

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 10. REQUIREMENTS, STANDARDS, AND PROCEDURES

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Education and Examination Requirements
605:10-3-6 [AMENDED]
605:10-3-7 [AMENDED]
Subchapter 9. Broker's Operational Procedures
605:10-9-8 [AMENDED]
Subchapter 13. Trust Account Procedures
605:10-13-1 [AMENDED]
Subchapter 15. Disclosures, Brokerage Services and Statute of Frauds
605:10-15-2 [AMENDED]
605:10-15-3 [REVOKED]
Subchapter 17. Causes for Investigation; Hearing Process; Prohibited Acts; Discipline
605:10-17-2 [AMENDED]
605:10-17-4 [AMENDED]

SUMMARY:

The proposed amendments to Subchapter 3 clarify continuing education requirements and remove unnecessary language regarding submission processes for continuing education completion.

The proposed amendment to Subchapter 9 clarifies the process for closing a branch office.

The proposed amendment to Subchapter 13 clarifies the trust account compliance standards and document availability requirement for inspections.

The proposed amendments to Subchapter 15 remove unnecessary language related to brokerage service agreements and redundant language regarding disclosure for psychological factors.

The proposed amendments to Subchapter 17 clarify the complaint notification process and define familial relationship for necessary disclosures.

AUTHORITY:

Oklahoma Real Estate Commission; 59 O.S., § 858-208.

COMMENT PERIOD:

Persons wishing to make written comments may do so in person, by mail, or by email through December 10th, 2024, at: Oklahoma Real Estate Commission, 1915 North Stiles Ave., Suite #200, Oklahoma City, OK 73105, or bailey@orec.ok.gov.

PUBLIC HEARING:

A public hearing will be held to provide a means by which persons may offer oral input on the content of the proposed rules: 9:30 a.m. on Wednesday, December 11th, 2024, at the Oklahoma Real Estate

Commission, 1915 North Stiles Ave., Suite #200, Oklahoma City, OK 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts, if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing by 5:00 p.m., December 10th, 2024, at the Oklahoma Real Estate Commission, 1915 North Stiles Ave., Suite #200, Oklahoma City, OK 73105, or bailey@orec.ok.gov.

COPIES OF PROPOSED RULES:

Interested persons may request copies of the proposed rules at the Oklahoma Real Estate Commission, 1915 North Stiles Ave., Suite #200, Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. Section 303(D), a rule impact statement will be prepared and will be available in the Oklahoma Real Estate Commission office at the address listed above and on the Board's website at orec.ok.gov after October 15th, 2024.

CONTACT PERSON:

Bailey Crotty, Deputy Director, (405) 521-3387, bailey@orec.ok.gov

CHAPTER 10. REQUIREMENTS, STANDARDS, AND PROCEDURES

SUBCHAPTER 3. EDUCATION AND EXAMINATION REQUIREMENTS

605:10-3-6. Continuing education requirement

(a) **Definition.** Continuing education shall be defined as any real estate oriented education course or equivalent, hereinafter called offering(s) intended:

- (1) To improve the knowledge of licensees.
- (2) To keep licensees abreast of changing real estate practices and laws.
- (3) To help licensees meet the statutory requirements for license renewal.

(b) **Purpose.** The purpose of continuing education is to provide an educational program through which real estate licensees can continually become more competent and remain qualified to engage in real estate activities for which they are licensed. Such activities involve facts and concepts about which licensees must be knowledgeable in order to safely and confidently conduct real estate negotiations and transactions in the public's best interest.

(c) **Goals.** The goals of continuing education are:

- (1) To provide licensees with opportunity for obtaining necessary current information and knowledge which will enable them to conduct real estate negotiations and transactions in a legal and professional manner in order to better protect public interest.
- (2) To assure that the licensees are provided with current information regarding new and/or changing laws and regulations which affect the real estate business.
- (3) To ensure that the consumers interest is protected from unknowledgeable licensees.

(d) **Objectives.** The objectives of continued education are as follows:

- (1) For licensees to expand and enhance their knowledge and expertise so as to be continually effective, competent, and ethical as they practice real estate.
- (2) For licensees to review and update their knowledge of federal, state and local laws and regulations which affect real estate practices.

