

BROKER IN CHARGE 2020

15-hour Required Course Approved by the Oklahoma Real Estate Commission (OREC) for broker and sales associate licensees.

THIS COURSE is for real estate licensees to become more competent and remain qualified to engage in real estate activities for which they are licensed. It is focused on current information regarding new and/or changing laws and regulations which affect the real estate business, as well as facts and concepts about which licensees must be knowledgeable in order to safely and confidently conduct real estate negotiations and transactions. Participants will expand and enhance their knowledge and expertise to be continually effective, competent, and ethical as they practice real estate.

INSTRUCTOR: Joyce Painter

ANY LICENSEE may complete the Broker in Charge course in lieu of the required subject matter. However, all Brokers must successfully complete the Broker in Charge course as approved by the OREC consisting of 15 clock hours. Additionally, to fully complete the continuing education requirement of 21 clock hours a broker must also complete at least two of the six required subject matter topics, equal to at least six clock hours. Each licensee must provide evidence of completion of 21-clock hours of OREC approved subject matter. [OREC Rule 605:10-3-6]

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Course Objectives

This course incorporates the recommended syllabus developed by the Oklahoma Real Estate Commission as a 15-hour course. It is used in conjunction with the Oklahoma Real Estate Commission (OREC) Code and Rules Booklet. The OREC Code & Rules booklet is the source of legal definitions and statutory citations; it serves as the authority for any questions which arise during this course.

Upon completion of this course, the participant is expected to:

1. Know five responsibilities required of a managing broker under the OREC Code and Rules.
2. Name the four licensing options for operating a real estate brokerage firm in Oklahoma.
3. Identify three prohibited dealings listed in the License Code and Rules.
4. Select three advertising and/or marketing examples prohibited by the OREC License Code and Rules.
5. Know the disclosures required in Oklahoma for residential real estate sales.
6. Understand Oklahoma law regarding trust accounts; and proper handling of earnest money
7. List three leadership characteristics and explain how each applies to real estate brokerage management.

INTRODUCTION

The sponsoring broker accepts a huge responsibility in terms of day-to-day management of people, as chief guardian of the company's reputation, risk manager and overseer of the entire organization's success. The broker is the leader, the mentor, the one who sets an example for the entire organization. The broker must set policies regarding real estate transactions and how they are handled within the firm; is liable for all trust funds collected and must ensure they are deposited promptly and remain secure.

Legal liability and risk management may be the most important concern a broker will face. The ability to recognize and deal with situations that most frequently result in litigation is a pressing challenge encountered daily. The sales associates are key to a company's success, and to risk prevention.

One of the most important skills of a managing broker is to recruit agents and retain existing ones. Rather than selling property, they are resolving problem issues with clients, agents, transactions and providing training; all while overseeing the running of the office. It is more than an administrative function. Brokers also set the vision, tone and culture of the organization.

OKLAHOMA REAL ESTATE CODE AND RULES

The OREC Code and Rules Book is the Oklahoma law (code) and contains rules developed by the Oklahoma Real Estate Commission to carry out its mission as a state regulatory agency. The Oklahoma Real Estate License **Code** is found in Title 59 of the Oklahoma Statutes. Title 59 contains statutes for Professions and Occupations. Our statutes begin at Section 858-101 and end at 858-605. Since these represent the law of Oklahoma, they can only change through the

legislative process. The **Rules** begin at Title 605 and continue through page 66. At end of booklet you will find the most current version of the Residential Property Condition Disclosure Statement.

CURRENT HOT TOPICS

Coming Soon Listings

Generally, 'coming soon' refers to properties that are listed and filed with the MLS, even though the property is not available for showing and/or purchase for a specific period.

Coming soon can be a legitimate advertising technique. It allows the owners more time to clean, make repairs or otherwise ready the property for showing or sale. A legitimate 'coming soon' complies with state law, MLS rules and NAR's Code of Ethics. On the other hand, illegitimate 'coming soon' listings can be used to circumvent state laws, the MLS, to market the property to a select group of buyers, or to ensure the buyer uses the listing broker for the transaction.

Proper Coming Soon Listings:

1. Are only for properties under a signed listing agreement.
2. Comply with all state licensing laws and regulations.
3. Have a compelling reason that this tactic is in the best interest of the client.
4. Have the client's informed consent in a thoroughly documented written agreement.
5. Restrict showings and bids equally to all potential buyers.
6. Comply with MLS rules.

Improper Coming soon Listings

1. Are not in the seller's best interest.
2. Are made without the seller's permission or consent.
3. Have no logical or reasonable reason to be marketed in this way.
4. Have no signed listing contract.
5. Are actively shown only to select groups of buyers.
6. Accept offers.
7. Compel sellers to accept offers from a buyer who is represented by the seller's own agent.

Wire Fraud and Cybersecurity

Technology has dramatically increased the amount of consumer data collected and used by real estate businesses. Several recent high-profile data breaches coupled with a high rate of identity theft crime has made data security and consumer privacy a hot issue for the real estate industry.

REALTORS® strongly support efforts to protect consumers' sensitive personal information. The REALTOR® code of Ethics and Standards of Practice explicitly acknowledge a REALTOR's® obligation to preserve the confidentiality of personal information provided by clients in the course of any agency or non-agency relationship—both during and after the termination of these business relationships.

For example: A hacker will break into a licensee's e-mail account to obtain information about upcoming real estate transactions. After monitoring the account to determine the likely timing of a close, the hacker will send an e-mail to the buyer, posing either as the title company representative or as the licensee. The fraudulent e-mail will contain new wiring instructions or routing information and will request that the buyer send transaction-related funds accordingly. Unfortunately, some buyers have fallen for this scheme, and have lost money.

Best Email

Practices:

Unsecure email accounts are open doors to cyber criminals. Follow these guidelines to help keep that door securely shut and locked tight.

1. Whenever possible, avoid sending sensitive information via email.
2. If you must send sensitive information via email, make sure to use encrypted email.
3. Never trust contact information in unverified emails.
4. If an email looks even slightly suspicious, do not click on any links in it, and do not reply to it.
5. Clean out your email account regularly. You can always store important emails on your hard drive.
6. Do not use free WIFI to transact business.
7. Avoid using free email accounts for business.
8. Use strong passwords.
9. Change your password regularly.

Best Transaction Practices: Real estate transactions require flurries of information between numerous parties. This makes for primetime opportunities for fraudsters. How do you secure your deal?

1. From the very start of any transaction, communicate and educate. Get all parties to the transaction up to speed on fraud “red flags,” and make sure everyone implements secure email practices.
2. When wiring money, the person doing the wiring should pick up the telephone and call the intended recipient of the wired funds immediately prior to sending the funds in order to verify the wiring instructions.
3. Remember to use only independently verified contact information.


Short-Term Rentals

1. The right to rent is a core property right.
2. Renting is a residential use.
3. How can you help investor clients who want to acquire short term rentals?
4. HOA covenants and neighborhood restrictions.
5. Oklahoma City 2019 city ordinance.

Wholesaling Real Estate in Oklahoma

Wholesaling real estate is often marketed by unscrupulous persons a way to get rich in real estate without having to invest any money of your own.

WIRE FRAUD ADVISORY #519 (Page 1 of 1)


MASSACHUSETTS ASSOCIATION OF REALTORS®

Buyers and sellers need to exercise extreme caution when wiring funds in real estate transactions. Criminals/hackers target email accounts of real estate brokers and salespersons as well as other parties involved in real estate transactions, including mortgage brokers, closing attorneys, and title agents. In many cases, they have been able to intercept emailed wire transfer instructions, obtain account information and, by altering some of the data, use emails to redirect the funds to a different account. These emails are convincing and sophisticated and may look like legitimate emails from parties in the transaction.

In every real estate transaction, Buyer and Seller are advised to:

- Never wire funds without personally speaking with the intended recipient of the wire to confirm the routing number and account number.
- Verify that the contact information for the wire transfer recipient is legitimate. Buyer and seller should each call using a phone number that has been independently obtained, not the phone number contained in the email containing the wiring instructions.
- Never send personal information such as social security numbers, bank account numbers and credit card numbers, unless it is through secured/encrypted email or personal delivery to the intended recipient.
- Take steps to secure the system you are using with your email account such as using strong passwords and secure WiFi.
- If you suspect that you have been victimized by wire fraud, immediately contact the Boston FBI field office at 857-386-2000 or file a complaint online at www.ic3.gov.

If you believe you have received questionable or suspicious wire transfer instructions, immediately notify your bank, the escrow agent, and your real estate professional.

For example: the wholesaler finds a house for sale in which the seller has equity and prefers to sell in its 'as-is' condition. Wholesaler agrees to buy the property from the seller and both parties sign a purchase agreement (in which the wholesaler has inserted an assignment clause). A simple example might go this way: the wholesaler agreed to buy the house for \$50,000 using the contract which included the assignment clause; he then markets the contract to an investor/buyer for \$60,000. When the investor agrees to buy the house from the wholesaler through the assignment of the contract, she then steps into the shoes of the wholesaler and takes over the contract. When the sale is closed, the seller will receive \$50,000; the wholesaler will receive \$10,000; and the investor/buyer will receive the house.

Wholesaling real estate in Oklahoma is fraught with misunderstanding, legal liability and other difficulties. Frequently the result of a wholesaling transaction is financial harm to a member of the public. This may bring litigation and complaints to the Oklahoma Real Estate Commission. Since the law is unclear in many areas of this subject, and the Real Estate Commission is tasked with protecting the public, licensees should consult legal counsel before taking on wholesaling as part of a business plan.

