. 1990, SECTIONS 858-201, 858-303, 858-307.1, 858-307.2, 858-603 AND 858-604), WHICH RELATE TO THE OKLAHOMA REAL ESTATE LICENSE CODE; ADDING NEW ASSOCIATE CATEGORY UNDER REGULATORY POWERS OF THE REAL ESTATE COMMISSION; ADDING NEW DEFINITIONS; PROVIDING NEW LICENSURE CATEGORY; PROVIDING FOR LICENSING ELIGIBILITY; REQUIRING POST-LICENSING REQUIREMENTS; MODIFYING BROKER ELIGIBILITY REQUIREMENTS; ADDING ADDITIONAL CATEGORY FOR LICENSURE IN RELATION TO EDUCATIONAL REQUIREMENTS; MODIFYING REAL ESTATE BROKER EXPERIENCE REQUIREMENTS; MAKING HIGHER EDUCATIONAL REQUIREMENTS APPLICABLE TO NEW LICENSURE CATEGORY; MAKING HIGHER EDUCATION REQUIREMENTS APPLICABLE TO

POST-LICENSING REQUIREMENTS; MODIFYING CERTAIN
BROKER EDUCATIONAL REQUIREMENTS; ADDING ADDITIONAL
LICENSING CATEGORY FOR NONRESIDENTS; PROVIDING FOR
ADDITIONAL LICENSING CATEGORY; MODIFYING CONTINUING
EDUCATION REQUIREMENTS; PROVIDING NEW EDUCATIONAL
REQUIREMENTS; EXEMPTING NEW LICENSURE CATEGORY FROM
CERTAIN EDUCATIONAL REQUIREMENTS; MODIFYING
LANGUAGE; REQUIRING REVOCATION OF LICENSE UPON
SATISFACTION OF JUDGMENT; AND PROVIDING AN
EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 59 O.S. 1981, Section 858-201, as last amended by Section 1, Chapter 231, O.S.L. 1985 (59 O.S. Supp. 1990, Section 858-201), is amended to read as follows:

Section 858-201. There is hereby re-created, to continue until July 1, 1991, in accordance with the provisions of the Oklahoma Sunset Law, the Oklahoma Real Estate Commission, which shall consist of seven (7) members. The Commission shall be the sole governmental entity, state, county or municipal, which shall have the authority to regulate and issue licenses to real estate brokers ~~and~~ real estate sales associates and provisional sales associates in the State of Oklahoma. All members of the Commission shall be citizens of the United States and shall have been residents of the State of Oklahoma for at least three (3) years prior to their appointment, and five members shall be licensed real estate brokers and shall have had at least five (5) years' active experience as real estate brokers prior to their appointment, one member shall be a lay person not in the real estate business, and one member shall be a

representative of a school of real estate located within the State of Oklahoma and approved by the Commission. Provided however, that no more than two members shall be appointed from the same congressional district according to the latest congressional redistricting act.

SECTION 2. AMENDATORY 59 O.S. 1981, 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 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 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 three-year forty-five (45) clock hour post-licensing educational requirement to be completed within the first thirty-six (36) month license term. 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. "Licensee" shall include any person licensed under the Oklahoma Real Estate License Code.

~~4.~~ 6. The word "Commission" shall mean the Oklahoma Real Estate Commission.

~~5.~~ 7. The word "person" shall include and mean every individual, partnership, association or corporation, foreign or domestic.

~~6.~~ 8. Masculine words shall include the feminine and neuter, and the singular includes the plural.

SECTION 3. AMENDATORY 59 O.S. 1981, Section 858-302, is amended to read as follows:

Section 858-302. Any person of good moral character, eighteen (18) years of age or older, and who shall submit to the Commission evidence of successful completion of forty-five (45) clock hours of basic real estate instruction in a course of study approved by the Commission, may apply to the Commission to take an examination for the purpose of securing a license as a ~~real estate~~ provisional sales associate after the effective date of this act. Application shall be made upon forms prescribed by the Commission and shall contain

such information and be accompanied by any recommendations the Commission may require. Upon approval by the Commission of the application, and the payment of an examination fee as provided for in this Code, the applicant shall appear in person before the Commission for an examination which shall be in the form and inquire into the subjects 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~~ provisional sales associate.

Following the issuance of a provisional sales associate license, the licensee shall then submit to the Commission, prior to the expiration of the provisional license, evidence of successful completion of forty-five (45) clock hours of additional real estate instruction in a course(s) of study approved by the Commission.