(e) **Entities allowed to seek approval.** The Commission may approve and/or accept any offering provided by an entity which meets the purposes, goals, and objectives of the continuing education requirement. The Commission may accept the following offerings as proof of meeting the continuing education requirement:

- (1) Any offering which is approved and presented by those entities enumerated in paragraph B, of 858- 307.2 of the "Code".
- (2) Any offering in real estate, or directly related area, approved and/or accepted by the real estate regulatory agency in another state; provided such offering is not excluded elsewhere in this Chapter.
- (3) Any offering in real estate, or directly related area, not accepted in paragraphs (1) or (2) of this subsection, which the Commission determines to be in compliance with the rules of this Chapter.
- (4) Completion of an approved ninety (90) hour prelicense broker course or an approved forty-five (45) hour provisional sales associate postlicense course, or its respective equivalent as determined by the Commission shall suffice for thirty (30) hours of continuing education credit for a licensee. An individual segment of an approved prelicense broker course or an approved provisional sales associate postlicense course shall suffice for continuing education credit provided such individual segment has also been separately approved for continuing education credit.

(f) **Ineligible courses.**

- (1) The following offerings will not be considered by the Commission to meet continuing education requirements:
 - (A) General training or education not directly related to real estate or real estate practices.
 - (B) Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, report writing, and personal motivation that is not directly related to real estate.
 - (C) Sales promotion or other meetings held in conjunction with the general real estate brokerage business.
 - (D) Meetings which are a normal part of in-house training.
 - (E) That portion of any offering devoted to breakfast, luncheon, dinner, or other refreshments.
 - (F) Prelicense general training and education to obtain a provisional sales associate or sales associate license or license examination refresher courses for provisional sales associate/sales associate or broker.
- (2) The list in (1) of this subsection does not limit the Commission's authority to disapprove any offering which fails to meet the adopted purposes, goals and objectives.

(g) **Licensee responsible for notification to Commission.** Each licensee shall ultimately be responsible for furnishing evidence of successfully completing the continuing education requirements for license renewal, activation, or reinstatement, to the Commission as set forth elsewhere in this Chapter. Each licensee shall present to the Commission evidence of completion of a minimum of thirty (30) clock hours of continuing education offerings acceptable by the Commission. As evidence of completing the requirement, each licensee shall present:

- (1) A certificate, and/or documents, statements and forms, as may reasonably be required by the Commission, or

(2) A certified transcript; provided, however, if such offering is taken as an accredited C.E.U. (Continuing Education Unit) a certificate may be accepted in lieu of the transcript.

(h) **Attendance and successful completion required for credit.** To complete any offering, a person must physically be present in-class during all of the in-class offering time and successfully complete all course requirements.

(i) **Successful completion of materials and examination required for distance education credit.** To complete a distance education course offering, a person must successfully complete all course requirements to include all modules and an examination.

(j) **Course limitations.**

(1) A particular course offering may not be taken for continuing education credit more than once from the same entity and/or instructor during a renewal period.

(2) Educational courses taken for disciplinary reasons shall not count towards the normal continuing education requirements for licensees.

(k) **Required number of continuing education hours.** The required number of continuing education hours for a licensee shall be as follows:

(1) As a condition of a license activation or active reinstatement, each licensee, with the exception of those exempt as set out in Title 59, 858-307.2, shall provide evidence of completion of thirty (30) clock hours of Commission approved subject matter, or its equivalent, as determined by the Commission. Such hours shall be taken in the same license term for which the license is to be issued, with the exception of a licensee whose hours were not used in the preceding license term. In that case, the hours taken in the preceding license term shall count towards an applicable license activation or active reinstatement.

(2) Each licensee shall complete a minimum of thirteen (13) hours of required subject matter consisting of no less than six (6) hours of Contracts and Forms, three (3) hours in Professional Conduct, and one (1) hour in Broker Relationships Act, Fair Housing, Code and Rules, and Hot Topics/Current Issues. The remaining seventeen (17) hours of required education may consist of elective subject matter as approved by the Commission.

(3) Any licensee may complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours in lieu of the required subject matter, except for required Contracts education.

(4) All Brokers shall be required to successfully complete the Broker in Charge course consisting of fifteen (15) clock hours, or its equivalent, as approved by the Commission. In addition, to satisfy the continuing education requirement of thirty (30) clock hours, all Brokers shall complete at least six (6) hours of Contracts and Forms education. The remaining nine (9) clock hours of required education may consist of elective subject matter as approved by the Commission.