A wholesaler may be guilty of violating Oklahoma law. There is no clear answer that provides certainty for wholesalers doing business in Oklahoma. The best way to assist a client interested in this kind of transaction is to recommend legal counsel before the purchase.

LICENSE EXCEPTIONS

CODE: §858-301

It shall be unlawful for any person to act as a real estate licensee, or to hold himself or herself out as such, unless the person shall have been licensed to do so under this Code. However, nothing in this section shall:

1. Prevent any person, partnership, trust, association or corporation, or the partners, officers or employees of any partnership, trustees or beneficiaries of any trust, association or corporation, from acquiring real estate for its own use, ..., from selling, renting, leasing, exchanging, or offering to sell, rent, lease or exchange, any real estate so owned or leased, or from performing any acts with respect to such real estate when such acts are performed in the regular course of, or as an incident to, the management, ownership or sales of such real estate and the investment therein;
2. Apply to persons acting as the attorney-in-fact for the owner of any real estate authorizing the final consummation by performance of any contract for the sale, lease or exchange of such real estate;
3. In any way prohibit any attorney-at-law from performing the duties of the attorney as such, nor shall this Code prohibit a receiver, trustee in bankruptcy, administrator, executor, or his or her attorney, from performing his or her duties, or any person from performing acts under the order of any court, or acting as a trustee under any trust, will agreement or deed of trust;
4. Apply to any person acting as the resident manager for the owner or an employee acting as the resident manager for a licensed real estate broker managing an apartment building, duplex, apartment complex or court, when such resident manager resides on the premises and is engaged in the leasing of property in connection with employment of the resident manager;
5. Apply to any person who engages in such activity on behalf of a corporation or governmental body, to acquire easements, rights-of-way, leases, permits and licenses, ...or facilities related to, transportation, communication services, cable lines, utilities, pipelines, or oil, gas, and petroleum products;

6. Apply to any person who engages in such activity in connection with the acquisition of real estate on behalf of an entity... which has the right to acquire the real estate by eminent domain;
7. Apply to any person who is a resident of an apartment building, duplex, or apartment complex or court, when the person receives a resident referral fee. As used in this paragraph, a "resident referral fee" means a nominal fee not to exceed \$100.00, offered to a resident for the act of recommending the property for lease to a family member, friend, or coworker;
8. Apply to any person or entity managing a transient lodging facility. "transient lodging facility" means a furnished room or furnished suite of rooms which is rented to a person on a daily basis, not as a principal residence, for a period less than thirty (30) days; or
9. Apply to employees of a licensed real estate broker to lease residential housing only to eligible persons through a state/ federal housing subsidized program ...in an affordable housing development project. "Affordable housing development project" is a housing development of four or more units for lease to

specifically eligible persons... including, but not limited to, the U.S. Department of HUD, the U.S. Department of Agriculture Rural Development, the U.S. Department of Treasury Internal Revenue Service, or the Oklahoma Housing Finance Agency.

ACTIVITIES THAT REQUIRE A REAL ESTATE LICENSE	
<ol style="list-style-type: none"> 1. Paid a percentage or share of a commission. 2. Showing property. 3. Soliciting listings. Includes "For Sale by Owner," expired listings and all other personal contact forms of soliciting for listings. 4. Securing listings. Shall include: <ol style="list-style-type: none"> a. Listing presentation. b. Assistance in pricing by presenting and interpreting Competitive Market Analysis (CMA). c. Provision of market information and data which may indicate value and suggestion regarding value (but shall not be an advocate for either party). d. Prepare and present estimate of costs to seller. e. Negotiating with seller. f. Explaining the listing agreement. g. Obtaining the seller's signature. 5. Soliciting prospective buyers; includes all forms of personal contact soliciting. 6. Securing sales. Shall include: <ol style="list-style-type: none"> a. Interviewing buyers. b. Assisting or working for the benefit of a buyer. c. Showing property; includes holding Open Houses. d. Negotiating with buyers. e. Preparing and presenting estimate of costs to buyer. f. Preparing offer to purchase. g. Preparing purchase contracts. h. Presenting and/or explaining purchase contract. i. Obtaining signature of parties to contract. j. Presenting and negotiating offers and counteroffers to buyer and/or seller. 7. Securing lease or rental agreements. Includes all activities named in activity #4 above, with tenants. 8. Real property management, both residential and commercial. Shall include: <ol style="list-style-type: none"> a. All personal contact forms of soliciting. b. Negotiating with tenant. c. Securing leases and/or rental agreements. d. Preparing documents and obtaining signatures. 	

BROKERAGE LICENSING OPTIONS

When you start a business one of the first things to decide is which business structure your business will take. Each structure offers different combinations of tax advantages, liability protection, and other unique advantages.

Two important topics to consider when forming a business are taxation and personal liability. Liability refers to how personally responsible you are for your business' debts and obligations. If you are fully liable for your business's debts your personal assets such as property or savings, can be used to settle outstanding business debts.

TRADE NAMES

Each licensed broker or entity must register in writing to the Commission all trade names used in connection with real estate activities prior to the trade name being advertised or displayed in any way. Further, each broker is to notify the Commission in writing of all deleted or unused trade names

"Trade name" means the name a firm is to be known as and which is used in advertising by the firm to promote and generate publicity for the firm. The Oklahoma Real Estate Commission (OREC) does not license trade names. OREC does license sole proprietors, corporations, associations/ limited liability companies (LLCs) and partnerships. A brokerage firm must register with the Commission all trade names used by the firm. A trade name can be registered with the Oklahoma Secretary of State's office to protect the name from being used by someone else. Check to make sure the name you want is not already registered by accessing the Secretary of State's Business Database. If it is not in use, register it yourself with the Oklahoma Secretary of State so another business can't use the name.

Rule 605: 10-9-3

1. Sole proprietorship Using Trade Name
 - a. Example: John Adams wants to conduct his real estate business as John Adams Realty and ABC Realty. These two names are trade names and Mr. Adams must register them with OREC prior to using them for his real estate business. Also, he needs to check with the Secretary of State to ensure that no one else is using the names he has selected. Mr. Adams may also want to register the names with the Secretary of State's office so that no one else can use the names he has selected.
2. Corporation Using Trade Name
 - a. Example: Rich Realty, Inc., a corporation licensed through OREC does not want to use their licensed name (Rich Realty, Inc.) but wants to do business as Adam Realty and as Rich Realty & Property Management. The corporation must register with the OREC the trade names of Adam Realty and Rich Realty & Property Management.
3. Use of the term 'agent' or 'agency' within a trade name is permitted; Oklahoma law does not allow any broker to offer agency in real estate activities.

§858-361.

TRADE NAMES VS. TEAM NAMES: A team is defined by OREC [as of November 1, 2017] as two or more licensees working together and under the supervision of the same broker. A team is not licensed yet is made up of two or more individual licensees.

1. A team name must be approved by the broker and registered with the OREC prior to its use.
2. Team name may not be a registered entity with the Oklahoma Secretary of State, such as an LLC or an association.
3. A trade name is a name that has been registered with the Oklahoma Secretary of State as another name under which the entity will conduct business; e.g., such as what is commonly known as a “dba.”
4. Any entity conducting licensable real estate activities must hold an active real estate license.

NAME CHANGE

Any change of name of a licensee or licensed firm must be filed in the Commission office within ten (10) days of such change. Filed shall mean the date of the United States postal service postmark or the date personal delivery is made to the Commission office. The licensee or firm shall return the license certificate to the Commission office along with the request for such name change. Upon any request for a change of name there shall be paid a fee to the Commission of Twenty-five Dollars (\$25.00) for each license to be changed. The Commission may require additional documents as may reasonably be required by the Secretary-Treasurer.

Changing a trade name is an exception to this rule; however, to begin use of a trade name or to discontinue one requires registration with the real estate commission.

Rule 605:10-7-5.

ENTITIES

The following Brokerage license types are referred to as entities by OREC: (a) Corporation, (b) Partnership, and (c) Association [Limited Liability Company, LLC].

For an entity to operate and hold itself out as engaged in licensed real estate activities, the entity must obtain a real estate license. Further, for an entity to operate, there must be a human sponsoring person (not a corporation), an actively licensed broker, or in the case of a partnership, two or more actively licensed brokers who are responsible for the acts of the licensed entity.

The issuance of two licenses is required to license an entity: one for the entity and one for the sponsoring broker. Each license renewal is on its own license cycle and they may not occur at the same time, so it is important to pay special attention to each for license renewal dates. If one license expires, whether it is the sponsoring broker or entity, it will cause all licenses associated with the company to go on inactive status until such time as license is reinstated. In this event, all licensed activity must cease until such time as the licenses are actively reinstated.

CORPORATION

A corporation is a sole legal entity created under state laws of incorporation. Although it is an association of one or more persons (as stockholders), a corporation is regarded as having an existence and personality of its own. Corporations enjoy most of the rights and responsibilities that an individual possesses; that is, a corporation has the right to contract, loan and borrow money, sue and be sued, hire employees, own assets and pay taxes.

One of the major disadvantages of a corporation is that profits are taxed twice: once at the corporate level (before dividends are distributed) and again as dividends are distributed to the stockholders. The most important aspect of a corporation is limited liability. That is, shareholders have the right to participate in the profits, through dividends and/or the appreciation of stock, but are not held personally liable for the company's debts. Corporations are often called "C Corporations."

