

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 742

By: Haney, Helton and Herbert
of the Senate

and

Bastin, Sullivan, Fields
and Isaac of the House

COMMITTEE SUBSTITUTE

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 858-102, as amended by Section 1, Chapter 94, O.S.L. 1992, 858-208, as amended by Section 1, Chapter 54, O.S.L. 1993 and 858-307.2 and 858-312, as amended by Sections 5 and 6, Chapter 94, O.S.L. 1992 (59 O.S. Supp. 1993, Sections 858-102, 858-208, 858-307.2 and 858-312), which relate to real estate licensees; modifying and adding definitions; modifying and adding powers and duties; modifying continuing education requirements; modifying and adding acts deemed cause for sanctions; prohibiting filing of application for reissuance of license within certain time period; prohibiting certain persons from operating, having a participating interest in, or acting in certain capacity for a real estate business; providing for codification; 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 amended by Section 1, Chapter 94, O.S.L. 1992 (59 O.S. Supp. 1993, 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-; i

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-; i

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-; i

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 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-; i

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

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;i

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;i

8. 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;

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

10. "Licensee" shall include any person licensed under the Oklahoma Real Estate License Code;i

~~9.~~ 11. The word "Commission" shall mean the Oklahoma Real Estate Commission;i

~~10.~~ 12. The word "person" shall include and mean every individual, partnership, association or corporation, foreign or domestic;i and

~~11.~~ 13. Masculine words shall include the feminine and neuter, and the singular includes the plural.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 858-208, as amended by Section 1, Chapter 54, O.S.L. 1993 (59 O.S. Supp. 1993, 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 prescribe such rules and to make such orders as it may deem necessary or expedient in the performance of its duties;
2. To hold examinations of persons who shall apply for the issuance of licenses to them and to promulgate such rules with reference to such examinations as it may deem proper;
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 shall have passed examinations or who shall otherwise be entitled to such licenses;
5. To promulgate rules governing the issuing of licenses to and regulating 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 3 of this act, or
 - g. any combination of discipline as provided by subparagraphs a through f of this paragraph;
7. To retain jurisdiction over persons who have had their licenses revoked or suspended, or have requested or allowed their licenses to be cancelled, surrendered or lapsed pending investigation or disciplinary proceedings, until that person produces documentation of accounting of funds and cessation of

licensed activities, pursuant to rules promulgated by the Commission;

~~8.~~ 8. Upon showing good cause, to modify any sanction imposed pursuant to the provisions of this section and to reinstate licenses;

~~8.~~ 9. To prescribe rules governing proceedings for discipline, for cause, of licensees and for reinstatement of licenses or modification of sanctions imposed;

~~9.~~ 10. To prescribe such rules and 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.~~ 11. To cause the prosecution of any person who ~~shall~~ violates any of the provisions of this Code;

~~11.~~ 12. To promulgate rules governing the approval of 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.~~ 13. To contract with attorneys and other professionals to carry out the functions and purposes of this Code; and

~~13.~~ 14. To apply for injunctions and restraining orders for violations of the Code or the rules of the Commission.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 858-307.2, as amended by Section 5, Chapter 94, O.S.L. 1992 (59 O.S. Supp. 1993, 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 real estate sales associate and broker shall submit to the Commission evidence of attendance of 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 and broker 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 in accordance with a syllabus prescribed by the Commission.

2. Beginning July 1, 1996, as a condition of renewal or reactivation of the license, each real estate ~~licensee~~ sales associate and broker shall submit to the Commission evidence of attendance ~~at~~ of 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 ~~licensee~~ sales associate and broker shall be required to ~~successfully~~ complete and include as part of said twenty-one (21) clock hours of continuing education 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 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;

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.

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.

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 4. AMENDATORY 59 O.S. 1991, Section 858-312, as amended by Section 6, Chapter 94, O.S.L. 1992 (59 O.S. Supp. 1993, 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~~ real estate 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~~ Advertising or offering for sale, rent or lease any real estate, or placing a sign on any real estate offering it for sale ~~or for~~, rent or lease 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 as defined in this Code 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, religion, sex, familial status, handicap, or national origin~~ violated any provision of the federal fair housing laws, 42 U.S.C. Section 3601 et seq.;

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; and

22. Having offered, loaned, paid, or made it appear to have been paid, a down payment or earnest money deposit for a purchaser or seller in connection with a real estate transaction.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-307.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

A person shall not be permitted to file an application for reissuance of a license after revocation of the license within three (3) years of the effective date of revocation.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-312.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. No person whose license is revoked or suspended shall operate directly or indirectly or have a participating interest, or act as a member, partner or officer, in any real estate business, corporation, association or partnership that is required to be licensed pursuant to this Code.

B. No person whose license is cancelled, surrendered or lapsed pending investigation or disciplinary proceedings shall operate directly or indirectly or have a participating interest, or act as a member, partner or officer, in any real estate business, corporation, association or partnership that is required to be licensed pursuant to this Code until such time as the Commission makes a determination on the pending investigation or disciplinary proceedings and approves an application for license.

SECTION 7. Sections 1 and 3 of this act shall become effective July 1, 1994.

SECTION 8. Sections 2, 4, 5 and 6 of this act shall become effective July 1, 1995.

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.