(5) Any broker that lapsed or renewed inactive in their previous license term or current license term who applies for reinstatement or activation must complete the following prior to their license being reinstated or reactivating:

(A) the Broker in Charge course;

(B) six (6) hours of Contracts and Forms education;

(C) nine (9) hours of elective courses

605:10-3-7. Provisional sales associate post-license education requirement

(a) **Purpose.** The purpose of the provisional sales associate post-license education requirement is to provide an educational program through which real estate provisional sales associate licensees can become more competent, knowledgeable and perfect their ability to engage in real estate activities for which they are licensed. Such activities involve facts and concepts which licensees must be knowledgeable in order to safely and confidently conduct real estate negotiations and transactions in the public's best interest.

(b) **Goals.** The goals of the provisional sales associate post-license education requirements are:

(1) To provide newly licensed individuals with the opportunity to obtain current information and knowledge to enable them to conduct real estate negotiations and transactions in a legal and professional manner in order to better protect public interest.

(2) To assure that licensees are provided with relevant information pertaining to practices which directly relate to real estate business.

(3) To assure that the provisional sales associate is provided with information regarding new and/or changing laws and regulations which affect the real estate business.

(4) To assure that the consumers interest is protected from unknowledgeable licensees.

(c) **Objectives.** The objectives of post-license education are to:

(1) Assist newly licensed individuals by having available a practical educational program wherein the information attained can be put into practice.

(2) To help licensees expand and enhance their knowledge and expertise so as to continually be effective, competent, and ethical as they practice real estate.

(3) To encourage licensees to gain additional education for specialization in particular areas of real estate.

(d) **Requirements.** A provisional sales associate shall be required to successfully complete prior to the first license expiration date, forty-five (45) clock hours of post-license education or its equivalent as determined by the Commission. Such course of study shall be referred to as the Provisional Post-license Course of Real Estate, Part II of II and shall encompass the following areas of study:

(1) Real Estate Marketplace

(2) Marketing Real Estate

(3) Personal Marketing

- (4) The Qualifying Process
- (5) Prospecting and Negotiating
- (6) Financing Real Estate, Investments and Exchanges
- (7) Financial Documents
- (8) Duty to Account
- (9) Title Search
- (10) Risk Management
- (11) At least three (3) clock hours of Broker Relationships with Parties to a Transaction
- (12) Property Management
- (13) At least three (3) clock hours of Laws and Regulations Affecting Real Estate Practice, including Code and Rules
- (14) Disciplinary Action
- (15) At least three (3) clock hours of Contracts and Forms.
- (16) At least three (3) clock hours of Professional Conduct and Ethics
- (17) At least three (3) clock hours of Fair Housing.

(e) **Equivalent course content.** The Commission may approve and/or accept any offering or combination of offerings which consists of forty-five (45) clock hours or more or its equivalent as determined by the Commission provided by an entity which meets the purposes, goals and objectives of the provisional sales associate post-license education requirement.

(f) **Offerings.**

- (1) The Commission may accept the following offerings as proof of meeting the post-license education requirement:
 - (A) Any offering which is approved and presented by those entities enumerated in Title 59, O.S., subsection B, of 858-307.2 of the "Code."
 - (B) Any offering in real estate, or directly related area, not accepted in paragraph (A) of this subsection, which can be determined by the Commission to be in compliance with the rules of this Chapter.
- (2) The Commission has the authority to disapprove any offering which fails to meet the purposes, goals and objectives of this Section.

(g) **Licensee responsible for notification to Commission.** Each provisional sales associate shall be responsible to furnish evidence to the Commission of successfully completing a Commission approved forty-five (45) clock hour post-license education course or its equivalent as determined by the Commission. Upon successful completion of the post-license education requirement, evidence must be submitted on or before license expiration, ~~and on a form approved by the Commission.~~

(h) **Failure to complete post-license education requirement prior to license expiration** A provisional sales associate who fails to complete the post-license education requirement prior to the first expiration date of the provisional sales associate license, shall not be entitled to renew such license.

(i) **Evidence of completion.** As evidence of having completed the education requirement, each provisional sales associate shall present one or more of the following as required by the Commission:

- (1) A certificate, and/or documents, statements and forms, as may reasonably be required by the Commission, or
- (2) A certified transcript; however, if such offering is taken as an accredited C.E.U. (Continuing Education Unit) a certificate may be accepted in lieu of the transcript.