S Corporation (S Corp) is a variation of a corporation within Subchapter S of the IRS Code. The S Corp offers many of the same advantages of a C Corp and overcomes one of the major disadvantages, the double taxation. Corporate income, losses, deductions, and credit are 'passed through' directly through to the stockholders. They, rather than the S Corp, pay taxes (or deduct losses) on their personal tax returns. In other words, an S Corp is treated in the same way as a partnership for tax purposes. As to legal liability, personal assets of shareholders are protected by the structure of an S Corp. No shareholder is personally responsible for the liabilities and debts of the business and creditors have no claim on the personal assets of shareholders. IRS criteria and restrictions may restrict the flexibility of a business and its goals.

In Oklahoma, a corporation must be licensed as a real estate broker prior to conducting business in real estate and/or before receiving a fee, commission or other valuable consideration on real estate transactions. Corporations must be registered at the Oklahoma Secretary of State. The OREC rules require the corporation and the managing corporate broker to be responsible for the acts of the corporation, including the acts of all associates and unlicensed assistants associated with the corporation. The managing member or managing officer must hold an individual license as a real estate broker. The most important aspect of a corporation is limited liability. That is, shareholders have the right to participate in the profits, through dividends and/or the appreciation of stock, but are not held personally liable for the company's debts. Corporations are often called "C Corporations."

OREC rules require the corporation and the managing corporate broker to be responsible for the acts of the corporation, including the acts of all associates and unlicensed assistants associated with the corporation. The managing member or managing officer must hold an individual license as a real estate broker.

To be approved to receive a corporate broker's license, these are required items:

1. Completed application form(s) and required fee(s).
2. Verification that the corporation is authorized to transact business as a corporation in the State of Oklahoma and that the corporation is in good standing in the State of Oklahoma.
3. Corporation in compliance with Title 59, O.S., Section 858-312.1 of the License "Code."
4. Corporation must have a managing corporate broker who holds a separate license as a real estate broker.
5. Designation of a managing corporate broker established by sworn statement signed by the president of the corporation stating the date and place such action was taken.
6. In the event of the death or disability of the managing corporate broker, must appoint a new managing corporate broker file notice of change with OREC office no later than thirty days of the occurrence of the event. Notice of change must be accompanied by appropriate documents with a \$25.00 fee.
7. In the event of the retirement or cessation of employment for any reason of the managing corporate broker, must appoint a new managing corporate broker and file notice of change with OREC office no

later than ten working days of the occurrence of the event. Notice of change must be accompanied by appropriate documents with a \$25.00 fee.

8. Change in corporate officers must be filed with OREC in writing within ten (10) days of the date of a change.

Rule 605:10-7-8.

ASSOCIATE'S CORPORATION: to avoid a violation of OREC Code § 858-312 (14), an associate's corporation or association formed for the purpose of receiving real estate compensation by a broker must abide follow these requirements:

1. The associate's corporation or association shall not perform any act requiring a real estate license and shall not hold itself out as engaged in such activity.
2. The associate must have an active individual real estate license.
3. The broker of the associate must provide OREC a written statement approving the associate's corporation or association.
4. The associate must be the majority stockholder and president of the corporation or majority member of the association.
5. Ownership of an associate's corporation or association is limited to spouses and blood relatives.
6. The associate's corporation or association shall not advertise nor receive referral fees or commissions except from the associate's broker.
7. The broker and associate must submit a signed OREC approved form that includes the following:
 1. A statement that the associate is the majority stockholder and president of the corporation or majority member of the association.
 2. Names and relation of all officers/members and/or stockholders.
 3. Verification that the association or corporation is in good standing with the Oklahoma Secretary of State.

Once an associate's corporation or association is approved by the OREC, commissions earned by the associate may be paid to the corporation or association. Only commissions earned by the associate identified on the approval may be paid to the corporation or association.

Rule 605:10-11-3

PARTNERSHIP

A partnership is an organization formed under the state's Uniform Partnership Act in which two or more co-owners engage in business for a profit. You don't have to file any paperwork to form a partnership—the arrangement begins as soon as you start a business with another person. The law assumes this partnership type to be a general partnership. A person who receives a share of the business is presumed to be a partner of the business. A partnership is an entity distinct from its partners.

1. In Oklahoma, a partnership must be licensed as a real estate broker prior to conducting business in real estate and/or before receiving a fee, commission or other valuable consideration on real estate transactions.
2. A partnership must consist of at least two or more partners who are actively licensed brokers.

3. If a corporation or association is a partner of the partnership a letter must be submitted to OREC acknowledging that the managing member of the association or corporation is responsible for all acts of the partnership, including the acts of all real estate associates.
4. All partners share in the liability and in the responsibility of supervising the acts of the associates
5. The managing partners in conjunction with the partnership entity are responsible for all acts of the partnership, including the acts of all associates associated with the partnership.
6. The partnership is required to be registered at the Oklahoma Secretary of State.

Rule 605:10-7-8.1.

The types of partnerships which may be formed in Oklahoma are listed below:

1. General Partnership (GP): are business entities that allow two or more partners to share revenue and responsibilities. GPs do not offer any protection to the partners from the GP's debts. The partners are jointly and severally liable for the entirety of the business's liabilities.
2. Limited Partnership (LP): Limited partnerships allow limited partners in addition to general partners. Limited partners are not liable for the business's debts beyond their total investment. General partners still bear full liability, even in LPs. LPs and GPs share the same tax structure.
3. Limited Liability Partnership (LLP): A common choice for professionals practicing in high- liability fields, limited liability partnerships shield partners from liability that they aren't responsible for creating themselves. While the exposure to liability may be different and there may be slightly more regulation of LLPs, the tax structure remains like that of GPs and LPs.
4. Limited Liability Limited Partnership (LLLLP): Limited liability limited partnerships combine the LLP and LP into one partnership type. An LLLP offer two layers of liability shielding like an LP, one for general partners who are not liable for partnership debts not of their own creation and one for limited partners whose liability is limited to the amount of their investment.

ASSOCIATIONS (LLCS)

Many brokers see a limited liability company (LLC) form of ownership as an appealing alternative to corporations or partnerships. A limited liability company is essentially a hybrid entity that combines characteristics of a corporation and a partnership or sole proprietorship; While the limited liability feature is like a corporation, and the availability of flow-through taxation to the members of an LLC is a feature of partnerships. Investors in LLCs are members, rather than partners or shareholders, holding membership interests (rather than stock) in the company. An LLC is the only entity that is licensed by OREC as an association.

Each association who performs activities which require a real estate license shall apply as a real estate broker. Upon approval by the Commission, the association will be granted a real estate broker license. In order to obtain a license, the association must furnish to the satisfaction of the Commission, the following items:

1. Completed application form(s) and required fee(s).
2. Verification that the association is authorized to transact business as an association in the State of Oklahoma and that the association is in good standing in the State of Oklahoma.
3. Association must comply 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. 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 taken.
6. In the event of death or disability of the managing broker member or manager, the association shall appoint a new managing broker member or manager and notice of change must be filed in the Commission office no later than thirty (30) working days of the occurrence of the event.
7. In the event of the retirement or cessation of employment for any reason of the managing broker member or manager, the association appoint a new managing broker member or manager and notice of change must be filed in the Commission office no later than ten (10) working days of the occurrence of the event.

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.

Rule 605:10-7-8.2.

SOLE PROPRIETOR

A sole proprietorship is a one-person business that is not registered with the state like a corporation or limited liability company (LLC). Legally, a sole proprietorship is inseparable from its owner. The sole proprietor can be held personally liable for any business-related obligation; this means that if the business doesn't pay a supplier, defaults on a debt, or loses a lawsuit, the creditor can legally come after the broker's personal assets. Since a sole proprietorship and its owner are one and the same, a sole proprietor reports all business income or losses on his individual income tax return.

The sole proprietor must be a licensed broker who is the sole owner of the real estate business and who can sponsor associates. The broker is the person answerable to the OREC for all activities of the company (the owner himself) and all licensed associates.

If the broker operating as a sole proprietorship, becomes disabled and can no longer work, or the broker dies, the sole proprietorship may not be sold except for its name, goodwill, and personal assets, including furniture, office equipment, etc. The real estate assets such as listings, existing contracts, property management agreements, etc., cannot be sold unless the actual agreements contain an assignment clause. Had the broker formed a corporation or association, the business could continue and/or be sold because the real property assets were taken in the name of the entity.

If the company is sold, the new owner must negotiate new agreements. All pending contracts and trust account monies can either be held by the original sole proprietor until proper disbursement; or until proper addenda to contracts are prepared and signed by all parties agreeing to the transfer of contracts and/or monies.

Rule 605:10-7-8.3.

PLACE OF BUSINESS

The form and function of a real estate office is a model of the past that is quickly being recast. Instead of being the go-to work as they have in the past, the office today is a place that supports people wherever they work.

Real estate licensing laws are still rooted in the permanence of a physical office complete with fixed signage, telephones, and the like. Technology drives this trend not only for salespeople but for other company personnel as well. As such, the neighborhood sales office becomes less important than the company's ability to interface with consumers electronically. While real estate companies may have differing policies about mobile officing, the nationwide trend is that the sales office is no longer the salesperson's primary base of operations (except as required by license laws).

Oklahoma's License Code and Rules stipulate that each broker must maintain a specific place of business and supervise a brokerage practice which is available to the public during reasonable business hours.