SECTION 4. AMENDATORY 59 O.S. 1981, Section 858-303, as amended by Section 5, Chapter 194, O.S.L. 1982 (59 O.S. Supp. 1990, Section 858-303), is amended to read as follows:

Section 858-303. Any person of good moral character, who shall have had ~~one (1) year's~~ 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 ~~forty-five (45)~~ 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 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 5. AMENDATORY 59 O.S. 1981, 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, 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 ~~a three~~ five-academic-hour advanced course 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, except the completion of ~~one (1) year's~~ two (2) years' experience within the previous five (5) years as a licensed real estate sales associate or provisional sales associate and the successful completion of the regularly scheduled real estate broker's examination.

~~C.~~ D. The Commission shall furnish to every approved real estate school, whether public or private, a syllabus outline of the basic and advanced courses 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 6. AMENDATORY 59 O.S. 1981, Section 858-306, is amended to read as follows:

Section 858-306. Any person who is not a resident of the State of Oklahoma, but who shall otherwise qualify for a license as a real estate broker ~~or,~~ real estate sales associate or provisional sales associate, may obtain a license as a real estate broker ~~or,~~ real estate sales associate or provisional sales associate by complying with all applicable provisions of this Code, and, in addition thereto, giving his written consent that actions and suits at law may be commenced against such nonresident broker or sales associate in any county in this state wherein any cause of action may arise or be claimed to have arisen out of any transaction occurring in the county because of any transactions commenced or conducted by such nonresident or his agents or employees in such county, and such

nonresident shall further, in writing, appoint the secretary-treasurer of said Commission as service agent to receive service of summons for him in all of such actions and service upon the secretary-treasurer of such Commission shall be held to be sufficient to give the court jurisdiction over him in all such actions. Provided, that a nonresident duly licensed in the state of his residence as a real estate broker ~~or~~, sales associate or provisional sales associate may become associated with a licensed real estate broker in this state.

SECTION 7. AMENDATORY 59 O.S. 1981, Section 858-307.1, as last amended by Section 3, Chapter 235, O.S.L. 1989 (59 O.S. Supp. 1990, 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 broker's ~~and~~, real estate sales associate's and provisional sales associate's license for a term of thirty-six (36) months; provided, however, that the Commission shall promulgate rules and regulations establishing and implementing in an equitable and practicable manner a system by which the terms of broker's ~~and~~, sales associate's and provisional sales associate's licenses and renewals shall be staggered on a monthly basis. The expiration date of the license shall be the end of the thirty-sixth month including the month of issuance except as otherwise may be provided by the Commission in implementing the staggered system of licensing and renewal. The license fees for a thirty-six-month term shall be One Hundred Five Dollars (\$105.00) for a real estate broker's license and Seventy-Five Dollars (\$75.00) for a real estate sales associate's or a provisional sales associate's license 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 licensee or a provisional sales associate licensee shall qualify for a license as

a real estate broker, then the real estate 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. 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. The examination fee for applications for a real estate broker's license shall be Fifty Dollars (\$50.00), and the examination fee for a real estate sales associate's and provisional sales associate's license shall be Forty Dollars (\$40.00).

SECTION 8. AMENDATORY 59 O.S. 1981, Section 858-307.2, as last amended by Section 1, Chapter 16, O.S.L. 1984 (59 O.S. Supp. 1990, Section 858-307.2), is amended to read as follows:

Section 858-307.2 A. 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 and include as part of said twenty-one (21) clock hours of continuing education ~~a three-clock-hour course~~ nine-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.

The Commission shall publish a list of the institutions and associations and the courses offered by them in this state, which are approved by the Commission.

~~C.~~ D. 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.

~~D.~~ E. The provisions of this section do not apply during the period a license is on inactive status.

