

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2563

By: Bastin

AS INTRODUCED

An Act relating to professions and occupations;

amending 59 O.S. 1991, Sections 858-102, as last amended by Section 1, Chapter 149, O.S.L. 1994, 858-201, as last amended by Section 1, Chapter 38, O.S.L. 1997, 858-202, 858-204, 858-205, as amended by Section 2, Chapter 94, O.S.L. 1992, 858-206, 858-209, 858-301, as amended by Section 13, Chapter 401, O.S.L. 1997, 858-302, 858-303, as amended by Section 3, Chapter 94, O.S.L. 1992, 858-304, as amended by Section 4, Chapter 94, O.S.L. 1992, 858-306, 858-307.1, 858-307.2, as last amended by Section 3, Chapter 149, O.S.L. 1994, 858-309, 858-310, 858-311, 858-312, as last amended by Section 3, Chapter 159, O.S.L. 1996, 858-513, 858-601, as last amended by Section 1, Chapter 105, O.S.L. 1997, 858-602, 858-603, 858-604, as amended by Section 2, Chapter 105, O.S.L. 1997 (59 O.S. Supp. 1997, Sections 858-102, 858-201, 858-205, 828-301, 858-303, 858-304, 858-307.2, 858-312, 858-601 and 858-604), which relate to the Oklahoma Real Estate License Code; modifying and adding definitions; removing obsolete language; correcting certain language; placing certain sections in outline form; authorizing the Commission to determine substitutes

for certain evidence submitted; modifying certain application procedures; modifying certain license eligibility requirements; modifying consideration and procedures concerning transcript acceptance from institutions of higher education; modifying consideration and procedures relating to licensure of nonresidents; authorizing certain cooperative agreements; prohibiting the modification of license terms except under certain circumstances; modifying certain fees; requiring evidence of completion of continuing education hours or its equivalent; modifying entities offering such courses; eliminating certain entities which offer such courses; requiring Commission to maintain the list of courses; eliminating the publishing requirement; adding to those for which the continuing education requirement does not apply; modifying requirements relating to branch offices; modifying and adding to certain violations relating to licensees; modifying requirements relating to psychologically impacted real estate; providing for warrants from certain fund to be drawn by the State Treasurer; modifying eligibility to recover from certain fund; modifying person to whom certain claim could be imputed; 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 858-102, as last amended by Section 1, Chapter 149, O.S.L. 1994 (59 O.S. Supp. 1997, 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 to include condominiums, time-shared ownerships and cooperatives; 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 lease, or solicits for prospective tenants, purchasers or sellers, or who advertises or holds himself out as engaged in such activities;

3. The term "broker associate" shall include any person who has qualified for a license as a broker and who is employed or engaged by, associated as an independent contractor with, or on behalf of, a broker to do or deal in any act, acts or transaction set out in the definition of a broker;

4. 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.~~ 5. "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 postlicensing 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 postlicensing 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.~~ 6. The term "successful completion" shall include prelicense and postlicense courses in which an approved public or private school entity has examined the individual, to the satisfaction of the entity, in relation to the course material presented during the offering;

~~6.~~ 7. 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 prelicense and postlicense educational requirements;

~~7.~~ 8. The term "nonrenewable license" shall refer to a provisional sales associate who is the holder of such license and who has only completed the prelicense educational requirement;

~~8.~~ 9. 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.~~ 10. The term "canceled license" shall refer to a real estate license which is canceled, upon the request of the licensee and approval of the Commission, due to a personal reason or conflict;

~~10.~~ 11. "Licensee" shall include any person who performs any act, acts or transactions set out in the definition of a broker and licensed under the Oklahoma Real Estate License Code;

~~11.~~ 12. The word "Commission" shall mean the Oklahoma Real Estate Commission;

~~12.~~ 13. The word "person" shall include and mean every individual, partnership, association or corporation, foreign or domestic; ~~and~~

~~13.~~ 14. Masculine words shall include the feminine and neuter, and the singular includes the plural; and

15. The word "associate" shall mean a broker associate, sales associate or provisional sales associate.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 858-201, as last amended by Section 1, Chapter 38, O.S.L. 1997 (59 O.S. Supp. 1997, Section 858-201), is amended to read as follows:

Section 858-201. A. There is hereby re-created, to continue until July 1, 2003, 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 real estate licenses ~~to real estate brokers, real estate sales associates and, on and after July 1, 1993, provisional sales associates,~~ in the State of Oklahoma.