Each broker must be available to manage and supervise the brokerage practice and comply with the following:

1. Broker's license, as well as those of all licensees associated with the broker, must be maintained in the place of business as registered with the OREC and available upon request.
2. Place of business 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.
3. Each broker shall register for each place of business a physical business address and office telephone number(s).
4. Branch Office. A branch is an extension of the main office located in a different locale. If a broker maintains one or more places of business, each of these additional places are referred to as a branch office. Each associate's license shall be issued to and available upon request in the office to which the associate is assigned whether that be the main place of business or branch office.
5. Office located at residence. The office may be in the residence of the broker.
6. Associates not permitted to have an office. Associates are not permitted to have a place of business but must be registered with a place of business maintained and registered in the name of the broker.
 1. Licenses issued to place of business. All licenses will be issued to the street address of the place of business, unless the United States postal service refuses to deliver mail when addressed in such manner.
 2. Broker may be broker for more than one firm. A broker may be the broker for more than one firm so long as the firms are at the same location.
 3. Broker is responsible for acts of unlicensed assistants. A broker is responsible for all real estate related activities of any unlicensed assistant working within the firm.

Rule 605:10-9-1.

OFFICE IDENTIFICATION

1. Office sign. Each licensed real estate broker holding an active license certificate, except those registered as being associated with a broker shall erect and maintain a sign on or about the entrance of his or her office, and all branch offices, which sign shall be easily observed and read by persons about to enter any of said offices.
2. Specifications of sign. Each sign shall contain the name of the broker or trade name registered with the OREC, and if a partnership, association or corporation, shall contain the name or trade name of the firm.

- The sign must indicate that the party is a real estate broker and not a private party, to include, but not limited to, “company”, “realty”, or “real estate”, as the case may be,
- All in letters not less than one (1) inch in height.
- Legal abbreviations following the trade name or name under which the broker is licensed are acceptable if they are easily identifiable by the public as such.

Rule 605:10-9-2.



THE AMERICANS WITH DISABILITIES ACT

The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else. The ADA is divided into five titles (or sections) that relate to different areas of public life.

TITLE I - EMPLOYMENT

- Helps people with disabilities access the same employment opportunities and benefits available to people without disabilities.
- Applies to employers with 15 or more employees.
- Requires employers to provide reasonable accommodations to qualified applicants or employees. A “reasonable accommodation” is a change that accommodates employees with disabilities so they can do the job without causing the employer “undue hardship” (too much difficulty or expense).
- Defines disability, establishes guidelines for the reasonable accommodation process, and addresses medical examinations and inquiries.

TITLE III - PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

- Prohibits places of public accommodation from discriminating against individuals with disabilities.
- Examples of businesses covered include hotels, restaurants, and libraries, places of education, convention centers, sales establishments (**including real estate offices**), and banks, offices of professionals such as attorneys and CPAs, and **real estate board offices**.
- If a real estate broker or agent has a home office in which business is conducted with customers, that portion of the home must also comply.
- Requires the removal of architectural and communication barriers that are structural in existing facilities where such removal is readily achievable, easily accomplishable and able to be carried out without much difficulty or expense. The obligation to engage in readily achievable barrier removal is a continuing one and should be assessed periodically.

TELECOMMUNICATIONS

The ADA requires businesses and nonprofit organizations that serve the public communicate effectively with people who have communication disabilities. The goal is to ensure that communication with people with these disabilities is equally effective as communication with people without disabilities.

1. Provide auxiliary aids and services when needed to communicate effectively with people who have communication disabilities.
2. The key to communicating effectively is to consider the nature, length, complexity, and context of the communication and the person's normal method(s) of communication.
3. The rules apply to communicating with the person receiving the covered entity's goods or services as well as with that person's parent, spouse, or companion in appropriate circumstances.
4. Covered entities are also required to accept telephone calls placed through TRS and VRS, and staff who answer the telephone must treat relay calls just like other calls. The communications assistant will explain how the system works if necessary.
5. Oklahoma Relay, dial 7-1-1

ACCESSIBLE WEBSITES AND THE ADA

As places of public accommodation, real estate brokers and associations are required to create office spaces free of physical barriers, to provide auxiliary aids to ensure effective communication, and to modify certain policies or practices to accommodate persons with disabilities. However, what is not clear is a business' obligation to create an accessible website. Many businesses, including those in the real estate industry, are now dealing with the question of what, if any, legal obligation they have to make their website accessible under the ADA. For now, there is no definitive answer. The Department of Justice has taken the very broad position that all websites are places of public accommodation.

For a website to be accessible to users with various disabilities, it needs to conform to the Web Content Accessibility Guidelines (WCAG). Ensuring your web content adheres to these internationally recognized standards will deliver a better experience for **all** users, not just those with disabilities.

Below is a checklist of some of the most common things to look for in order to conform to WCAG 2.0 and WCAG 2.1:

- Prioritize simplicity and ease of consumption when creating content in ways that will not sacrifice information or structure
- Provide text alternatives for visual images that communicate relevant information
Provide captions or audio descriptions for videos and audio
- Ensure content is fully accessible using only a keyboard
- Offer markers or other aids to help users understand where they are during the entire experience and find what they need to
- Avoid design layouts that are known to cause seizures
- Programmatically determine the language of the page
- Include form input error identification and description in text format
- Use clean markup languages: elements with start and end tags and are properly nested; maintain unique IDs and attributes

Web accessibility is the inclusive practice of ensuring there are no barriers that prevent interaction with, or access to, **websites** on the World Wide **Web** by people with physical disabilities, situational disabilities, and socio-economic restrictions on bandwidth and speed.

- Enable reflow such that a user need not scroll in two dimensions after enlarging text
- Utilize a 3:1 color contrast ratio for text

The issue of websites as places of public accommodation is far from clear. There is enough case law finding websites to be places of accommodation under the ADA, along with enforcement actions, that real estate practitioners should put this issue on the radar and begin working toward our own website's accessibility.

FAIR HOUSING

ADVERTISING

It is well understood that the Fair Housing Act specifically states that it is against the law to advertise in such a way as to indicate a preference, limitation, or discrimination based on any of the protected classes the statute. Here are a few tips for what that means in practice:

1. It is a best practice that all advertising (including internet sites in addition to flyers, mailings, newspaper ads, magazines, business cards, radio, television, and even word of mouth) contain the Equal Housing Opportunity logo.
2. Offensive phrases, such as "no children, singles preferred, next to a catholic church, and/or perfect for Hispanics", and the like should be avoided.
3. To the contrary, use welcoming phrases such as "quiet residential area, close to parks and recreation, gated community, and/or near many houses of worship."
4. If your ads include photos of human models, make sure you select a variety of people from different national origins and races. Does that mean every picture needs to include someone of every national origin? Of course, not but aim to be inclusive as you develop advertising strategy.
5. As a part of being inclusive run your advertising in media that caters to more than one racial or national origin segment of the population.

ASSISTANCE ANIMALS

The ADA applies to housing programs administered by state and local governments, such as public housing authorities, and by places of public accommodation, such as public and private universities. In addition, the Fair Housing Act applies to virtually all types of housing, both public and privately-owned, including housing covered by the ADA. Under the Fair Housing Act, housing providers are obligated to permit, as a reasonable accommodation, the use of animals that work, provide assistance, or perform tasks that benefit persons with disabilities, or provide emotional support to alleviate a symptom or effect of a disability.

1. FHA. Under the FHA, a disability is defined as a physical or mental impairment which significantly limits a person's major life activities. Even if a lease says "no pets" or restricts pets, landlords are required to make what is called a "reasonable accommodation" to allow pets who serve as assistance animals, which includes animals who provide emotional support.
 - a. The fact that the term "service animal" is often used by landlords and public housing authorities to refer to both service dogs and assistance animals often creates confusion.
 - b. Assistance animals are in a different legal classification than pets who are not assistance animals, which is why pet restrictions and fees are waived for them. They are animals that work, assist and/or perform tasks and services for the benefit of a person with a disability or provide emotional support that improves the symptoms of a disability.

- c. There is no official certification or training for assistance animals, and they can assist in a wide variety of ways. Breed and weight restrictions do not apply to assistance or service animals.
- d. Examples of assistance animals
- A cat who can detect and alerts their companion of oncoming seizures.
 - A dog who alleviates a person's depression or anxiety.
 - A cat who reduces a person's stress induced pain.
 - A bird who alerts their hard-of-hearing companion when someone has come to the door.
- e. Landlords must agree to a reasonable accommodation request if the disability claim is true and if the request does not create a hardship on the landlord or other tenants. Service and assistance animals are not technically pets and owners do not have to pay pet fees. The landlord, however, can charge a security deposit and may still seek money from the tenant if there is any damage caused by the animal to the home. Also, if there is a nuisance issue the landlord does have the right to try to remove the assistance animal through legal proceedings.
2. ADA. Under the ADA, a service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.
- a. The dog must be trained to take a specific action when needed to assist the person with a disability. For example, a person with diabetes may have a dog that is trained to alert him when his blood sugar reaches high or low levels. A person with depression may have a dog that is trained to remind her to take her medication. Or, a person who has epilepsy may have a dog that is trained to detect the onset of a seizure and then help the person remain safe during the seizure.
- b. Emotional support, therapy, comfort, or companion animals are not considered service animals under the ADA. These terms are used to describe animals that provide comfort just by being with a person. Because they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA.
 ...The ADA makes a distinction between psychiatric service animals and emotional support animals. If the dog has been trained to sense that an anxiety attack is about to happen and take a specific action to help avoid the attack or lessen its impact, that would qualify as a service animal. However, if the dog's mere presence provides comfort, that would not be considered a service animal under the ADA.
- c. There are individuals and organizations that sell service animal certification or registration documents online. These documents do not convey any rights under the ADA and the Department of Justice does not recognize them as proof that the dog is a service animal.

