

THE HOUSE OF REPRESENTATIVES
Tuesday, February 19, 2008

Committee Substitute for
House Bill No. 2564

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2564 - By: MARTIN (STEVE) of the House and BRANAN of the Senate.

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 858-208, as last amended by Section 2, Chapter 42, O.S.L. 2007, 858-304, 858-306, 858-307.2 and 858-312 (59 O.S. Supp. 2007, Section 858-208), which relate to the Oklahoma Real Estate Commission; modifying powers and duties of the Commission; modifying requirements for certain persons licensed in multiple jurisdictions; modifying academic hour requirements; modifying examination requirements for certain persons; deleting obsolete language; modifying cause for suspension or revocation of license; and providing an effective date.

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

1 SECTION 1. AMENDATORY 59 O.S. 2001, Section 858-208, as last amended
2 by Section 2, Chapter 42, O.S.L. 2007 (59 O.S. Supp. 2007, Section 858-208), is amended
3 to read as follows:

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

- 6 1. To promulgate rules, prescribe administrative fees by rule, and make orders as it
7 may deem necessary or expedient in the performance of its duties;
- 8 2. To administer examinations to persons who apply for the issuance of licenses;

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

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

6 5. To issue licenses to and regulate the activities of real estate brokers, provisional
7 sales associates, sales associates, branch offices, nonresidents, associations, corporations,
8 and partnerships;

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

11 a. reprimand,

12 b. probation for a specified period of time,

13 c. requiring education in addition to the educational requirements
14 provided by Section 858-307.2 of this title,

15 d. suspending real estate licenses and approvals for specified periods of
16 time,

17 e. revoking real estate licenses and approvals,

18 f. imposing administrative fines pursuant to Section 858-402 of this title,
19 or

20 g. any combination of discipline as provided by subparagraphs a through
21 f of this paragraph;

- 1 7. Upon showing good cause, to modify any sanction imposed pursuant to the
2 provisions of this section and to reinstate licenses;
- 3 8. To conduct, for cause, disciplinary proceedings;
- 4 9. To prescribe penalties as it may deem proper to be assessed against licensees for
5 the failure to pay the license renewal fees as provided for in this Code;
- 6 10. To initiate the prosecution of any person who violates any of the provisions of
7 this Code;
- 8 11. To approve instructors and organizations offering courses of study in real estate
9 and to further require them to meet standards to remain qualified as is necessary for the
10 administration of this Code;
- 11 12. To contract with attorneys and other professionals to carry out the functions
12 and purposes of this Code;
- 13 13. To apply for injunctions and restraining orders for violations of the Code or the
14 rules of the Commission;
- 15 14. To create an Oklahoma Real Estate Contract Form Committee by rule that will
16 be required to draft and revise real estate purchase and/or lease contracts and any
17 related addenda for voluntary use by real estate licensees;
- 18 15. To enter into contracts and agreements for the payment of food and other
19 reasonable expenses as authorized in the State Travel Reimbursement Act necessary to
20 host, conduct, or participate in meetings or training sessions as is reasonable for the
21 administration of this Code; ~~and~~

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

3 17. To enter into reciprocal agreements with other real estate licensing regulatory
4 jurisdictions with equivalent licensing, education and examination requirements.

5 SECTION 2. AMENDATORY 59 O.S. 2001, Section 858-304, is amended to
6 read as follows:

7 Section 858-304. A. A certified transcript from an institution of higher education,
8 accredited by the Oklahoma State Regents for Higher Education or the corresponding
9 accrediting agency of another state, certifying to the successful completion of a ~~three-~~
10 ~~academic-hour~~ six-academic-hour basic course of real estate instruction for which college
11 credit was given, shall be prima facie evidence of successful completion of the clock hours
12 of basic real estate instruction for a provisional sales associate applicant as required in
13 Section 858-302 of this Code.

14 B. A certified transcript from an institution of higher education, accredited by the
15 Oklahoma State Regents for Higher Education or the corresponding accrediting agency of
16 another state, certifying to the successful completion of a three-academic-hour course of
17 real estate instruction consisting of the provisional sales associate postlicensing
18 educational requirements for which college credit was given, shall be prima facie
19 evidence of successful completion of the clock hours of real estate instruction for the
20 postlicense requirement as required in Section 858-302 of this title.