(j) **Attendance and successful completion required for credit.** To complete any offering, a person must physically be present in-class during all of the in-class offering time, if any, and otherwise successfully complete all course requirements and an examination.

(k) **Successful completion of materials and examination required for distance education credit.** To complete a distance education offering, a person must successfully complete all course requirements to include all modules and an examination.

(l) **Course limitations.** The following course limitations shall apply:

- (1) A provisional sales associate shall only be given credit for courses specifically approved by the Commission.
- (2) Educational courses taken for disciplinary reasons do not count towards the normal post-license education requirement.

(m) **Extension of time for completion of post-license course for provisional sales associate that has received orders for active military service.** A provisional sales associate that has received orders for active military service may request an extension of time to complete the post-license education requirement if the request is received in writing prior to the expiration of the license. The request must be accompanied by a copy of the military orders for active military service. The extension of time shall be one (1) year from the date of return from active military service. In conformance with §858-309, a licensee on active military service shall request an inactive status prior to each term for which the license is to be issued. If an extension is approved, a provisional sales associate shall be allowed to renew their license by requesting an inactive status in writing prior to each term for which the license is to be issued.

SUBCHAPTER 9. BROKER'S OPERATIONAL PROCEDURES

605:10-9-8. Branch office closing instructions

The Commission must receive in writing, the requirements listed in this Section at the time notice is given to the Commission that the branch office has closed; however, a written request may be submitted to the Commission for approval to extend the period for submitting such documents and information. Unless specifically approved otherwise by the Commission, a real estate branch office shall be closed by the main office broker in the following manner:

- (1) Notify the Commission in writing of the date the branch office will close and advise as to the location where records will be stored and retained for a minimum of five (5) years in conformance with 605:10-13-1 (1).
- (2) ~~Return~~ Destroy the branch office license certificate and pocket identification card along with all license certificates of those associated with the branch office to the Commission and advise the Commission as to the circumstances involving any not returned.
- (3) Release forms must be filed for all licensees affiliated with the branch office.
- (4) The branch broker must either transfer his or her license to a firm of his or her choice or place his or her license on inactive status.
- (5) If the main office is not going to service the branch office's existing listing and management clients, as well as parties and co-brokers to existing contracts, notice is to be sent in writing advising all parties of the date the branch office will close and advise each client that he or she may enter a new listing or management agreement with a firm of his or her choice.
- (6) All advertising in the name of the branch office must be terminated and offering signs removed within thirty (30) days of office closing.
- (7) Trust account funds and pending contracts must be maintained by the responsible broker until final proper disbursement or until new agreements are secured from all parties for transfer of the funds and/or contracts. The Commission is to be notified in writing of any accounts that are closed.

SUBCHAPTER 13. TRUST ACCOUNT PROCEDURES

605:10-13-1. Duty to account; broker

(a) Deposit and account of trust/escrow funds.

- (1) The obligation of a broker to remit monies, valuable documents and other property coming into his or her possession within the meaning of subparagraph six (6), Section 858-312 of the "Code" shall be construed to include, but shall not be limited to, the following:
 - (A) Shall deposit all checks and monies of whatever kind and nature belonging to others in a separate account in a financial institution wherein the deposits are insured by an agency of the federal government. Any damage or security deposit required by a landlord of a tenant must be kept in an escrow account maintained in Oklahoma with a federally insured financial institution in compliance with 41 O.S. Section 115.
 - (B) The broker is required to be a signor on any brokerage account where such funds are held.
 - (C) Any brokerage account where such funds are held must be in the name of the broker or brokerage as it appears on the license or trade name as registered with the Commission and styled as a trust or escrow account and shall be maintained by the broker as a depository for deposits belonging to others.
 - (D) All escrow funds shall be deposited before the end of the third banking day following acceptance of an offer by an offeree or receipt of escrow funds unless otherwise agreed to in writing by all interested parties.
 - (E) The broker shall ensure such funds are maintained in said account until the transaction involved is consummated or terminated and proper accounting made.
 - (F) The broker shall at all times, maintain an accurate and detailed record thereof.
- (2) Funds referred to in this subsection shall include, but are not limited to earnest money deposits, money received upon final settlements, rents, security deposits and other deposited as required by landlord or broker, money advanced by buyer or seller for the payment of expenses in connection with closing of real estate transactions, and money advanced by his or her principal or others for expenditures on behalf of subject principal.