What is a Service Dog?

The Americans with Disabilities Act (ADA) defines Service Dogs as dogs that are individually trained to do work or perform tasks for people with disabilities. Some state and local laws define service dogs more broadly than the ADA.)

Service dogs undergo extensive training to perform their jobs.

Service dogs perform a variety of different tasks.

Service dogs are not pets. Do not pet, talk to, or distract a working service dog.

The only types of animals recognized by the ADA as trained to do work/performance tasks for people with disabilities are dogs and miniature horses.

There are different types of service dogs: guide dogs for the blind, hearing dogs, mobility dogs, medical alert dogs, medical assistance dogs, and psychiatric service dogs.

Service dogs can be any breed or size. While larger dogs such as Labradors are commonly used as guide and mobility dogs, smaller dogs can also be service dogs.

Service dogs often (but not always) wear special harnesses or vests with patches identifying them as service, guide, or medical alert dogs.

A service dog is expected to behave in accordance with strict standards, and its handler is expected to adhere to service dog handler etiquette.



Under the ADA, service dogs are allowed access to any place that is open to the public, however can be asked to leave if not under control. A service dog must be accompanying a disabled person in order to be granted access - the ADA protects the rights of the disabled handler, not the dog. (Remember, not all disabilities are apparent to others.)

PROPERTY MANAGEMENT

CHANGE: OKLAHOMA'S LANDLORD AND TENANT ACT

Effective November 1, 2018, Oklahoma enacted a new law (Section 113.2 of Title 41 O.S.) regarding assistance animals. It defines 'assistance animal', establishes procedures for submission of certain requests, authorizes landlords to require tenants to provide documentation of disability when requesting service animal or assistance animal accommodations. This Act also limits liability of landlord for certain injury

- A. As used in this section, "Assistance animal" means an animal that works, provides assistance or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. "assistance animal" includes a service animal specifically trained or equipped to perform tasks for a person with a disability, or an emotional support animal that provides support to a person with a disability who has a disability-related need for such support. Shown below is a copy of the remaining clauses.

B. A person with a disability may submit a request for a reasonable accommodation to maintain an assistance animal in a dwelling pursuant to the Fair Housing Act, as amended, 42 U.S.C., Section 3601 et seq., the Americans with Disabilities Act of 1990, 42 U.S.C., Section 12101 et seq., and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C., Section 701 or any other federal, state or local law. Unless the person making the request has a disability or disability-related need for an assistance animal that is readily apparent, the landlord may request reliable supporting documentation that (1) is necessary to verify that the person meets the definition of disability pursuant to the Fair Housing Act, (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. The landlord may independently verify the authenticity of any supporting documentation. Supporting documentation that was acquired through purchase or exchange of funds for goods and services shall be presumed to be fraudulent supporting documentation.

C. A landlord shall not be liable for injuries by a person's assistance animal permitted on the landlord's property as a reasonable accommodation to assist the person with a disability pursuant to the requirements of subsection B of this section.

D. If a person obtains a reasonable housing accommodation under this section by knowingly making a false claim of having a disability that requires the use of an assistance animal or by knowingly providing fraudulent supporting documentation in connection with such claim, the landlord may remedy the person's noncompliance by the procedures authorized pursuant to the Oklahoma Residential Landlord and Tenant Act in Section 132 of Title 41 of the Oklahoma Statutes. Additionally, a prevailing landlord in an eviction action under this section may be awarded court costs and fees, plus damages not to exceed One Thousand Dollars (\$1,000.00) from the tenant.

SECTION 2. This act shall become effective November 1, 2018.

ANTITRUST LAW AND REAL ESTATE PRACTICE

The word “antitrust” dates from the late 1800s, when powerful companies dominated industries, working together as “trusts” to stifle competition. Laws aimed at protecting competition have long been labeled “antitrust.” Fast forward to the 21st century: we still find “antitrust” in news stories about competitors merging or companies conspiring to reduce competition. The antitrust laws are designed and intended to protect competition and prevent monopolies. The Supreme Court declared that the Sherman Act prohibits only those contracts or combinations that “unreasonably” restrain trade.

The nature of real estate practice makes real estate brokers particularly susceptible to antitrust challenges. Brokers vigorously compete to secure property listings to offer for sale, but they also regularly cooperate with one another. This dual tradition of competition and cooperation, which exists in few other professions, presents frequent opportunities for antitrust misconduct, whether intentional or inadvertent.

PER SE RESTRAINTS

The Supreme Court identified certain types of restraints deemed to be so inherently anticompetitive that their effects on trade are presumed, without a need for the plaintiff to prove, or even introduce evidence of, the restraint’s impact on the market. Such restraints are called *per se* offenses. In a *per se* case, the only issue to be addressed in determining whether a defendant has violated the Sherman Act is whether the defendant participated in the alleged conspiracy.

PRICE [COMMISSION] FIXING

Antitrust problems most frequently arise out of agreements—conspiracies—among competitors that have the purpose or effect of eliminating or restricting competition between the parties to the agreement. A common subject of such agreements is the price or fee each competitor charges its customers for its services. With real estate brokerage firms, this usually means commission rates.

Two *per se* restraints important to real estate brokers

1. Conspiracies to fix prices, such as real estate commission rates, or to fix other terms or conditions of the broker-client relationship.
2. Group boycotts, or concerted refusals to deal with another competitor or with a supplier.

The antitrust prohibition on fixing commission rates means, simply, that two or more real estate firms may not agree on the commission rate that each will charge. Brokers must not agree with others on commission rates and must take care to avoid even implying that they have discussed and/or reached agreement on fees. Salespeople must exercise similar caution to avoid the implication that the firm with which they are affiliated is part of a price-fixing conspiracy. To avoid vulnerability to an antitrust price-fixing claim, real estate firms should:

1. Establish fees unilaterally, without consultation or discussion with persons affiliated with other competing firms.
2. Ensure that when the company’s brokers or salespeople discuss fees with actual or potential clients, they use words that indicate that the services were priced independently.
3. Avoid dangerous words and phrases like the following:
 - “This is the rate everyone charges.”

- “I’d like to lower the commission, but no one else in the MLS will show your house unless the commission is X percent.”
- “Commission rates are pretty standard.”

FIXING COMMISSION SPLITS

Listing brokers should not agree on the commission “split” to be paid to compensate cooperating brokers who produce a buyer for a listed property. Conspiracies among competitors to fix the compensation paid to cooperating brokers can be deemed *per se* illegal.

Brokers must determine their cooperative compensation policies in the same unilateral and independent manner that they establish the commission or fees charged to clients. Listing and selling brokers may, of course, have occasion to discuss or negotiate the compensation they will pay to each other in connection with individual transactions. These negotiations, however, generally take place before an offer to purchase has been procured by the cooperating office; however, this should never include a representative of a third office.

BOYCOTTS

The typical group boycott allegation in the real estate brokerage business involves a claim that two or more real estate firms agreed to refuse to cooperate, or to cooperate on less favorable terms, with a third firm. Often the target of the alleged boycott is a broker that employs a “discount,” “alternative,” or other nontraditional commission/compensation arrangement with clients.

In some cases, targets of boycotts are real estate firms that use nontraditional methods of offering or providing real estate marketing services. The purpose of the boycott, either explicitly or implicitly, is to eliminate the firm as a competitor in the market, or to cause the firm to abandon the discount or alternative strategies. The antitrust laws clearly make such boycotts as these *per se* illegal.

Comments that create inferences of boycott conspiracies include:

- “I bet they’d drop their ‘discount’ program if we told them they couldn’t market or sell our listings.”
- “the MLS accepts ‘entry only’ listings, but most of us think they don’t belong in the MLS at all.”
- “Before you list with XYZ Realty, you should know that nobody works on their listings.”

SUPERVISING AND MONITORING ASSOCIATES

Every business that hires workers must determine whether a worker is an employee or an independent contractor. Brokers and sales associates alike must be clear about the nature of their contractual relationship and operate in compliance with the terms and conditions of a written agreement. In today’s office you are likely to be supervising both employees and independent contractors. Misclassifying workers can result in an avalanche of expensive legal and tax problems. The company can’t have life “both ways,” that is, it can’t enjoy the financial benefits of hiring independent contractors while controlling them as if they were employees.

EMPLOYER / EMPLOYEE

broker may decide that hiring salespeople as employees rather than as independent contractors is best. Although real estate companies use the Independent Contractor (IC) model, some companies choose the employee route, accepting the added employee costs to gain greater control over the sales activities. Generally, these companies have smaller sales forces and are more selective about the about the caliber of the salespeople they hire. A broker choosing this relationship must become fully knowledgeable about employment laws, federal and state.

INDEPENDENT CONTRACTOR STATUS IN REAL ESTATE

A recent wave of litigation is challenging the longstanding practice with the real estate industry of brokers choosing to classify real estate agents as independent contractors as opposed to employees. The outcome of this challenge could potentially have a wide-reaching impact on the manner in which brokers have traditionally done business; as a result, the issue of worker classification has gained the attention and interest of the National Association of REALTORS® and its members. However, the real estate industry is not alone, as the issue of worker classification has been raised in several industries throughout the country, and the Department of Labor has made it clear that it will pursue worker misclassification as a top priority.

