

and

Herbert of the Senate

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 858-102, as last amended by Section 1, Chapter 60, O.S.L. 1998, 858-312, as last amended by Section 18, Chapter 60, O.S.L. 1998 and Section 3, Chapter 54, O.S.L. 1993 (59 O.S. Supp. 1998, Sections 858-102, 858-312 and 858-402), which relate to the Oklahoma Real Estate License Code; modifying definition; deleting a cause for sanction; modifying payment of fine penalty; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 1991, Section 858-102, as last amended by Section 1, Chapter 60, O.S.L. 1998 (59 O.S. Supp. 1998, 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;

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;

6. The term "successful completion" shall include prelicense ~~and,~~ postlicense, and distance education courses in which an approved public or private school entity has examined the individual, to the satisfaction of the entity and standards as established by the Commission, in relation to the course material presented during the offering;

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;

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;

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;

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;

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;

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

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

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 858-312, as last amended by Section 18, Chapter 60, O.S.L. 1998 (59 O.S. Supp. 1998, 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 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 an associate, except from the real estate broker with whom the associate is associated;

5. Representing or attempting to represent a real estate broker other than the broker with whom the associate is associated without the express knowledge and consent of the broker with whom the 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 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 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 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 licensee, whether of the same or of a different character as specified in this section, or because the real estate 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 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 the licensee is a real estate licensee;

21. Paying any part of a fee, commission, or other valuable consideration received by a real estate licensee to any person not licensed;

~~22. Failing to obtain a written statement from an out-of-state licensee verifying that the out-of-state licensee will not pay any part of the earned fee, commission, or other valuable consideration 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

~~24.~~ 23. Violating the Residential Property Condition Disclosure Act.

SECTION 3. AMENDATORY Section 3, Chapter 54, O.S.L. 1993 (59 O.S. Supp. 1998, Section 858-402), is amended to read as follows:

Section 858-402. A. The Oklahoma Real Estate Commission may impose administrative fines on any licensee licensed pursuant to The Oklahoma Real Estate License Code as follows:

1. Any administrative fine imposed as a result of a violation of this Code or the rules of the Commission shall not:
 - a. be less than One Hundred Dollars (\$100.00) and shall not exceed Two Thousand Dollars (\$2,000.00) for each violation of this Code or the rules of the Commission, or
 - b. exceed Five Thousand Dollars (\$5,000.00) for all violations resulting from a single incident or transaction;
2. All administrative fines shall be paid within thirty (30) days of notification of the licensee by the Commission of the order of the Commission imposing the administrative fine;
3. The license may be suspended until any fine imposed upon the licensee by the Commission is paid;
4. If fines are not paid in full by the licensee within thirty (30) days of the notification by the Commission of the order, the fines shall double and the licensee shall have an additional thirty-day period. If the doubled fine is not paid within the additional thirty-day period, the license shall automatically be revoked; and
5. All monies received by the Commission as a result of the imposition of the administrative fine provided for in this section shall be deposited in the Oklahoma Real Estate Education and Recovery Fund, created pursuant to Section 858-601 of this title.

B. The administrative fines authorized by this section may be in addition to any other criminal penalties or civil actions provided for by law.

SECTION 4. This act shall become effective November 1, 1999.

Passed the House of Representatives the 2nd day of March, 1999.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1999.

President of the Senate