B. 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.~~

C. 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 and be engaged full time in the real estate brokerage business. One member shall be a lay person not in the real estate business, and one member shall be an active representative of a school of real estate located within the State of Oklahoma and approved by the Oklahoma Real Estate Commission. ~~Provided however, that no~~

D. No more than two members shall be appointed from the same congressional district according to the latest congressional redistricting act.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 858-202, is amended to read as follows:

Section 858-202. A. Members of the Oklahoma Real Estate Commission shall be appointed by the Governor with the advice and consent of the Senate ~~within ninety (90) days after the effective date of this Code. Two members shall be appointed for a term of one (1) year; two members shall be appointed for a term of two (2) years; and one member shall be appointed for a term of three (3) years. Upon this act becoming effective, the present members~~

B. Members of the Commission shall serve until their terms expire ~~and their successors are appointed and qualified. Within ninety (90) days after the effective date of this act, two new members shall be appointed by the Governor, from a list of three qualified persons compiled by the Oklahoma Association of Realtors, Incorporated, one new member shall be appointed to serve until July 1, 1985, and the other new member shall be appointed to serve until July 1, 1983. The terms of the Commission members except as~~

~~otherwise provided above,~~ shall be for three (3) years and until their successors are appointed and qualified.

C. Each successor member and any vacancy which may occur in the membership of the Commission shall be filled by appointment of the Governor with the advice and consent of the Senate.

D. The Governor may select appointees from a list of at least three qualified persons submitted by the Oklahoma Association of Realtors, Incorporated.

E. Each person who shall have been appointed to fill a vacancy shall serve for the remainder of the term for which the member whom he will succeed was appointed and until his successor, in turn, shall have been appointed and shall have qualified.

F. Members of the Commission may be removed from office by the Governor for inefficiency, neglect of duty or malfeasance in office in the manner provided by law for the removal of officers not subject to impeachment.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 858-204, is amended to read as follows:

Section 858-204. A. The members of the Commission, within thirty (30) days after their appointment, shall organize and elect a chairman and vice-chairman. Annually thereafter the offices of chairman and vice-chairman shall be attained through election by Commission members.

B. The Commission, as soon after the election of the chairman and vice-chairman as practicable, shall employ a secretary-treasurer and such clerks and assistants as shall be deemed necessary to discharge the duties imposed by the provisions of this Code, and shall determine their duties and fix their compensation subject to the general laws of this state.

C. The chairman of the Commission, and in his absence the vice-chairman, shall preside at all meetings of the Commission and shall

execute such duties as the Commission, by its rules, shall prescribe.

D. The secretary-treasurer shall keep a complete and permanent record of all proceedings of the Commission and perform such other duties as the Commission shall prescribe.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 858-205, as amended by Section 2, Chapter 94, O.S.L. 1992 (59 O.S. Supp. 1997, Section 858-205), is amended to read as follows:

Section 858-205. A. 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.

B. 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.

C. 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.

D. The revolving fund shall be audited at least once each year by the State Auditor and Inspector.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 858-206, is amended to read as follows:

Section 858-206. A. The Commission may sue and be sued in its official name, and service of summons upon the secretary-treasurer of the Commission shall constitute lawful service upon the Commission.

B. The Commission shall have a seal which shall be affixed to all licenses, certified copies of records and papers on file, and to such other instruments as the Commission may direct, and all courts shall take judicial notice of such seal.

C. Copies of records and proceedings of the Commission and all papers on file in the office, certified under the seal, shall be received as evidence in all courts of record.