INDEPENDENT CONTRACTOR: COMMON LAW

The common law is law based on judicial decisions from court cases, as opposed to statutes, which are enacted by the legislature. Under the common law, a real estate salesperson generally is deemed to be an employee if the broker has the right to control and direct not only the results to be accomplished, but also the methods and means by which the result is accomplished. Under the common law, the primary factor is the degree of control or right of control which the broker has over the person's activities.

INDEPENDENT CONTRACTOR: NONEMPLOYEE (STATUTORY)

In 1984 Congress created a category of independent contractor for federal tax purposes known as a "statutory non-employee," or "statutory' independent contractor. To qualify as a nonemployee independent contractor for IRS purposes, three criteria must be met:

1. The associate must be a licensed real estate agent,
2. Substantially all the sales associate's remuneration for the services performed as a real estate agent must be directly related to sales or other output rather than the number of hours worked,
3. A written agreement must exist between the sales associate and the broker. It must provide that the sales associate will not be treated as an employee with respect to federal tax purposes.

This statutory test addresses the independent contractor issue **for federal tax purposes only**. Control may no longer be a factor if a salesperson is a statutory independent contractor for federal tax purposes but may continue to be the measure of independent contractor status for common-law IC purposes such as legal liability. The more restrictive of the two types of relationships will prevail.

Comparison of Brokerage Practices—Employee, Common-Law and Statutory Independent Contractor Classifications

[Answer Key]

Brokerage Practice	Employee	Common-Law Independent Contractor	Statutory Independent Contractor
1. Training and education can be required.	Yes	No	Yes
2. Business forms can be required.	Yes	Yes	Yes
3. Minimum earnings can be required.	Yes	No	Yes
4. Office manuals can be required.	Yes	No*	Yes
5. Sales meetings can be required.	Yes	No	Yes
6. Managerial positions are OK.	Yes	No	Yes
7. Territorial assignments are OK.	Yes	No	Yes
8. Immediate termination is OK	Yes	No	Yes
9. Work other than sales is OK	Yes	No	Yes
10. Payment of business cards by broker is OK.	Yes	No	No
11. Office space provided by broker is OK	Yes	Yes	Yes
12. Secretarial help provided by broker is OK.	Yes	No	Yes
13. Auto provided by broker is OK.	Yes	No	No
14. Floor time can be required.	Yes	No	Yes
15. Number of hours worked/overtime can be required.	Yes	No	Yes
16. Paid by salary.	Yes	No	Yes**
17. Commissions.	Yes	Yes	Yes
18. Bonus, overrides, etc.	Yes	No	Yes**
19. Draws are OK.	Yes	No	No
20. Broker may pay for automobile insurance.	Yes	No	No
21. Broker may pay for E&O insurance.	Yes	Yes	Yes
22. Broker may pay real estate license fee.	Yes	No	No
23. Broker may pay REALTOR® dues	Yes	No	No
*with exceptions			
**if based on sales performance (the total of these amounts may not exceed 10% of the salesperson's total annual income for real estate sales.			

OKLAHOMA WORKERS' COMPENSATION ACT

Oklahoma's Workers' Compensation Code addresses the independent contractor issue directly through a statutory carve out. Licensed real estate sales associates or brokers paid on a commission basis are exempt from Workers Compensation.

§311 Employees excluded

The Workers' Compensation Code shall not apply to the following employees:

1. Any person for whom an employer is liable under any Act of Congress for providing compensation to employees for injuries, disease or death arising out of and in the course of employment including, but not limited to, the Federal Employees' Compensation Act, the Federal Employers' Liability Act, the Longshoremen's and Harbor Workers' Act and the Jones Act, to the extent his or her employees are subject to such acts;
2. Any person who is employed in agriculture or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars (\$100,000.00) wages for agricultural or horticultural workers, or any person who is employed in agriculture or horticulture who is not engaged in operation of motorized machines;
3. Any person who is a licensed real estate sales associate or broker, paid on a commission basis;
4. Any person who is providing services in a medical care or social services

CASE STUDY: HOW REAL IS YOUR INDEPENDENT CONTRACT STATUS?

Plaintiff: Lynn Drake (Drake)

Defendant: Northside Realty Associates, Inc. (Northside)

Complaint: Lynn Drake, buyer, sued Northside Realty, Inc., and five other defendants, alleging fraud, violation of the Fair Business Practices Act, breach of contract, negligence, and breach of warranty. Drake purchased a home in a subdivision development marketed by two real estate agents, Matsis and Rumble, whom Drake contended were employees of Northside. She alleged that the agents, the real estate company, and the builder sold the home to her with knowledge of substantial construction defects and concealed that knowledge from her. She also sued a home inspection service for breach of contract and negligent inspection.

Background: Northside had an exclusive right to preconstruction sales of homes in the subdivision and executed a detailed "exclusive marketing agreement" with the owner. In compliance with that agreement, Northside's broker conducted interviews, selected Matsis, a sales associate with a written contract which classified her as an independent contractor. In her trial testimony she stated that he assigned her to work in the subdivision as her sole and exclusive employment during certain specified business hours or "staff duty schedule." She was required to be "on duty" during these hours by "my manager and my boss." A second agent, Rumble, was designated as an "ambassador" or assistant agent for those hours when Matsis was unavailable.

Matsis, was required to use specific procedures when negotiating the sale of a lot; she was required to use standard forms provided by Northwest and the builder. Northside also provided an "account executive" to coordinate the activities of the "on-site sales staff and the marketing department." Also, Matsis was subject to quarterly performance reviews by Northside who would 'make changes as deemed necessary.'

Questions:

1. Was Matsis an employee or independent contractor?
2. Can salespeople be considered "employees" even when they have a contract classifying them as independent contractors for tax purposes?

ASSOCIATE COMPENSATION

An associate may receive compensation only through the sponsoring broker, except under certain circumstances.

1. Closing Company pays directly to associate; In some instances, a broker wishes to allow a settlement agent such as the title company to pay compensation directly to the associate. This is allowed when broker approves and maintains written approval in the file at the title company and in the broker's files. Also, the broker still has the tax responsibility to send a Form 1099 to the associate.
2. Payments to associate's corporation or association; An associate may form an associate's corporation or association for tax purposes if complies with OREC **Rule 605: 10-11-3.**
3. Disassociated associate; A previous broker may pay compensation due a disassociated associate directly to the associate and not be required to make the payment through the associate's new broker. However, any agreements between the associate and prior broker requiring further activities to be performed in connection with the compensation to be received, can only be performed with consent and acknowledgement of the new broker. **Rule 605:10-11-2(f)**
4. License change status to inactive; the broker may pay the licensee if he was active with the broker at the time the commission was earned.

MONITORING ASSOCIATE LICENSES

The broker must ensure all persons under his supervision who are performing real estate licensed activities are properly licensed. This includes verification that all associates have renewed their licenses and completed the necessary continuing education requirements to include the post-license education for provisional sales associates.

An associate may transfer from one broker to another while keeping license on active status. An active associate transferring from one broker to another broker may continually act if the change is done in a timely manner and within the 10-day notification requirement of the OREC Rules. The licensee cannot receive commissions from the new broker until the signed release from the prior broker has been executed.

A change of home address must be filed with the OREC within 10-days of the change

Rule 605:10-11-2.

PROVISIONAL ASSOCIATES

A provisional license is not renewable, and the licensee will have to start over as an original applicant if the postlicense education is not completed as required. The 45-hour education requirement is a specifically designated postlicense course approved by OREC--not an accumulation of separate 3-hour continuing education courses. The only time extension to complete a post-license course is allowed for a provisional associate who has received orders for active military service; certain documentation and approval is required from the OREC.

Rule 605:10-3-7

TEAMS

A team is any two or more licensees who work under the supervision of the same broker, work together on real estate transactions to provide brokerage services, represent themselves to the public as being a part or team and are designated by a team name. The team name must be registered before any licensed activities are performed by the team, including marketing and advertising.

1. Broker must register each team within the brokerage with the Commission on a form prescribed by the Commission. The fee for each team name registration is \$100.00.
2. Team name must be approved by the broker and must be unique and not registered to another real estate team within the State of Oklahoma; it must not be identical to any association, corporation or partnership licensed as a real estate entity by the Commission.
3. Broker shall not allow any team name identical to an associate's corporation or association formed for the purpose of receiving compensation.
4. Each team name must be registered with OREC prior to the performance of any licensable activities by the team.
5. It is prohibited for a broker to register any team name that is not being used by a team within their brokerage.
6. The broker shall maintain and keep current a list of teams and their respective members, in writing, within the brokerage. Copies of this list shall be made available immediately to the Commission upon request.
7. The broker shall notify the Commission, in writing, of all deleted or unused team names.

Rule 605:10-3-7

ACTS OF ASSOCIATES

1. An associate is not allowed to work for more than one broker at the same time. All real estate acts performed by an associate must be done only in the name of associate's sponsoring broker. However, an exception is allowed if the associate's broker should agree to loan an associate to another broker for a specific duty, such as:
 - Sitting at an open house
 - Calling an auction or performing other auction related duties
 - Any other specific duty as requested in writing and approved by the OREC.
 - The broker is responsible for all acts performed by the associate while loaned to another broker for a specific duty.
2. An associate who employs an unlicensed assistant is responsible in conjunction with the broker for all real estate acts of the assistant.
3. Remember that all activities performed by an associate are to be under the supervision of the Broker. Associates are prohibited from opening or maintaining a trust account for purposes of managing property for others.

