



OKLAHOMA REAL ESTATE COMMISSION COMMENT

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2003 Legislation

HB 1541 — Recreated the Real Estate Commission until July 1, 2009.

HB 1262 - Effective November 1, 2003. Amended the Statute of Frauds (**Title 15, Section 136**) to allow a single-party broker to sign on behalf of a party.

- This law amendment **will now allow property managers to sign** on behalf of their party while acting as a single-party broker *only*.
- Further this **amendment supercedes AG Opinion 02-9** that prohibited a single-party broker from signing for a party, and keeping the identity of the buyer confidential.

This bill also amended **Title 59, Section 858-363** that **prohibits an associate** from referring to them self as a broker.

HB 1319 — Effective November 1, 2003. Amended **Title 60, Section 833** to **require** the residential property condition disclosure form to **include a question relating to “the existence of prior manufacturing of methamphetamines.”** The Commission has been advised that due to the addition the disclosure form will need to be amended, therefore, we will have a new form available November 1, 2003.

Further, **Section 837** was amended to **further clarify that the sole and exclusive civil remedy** under the Residential Property Condition Disclosure Act **shall be an action for actual damages, including the cost of repairing the defect**, suffered by the purchaser as a result of a defect existing in the property as of the date of acceptance by the seller of an offer to purchase and shall not include the remedy of exemplary damages.

E Commerce Solicitation



Before you pay a referral fee to a broker from another jurisdiction, you should insure that the person is properly licensed. The Association of Real Estate License Law Officials (ARELLO) which is an association the Commission belongs to, as well as other regulatory counterparts internationally, maintains a

website which contains a data base of licensees nationwide. There are a few jurisdictions who have not submitted their license data so if the referring broker’s name does not appear, ask them for proof of licensing.

The ARELLO license data bank can be found at arello.com. This is a great resource for confirming broker referrals nationwide.

In addition, a broker *who is licensed in another jurisdiction and who is not licensed in Oklahoma* is restricted from entering this state to perform any licensed activity to include solicitation by way of mail, phone or any electronic medium. If such a broker desires to perform licensed activities in the State of Oklahoma, they should apply for an Oklahoma non-resident license.

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*Out of the clutter
of details, find
simplicity and focus.*

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Commission Comment

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Address all communications to the
Commission Office

"Use your zip code and ours
when you write to us"

Points of Interest

Enforcement and offenses in Alberta,
Canada

- Disciplinary action fines are up to \$25,000 for any violation.
- Persons convicted of unlicensed activity must return any commission or remuneration received from acts leading to conviction.
- Banks accounts may be frozen and a receiver may be appointed in certain circumstances.

**CHAIRMAN'S
CORNER**



E. R. Andrew
Chairman

I shall pass the gavel soon as my Chairmanship will end in June so this will be my last article to you. I never imagined the responsibility the Commission had in regulating the real estate industry. I was surprised to learn of the process involved beginning with the filing of a complaint to the end wherein disciplinary action is to be imposed. This process is dictated by statute and referred to as the "Administrative Procedures Act." This is not a quick process and all parties are due their due process as outlined in statute.

June 2003 concludes the term of three fellow Commission members, each of whom has served six years or longer. Their dedication to our industry certainly is appreciated and will be felt for sometime. It definitely is an honor to be recommended by your peers and appointed by the Governor. Each of the retiring Commissioners were reappointed for a second term and of course, all served without compensation. Our gratitude is extended to the retiring Commission members which includes: John Mosley, Chickasha, who operates Mosley Agency and Century 21 Mosley Real Estate; John Snodgrass, Oklahoma City, Vice-President of Wells Fargo Home Mortgage; and Martin VanMeter, Durant, owner of VanMeter Realty. The Real Estate Commission and this years Chairman want to express our sincere appreciation for all of your hard work over these past years-each of you will truly be missed.

On a personal note: My heart felt thanks to those of you in Enid and the real estate industry across the State and Nation for your thoughts and prayers for the safe return of my grandchildren after the murder of their father. We now, are permanent guardians of these kids, after nearly a year and a half of search and court hearings. God is Great.