D. The office of the Commission shall be at Oklahoma City, Oklahoma.

SECTION 7. AMENDATORY 59 O.S. 1991, Section 858-209, is amended to read as follows:

Section 858-209. A. In the exercise of all powers and the performance of all duties provided in this Code, the Commission shall comply with the procedures provided in the Administrative Procedures Act. Appeals shall be taken as provided in said act.

B. The Commission may designate and employ a hearing examiner or examiners who shall have the power and authority to conduct such hearings in the name of the Commission at any time and place subject to the provisions of this section and any applicable rules, ~~regulations~~ or orders of the Commission. No person shall serve as a hearing examiner in any proceeding in which any party to the proceeding is, or at any time has been, a client of the hearing examiner or of any firm, partnership or corporation with which the hearing examiner is, or at any time has been, associated; ~~and,~~

~~provided further, that no.~~ No person who acts as a hearing examiner shall act as attorney for the Commission in any court proceeding arising out of any hearing in which he acted as hearing examiner.

C. In any hearing before the Commission, the burden of proof shall be upon the moving party.

SECTION 8. AMENDATORY 59 O.S. 1991, Section 858-301, as amended by Section 13, Chapter 401, O.S.L. 1997 (59 O.S. Supp. 1997, Section 858-301), is amended to read as follows:

Section 858-301. It shall be unlawful for any person to act as a real estate ~~broker or real estate sales associate~~ licensee, or to hold himself or herself out as such, unless the person shall have been licensed to do so under this Code. However, nothing in this section shall:

1. Prevent any person, partnership, association or corporation, or the partners, officers or employees of any partnership, association or corporation, from acquiring real estate for its own use, nor shall anything in this section prevent any person, partnership, association or corporation, or the partners, officers or employees of any partnership, association or corporation, as owner, lessor or lessee of real estate, from selling, renting, leasing, exchanging, or offering to sell, rent, lease or exchange, any real estate so owned or leased, or from performing any acts with respect to such real estate when such acts are performed in the regular course of, or as an incident to, the management, ownership or sales of such real estate and the investment therein;

2. Apply to persons acting as the attorney-in-fact for the owner of any real estate authorizing the final consummation by performance of any contract for the sale, lease or exchange of such real estate;

3. In any way prohibit any attorney-at-law from performing the duties of the attorney as such, nor shall this Code prohibit a receiver, trustee in bankruptcy, administrator, executor, or his or

her attorney, from performing his or her duties, or any person from performing any acts under the order of any court, or acting as a trustee under the terms of any trust, will, agreement or deed of trust;

4. Apply to any person acting as the resident manager for the owner or an employee acting as the resident manager for a licensed real estate broker managing an apartment building, duplex, apartment complex or court, when such resident manager resides on the premises and is engaged in the leasing of property in connection with the employment of the resident manager;

5. Apply to any person who engages in such activity on behalf of a corporation or governmental body, to acquire easements, rights-of-way, leases, permits and licenses, including any and all amendments thereto, and other similar interests in real estate, for the purpose of, or facilities related to, transportation, communication services, cable lines, utilities, pipelines, or oil, gas, and petroleum products; or

6. Apply to any person who engages in such activity in connection with the acquisition of real estate on behalf of an entity, public or private, which has the right to acquire the real estate by eminent domain.

SECTION 9. AMENDATORY 59 O.S. 1991, Section 858-302, is amended to read as follows:

Section 858-302. A. 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 or its equivalent as determined by the Commission 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 provisional sales associate after the effective date of this act.

B. Application shall be made upon forms prescribed by the Commission and shall ~~contain such information and~~ be accompanied by ~~any recommendations~~ an examination fee as provided for in this Code and all information and documents 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~~

C. 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.

D. If it shall be determined that the applicant shall have passed the examination, ~~upon the payment of the~~ received final approval of the application, and paid the appropriate 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 provisional sales associate license ~~which shall authorize the applicant to act as a provisional sales associate.~~

E. 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 or its equivalent as determined by the Commission of posteducation real estate instruction in a course(s) of study approved by the Commission. A provisional sales associate who fails to submit evidence of compliance with the posteducation requirement pursuant to this section, prior to the first expiration date of the provisional sales associate license, shall not be entitled to renew such license for another license term.

