ENGROSSED HOUSE
BILL NO. 2007

By: Bastin, Sullivan (Leonard) and Settle of the House

and

Herbert, Leftwich, Ford and Brown of the Senate

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 858-601, as amended by Section 7, Chapter 94, O.S.L. 1992, and 858-604 (59 O.S. Supp. 1996, Section 858-601), which relate to the Oklahoma Real Estate License Code; modifying reimbursement of certain monies in the Oklahoma Real Estate Education and Recovery Fund; providing for the determination of eligibility for certain recovery from such fund; stating assignment of certain rights, titles and interests in portion of certain judgments; requiring certain claims against associations be imputed to certain brokers at certain times; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 1991, Section 858-601, as amended by Section 7, Chapter 94, O.S.L. 1992 (59 O.S. Supp. 1996, 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~~ <u>awarded a judgment, subject to subsection C of this section,</u> 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~~ <u>an Oklahoma real estate licensee</u> 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~~ any act which would constitute a violation of the Oklahoma Real Estate License Code.

C. In determining a person's eligibility to recover from the fund, the Commission may conduct an independent review of the merits, findings and damages involved in the underlying action and may conduct an evidentiary hearing to determine if a claim is eligible for recovery from the fund and the amount of damages awarded which are due to the acquisition of money or property by a licensee through acts constituting a violation of the Oklahoma Real Estate License Code.

SECTION 2. AMENDATORY 59 O.S. 1991, 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~~ assigns his or her 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 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, association or partnership would be imputed to the sponsoring broker(s) at the time the cause of action arose.

G. 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 licensee, shall be automatically revoked. The license shall not be considered for reinstatement until such 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 or her.

SECTION 3. This act shall become effective July 1, 1997.

SECTION 4. 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, 1997.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate