

SB 1312

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THE STATE SENATE
Tuesday, February 24, 2004

Senate Bill No. 1312
As Amended

SENATE BILL NO. 1312 - By: FORD, BRANAN and GUMM of the Senate and
WRIGHT of the House.

[Oklahoma Real Estate License Code - penalties for
violations - court orders - 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;

1 2. The term "real estate broker" shall include any person,
2 partnership, association or corporation, foreign or domestic, who
3 for a fee, commission or other valuable consideration, or who with
4 the intention or expectation of receiving or collecting a fee,
5 commission or other valuable consideration, lists, sells or offers
6 to sell, buys or offers to buy, exchanges, rents or leases any real
7 estate, or who negotiates or attempts to negotiate any such
8 activity, or solicits listings of places for rent or lease, or
9 solicits for prospective tenants, purchasers or sellers, or who
10 advertises or holds himself out as engaged in such activities;

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

16 4. The term "real estate sales associate" shall include any
17 person having a renewable license and employed or engaged by, or
18 associated as an independent contractor with, or on behalf of, a
19 real estate broker to do or deal in any act, acts or transactions
20 set out in the definition of a real estate broker;

21 5. "Provisional sales associate" shall include any person who
22 has been licensed after June 30, 1993, employed or engaged by, or
23 associated as an independent contractor with, or on behalf of, a

1 real estate broker to do or deal in any act, acts or transactions
2 set out in the definition of a real estate broker and subject to an
3 additional forty-five-clock-hour postlicensing educational
4 requirement to be completed within the first twelve-month license
5 term. However, the Oklahoma Real Estate Commission shall promulgate
6 rules for those persons called into active military service for
7 purposes of satisfying the postlicensing educational requirement.
8 The license of a provisional sales associate shall be nonrenewable
9 unless the postlicensing requirement is satisfied prior to the
10 expiration date of the license. Further, the term sales associate
11 and provisional sales associate shall be synonymous in meaning
12 except where specific exceptions are addressed in the Oklahoma Real
13 Estate License Code;

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

20 7. The term "renewable license" shall refer to a sales
21 associate who is a holder of such license or to a provisional sales
22 associate who has completed both the prelicense and postlicense

1 educational requirements within the required time period as stated
2 in the Code;

3 8. The term "nonrenewable license" shall refer to a provisional
4 sales associate who is the holder of such license and who has not
5 completed the postlicense educational requirement;

6 9. The term "surrendered license" shall refer to a real estate
7 license which is surrendered, upon the request of the licensee, due
8 to a pending investigation or disciplinary proceedings;

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

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

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

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

19 14. Masculine words shall include the feminine and neuter, and
20 the singular includes the plural; and

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

1 SECTION 2. AMENDATORY 59 O.S. 2001, Section 858-302, is
2 amended to read as follows:

3 Section 858-302. A. Any person of good moral character,
4 eighteen (18) years of age or older, and who shall submit to the
5 Commission evidence of successful completion of forty-five (45)
6 clock hours or its equivalent as determined by the Commission of
7 basic real estate instruction in a course of study approved by the
8 Commission, may apply to the Commission to take an examination for
9 the purpose of securing a license as a provisional sales associate.

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

14 C. The applicant shall appear in person before the Commission
15 for an examination which shall be in the form and inquire into the
16 subjects the Commission shall prescribe.

17 D. If it shall be determined that the applicant shall have
18 passed the examination, received final approval of the application,
19 and paid the appropriate license fee provided for in this Code along
20 with the Oklahoma Real Estate Education and Recovery Fund fee, the
21 Commission shall issue to the applicant a provisional sales
22 associate license.

1 E. Following the issuance of a provisional sales associate
2 license, the licensee shall then submit to the Commission, prior to
3 the expiration of the provisional license, evidence of successful
4 completion of forty-five (45) clock hours or its equivalent as
5 determined by the Commission of posteducation real estate
6 instruction in a course(s) of study approved by the Commission. A
7 provisional sales associate who fails to submit evidence of
8 compliance with the posteducation requirement pursuant to this
9 section, prior to the first expiration date of the provisional sales
10 associate license, shall not be entitled to renew such license for
11 another license term. However, the Commission shall promulgate
12 rules for those persons called into active military service for
13 purposes of satisfying the posteducation requirement.

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

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

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

12 1. After notice and hearing, and upon finding a violation of
13 the Code, impose a fine of not more than Five Thousand Dollars
14 (\$5,000.00) or the amount of the commission or commissions earned,
15 whichever is greater for each violation of the Code for unlicensed
16 activity;

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

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

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

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

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

7 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-18-04 - DO
8 PASS, As Amended and Coauthored.