SECTION 10. AMENDATORY 59 O.S. 1991, Section 858-303, as amended by Section 3, Chapter 94, O.S.L. 1992 (59 O.S. Supp. 1997, Section 858-303), is amended to read as follows:

Section 858-303. A. 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 or its equivalent as determined by the Commission 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, may apply to the Commission to take an examination for the purpose of securing a license as a real estate broker or broker associate.

B. Application shall be made upon forms prescribed by the Commission and shall be accompanied by ~~any~~ an examination fee as provided for in this Code and all 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~~

C. 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.

D. If it shall be determined that the applicant shall have passed the examination, ~~upon the payment~~ received final approval of the application, and paid the appropriate 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 broker or broker associate license ~~which shall authorize the applicant to act as a real estate broker~~.

SECTION 11. AMENDATORY 59 O.S. 1991, Section 858-304, as amended by Section 4, Chapter 94, O.S.L. 1992 (59 O.S. Supp. 1997, 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 for a provisional sales associate applicant as required in Section 858-302 of this Code; ~~and, in such case, no further evidence shall be required of a provisional sales associate applicant, except the successful completion of the provisional sales associate's examination.~~

B. ~~The same~~ 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 ~~procedural requirements found in subsection A of this section are applicable in fulfilling the post-provisional~~ course of real estate instruction consisting of the provisional sales associates' education associate postlicensing educational requirements for which college credit was given, shall be prima facie evidence of successful completion of the clock hours of real estate instruction for the postlicense requirement as required in Section 858-302 of this title.

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, 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 broker's examination for a broker applicant.~~

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

SECTION 12. AMENDATORY 59 O.S. 1991, Section 858-306, is amended to read as follows:

Section 858-306. A. 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, real estate sales associate or provisional sales associate,~~ desires to perform licensed activities in Oklahoma but maintains a place of business outside of Oklahoma may obtain ~~a~~ an Oklahoma nonresident license as ~~a real estate broker, real estate sales associate or provisional sales associate~~ by complying with all applicable provisions of this Code, ~~and, in addition thereto, giving his.~~

B. The nonresident shall give written consent that actions and suits at law may be commenced against ~~such~~ the nonresident ~~broker or sales associate licensee~~ 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~~ the nonresident's associates or employees in such county, ~~and such.~~ The nonresident shall further, in writing, appoint the secretary-treasurer of said Commission as service agent to receive service of summons for ~~him~~ the nonresident 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~~ the

nonresident in all such actions. ~~Provided, that a nonresident duly licensed in the state of his residence as a real estate broker, sales associate or provisional sales associate may become associated with a licensed real estate broker in this state.~~

C. A broker who is duly licensed in another state and who has not obtained an Oklahoma nonresident license may enter a cooperative brokerage agreement with a licensed real estate broker in this state. If, however, the broker desires to perform licensed activities in this state, the broker must obtain an Oklahoma nonresident license.

SECTION 13. AMENDATORY 59 O.S. 1991, 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, 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, sales associate's and provisional sales associate's licenses and renewals shall be staggered on a monthly basis.~~ The license term shall not be altered except for the purpose of general reassignment of the terms which might be necessitated for maintaining an equitable staggered license term system. 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 or broker associate'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.

C. 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.

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

SECTION 14. AMENDATORY 59 O.S. 1991, Section 858-307.2, as last amended by Section 3, Chapter 149, O.S.L. 1994 (59 O.S. Supp. 1997, 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~~ licensee with the exception of those exempt as set out in this section shall submit to the Commission evidence of attendance completion of twenty-one (21) clock hours or its equivalent as determined by the Commission 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~~ licensee 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 on required subjects as prescribed by the Commission.