21 C. A certified transcript from an institution of higher education, accredited by the
22 Oklahoma State Regents for Higher Education or the corresponding agency of another

1 state, certifying to the successful completion of ~~five-academic-hours~~ a six-academic-hour
2 advanced ~~courses~~ course of real estate instruction for which college credit was given,
3 shall be prima facie evidence of successful completion of the clock hours of advanced real
4 estate instruction as required in Section 858-303 of this Code for a broker applicant.

5 D. Each school, whether public or private other than institutions of higher
6 education, must present to the Commission its syllabus of instruction, prior to approval
7 of such school.

8 SECTION 3. AMENDATORY 59 O.S. 2001, Section 858-306, is amended to
9 read as follows:

10 Section 858-306. A. Any person who desires to perform licensed activities in
11 Oklahoma but maintains a place of business outside of Oklahoma may obtain an
12 Oklahoma nonresident license by complying with all applicable provisions of this Code
13 including the successful completion of the applicable Oklahoma state portion of the real
14 estate examination.

15 B. The nonresident shall give written consent that actions and suits at law may be
16 commenced against the nonresident licensee in any county in this state wherein any
17 cause of action may arise or be claimed to have arisen out of any transaction occurring in
18 the county because of any transactions commenced or conducted by the nonresident or
19 the nonresident's associates or employees in such county. The nonresident shall further,
20 in writing, appoint the secretary-treasurer of said Commission as service agent to
21 receive service of summons for the nonresident in all of such actions and service upon the

1 secretary-treasurer of such Commission shall be held to be sufficient to give the court
2 jurisdiction over the nonresident in all such actions.

3 C. A broker who is duly licensed in another state and who has not obtained an
4 Oklahoma nonresident license may enter a cooperative brokerage agreement with a
5 licensed real estate broker in this state. If, however, the broker desires to perform
6 licensed activities in this state, the broker must obtain an Oklahoma nonresident license.

7 SECTION 4. AMENDATORY 59 O.S. 2001, Section 858-307.2, is amended to
8 read as follows:

9 Section 858-307.2 A. 1. ~~Beginning July 1, 1996, as a condition of renewal or~~
10 ~~reactivation of the license, each licensee, with the exception of those exempt as set out in~~
11 ~~this section, shall submit to the Commission evidence of completion of the specified~~
12 ~~number of clock hours of continuing education courses approved by the Commission,~~
13 ~~within the thirty-six (36) months immediately preceding the term for which the license is~~
14 ~~to be issued. The number of hours, or its equivalent, required for each licensed term~~
15 ~~shall be determined by the Commission and promulgated by rule. Each licensee shall be~~
16 ~~required to complete and include as part of said continuing education a certain number of~~
17 ~~required subjects as prescribed by rule.~~

18 ~~2.~~ Beginning November 1, 2004, as a condition of renewal or reactivation of the
19 license, each licensee with the exception of those exempt as set out in this section shall
20 submit to the Commission evidence of completion of a specified number of hours of
21 continuing education courses approved by the Commission, within the thirty-six (36)
22 months immediately preceding the term for which the license is to be issued. The

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BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 number of hours, or its equivalent, required for each licensed term shall be determined
2 by the Commission and promulgated by rule. Each licensee shall be required to complete
3 and include as part of said continuing education a certain number of required subjects as
4 prescribed by rule.

5 B. The continuing education courses required by this section shall be satisfied by
6 courses approved by the Commission and offered by:

- 7 1. The Commission;
- 8 2. A technology center school;
- 9 3. A college or university;
- 10 4. A private school;
- 11 5. The Oklahoma Association of Realtors, the National Association of Realtors, or
12 any affiliate thereof;
- 13 6. The Oklahoma Bar Association, American Bar Association, or any affiliate
14 thereof; or
- 15 7. An education provider.

16 C. The Commission shall maintain a list of courses which are approved by the
17 Commission.

18 D. The Commission shall not issue an active renewal license or reactivate a license
19 unless the continuing education requirement set forth in this section is satisfied within
20 the prescribed time period.

21 E. The provisions of this section do not apply:

- 22 1. During the period a license is on inactive status;

1 2. To a licensee who holds a provisional sales associate license;

2 3. To a nonresident licensee licensed in this state if the licensee maintains a
3 current license in another state and has satisfied the continuing education requirement
4 for license renewal in that state; or

5 4. To a corporation, association, partnership or branch office.

