

SHORT TITLE: Professions and occupations; removing power of Oklahoma Real Estate Commission to retain jurisdiction over certain persons; requiring certain persons be licensed as real estate broker; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 786

By: Herbert of the Senate

and

Bastin of the House

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 858-208, as last amended by Section 2, Chapter 149, O.S.L. 1994, 858-305 and 858-312, as last amended by Section 4, Chapter 149, O.S.L. 1994 (59 O.S. Supp. 1995, Sections 858-208 and 858-312), which relate to licensure of real estate professionals; clarifying language; authorizing Oklahoma Real Estate Commission to prescribe certain fees; removing power of Commission to retain jurisdiction over certain persons; requiring certain persons be licensed as real estate brokers; modifying gender references; providing for certain exemption; including violation of certain law in list of acts used to establish cause; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 1991, Section 858-208, as last amended by Section 2, Chapter 149, O.S.L. 1994 (59 O.S. Supp. 1995, 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~~ promulgate rules, prescribe fees by rule, 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 and prescribe fees by rule 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~~ are entitled to such licenses;

5. To promulgate rules and prescribe fees by rule 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~~ 858-402 of this ~~act~~ title, 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.~~ 7. Upon showing good cause, to modify any sanction imposed pursuant to the provisions of this section and to reinstate licenses;

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

~~10.~~ 9. To ~~prescribe such~~ promulgate rules and prescribe penalties by rule 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;

~~11.~~ 10. To cause the prosecution of any person who violates any of the provisions of this Code;

~~12.~~ 11. To promulgate rules and prescribe fees by rule 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;

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

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

SECTION 2. AMENDATORY 59 O.S. 1991, Section 858-305, is amended to read as follows:

Section 858-305. A. The Commission may license as a real estate broker any association or corporation in which the managing member or managing officer holds a license as a real estate broker, as defined in this Code, and in which every member, officer or employee who acts as a real estate broker or real estate sales associate holds a license for that purpose, as defined in this Code. The Commission may license as a real estate broker any partnership in which each partner holds a license as a real estate broker, as defined in this Code.

B. Any person who has active management control over the activities of a person required to have a license under this Code, or has management control over the real estate activities of a corporation, association or partnership required to have a license under this Code, must possess a license as a real estate broker.

C. Application for licenses described in this section shall be made on forms prescribed by the Commission and shall be issued pursuant to rules ~~and regulations~~ promulgated by the Commission.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 858-312, as last amended by Section 4, Chapter 149, O.S.L. 1994 (59 O.S. Supp. 1995, 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~~, real estate

~~associates~~ licensees, 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~~ the licensee acts;

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

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

6. Failing, within a reasonable time, to account for or to remit any monies, documents, or other property coming into ~~his~~ 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 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. 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 ~~his~~ the owner's authorized ~~agent~~ 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 ~~he~~ the licensee has an interest unless his or her interest is disclosed in the report. All appraisals will be in compliance with the Oklahoma real estate appraisal law, and the person performing the appraisal or report will disclose to the employer whether the person performing the appraisal or report is licensed or certified by the Oklahoma Real Estate Appraisal Board;

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~~ the licensee's own money or property the money or property of others which is received and held by ~~him~~ the licensee, unless the money or property of others is received by ~~him~~ the licensee 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 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~~ licensee his or her 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 or she is a real estate ~~broker or real estate sales associate~~ licensee unless exempt under paragraph 1 of Section 858-301 of this Code;

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~~ the licensee 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,~~ Offering, loaning, paying, or ~~made it~~ 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. Violating the Residential Property Condition Disclosure Act.

SECTION 4. This act shall become effective November 1, 1996.

45-2-1700

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