2. Beginning July 1, 1996, as a condition of renewal or reactivation of the license, each ~~real estate sales associate and broker licensee~~ shall submit to the Commission evidence of attendance completion of twenty-one (21) clock hours or its equivalent as determined by the Commission 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 licensee~~ shall be required to 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 on required subjects as prescribed by the Commission.

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~~

1. The Commission;

b. ~~an~~

2. An area vocational-technical school;

3. A college or university;

c. ~~a~~

4. A private school;

d. ~~the~~

5. The Oklahoma Association of Realtors, the National Association of Realtors, or any affiliate thereof;

e. ~~the~~

6. 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~~

7. An education provider.

C. The Commission shall ~~publish~~ maintain a list of ~~the institutions and associations~~ courses 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:

1. During the period a license is on inactive status;

2. To a licensee who holds a provisional sales ~~associate's~~ associate 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; or

4. To a corporation, association, partnership or branch office.

SECTION 15. AMENDATORY 59 O.S. 1991, Section 858-309, is amended to read as follows:

Section 858-309. The Commission may place a ~~real estate broker's or sales associate's~~ license on inactive status when the request therefor is accompanied by sufficient reason; however, said status shall not relieve the licensee from paying the required fees. The request for inactive status shall be in writing on forms furnished by the Commission. During active military service, any licensee shall not be required to pay the fees but shall request the

inactive status prior to each term for which the license is to be issued. ~~Inactive status shall relieve any licensee from the requirements of continuing education as provided in Section 858-307.2 of this title.~~

SECTION 16. AMENDATORY 59 O.S. 1991, Section 858-310, is amended to read as follows:

Section 858-310. ~~All brokers~~ A. A real estate broker shall maintain a specific place of business. Such place of business shall comply with all local laws and shall be available to the public during reasonable business hours. ~~If the applicant for a broker's license maintains more than one place of business within the state he shall apply for and obtain an additional license in his name at each branch office. Every application shall state the location of each branch office and the name of the person in charge of it. Each branch office shall be under the direction and supervision of a broker licensed at that address. Provided, however, that nothing herein contained shall prevent any real estate broker from maintaining more than one office.~~

B. If a real estate broker maintains more than one place of business and the additional location is an extension of the main office, a branch office license must be obtained for each additional location. Each branch office shall be under the direction and supervision of a separate broker and shall be considered a managing broker of the branch office. Application shall be made upon forms as prescribed by the Commission.

SECTION 17. AMENDATORY 59 O.S. 1991, Section 858-311, is amended to read as follows:

Section 858-311. No person, partnership, association or corporation acting as a real estate ~~broker or real estate sales associate~~ licensee shall bring or maintain an action in any court in this state for the recovery of a money judgment as compensation for services rendered in listing, buying, selling, renting, leasing or

exchanging of any real estate without alleging and proving that such person, partnership, association or corporation was licensed ~~as a real estate broker or real estate sales associate~~ when the alleged cause of action arose.

SECTION 18. AMENDATORY 59 O.S. 1991, Section 858-312, as last amended by Section 3, Chapter 159, O.S.L. 1996 (59 O.S. Supp. 1997, 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~~ licensee, 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 business, or through real estate 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 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~~ an associate, except from the real estate broker with whom the ~~licensee~~ associate is associated;

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

6. Failing, within a reasonable time, to account for or to remit any monies, documents, or other property coming into 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 or rules promulgated by the Commission;

10. Guaranteeing or having authorized or permitted any real estate ~~broker or associate~~ licensee 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 the owner's authorized 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 the licensee has an interest unless ~~his or her~~ the licensee's 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~~

~~associate licensee~~ 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 associate licensee~~, whether of the same or of a different character as specified in this section, or because the real estate ~~broker or associate licensee~~ has been convicted of a crime involving moral turpitude;

16. Commingling with the licensee's own money or property the money or property of others which is received and held by the licensee, unless the money or property of others is received by 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 licensee ~~his or her~~ the licensee's 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~~ the licensee is a real estate licensee;

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

22. Paying any part of a fee, commission, or other valuable consideration received by a real estate licensee to a licensed person knowing that licensed person will in turn pay a portion or all of that which is received to any person not licensed;

23. Offering, loaning, paying, or 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.~~ 24. Violating the Residential Property Condition Disclosure Act.