E.R. Andrew
Chairman

What's Happening at the Standard Contract Committee

The Contract Committee is making great strides in the development of a standard residential contract and related addenda for use by real estate licensees statewide. It is our hopes that one contract will bring about a common understanding for both licensees and the public in relation to the real estate transaction and thereby streamline the process and eliminate misunderstandings.

It is commonplace for the Commission to see various contracts that lack proper disclosures and contract provisions that are necessary for the

protection of both the consumer and licensee.

The membership of the committee consists of: Commissioners John Mosley, Chairman (Chickasha,) Martin VanMeter (Durant,) and John Snodgrass (Oklahoma City) Note: Beginning June 2003 Bud Engstrom (Tulsa) will replace John Snodgrass; Attorneys R. Victor Kennemer (Wewoka,) Stan McKay (Oklahoma City,) and Robert Nichols (Tulsa); and Association of Realtor members Sam Rader (Tulsa,) Barbara Morton

(Tulsa,) Carolyn Rodgers (Duncan,) John Scherler (Lawton,) and Jean Thornton (Oklahoma City.)

The Committee has been meeting almost every month and sessions have been lasting all day. Membership on the Committee requires extreme dedication and commitment and the current members are to be applauded.

The Commission will keep you advised of the Committee's progress and implementation of a residential contract.

A Note from the Education Program Director Connie Miller

Education is the necessity for a successful business.

Even though I find change an exciting challenge; others react differently to change. It is as though they work in a box that has boundaries and they can't seem to get past the boundaries. It's like the world is flat and if they pass that boundary they will fall off the face of the earth.

Today the pace of the industry is so much faster than in the past that if licensees don't keep up with the changes, they will fall off the face of the earth. Technology has become more complex and real estate is an ever-changing business. Liability has increased and laws are continually changing in our business. Computers are used for our web sites, listing and selling information, client search, and even on-line licensing in some states. (Oklahoma is working towards on-line licensing for the very near future.)

How does a licensee survive in these ever changing times? The learning process can never stop and many licensees realize that they must keep the process of learning on going.

In 1981, the Oklahoma Real Estate Commission began their continuing education program and has kept the program current with industry changes. In July 2002, the Commission made new changes to the continuing education requirements by identifying certain courses as required/core course. The number of continuing education has not changed; they remain 21-clock hours. However, the new change requires 12 clock hours of core material with at least one course in each of the 4 core subjects (Fair Housing, Professional Conduct, Broker Relationships, and Hot Topic.) The remaining 9 clock hours may be elective courses.

The Commission often receives questions as to what are the elective courses that must be taken. The remaining 9-clock hours may be either required/core or elective. The one thing to remember is, don't duplicate a course during the license period and don't start new classes for the next license period in the same month your license renews. Your renewal form and fees are due by the 10th of the month and you have until the end of the month to complete your education. Licensees that pay after the 10th of the month will be charged a late penalty. Don't wait until the last minute to complete your continuing education. (The Commission is working towards licensees being able to look up their CE on-line.)

Have you ever attended a Commission meeting? Did you know you could receive 3-clock hours of required/core continuing education by attending a Commission meeting? Did you know you could learn new and upcoming happenings, education events, new licensing requirements or changes, and disciplinary action taken against licensees?

Investigators' Clues

Sherry L. Kueffler, Chief Investigator
Chuck Melton, Investigator

- **After notification of a complaint being filed, all licensees whose name appear on the letter are required to submit an adequate written response within 15 days.** This includes branch office brokers and managing brokers. Failure to do so is a violation of the Licensing Code and Rules.
- **Team names are permitted for use by associates.** However, when advertising the team name, the names of the team member associates must be included near the team name reference and cannot be construed as a company name. Also, remember that the broker's reference must be prominent, conspicuous and easily identifiable by the public. Note: Any unlicensed assistant must be identified as such.
- **Nicknames must be registered at the Commission** if they are used during the course of real estate business. Also, if a middle name is used to reference a licensee, it must also be registered.
- **A licensee must disclose his/her broker relationship to a tenant or landlord.** This may be done in the lease or may be disclosed in a separate form. Refer to Sections 858-351 - 858-363 for what must be included in the disclosure.
- **There have recently been numerous complaints filed by the public due to the failure of the licensee to reduce an offer to writing** and they have resulted in disciplinary action.