Rule 605:10-11-1

CAUSES FOR SUSPENSION OR REVOCATION OF LICENSE

<p>§858-312. Investigations—Cause for suspension or revocation of license. The Oklahoma Real Estate Commission may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any real estate licensee, and may, upon showing good cause, impose sanctions as provided for in Section 858-208 of this title. Cause shall be established upon the showing that any licensee has performed, is performing, has attempted to perform, or is attempting to perform any of the following acts:</p>	
	See Rule cited
1. Making a materially false or fraudulent statement in an application for a license;	
2. Making substantial misrepresentations or false promises in the conduct of business, or through real estate licensees, or advertising, which are intended to influence, persuade, or induce others; [Substantial Misrepresentation]	605:10-17-5, 605:10-15-1*
3. Failing to comply with the requirements of Sections 858-351 through 858-363 of this title; [Broker Relationships]	605:10-15-1*
4. Accepting a commission or other valuable consideration as a real estate associate for the performance of any acts as an associate, except from the real estate broker with whom the associate is associated;	605:10-15-1*
5. Representing or attempting to represent a real estate broker other than the broker with whom the associate is associated without the express knowledge and consent of the broker with whom the associate is associated	
6. Failing, within reasonable time, to account for or to remit any monies, documents, or other property coming into possession of the licensee which belong to others; [Duty to Account]	605:10-13-1, 605:10-13-2
7. Paying a commission or valuable consideration to any person for acts or services performed in violation of the Oklahoma Real Estate License Code;	
8. Any other conduct which constitutes untrustworthy, improper, fraudulent, or dishonest dealings; [Prohibited Dealings]	605:10-17-4, 605:10-15-1*
9. Disregard or violating any provision of the Oklahoma Real Estate License Code or rules promulgated by the Commission;	
10. Guaranteeing or having authorized or permitted any real estate licensee to guarantee future profits which may result from the resale of real estate;	
11. Advertising or offering for sale, rent or lease any real estate, or placing a sign on any real estate offering it for sale, rent or lease without the consent of the owner or the owner's authorized representative;	↓

§858-	12. Using prizes, money, gifts or other valuable consideration as an inducement to secure customers or clients to purchase specific property; however, licensees may use prizes, money, gifts or other valuable consideration for marketing purposes provided they are not contingent or limited to individuals making an offer or purchasing a specific property;[New language 11/1/19]
12. S cond influ	
13. Accepting employment or compensation for appraising real estate contingent upon the reporting of a predetermined value or issuing any appraisal report on real estate in which the licensee has an interest unless the licensee's interest is disclosed in the report. All appraisals shall be in compliance with the Oklahoma real estate appraisal law, and the person performing the appraisal or report shall disclose to the employer whether the person performing the appraisal or report is licensed or certified by the Oklahoma Real Estate Appraiser Board;	605:10-15-1*
14. Paying a commission or any other valuable consideration to any person for performing the services of a real estate licensee as defined in the Oklahoma Real Estate License Code who has not first secured a real estate license pursuant to the Oklahoma Real Estate License Code;	
15. Unworthiness to act as a real estate licensee, whether of the same or of a different character as specified	
16. Commingling with the licensee's own money or property the money or property of others which is received and held by the licensee, unless the money or property of others is received by the licensee and held in an escrow account that contains only money or property of others;	
17. Conviction in a court of competent jurisdiction of having violated any provision of the federal fair housing laws, 42 U.S.C. Section 3601 et seq.;	
18. Failure by a real estate broker, after the receipt of a commission, to render an accounting to and pay to a real estate licensee the licensee's earned share of the commission received;	
19. Conviction in a court of competent jurisdiction in this or any other state of the crime of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, fraud, or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;	
20. Advertising to buy, sell, rent, or exchange any real estate without disclosing that the licensee is a real estate licensee;	
21. Paying any part of a fee, commission, or other valuable consideration received by a real estate licensee to any person not licensed;	
22. Offering, loaning, paying, or making to appear to have been paid, a down payment or earnest money deposit for a purchaser or seller in connection with the real estate transaction; and	
23. Violation of the Residential Property Condition Disclosure Act.	
*605:10-15-1, Disclosure of beneficial interest or referrals: applies to 2, 3, 8 and 15; also 4 in the case of a sales associate licensee.	
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PROHIBITED DEALINGS

Prohibited Dealings

Rule 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 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) 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. signature signature(s) and dates of such signature(s) change 11/1/19
- (4) Procuring the signature to a purchase offer or contract or to any lease or lease proposal which has no definite purchase price or lease rental, or no method of payment, termination date, and possession date or property description.
- (5) 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.
- (6) 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. {or} 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.
- (7) Failure to make known in writing to any purchaser any interest the licensee has in the property they are selling.
- (8) 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.
- (9) 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.

Continued ↓

Prohibited Dealings, continued

- (10) Failure to reduce an offer to writing, when a proposed purchaser requests such offer to be submitted.
- (11) Failure to submit all 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) 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.
- (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.
- (17) Knowingly providing false or misleading information to the Commission during the course of an investigation.
- (18) 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.
- (19) Knowingly cooperating with an unlicensed person or entity to perform licensed real estate activities as required by Title 59 O.S. Section 858-301.
- (20) Failing to disclose any known immediate family relationship to a party to the transaction for which the broker is providing brokerage services.
- (21) Failure by a broker to ensure all persons performing real estate licensed activities under the broker is properly licensed.
- (22) An associate shall not perform licensed activities outside their broker's supervision.
- (23) 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.

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SUBSTANTIAL MISREPRESENTATION

Substantial Misrepresentation

605:10-17-5. Substantial misrepresentation. Substantial misrepresentation within the meaning of paragraph 2 of Section 858-312 of the "Code" includes, but is not limited to:

- (1) The recommendation or use by a licensee of a fictitious or false instrument for the purpose of inducing any lender or Government Agency to loan or insure any sum of money.
- (2) Failure to disclose to a buyer or other cooperative licensee or firm a known material defect regarding the condition of a parcel of real estate of which a broker or associate has knowledge.
- (3) The use by a real estate broker of the name or trade name of a licensee whose license has been revoked or currently on suspension.
- (4) Representing to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sales price of the real property or terms differing from those actually agreed upon by the parties to the transaction.

PERSONS PROHIBITED FROM REAL ESTATE BUSINESS

1. No person whose license is revoked or suspended shall operate directly or indirectly or have a participating interest, or act as a member, partner or officer, in any real estate business, corporation, association or partnership that is required to be licensed pursuant to the Oklahoma Real Estate License Code and Rules.
2. No person whose license is cancelled, surrendered or lapsed pending investigation or disciplinary proceedings shall operate directly or indirectly or have a participating interest, or act as a member, partner or officer, in any real estate business, corporation, association or partnership that is required to be licensed pursuant to this Code until such time as the Commission makes a determination on the pending investigation or disciplinary proceedings and approves an application for license.

PENALTIES AND FINES

UNLICENSED

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

In addition to any civil or criminal actions authorized by law, whenever any unlicensed person has engaged in any acts or practices which constitute a violation of the Oklahoma Real Estate License Code, the Commission may:

1. After notice and hearing, and upon finding a violation of the Code, impose a fine of not more than Five Thousand Dollars (\$5,000.00) or the amount of the commission or commissions earned, whichever is greater for each violation of the Code for unlicensed activity;
2. Make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the Commission that such person has engaged in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court, without bond; or
3. Impose administrative fines pursuant to this subsection which shall be enforceable in the district courts of this state. The order of the Commission shall become final and binding on all parties unless appealed to the district court as provided in the Administrative Procedures Act. If an appeal is not made, such order may be entered on the judgment docket of the district court in a county in which the debtor has property and thereafter enforced in the same manner as an order of the district court for collection actions.

Funds collected pursuant to this section shall be deposited in the Oklahoma Real Estate Education and Recovery Fund.

§858-401

LICENSED

The OREC may impose administrative fines on any licensee as follows:

1. Any administrative fine imposed as a result of a violation of this Code or the rules of the Commission shall not:
 - a. be less than One Hundred Dollars (\$100.00) and shall not exceed Two Thousand Dollars (\$2,000.00) for each violation of this Code or the rules of the Commission, or
 - b. exceed Five Thousand Dollars (\$5,000.00) for all violations resulting from a single incident or transaction;
2. All administrative fines shall be paid within thirty (30) days of notification of the licensee by the Commission of the order of the Commission imposing the administrative fine;
3. The license may be suspended until any fine imposed upon the licensee by the Commission is paid;
4. If fines are not paid in full by the licensee within thirty (30) days of the notification by the Commission of the order, the fines shall double, and the licensee shall have an additional thirty-day period. If the doubled fine is not paid within the additional thirty-day period, the license shall automatically be revoked; and
5. All monies received by the Commission as a result of the imposition of the administrative fine provided for in this section shall be deposited in the Oklahoma Real Estate Education and Recovery Fund, created pursuant to Section 858-601 of this title.

The administrative fines authorized by this section may be in addition to any other criminal penalties or civil actions provided for by law.

§858-402

INDUCEMENTS AND REBATES

Legislation to become effective November 1, 2019, should make marketing your business a little easier without having to worry about being investigated or fined. This change brings clarity to the difference between influencing a buyer to buy a particular house versus marketing yourself or your company to prospective buyers as a group.