SECTION 19. AMENDATORY 59 O.S. 1991, Section 858-513, is amended to read as follows:

Section 858-513. A. The fact or suspicion that real estate might be or is psychologically impacted, such impact being the result of facts or suspicions, including but not limited to:

1. That an occupant of the real estate is, or was at any time suspected to be infected, or has been infected, with Human Immunodeficiency Virus or diagnosed with Acquired Immune Deficiency Syndrome, or other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or

2. That the real estate was, or was at any time suspected to have been the site of a suicide, homicide or other felony, is not a material fact that must be disclosed in a real estate transaction.

B. No cause of action shall arise against an owner of real estate or ~~such owner's agent or agents~~ any licensee assisting the owner for the failure to disclose to ~~the transferee~~ any licensee assisting the owner of such real estate or ~~the transferee's agent or agents~~ any licensee assisting the purchaser or lessee that such real estate was psychologically impacted as provided for in subsection A of this section.

C. Notwithstanding the fact that this information is not a material defect or fact, in the event that a purchaser or lessee, who is in the process of making a bona fide offer, advises the ~~owner's agent~~ licensee assisting the owner, in writing, that knowledge of such factor is important to ~~his~~ the person's decision to purchase or lease the property, ~~an agent~~ the licensee shall make inquiry of the owner and report any findings to the purchaser or lessee with the consent of the owner and subject to and consistent with applicable laws of privacy; provided further, if the owner refuses to disclose, the ~~owner's agent~~ licensee assisting the owner shall so advise the purchaser or lessee.

SECTION 20. AMENDATORY 59 O.S. 1991, Section 858-601, as last amended by Section 1, Chapter 105, O.S.L. 1997 (59 O.S. Supp. 1997, 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~~ Treasurer, 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 awarded a judgment, subject to subsection C of this section, by a court of competent jurisdiction to have suffered monetary damages by an Oklahoma real estate licensee 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 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 21. AMENDATORY 59 O.S. 1991, Section 858-602, is amended to read as follows:

Section 858-602. A. An additional, nonrefundable fee of Fifteen Dollars (\$15.00) shall be added to and payable with the license fee for both new licenses and renewals of licenses for each ~~broker and sales associate~~ licensee as provided in Section 858-307.1 of this title. Such additional fee shall be deposited in the Oklahoma Real Estate Education and Recovery Fund.

B. If a license is issued for a period of less than thirty-six (36) months, such additional fee shall be prorated to the nearest dollar and month.

C. If a real estate sales associate ~~licensee~~ or provisional sales associate shall qualify for a license as a real estate broker, ~~then the real estate sales associate's~~ additional fee for the remainder of the term shall be prorated to the nearest dollar and month and credited to ~~such person's~~ the additional fee added to and payable with the real estate broker license fee.

D. At the close of each fiscal year, the Commission shall transfer into the Oklahoma Real Estate Commission Revolving Fund any money in excess of that amount required to be retained in the Oklahoma Real Estate Education and Recovery Fund and that amount authorized to be expended as provided within this Code that is remaining in the Oklahoma Education and Recovery Fund and unexpended.

SECTION 22. AMENDATORY 59 O.S. 1991, 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~~ The person is the spouse of the judgment debtor or a personal representative of such spouse;

2. ~~He~~ The person is a licensee who acted ~~as his own principal or agent~~ in such person's own behalf 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~~ such person's own, jointly responsible for any resulting injury with respect to the property owned or controlled by ~~him~~ the person.

SECTION 23. AMENDATORY 59 O.S. 1991, Section 858-604, as amended by Section 2, Chapter 105, O.S.L. 1997 (59 O.S. Supp. 1997, 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 assigns ~~his or her~~ the claimant's 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. 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~~ managing 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~~ the person.

SECTION 24. This act shall become effective July 1, 1998.

SECTION 25. 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.

46-2-8310

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