(b) **Commingling prohibited.** A broker may not keep any personal funds in the trust account except amounts sufficient to insure the integrity of the account and cover any charges made by the financial institution for servicing the trust or escrow account.

(c) **Interest bearing account.** A broker shall not be prohibited from placing escrow monies in an interest bearing account; however, he or she must disclose in writing to all parties that the account bears interest and identify the party receiving the interest. The Commission does not prohibit the broker from receiving the earned interest. In the event the interest is credited to the broker, the broker should, upon final consummation of the transaction, immediately disburse the interest from the account or insure that the amount does not exceed a reasonable amount to cover normal financial institution charges. The broker is required to maintain complete and accurate records of the interest earned. The interest bearing account must be a demand type account; this prohibits the use of certificate of deposit or other types of time deposits as trust/escrow accounts.

(d) **Trust account not mandatory unless funds or items are held.** A broker shall not be required to maintain a trust or escrow account unless monies or other depositable items belonging to others are accepted by the broker and require the broker to place the monies or items in the broker's trust account.

(e) **Trust accounts must be registered with commission.** A broker shall be required to notify the Commission in writing of all trust or escrow accounts, security deposit accounts, rental management operating accounts, and interest bearing accounts in which trust funds are held. Further, if a broker is a signor on a principal's account, the broker shall register that account as a trust account. A broker shall inform the Commission in writing of any accounts which are closed and no longer in use. All records relating to the broker's trust accounts, including bookkeeping system data, shall be made available for inspection by the Commission or its authorized representatives.

- (f) **Settlement statement to be furnished.** A broker shall insure that a signed settlement statement is furnished in each real estate transaction wherein he or she acts as broker, at the time such transaction is consummated.
- (g) **Payment of funds.** A broker shall pay over all sums of money held by him or her promptly after the closing of any transaction, provided, that upon any hearing to suspend or revoke his or her license under this Section, the failure to pay over any sums of money held by him or her within three (3) days after a closing shall be prima facie evidence of a violation by such person under the provisions of this Section.
- (h) **Return of earnest money or items.** In the event a transaction does not consummate, a broker shall promptly disburse the earnest money or items to the proper party in accordance with the terms of the contract. In the event a dispute arises prior to the disbursement, the broker shall follow rule 605:10-13-3 or may file an interpleader action with the appropriate court.
- (i) **Documents, items, or monies furnished to all parties.** A broker shall insure the timely delivery or return of all documents, items or monies to a party to a transaction wherein the broker or the broker's associate have provided services.
- (j) **Inform all parties pertaining to escrow being held.** A broker shall insure that all parties of each transaction are informed of the details relating to the escrow including, but not limited to, a statement as to the nature of a non-depositable item, the value of the item, and in whose custody the item is being placed.
- (k) **Bookkeeping system required.** A broker shall maintain a bookkeeping system i.e., canceled checks, check book, deposit receipts, general accounts ledger, etc. which will accurately and clearly disclose full compliance with the Law relating to the maintaining of trust accounts.
- (l) **Record retention.** A broker shall maintain all records and files for a minimum of five (5) years after consummation or termination of a transaction. In the case of trust account records the five years shall commence with the date of disbursement of funds. Records as referenced in this paragraph shall be destroyed in a secure manner.
- (m) **Requirements for storage of records on alternative media.** The Real Estate Commission establishes the following requirements for storage of trust account and transaction records stored on alternative media. Alternative media is defined as media that uses an electronic device to store or retrieve the information that pertains to the trust account and transaction documentation. This requirement applies to any computer technology utilized by the broker to create, store or retrieve the aforementioned documentation, whether the computerized device is internal or external to the broker's computer equipment. If a broker utilizes his own equipment or a third party vendor to create, store or retrieve this information, the broker shall ensure that the documentation is maintained and able to be retrieved for the five (5) year time period as required by the Commission.
- (1) Trust account records shall be maintained by the broker in their original format for a minimum of two (2) years. Trust account records may then be transferred to an alternative media for the remaining required record retention time.
 - (2) Records, with the exception of trust account records, may be transferred at any time to an alternative media for the remaining required retention time.
 - (3) After documents are converted to alternative media, a quality assurance check shall be done to ensure that every document was imaged and can be reproduced in a legible and readable condition on a display device. If requested documentation is irretrievable, the Commission may take disciplinary action for failure to properly retain records.
 - (4) After the quality assurance check is completed, the original documents may be destroyed.
 - (5) A broker shall maintain the alternative media and a means of viewing and retrieving records, and shall provide a true, correct and legible paper copy to the Commission upon request.
 - (6) A broker shall store copies of the alternative media and the equipment used to read the media in an environment and at a level of quality conducive to maintain the ability to reproduce the media throughout the retention period. Reproduce means a process in which a document can be converted from the alternative media to a paper copy that is legible and able to be read.
- (n) **Cessation of real estate activities.** Upon a firm ceasing a portion of real estate activities or ceasing all real estate activities the broker shall:
- (1) Notify the Commission in writing of the effective date of such action and advise as to the location where records will be stored and comply with the following:
 - (A) Return or destroy the broker's license certificate and pocket identification card and all license certificates of those associated with the broker to the Commission and advise the Commission as to the circumstances involving any not returned.
 - (B) Release forms must be filed for all licensees affiliated with the firm.
 - (C) The broker must either transfer to a new firm or place his or her license on inactive status.
 - (2) Notify in writing all listing and management clients, as well as parties and co-brokers to existing contracts advising them of the date of cessation of real estate activities.
 - (3) All advertising in the name of the firm must be terminated and offering signs removed within thirty (30) days of cessation of real estate activities.
 - (4) Funds in trust accounts and pending contracts must be maintained by the responsible broker until consummation of transaction and final proper disbursement of funds. Upon final disbursements of funds the broker is required to close the account and notify the Commission in writing that the account is closed.
 - (5) In the event the responsible broker is unable to continue to maintain the funds and/or pending contracts, funds and/or pending contracts may be transferred to another authorized broker, entity or legal representative until consummation and proper disbursement of funds. In this event, the broker must submit a request in writing to the Commission for approval to