6 SECTION 5. AMENDATORY 59 O.S. 2001, Section 858-312, is amended to
7 read as follows:

8 Section 858-312. The Oklahoma Real Estate Commission may, upon its own
9 motion, and shall, upon written complaint filed by any person, investigate the business
10 transactions of any real estate licensee, and may, upon showing good cause, impose
11 sanctions as provided for in Section 858-208 of this title. Cause shall be established upon
12 the showing that any licensee has performed, is performing, has attempted to perform, or
13 is attempting to perform any of the following acts:

14 1. Making a materially false or fraudulent statement in an application for a license;

15 2. Making substantial misrepresentations or false promises in the conduct of
16 business, or through real estate licensees, or advertising, which are intended to
17 influence, persuade, or induce others;

18 3. Failing to comply with the requirements of Sections 858-351 through 858-363 of
19 this title;

20 4. Accepting a commission or other valuable consideration as a real estate associate
21 for the performance of any acts as an associate, except from the real estate broker with
22 whom the associate is associated;

1 5. Representing or attempting to represent a real estate broker other than the
2 broker with whom the associate is associated without the express knowledge and consent
3 of the broker with whom the associate is associated;

4 6. Failing, within a reasonable time, to account for or to remit any monies,
5 documents, or other property coming into possession of the licensee which belong to
6 others;

7 7. Paying a commission or valuable consideration to any person for acts or services
8 performed in violation of the Oklahoma Real Estate License Code;

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

11 9. Disregarding or violating any provision of the Oklahoma Real Estate License
12 Code or rules promulgated by the Commission;

13 10. Guaranteeing or having authorized or permitted any real estate licensee to
14 guarantee future profits which may result from the resale of real estate;

15 11. Advertising or offering for sale, rent or lease any real estate, or placing a sign
16 on any real estate offering it for sale, rent or lease without the consent of the owner or
17 the owner's authorized representative;

18 12. Soliciting, selling, or offering for sale real estate by offering "free lots",
19 conducting lotteries or contests, or offering prizes for the purpose of influencing a
20 purchaser or prospective purchaser of real estate;

21 13. Accepting employment or compensation for appraising real estate contingent
22 upon the reporting of a predetermined value or issuing any appraisal report on real

1 estate in which the licensee has an interest unless the licensee's interest is disclosed in
2 the report. All appraisals shall be in compliance with the Oklahoma real estate
3 appraisal law, and the person performing the appraisal or report shall disclose to the
4 employer whether the person performing the appraisal or report is licensed or certified
5 by the Oklahoma Real Estate Appraiser Board;

6 14. Paying a commission or any other valuable consideration to any person for
7 performing the services of a real estate licensee as defined in the Oklahoma Real Estate
8 License Code who has not first secured a real estate license pursuant to the Oklahoma
9 Real Estate License Code;

10 15. Unworthiness to act as a real estate licensee, whether of the same or of a
11 different character as specified in this section, or because the real estate licensee has
12 been convicted of, or pleaded guilty or nolo contendere to, a crime involving moral
13 turpitude;

14 16. Commingling with the licensee's own money or property the money or property
15 of others which is received and held by the licensee, unless the money or property of
16 others is received by the licensee and held in an escrow account that contains only money
17 or property of others;

18 17. Conviction in a court of competent jurisdiction of having violated any provision
19 of the federal fair housing laws, 42 U.S.C. Section 3601 et seq.;

20 18. Failure by a real estate broker, after the receipt of a commission, to render an
21 accounting to and pay to a real estate licensee the licensee's earned share of the
22 commission received;

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1 19. Conviction in a court of competent jurisdiction in this or any other state of the
2 crime of forgery, embezzlement, obtaining money under false pretenses, extortion,
3 conspiracy to defraud, fraud, or any similar offense or offenses, or pleading guilty or nolo
4 contendere to any such offense or offenses;

5 20. Advertising to buy, sell, rent, or exchange any real estate without disclosing
6 that the licensee is a real estate licensee;

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

9 22. Offering, loaning, paying, or making to appear to have been paid, a down
10 payment or earnest money deposit for a purchaser or seller in connection with a real
11 estate transaction; and

12 23. Violation of the Residential Property Condition Disclosure Act.

13 SECTION 6. This act shall become effective November 1, 2008.

14 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
15 FINANCIAL SERVICES, dated 02-18-08 - DO PASS, As Amended and Coauthored.