Recent Broker Relationships Violations

The most common violations are:

- Failing to describe and disclose, in writing, the broker's role to the party while acting as a transaction broker without a written agreement. (Brokers believe that nothing is required in writing if they provide services as a transaction broker without a written agreement. They only comply with the confirmation aspect as indicated in 858-356(E.) They must also comply with 858-356(A.)
- Failing to describe and disclose, in writing, the broker's role to the party while acting under either relationship. (Same as above. The confirmation is in the contract; however the written disclosure describing and disclosing the broker's role to the party is absent.)
- Failing to comply with any provision of broker relationship requirements.
- Acting as a single-party broker after disclosing they are working as a transaction broker or vice versa.
- Associates referring to themselves as brokers.

Rule Amendments to Become Effective July 1, 2003

Following are rules that were adopted by the Real Estate Commission on March 12, 2003. The rules were submitted to the Governor and Legislature for consideration and approval was obtained, and will become effective on July 1, 2003.

Underlined language represents new language. Words that are hyphenated through indicates language that is being deleted. Three asterisks indicate that existing language appears before or after the asterisk; however, the language was not changed and therefore does not appear in this listing.

Please visit our web site at www.orec.state.ok.us for a revised License Code and Rule booklet on or after July 1. If you have any questions about the rules, please contact our office.

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION CHAPTER 1. ADMINISTRATIVE OPERATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

605:1-1-4. Operational procedures

(g) Contract Forms Committee.

(1) The contract forms committee is required to draft and revise residential real estate purchase contracts and any related addenda for standardization and use by real estate licensees (Title 59 O.S. 858-208 {14}).

(2) The committee shall consist of eleven (11) members. Three (3) members shall be appointed by the Oklahoma Real Estate Commission; three (3) members shall be appointed by the Oklahoma Bar Association; and five (5) members shall be appointed by the Oklahoma Association of Realtors, Incorporated.

(3) The initial members' terms shall begin upon development of the forms and each member shall serve through the effective date of implementation of form(s) plus one (1) year. Thereafter, the Oklahoma Real Estate Commission shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years; the Oklahoma Bar Association shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years and; the Oklahoma Association of Realtors, Incorporated shall appoint two (2) members for one (1) year, two (2) members for two (2) years, and one (1) member for three (3) years. Thereafter, terms shall be for three (3) years and each member shall serve until their term expires and their successor has been appointed. Any vacancy which may occur in the membership of the committee shall be filled by the appropriate appointing entity.

(4) A member can be removed for just cause by the committee.

(5) Each member of the committee shall be entitled to receive travel expenses essential to the performance of the duties of his appointment, as provided in the State Travel Reimbursement Act.

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

SUBCHAPTER 1. GENERAL PROVISIONS

605:10-1-2. Definitions

When used in this Chapter, masculine words shall include the feminine and neuter, and the singular includes the plural. The fol-

lowing words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Broker” means a sole proprietor, corporation, managing corporate broker of a corporation, association, managing broker member or manager of an association, partnership, or managing partners of a partnership and shall be one and the same as defined as a broker in Section 858-102 of the Code and whom the Commission shall hold responsible for all actions of associates who are assigned to said broker.

“Inactive status” means a period in which a licensee is ~~restricted~~ prohibited from performing activities which require an active license.

605:10-1-4. Returned checks-disposition

(a) All fees are received subject to collection. Payment of a fee to the Commission with a dishonored check shall be prima facie evidence of a violation of Title 59, Section 858-312, ~~subsection 8.~~

(b) If the Commission receives a check that is dishonored upon presentation to the bank on which the check is drawn, a returned check fee of Thirty-five Dollars (35.00) will be charged. ~~and~~ If such payment is for fees, or other amounts due the Commission, and the check is not replaced within ~~ten (10) days~~ the specified time frame as determined by the Commission, such request shall be deemed incomplete and the transaction null and void.

(c) Other services may be delayed or denied if a check is dishonored upon presentation to the bank on which the check is drawn.

SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

605:10-7-1. ~~Receipt of license~~ License issuance

No real estate ~~broker or sales associate~~ licensee shall begin operations in the real estate business without first having ~~actu-~~ ally been issued his or her numbered license certificate. This includes all original licenses, activations, reinstatements and all license types being changed from an associate to a broker or branch office broker, as defined in the rules.

605:10-7-8.2. Association licensing procedures and requirements of good standing

(a) **Broker license requirement.** Each association who performs activities which require a real estate license pursuant to Title 59, O.S., Section 858-102 of the License “Code” shall apply as a real estate broker. Upon approval by the Commission, the association shall be granted a real estate broker license. In order to obtain a license, the association shall furnish to the satisfaction of the Commission, but not limited to, the following items:

(1) Completed application form(s) and required fee(s).

(2) Verification that the association is authorized to transact business as a association in the State of Oklahoma and that the association is in good standing in the State of Oklahoma.

(3) Association must be in compliance with Title 59, O.S., Section 858-312.1 of the License “Code”.

(4) Association must have a managing member or manager who holds a separate license as a real estate broker.

(5) The designation of a managing broker member or manager shall be established by sworn statement signed by an authorized member or manager of the association stating the date and place such action was effected.

(6) In the event of the death, disability, retirement or cessation of employment for any reason of the managing broker member or manager, the association shall be required to appoint a new managing broker member or manager within three (3) working days of the occurrence of such event, and such notice of change must be filed in the Commission office no later than five (5) working days of the occurrence of the event. The notice of change in a managing broker member or manager must be accompanied by the appropriate documents as required by the Commission and a Twenty-five Dollar (\$25.00) change of status fee.

(b) **Association and managing broker member or manager responsible for acts.** The managing broker member or manager in conjunction with the association is responsible for all acts of the association, including the acts of all associates associated with the association.

* * *

SUBCHAPTER 9. BROKER'S OPERATIONAL PROCEDURES

605:10-9-1. Place of business

(a) **Requirements.** Each broker shall maintain a specific place of business, ~~which shall be available~~ and supervise a brokerage practice which is available to the public during reasonable business hours. Each broker shall be available to manage and supervise such brokerage practice and comply with the following:

(1) The broker's license, as well as those of all licensees associated with the broker, must be prominently displayed in such place of business.

(2) The office shall consist of at least one enclosed room or building of stationary construction wherein negotiations and closing of real estate transactions of others may be conducted and carried on with privacy and wherein the broker's books, records and files pertaining to real estate transactions of others are maintained.

* * *

605:10-9-4. Advertising

* * *

(b) **Associates advertising.**

(1) An associate is prohibited from advertising under only his or her name.

(2) All advertising by an associate must be under the direct supervision of his or her broker.

(3) In all advertising, the associate must include the name of his or her broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable by the public. If allowed by a broker, an associate may include in the advertisement:

(A) The associate's personal insignia of which such approval is to be maintained by the broker and which cannot be construed as that of a company name.

(B) The associate's personal nickname or alias which must be registered at the Commission prior to its use and which cannot be construed as that of a company name.

(C) An associate's contact information.

(D) A team name so long as all of the name(s) names of all of the associate(s) associate team members is are included near the team name reference, and which cannot be construed as that of a company name; ~~and however~~, in the case of personal business cards, inclusion of

all associate team members' names shall not be required; and

(E) A slogan which cannot be construed as that of a company name.

(4) A sign rider with the associate's contact information may be attached to a yard sign if the sign contains the name or trade name and office telephone number of the broker.

(5) Open house or directional signs used in conjunction with broker's signs do not have to contain the name or trade name of the associate's broker and broker's telephone number.

* * *

SUBCHAPTER 11. ASSOCIATE'S LICENSING PROCEDURES

605:10-11-2. Associate licenses

* * *

(b) **Broker refusal to release associate.** In the event a broker refuses or for any other reason will not release an associate, the associate shall notify the broker by certified mail of the disassociation and furnish the Commission a sworn statement that the notification has been served on the broker. If a ~~principal~~ broker, when requested to release an associate or when notified by certified mail of the disassociation by an associate, is of the opinion that the association has not been terminated and he prevails in court over such associate, the ~~principal~~ broker may file a request with the Commission for a hearing to determine whether or not the associate should be disciplined. In such a filing, the complaining ~~principal~~ broker must show cause in the form of a copy of the court order directing a verdict in ~~his~~ their favor.

