

ENGROSSED HOUSE
BILL NO. 1608

By: Miller (Doug) of the House
and
Branan of the Senate

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 858-208, 858-601, 858-603 and 858-604, which relate to the Oklahoma Real Estate License Code; modifying powers of the Oklahoma Real Estate Commission; clarifying use of certain fund; clarifying reference to certain act as a violation; modifying reference from injury to monetary loss; increasing amount of certain maximum payment; providing for recovery of attorney fees; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 858-208, is amended to read as follows:

Section 858-208. The Oklahoma Real Estate Commission shall have the following powers and duties:

1. To promulgate rules, prescribe administrative fees by rule, and make orders as it may deem necessary or expedient in the performance of its duties;

2. To administer examinations to persons who apply for the issuance of licenses;

3. To sell to other entities or governmental bodies, not limited to the State of Oklahoma, computer testing and license applications to recover expended research and development costs;

4. To issue licenses in the form the Commission may prescribe to persons who have passed examinations or who otherwise are entitled to such licenses;

5. To issue licenses to and regulate the activities of real estate brokers, provisional sales associates, sales associates,

branch offices, nonresidents, associations, corporations, and partnerships;

6. Upon showing good cause as provided for in The Oklahoma Real Estate License Code, to discipline licensees, instructors and real estate school entities by:

- a. reprimand,
- b. probation for a specified period of time,
- c. requiring education in addition to the educational requirements provided by Section 858-307.2 of this title,
- d. suspending real estate licenses and approvals for specified periods of time,
- e. revoking real estate licenses and approvals,
- f. imposing administrative fines pursuant to Section 858-402 of this title, or
- g. any combination of discipline as provided by subparagraphs a through f of this paragraph;

7. Upon showing good cause, to modify any sanction imposed pursuant to the provisions of this section and to reinstate licenses;

8. To conduct, for cause, disciplinary proceedings ~~for discipline, for cause, of licensees and for reinstatement of licenses or modification of sanctions imposed;~~

9. To prescribe penalties as it may deem proper to be assessed against licensees for the failure to pay the license renewal fees as provided for in this Code;

10. To ~~cause~~ initiate the prosecution of any person who violates any of the provisions of this Code;

11. To approve instructors and organizations offering courses of study in real estate and to further require them to meet standards to remain qualified as is necessary for the administration of this Code;

12. To contract with attorneys and other professionals to carry out the functions and purposes of this Code;

13. To apply for injunctions and restraining orders for violations of the Code or the rules of the Commission; ~~and~~

14. To create an Oklahoma Real Estate Contract Form Committee by rule which will be required to draft and revise residential real estate purchase contracts and any related addenda for voluntary use by real estate licensees;

15. To enter into contracts and agreements for the payment of food and other reasonable expenses as authorized in the State Travel Reimbursement Act necessary to host, conduct, or participate in meetings or training sessions as is reasonable for the administration of this Code; and

16. To conduct an annual performance review of the Executive Director and submit the report to the Legislature.

SECTION 2. AMENDATORY 59 O.S. 2001, 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 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~~ claimant 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~~ an act which would constitute constituting a violation of the Oklahoma Real Estate License Code.

C. In determining a ~~person's~~ claimant'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~~ an act constituting a violation of the Oklahoma Real Estate License Code.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 858-603, is amended to read as follows:

Section 858-603. A. Any ~~person~~ claimant 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~~ claimant making application made a good faith effort to comply with the notification requirements;

4. Final judgment is received by the ~~plaintiff~~ claimant 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~~ claimant from the judgment debtor, or from any other source for any ~~injury~~ monetary loss arising out of the cause of action, has been applied to the ~~damages~~ judgment awarded by the court.

B. A ~~person~~ claimant shall not be qualified to make a claim for recovery from the Oklahoma Real Estate Education and Recovery Fund, if:

1. The ~~person~~ claimant is the spouse of the judgment debtor or a personal representative of such spouse;

2. The ~~person~~ claimant is a licensee who acted in ~~such person's~~ their own behalf in the transaction which is the subject of the claim; or

3. ~~Such person's~~ The claimant's claim is based upon a real estate transaction in which the ~~person~~ claimant is, through ~~actions~~

~~of such person's~~ their own action, jointly responsible for any resulting ~~injury~~ monetary loss with respect to the property owned or controlled by the ~~person~~ claimant.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 858-604, is amended to read as follows:

Section 858-604. A. Any ~~person~~ claimant 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~~ the claimant's judgment, which is actual or compensatory damages, or ~~Fifteen Thousand Dollars (\$15,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00), whichever is less. ~~For purposes of this subsection, attorney fees and costs shall not be considered as or included in actual or compensatory damages~~ The claimant is entitled to reimbursement for attorney fees reasonably incurred in the litigation not to exceed twenty-five percent (25%) of the claimant's amount approved by the Commission. Attorney fees charged and received shall be documented, verified, and submitted with the claim. Court costs and other expenses shall not be recoverable from the fund.

B. Upon receipt by the claimant of the payment from the Oklahoma Real Estate Education and Recovery Fund, the claimant assigns 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 or to the claimant and the claimant's attorney. 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~~ claimant'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~~ the 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~~ the claims shall be paid as the money becomes available. Where there is more than one ~~such~~ claim outstanding, ~~such~~ the claims shall be paid in the order that they were ~~made~~ approved.

F. Any claim against a corporation, association or partnership would be imputed to the managing broker(s) at the time the cause of action arose.

G. The license of said licensee, shall be automatically revoked upon the payment of any amount from the Oklahoma Real Estate Education and Recovery Fund ~~for satisfaction of~~ on a judgment against a licensee, ~~shall be automatically revoked~~. The license shall not be considered for reinstatement until ~~such person~~ the 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~~ on the judgment against the ~~person~~ licensee.

SECTION 5. This act shall become effective November 1, 2005.

Passed the House of Representatives the 23rd day of February,
2005.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2005.

Presiding Officer of the Senate