

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

HOUSE BILL HB1933

By: Collins

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 858-102, as last amended by Section 1, Chapter 26, O.S.L. 1999, and 858-312, as last amended by Section 14, Chapter 194, O.S.L. 1999 (59 O.S. Supp. 1999, Sections 858-102 and 858-312), which relate to the Oklahoma Real Estate License Code; adding definitions; prohibiting certain acts; repealing 59 O.S. 1991, Section 858-312, as last amended by Section 2, Chapter 26, O.S.L. 1999 (59 O.S. Supp. 1999, Section 858-312), which relates to prohibited acts in the Oklahoma Real Estate License Code; 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 26, O.S.L. 1999 (59 O.S. Supp. 1999, 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, 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;

16. The term "home inspection" shall mean the rendering of a written or oral report in exchange for compensation of any sort, regarding the condition of the construction or improvements to a residence, including, but not limited to structural problems or deterioration, equipment, and systems that are visible and readily accessible. Home inspection does not include a contract or proposal for repair, renovation, or remodeling of the improvements to a residence. The parties to a home inspection may limit or expand the scope of the inspection by agreement; and

17. The term "home inspector" shall mean a natural person who, for compensation of any sort, engages in the business of home inspection.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 858-312, as last amended by Section 14, Chapter 194, O.S.L. 1999 (59 O.S. Supp. 1999, 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. Failing to comply with the requirements of Sections ~~4~~ 858-351 through ~~13~~ 858-363 of this ~~act~~ title;

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 the Oklahoma Real Estate License Code;

8. Any other conduct which constitutes untrustworthy, improper, fraudulent, or dishonest dealings;

9. Disregarding or violating any provision of the Oklahoma Real Estate License 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 shall be in compliance with the Oklahoma real estate appraisal law, and the person performing the appraisal or report shall disclose to the employer whether the person performing the appraisal or report is licensed or certified by the Oklahoma Real Estate Appraiser 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 the Oklahoma Real Estate License Code who has not first secured a real estate license pursuant to the Oklahoma Real Estate License 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. Conviction 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. Failure by a real estate broker, after the receipt of a commission, to render an accounting to and pay to a real estate licensee the licensee's earned share of the commission received;

19. Conviction 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. 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. Violation of the Residential Property Condition Disclosure Act;

24. Committing any act or omission involving dishonesty, fraud, or misrepresentation with the intent to substantially benefit a home inspector or other person or with the intent to substantially injure another person in relation to a home inspection; and

25. Providing a home inspector with an inspection assignment when the employment itself is contingent upon the home inspector reporting a predetermined estimate, analysis, or opinion or when the fee to be paid is contingent upon the opinion, the conclusions, analysis, or report reached or upon the consequences resulting from such assignment.

SECTION 3. REPEALER 59 O.S. 1991, Section 858-312, as last amended by Section 2, Chapter 26, O.S.L. 1999 (59 O.S. Supp. 1999, Section 858-312), is hereby repealed.

SECTION 4. This act shall become effective November 1, 2000.

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