transfer the contracts and/or funds. Upon written approval by the Commission, the broker must secure approval and obtain new agreements from all parties for transfer of the contracts and/or funds.

(6) If funds, items and/or contracts are transferred to another authorized broker, entity or legal representative and approved by the Commission, the broker transferring such shall be required to compile a record of the following, retain a copy for his or her file and give a copy to the receiving authorized broker, entity or legal representative:

- (A) A copy of the written approval from the Commission authorizing the transfer of the contracts and/or funds.
- (B) The name and address of the authorized broker, entity or legal representative.
- (C) A trust account reconciliation sheet indicating ledger balance and financial institution balance at time of transfer to include the name of each depositor, amount of deposit, date, and purpose of the deposit.
- (D) A statement indicating that written agreements were obtained from all parties to each transaction agreeing to the transfer of the funds and/or contracts to another responsible broker, authorized entity or legal representative and that each depositor was notified of the effective date of transfer, and the name of the responsible person or entity.

(7) Any firm merger shall have a thirty (30) day time period in which to provide the Commission the documentation as referenced in subparagraph (n) of this rule. Firm merger means that a licensed firm has been acquired by another licensed firm and the firm that was acquired is ceasing a portion or all of its licensed activities.

(o) Security breach of personal information.

(1) Security breach of personal information as defined in Title 24, Oklahoma Statutes, Sections 161-166 means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security or confidentiality of personal information maintained by a licensee as part of a database of personal information regarding multiple persons. Personal information means the first name or first initial and last name in combination with and linked to any one or more of the following data elements:

- (A) social security number,
- (B) driver license number or state identification card number issued in lieu of a driver license, or
- (C) financial account number, or credit card or debit card number, in combination with any required security code, access code, or password that would permit access to the financial accounts.

(2) The breach of information would not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

(3) In the event personal information is breached, the licensee is required to send notice to the Commission and to all concerned persons whose information was breached by an unauthorized person or source as required in Title 24, O.S., Section 162 . The licensee is required to comply with all requirements within the Security Breach Notification Act or be subject to disciplinary action by the Commission.

SUBCHAPTER 15. DISCLOSURES, BROKERAGE SERVICES AND STATUTE OF FRAUDS

605:10-15-2. Broker Relationships Act to become effective November 1, 2013

(a) **Brokerage service agreement defined.** The term "brokerage service agreement" shall mean an oral or written agreement to provide brokerage services entered into by a real estate broker and a person who is a party to a real estate transaction and shall include, but not be limited to, listing agreements, buyer broker agreements and property management agreements.