SECTION 9. AMENDATORY 59 O.S. 1981, Section 858-312, as last amended by Section 2, Chapter 74, O.S.L. 1984 (59 O.S. Supp. 1990, 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, 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 ~~sales~~ 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 10. AMENDATORY 59 O.S. 1981, Section 858-603, as amended by Section 4, Chapter 324, O.S.L. 1988 (59 O.S. Supp. 1990, Section 858-603), is amended to read as follows:

Section 858-603. A. Any person shall be eligible to seek recovery from the Oklahoma Real Estate Education and Recovery Fund if the following conditions have been met:

1. An action has been filed in district court based upon a violation specified in the Oklahoma Real Estate License Code;

2. The cause of action has accrued on or after July 1, 1977, and not more than two (2) years prior to the filing of the action;

3. At the commencement of an action, the party filing the action shall immediately notify the Commission to this effect in writing and provide the Commission with a file-stamped copy of the petition or affidavit. Said Commission shall have the right to enter an appearance, intervene in, defend, or take any such action it may deem appropriate to protect the integrity of the Fund. The Commission may waive the notification requirement if it determines that the public interest is best served by the waiver, that is to best meet the ends of justice and that the person making application made a good faith effort to comply with the notification requirements;

4. Final judgment is received by the plaintiff upon such action;

5. The final judgment is enforced as provided by statute for enforcement of judgments in other civil actions and that the amount realized was insufficient to satisfy the judgment; and

6. Any compensation recovered by the plaintiff from the judgment debtor, or from any other source for any injury arising out of the cause of action, has been applied to the damages awarded by the court.

B. A person shall not be qualified to make a claim for recovery from the Oklahoma Real Estate Education and Recovery Fund, if:

1. He is the spouse of the judgment debtor or a personal representative of such spouse;

2. He is a ~~licensed real estate broker or sales associate~~ licensee who acted as his own principal or agent in the transaction which is the subject of the claim; or

3. Such person's claim is based upon a real estate transaction in which the person is, through actions of his own, jointly responsible for any resulting injury with respect to the property owned or controlled by him.

SECTION 11. AMENDATORY 59 O.S. 1981, Section 858-604, as amended by Section 5, Chapter 324, O.S.L. 1988 (59 O.S. Supp. 1990, Section 858-604), is amended to read as follows:

Section 858-604. A. Any person who meets all of the conditions prescribed by this act may apply to the Commission for payment from the Oklahoma Real Estate Education and Recovery Fund, in an amount equal to the unsatisfied portion of such person's judgment, which is actual or compensatory damages, or Fifteen Thousand Dollars (\$15,000.00), whichever is less. For purposes of this subsection, attorney fees and costs shall not be considered as or included in actual or compensatory damages.

B. Upon receipt by the claimant of the payment from the Oklahoma Real Estate Education and Recovery Fund, the claimant shall assign his right, title and interest in that portion of the judgment to the Commission which shall thereupon be subrogated up to the amount actually paid by the fund to the claimant to such right, title and interest. Upon suit to collect upon a judgment, the claimant shall have priority over the fund. Any amount subsequently recovered on the judgment by the Commission, to the extent of the Commission's right, title and interest therein, shall be used to reimburse the Oklahoma Real Estate Education and Recovery Fund.

C. Payments for claims arising out of the same transaction which constitutes a person's cause of action based upon a violation of the Oklahoma Real Estate License Code shall be limited in the aggregate of Fifty Thousand Dollars (\$50,000.00) irrespective of the number of claimants or parcels of real estate involved in the transaction.

D. Payments for claims based upon judgments against any one ~~licensed real estate broker or real estate sales associate~~ licensee shall not exceed in the aggregate Fifty Thousand Dollars (\$50,000.00).

E. If at any time the monies in the Oklahoma Real Estate Education and Recovery Fund are insufficient to satisfy any valid claim, or portion thereof, the Commission shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount of money has been deposited in the fund by collecting a special levy from the members of such fund of an amount not to exceed Five Dollars (\$5.00) each fiscal year. If the additional levy is not sufficient to pay all outstanding claims against the fund, then such claims shall be paid as the money becomes available. Where there is more than one such claim outstanding, such claims shall be paid in the order that they were made.

F. Any claim against a corporation or partnership would be imputed to the sponsoring broker(s) at the time the cause of action arose.

G. ~~Upon~~ The license of said licensee, upon the payment of any amount from the Oklahoma Real Estate Education and Recovery Fund for satisfaction of a judgment against a ~~licensed real estate broker, partnership, real estate corporation or real estate sales associate, the license of such broker, partnership, corporation, corporate sponsoring broker or sales associate~~ licensee, shall be automatically revoked. The license shall not be considered for reinstatement until such ~~broker or sales associate~~ licensee has repaid in full, plus interest at the rate of seven percent (7%) a year, the amount paid from the Oklahoma Real Estate Education and Recovery Fund for satisfaction of the judgment against him.

SECTION 12. This act shall become effective January 1, 1993.

43-1-5457

MMS