* * *

SUBCHAPTER 15. DISCLOSURES

605:10-15-4. Residential Property Condition Disclosure Act forms

(a) **Development and amendment of forms.** In accordance with Oklahoma Statutes, Title 60, Section 833 the Commission shall develop and amend by rule the forms for the Residential Property Condition Disclosure Statement and Residential Property Condition Disclaimer Statement. Effective ~~January 1, 1999~~ July 1, 2002, the disclosure statement is amended and all disclosure forms executed prior to ~~January 1, 1999~~ July 1, 2002 will remain in force and valid until expiration of the 180 days from the date noted thereon.

* * *

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

605:10-17-1. Commissions and disputes

(a) The Commission shall not establish the rate of commissions to be charged for real estate services and shall have no interest therein.

(b) ~~The Commission shall not be used as a Board of Arbitration to determine disputes between licensees or clients, or between any two of them.~~ At its discretion, the Commission may dismiss or postpone any investigation or hearing which essentially involves a ~~private~~ dispute not affecting the public interest until or unless such dispute is resolved.

(c) The Commission shall entertain a complaint against a broker charging a violation of subsection 18 of Section 858-312 of this "Code" only if the complaining licensee submits with his or her complaint evidence that a court of competent jurisdiction has ruled in his or her favor relative to the subject and awarded judgment against the broker.

OKLAHOMA REAL ESTATE COMMISSION

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PRESORTED STANDARD
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If you have a license with an expiration date of May 31, 2005 and before, you have a continuing education requirement of 9 required and 12 electives.

If you have a license with an expiration date of June 30, 2005 and thereafter, you have a continuing education requirement of 12 required and 9 electives, of which the required hours consist of core subject matter.

IMPORTANT

Record of Continuing Education Hours

NOTE: If you are a Provisional Sales Associate, the CE requirement does not apply to you, because you are required to complete a Commission approved 45 clock hour post-licensing course prior to the expiration date of your license.

The address label above contains information regarding the number of hours we have recorded for you in each category—“R” denotes required hours and **“E” denotes elective hours. The center date reflects the expiration date of your current license term.**

If your license is on an **inactive status**, it is possible that these hours may only be applied toward activation of your license.

* This label only reflects hours which were posted to your record prior to the label being extracted, which occurred approximately 30 days prior to the current date.

Rules continued from page 5

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:

* * *

(8) Failure of the licensee to inform the buyer and seller at the time the offer is presented that he or she will be expected to pay certain closing costs, ~~such as discount points, brokerage service costs,~~ and approximate amount of said costs.

(9) ~~Failing~~ 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.

(10) Failure to reduce a an ~~bona fide~~ offer to writing, ~~where~~ when a proposed purchaser requests such offer to be submitted.

(11) Failure to submit all ~~written~~ bona fide offers to an owner when such offers are received prior to the seller accepting an offer in writing.

(12) Any conduct in a real estate transaction which demonstrates bad faith or incompetency.

(13) ~~Failing~~ Failure to act, in marketing his or her own property, with the same good faith as when acting in the capacity of a real estate licensee.

(14) An associate who does not possess the license of a broker or branch office broker as defined in the rules, but is intentionally acting in the capacity of a broker or branch office broker.

(15) Discouraging a party from obtaining an inspection on a property.

(16) Allowing access to, or control of, real property without the owner’s authorization.

Appendix B. Residential Property Condition Disclaimer Statement Form—only amendment is the Commission’s address which changed from 4040 N. Lincoln to 2401 N.W. 23rd Street, Suite 18.

This publication, printed by The University of Oklahoma Printing Services, is issued by the Oklahoma Real Estate Commission as authorized by Anne M. Woody, Executive Director. 20,000 copies have been prepared and distributed at no cost to the taxpayers of the State of Oklahoma. The entire cost of preparing this publication has been borne by the Real Estate Licensees through their Education and Recovery Fund Fees. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.