~~(b) **Validity of a brokerage service agreement.** A brokerage service agreement shall remain in full force and effect until the agreement expires or is otherwise terminated by an agreement of the parties.~~

~~(c)~~**(b) Providing services to more than one party to the transaction.** When a firm provides brokerage services to more than one party to the transaction, the broker shall provide written notice to those parties that the broker is providing brokerage services to more than one party. When a firm provides brokerage services to both sides of the transaction, the firm shall ensure compliance with the duties and responsibilities in Title 59, O.S., Section 858-353 along with all other requirements of the License Code and Rules.

~~(d)~~**(c) Services provided to a tenant.** When a broker provides brokerage services to a landlord under a property management agreement, the services provided to the tenant by the broker shall not be construed as creating a broker relationship between the broker and the tenant unless otherwise agreed to in writing; however, the broker owes to the tenant the duties of honesty and exercising reasonable skill and care.

605:10-15-3. Requirements for furnishing psychological factors [REVOKED]

~~Psychologically impacted property is any property where the existence of certain circumstances, suspicions or facts may create emotional or psychological disturbance or concerns to a prospective purchaser/lessee, with the potential of influencing a buying/leasing decision. Therefore, the obligation of a real estate licensee to obtain information as stated in Title 59, O.S., Section 858-513A (1) and (2) shall be performed in the following manner:~~

- ~~(1) Purchaser/lessee must be in the process of making a bona fide offer.~~
- ~~(2) Licensee must receive request in writing from purchaser/lessee.~~
- ~~(3) Purchaser's/Lessee's written request must state that such factor is important to the decision of the purchaser/lessee.~~
- ~~(4) Licensee shall make inquiry of the owner by submitting the written request to the owner.~~
- ~~(5) Licensee shall report any findings to the purchaser/lessee with the consent of the owner.~~

- (6) If the owner refuses to furnish information requested, the licensee shall so advise the purchaser/lessee.
- (7) Further, if a purchaser/lessee is requesting information as to whether or not an occupant of the real estate is, or was at any time suspected to be infected, or has been infected with Acquired Immune Deficiency Syndrome, or any other disease which falls under the privacy laws, the information can only be obtained in accordance with the Public Health and Safety Statute, Title 63, O.S., 1988, Section 1-502.2A.

SUBCHAPTER 17. CAUSES FOR INVESTIGATION; HEARING PROCESS; PROHIBITED ACTS; DISCIPLINE

605:10-17-2. Complaint procedures

- (a) **Complaint may be filed by public or Commission's own motion.** A complaint brought pursuant to the Code alleging misconduct on the part of a licensee or any unlicensed person who violates provisions of the Code may be filed by any person in writing on a form supplied by the Commission, or may be ordered by the Commission on its own motion. The Commission will accept a complaint alleging misconduct on a form not supplied by the Commission.
- (b) **Complaint notification; required response.** When a complaint has been ~~filed~~ opened by the Investigations Department pursuant to the Code, the licensee or unlicensed person ~~pursuant to the Code~~ shall be ~~immediately~~ notified within a reasonable time and shall be required to file an adequate written response within fifteen (15) days of the notice. Written responses are filed with the Commission if mailed and/or emailed to the Commission at investigations@orec.ok.gov. If the response is emailed, you must include the case number, the name of the party your response is submitted on behalf of, and "Response to Complaint" in the subject line. If an adequate written response is not filed within fifteen (15) days, the respondent shall be considered in default and appropriate sanctions may be imposed, if the evidence is deemed sufficient by the Commission. The Secretary-Treasurer may, upon request, extend the time within which a response must be filed.
- (c) **Service of complaint and other notices.** Service of a complaint or any other notice or report outlined in this subchapter may be achieved by any service method authorized by state law, including mailing a copy by certified mail to a respondent's last known address. If a respondent is an associate associated with a broker, the Commission shall notify the associated broker in a like manner.
- (d) **Investigation and/or investigative session.** Subsequent to the fifteen (15) day response period, the Commission may continue to investigate the complaint to ascertain whether or not charges should be lodged and a formal hearing ordered. Such investigation shall be under the supervision of the Secretary-Treasurer of the Commission. He or she may designate an attorney who will act as a prosecutor for the Commission to examine all results of the investigation. The prosecutor so designated may, in the name of the Commission, subpoena witnesses, take testimony by deposition and compel the production of records and documents bearing upon the complaint.
- (e) **Findings reported to Commission.** At the completion of the investigation, a written report accompanied by findings, if any, may be submitted to the Commission. Following receipt of the report, the Commission shall determine whether or not the apparent evidence warrants lodging formal charges against the respondent and ordering a formal hearing. If a formal hearing is ordered all parties shall then be furnished with copies of a written report accompanied by findings, if any.

