

ENROLLED SENATE
BILL NO. 1312

By: Ford, Branam and Gumm of
the Senate

and

Miller (Doug), Sullivan,
Dorman, Phillips, Kirby,
Tyler and Calvey of the
House

An Act relating to the Oklahoma Real Estate License Code; amending 59 O.S. 2001, Sections 858-102, 858-302 and 858-401, which relate to penalties for violations; authorizing promulgation of certain rules; authorizing certain actions by the Oklahoma Real Estate Commission; providing for notice and hearing; authorizing certain fines upon finding of violation; providing for certain court orders; making certain fines enforceable in district courts; providing for appeal; directing deposit of certain funds; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, 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-clock-hour postlicensing educational requirement to be completed within the first twelve-month license term. However, the Oklahoma Real Estate Commission shall promulgate rules for those persons called into active military service for purposes of satisfying the postlicensing educational requirement. 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 license or to a provisional sales associate who has completed both the prelicense and postlicense educational requirements within the required time period as stated in the Code;

8. The term "nonrenewable license" shall refer to a provisional sales associate who is the holder of such license and who has not completed the postlicense 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. 2001, 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.

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

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, 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.

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. However, the Commission shall promulgate rules for those persons called into active military service for purposes of satisfying the posteducation requirement.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 858-401, is amended to read as follows:

Section 858-401. A. In addition to any other penalties provided by law, any person unlicensed pursuant to The Oklahoma Real Estate License Code who shall willingly and knowingly violate any provision of this Code, upon conviction, shall be guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

B. In addition to any civil or criminal actions authorized by law, ~~the Commission, the Attorney General, or the district attorney may apply to the district court in the county in which a violation of this act has allegedly occurred for an order enjoining or restraining the unlicensed person from continuing the acts specified in the complaint. The court may grant any temporary or permanent injunction or restraining order, without bond, as it deems just and proper~~ whenever, in the judgment of the Oklahoma Real Estate Commission, any unlicensed person has engaged in any acts or practices which constitute a violation of the Oklahoma Real Estate License Code, the Commission may:

1. After notice and hearing, and upon finding a violation of the Code, impose a fine of not more than Five Thousand Dollars (\$5,000.00) or the amount of the commission or commissions earned, whichever is greater for each violation of the Code for unlicensed activity;

2. Make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the Commission that such person has engaged in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court, without bond; or

3. Impose administrative fines pursuant to this subsection which shall be enforceable in the district courts of this state.

C. Notices and hearings required by this section and any appeals from orders entered pursuant to this section shall be in accordance with the Administrative Procedures Act.

D. Such funds as collected pursuant to this section shall be deposited in the Oklahoma Real Estate Education and Recovery Fund.

SECTION 4. This act shall become effective November 1, 2004.

Passed the Senate the 24th day of February, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the 14th day of April, 2004.

Presiding Officer of the House
of Representatives