605:10-17-4. Prohibited dealings

Within the meaning of subsection 8 of Section 858-312 of the "Code," untrustworthy, improper, fraudulent or dishonest dealing shall include, but not be limited to, the following:

- (1) The making of a brokerage service contract without a date of termination.
- (2) Purchasing of property by a licensee for himself or herself or another entity in which the licensee has an interest as defined in 605:10-15-1 (c), if such property is listed with the broker or the broker's firm, without first making full written disclosure thereof and obtaining the approval of the owner, or the failure by the licensee to exert the licensee's best effort in order to later purchase or acquire the property for themselves or another entity in which they have an interest as defined in 605:10-15-1 (c).
- (3) Purchasing of property by a licensee for himself or herself or another entity in which the licensee has an interest as defined in 605:10-15-1(c) without first making a full written disclosure to all parties involved in the transaction.
- (4) Repeated misrepresentations, even though not fraudulent, which occur as a result of the failure by the licensee to inform himself or herself of pertinent facts concerning property, as to which he or she is performing services.
- (5) Procuring the signature(s) and dates of such signature(s) to a purchase offer or contract or to any lease or lease proposal which has no definite maximum purchase price or lease rental, or no method of payment, termination date, possession date or property description.
- (6) The payment of any fees or amounts due the Commission with a check that is dishonored upon presentation to the bank on which the check is drawn.
- (7) Lending a broker's license to an associate; permitting an associate to operate as a broker; or failure of a broker to properly supervise the activities of an associate. A broker permitting the use of the broker's license to enable an associate licensed with the broker to, in fact, establish and conduct a brokerage business wherein the broker's only interest is the receipt of a fee for the use of the broker's sponsorship.
- (8) Failure to make known in writing to any purchaser any interest the licensee has in the property they are selling.

- (9) Failure of the licensee to inform the buyer and seller in writing at the time the offer is presented that the buyer and seller will be expected to pay certain closing costs, brokerage service costs, and approximate amount of said costs.
- (10) Failure, upon demand in writing, to respond to a complaint in writing, or to disclose any information within licensee's knowledge, or to produce any document, book or record in licensee's possession or under licensee's control that is real estate related and under the jurisdiction of the Real Estate Commission, for inspection to a member of the Commission staff or any other lawful representative of the Commission.
- (11) Failure to reduce an offer to writing, when a proposed purchaser requests such offer to be submitted.
- (12) Failure to submit all bona fide offers to an owner when such offers are received prior to the seller accepting an offer in writing.
- (13) Any conduct in a real estate transaction which demonstrates bad faith or incompetency.
- (14) Failure to act, in marketing the licensee's own property, with the same good faith as when acting in the capacity of a real estate licensee.
- (15) An associate who does not possess the license of a broker or branch broker as defined in the rules, but is intentionally acting in the capacity of a broker or branch broker.
- (16) Discouraging a party from obtaining an inspection on a property.
- (17) Allowing access to, or control of, real property without the owner's authorization.
- (18) Knowingly providing false or misleading information to the Commission during the course of an investigation.
- (19) Interfering with an investigation by means of persuading, intimidating or threatening any party or witness, or tampering with or withholding evidence relating to the investigation.
- (20) Knowingly cooperating with an unlicensed person or entity to perform licensed real estate activities as required by Title 59 O.S. Section 858-301.
- (21) Failing to disclose in writing any known immediate family relationship to a party to the transaction for which the broker is providing brokerage services. For purposes of this section, "immediate family relationship" means a licensee's: Spouse, Child, Parent, Grandparent, Brother, Sister, Half-Brother, Half-Sister, and the spouses of such persons named herein.
- (22) Failure by a broker to ensure all persons performing real estate licensed activities under the broker are properly licensed.
- (23) An associate shall not perform licensed activities outside their broker's supervision.
- (24) Failing to maintain documents relating to a trust account or real estate transaction for the time period as required by Rule 605:10-13-1.