This legislation changes OREC Code Section 858-312(12) which previously restricted offerings to purchasers or prospective purchasers. Licensees will now be able to "use prizes, money, gifts or other valuable consideration for marketing purposes provided they are not contingent or limited to individuals making an offer or purchasing a specific property."

REFERRAL FEES

Referral fees are a part of everyday business within real estate transactions. However, they may only be shared between licensees.

In order for an individual or entity to receive a referral fee relating to the sale of real estate, they must possess a real estate license. That's not to say only an Oklahoma real estate license is required, but they must have an active license in another jurisdiction before the referral fee is paid.

Also, you should remember it is a violation of the Oklahoma Licensing Code and Rules to knowingly cooperate with an unlicensed person or entity to perform licensed real estate activities. This means you would be in violation if you agreed to pay a referral fee to someone you knew did not have a real estate license.

ADVERTISING

REQUIREMENTS AND PROHIBITIONS

1. A broker, when advertising, must use their registered business trade name or the name under which the broker is licensed;
 - a. however, yard signs must also include the broker's office telephone number.
 - b. A firm shall not register or use a trade name of another licensed firm. In addition, the advertisement must indicate that the party is a real estate broker and not a private party, to include, but not limited to, "agency", "company", "realty", or "real estate", as the case may be.
 - c. Legal abbreviations following the trade name or name under which the broker is licensed shall be acceptable if they are easily identifiable by the public as such.
2. No real estate advertisement shall show only a post office box number, telephone number or street address.
3. A broker, when operating under a franchise name, shall clearly reveal in all office identification and in all advertising other than institutional type advertising, the franchise name along with the name of the broker or business trade name as registered with the Commission.
 - a. A franchise name shall not be the complete business trade name.
 - b. All institutional type franchise advertising shall indicate that each office is independently owned and operated.
4. A licensee shall not advertise, either personally or through any media, to sell, buy, exchange, rent, or lease property when such advertisement is directed at or referred to persons of a race, color, creed, religion, national origin, familial status or handicap.

- a. The contents of any advertisement must be confined to information relative to the property itself, and
 - b. any advertisement which is directed at or referred to persons of any particular race, color, creed, religion, national origin, familial status, age or handicap is prohibited.
5. Any advertising in any media which is misleading or inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies is prohibited.
6. A licensee shall not advertise any property for sale, rent, lease, or exchange in any media unless the broker has first secured the permission of the owner or the owner's authorized representative and said permission has a definite date of expiration.
7. Social networking. A licensee who is engaged in licensed activities through social networking methods must indicate their license status and include their broker's reference as required elsewhere in this rule.
8. A licensee shall not use a yard sign at the licensee's personal residence as a marketing tool, to make it appear the real property is for sale, lease or rent when such is not the case.
9. A broker may, or authorize an associate to, promote a seller incentive with the consent of the seller. The publicity must clearly indicate
 - a. the incentive is being offered by the seller and not by the licensee and
 - b. that the promotion only applies to a seller's particular property or properties.

Rule 605:10-9-4(a).

ASSOCIATE'S ADVERTISING

1. An associate is prohibited from advertising under only the associate's name.
2. All advertising by an associate must be under the direct supervision of the associate's broker.
3. In all advertising, the associate must include the name of the associate's broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable.

For the purposes of this section, "prominent, conspicuous and easily identifiable" means that the broker's reference shall be at least fifty percent (50%) or larger than any associate reference included in the advertisement. Insert, 11/1/19

If approved 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 firm's 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 firm's name.
 - c. An associate's contact information.
 - d. A slogan which cannot be construed as that of a firm's name.
 - e. A domain/website name that is registered with the broker. Within this domain/website, the broker's reference shall appear on every individual page and/or frame.
4. An associate's contact information may be added to a yard sign if the yard sign contains the registered name or trade name and office telephone number of the broker so long as it is approved by 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.

TEAM ADVERTISING

1. A team is prohibited from advertising only under the team name.
2. All advertising by a team must be under the direct supervision of the team's broker.
3. All team advertising must include the name of the team's broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable.

For the purposes of this section, "prominent, conspicuous and easily identifiable" means that the broker's reference shall be at least fifty percent (50%) or larger than any team reference included in the advertisement. Insert, 11/1/19

If approved by the broker, a team may include in the advertisement:

- a. The team's personal insignia of which such approval is to be maintained by the broker.
- b. The team's contact information.
- c. A team slogan approved by the broker.
- d. A domain/website name that is registered with the broker. Within this domain/website, the broker's reference shall appear on every individual page and/or frame.

Rule 605:10-9-4(c).

LICENSEE ACTING AS OWNER, PURCHASER OR DIRECT EMPLOYEE OF OWNER.

1. When a licensee, either active or inactive, is purchasing real estate or is the owner of property that is being sold, exchanged, rented or leased and such is being handled either by the licensee or marketed through a real estate firm, the licensee is required to
 - disclose in writing on all documents that pertain to the transaction and in all advertisements that he or she is licensed.
 - On all purchase or lease contracts the licensee is to include their license number.
2. A licensee who is not acting in the capacity of a licensee but is engaged in buying, selling, leasing or renting real estate as a direct employee for the owner or as an officer for an entity is not required to indicate in the advertising that he or she is licensed.

Rule 605:10-9-4(d).

INACTIVE LICENSE STATUS

Advertising while on inactive status requires the licensee to follow the Code and Rules. Inactive licensee status carries an ongoing duty to disclose your real estate license any time you buy, sell, lease, rent or exchange real property. Further, on all purchase or lease contracts you must include your license number.

MISLEADING ADVERTISING

1. Making substantial misrepresentations or false promises in the conduct of business, or through real estate licensees, or advertising, which are intended to influence, persuade, or induce others;
2. Advertising or offering for sale, rent or lease any real estate, or placing a sign on any real estate offering it for sale, rent or lease without the consent of the owner or the owner's authorized representative; **§858-312.2;11**
3. Any advertising in any media which is misleading or inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies is prohibited. **Rule 605:10-9-4(a)5**

4. Deceptive Practices. The Federal Trade Commission (FTC) is the primary regulator of deceptive advertising. The FTC considers a marketing effort to be deceptive if:
 - There is a representation, omission, act or practice that is likely to mislead consumers acting reasonably under the circumstances; and
 - That representation, omission, or practice is “material.”
5. Oklahoma Consumer Protection Act forbids false advertising through adoption of the Uniform Deceptive Trade Practices Act. Advertising violations include:
 - Advertising goods or services with intent not to sell them as advertised
 - Advertising goods or services with intent not to supply reasonably expected public demand, unless advertisement discloses a limitation of quantity
 - Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions
 - Engaging in any other conduct which similarly creates the likelihood of confusion or misunderstanding.

INTERNET ADVERTISING, SOCIAL MEDIA AND WEBSITES

1. Social networking. Any licensee who is engaged in licensed activities through social networking media must indicate their license status and include their broker’s reference as required in the OREC Code and Rules.
2. Social platforms and the Fair Housing Act. What Facebook refers to as multicultural advertising, and a practice called micro-targeting (being able to include and exclude certain groups in targeting advertising), HUD calls unlawful discrimination by limiting who could see housing-related ads online.
 - HUD sued Facebook in March, 2019, for engaging in housing discrimination by allowing advertisers to restrict who is able to see ads on the platform based on characteristics like race, religion and national origin.
 - “Facebook is discriminating against people based upon who they are and where they live,” Ben Carson, the housing secretary, said in a statement announcing the lawsuit. “Using a computer to limit a person’s housing choices can be just as discriminatory as slamming a door in someone’s face.”
3. Protect your listings from online scams. Some scammers hijack a real rental or real estate listing by changing the email address or other contact information and placing the modified ad on another. Real estate agents in almost every state report that their listings have been scraped or hijacked by scammers and posted on websites such as Craigslist, VRBOs and others. To use the three options below, Instructions may be found here <https://www.youtube.com/watch?v=-X5UomkleOs&t=97s>. or, search YouTube for the title How to Protect Your Property Listings From Rental Scams.
 - Set up a **Google Alert**
 - Create a recipe in **iftthishenththat**. Set up a free IFTTT account to do this.
 - Search **Google Images**.

COMMERCIAL EMAIL

Which of these is considered to be commercial Email?

<p>MESSAGE A:</p> <p>TO: Jane Smith</p> <p>FR: XYZ Distributing</p> <p>RE: Your Account Statement</p> <p>We shipped your order of 25,000 deluxe widgets to your Springfield warehouse on June 1st. We hope you received them in good working order. Please call our Customer Service Office at (877) 555-7726 if any widgets were damaged in transit. Per our contract, we must receive your payment of \$1,000 by June 30th. If not, we will impose a 10% surcharge for late payment. If you have any questions, please contact our Accounts Receivable Department.</p> <p>Visit our website for our exciting new line of mini-widgets!</p> <p>MESSAGE A is most likely a <i>transactional or relationship message</i> subject only to CAN-SPAM's requirement of truthful routing information. One important factor is that information about the customer's account is at the beginning of the message and the brief commercial portion of the message is at the end.</p>	<p>MESSAGE B:</p> <p>TO: Jane Smith</p> <p>FR: XYZ Distributing</p> <p>RE: Your Account Statement</p> <p>We offer a wide variety of widgets in the most popular designer colors and styles – all at low, low discount prices. Visit our website for our exciting new line of mini-widgets!</p> <p>Sizzling Summer Special: Order by June 30th and all waterproof commercial-grade super-widgets are 20% off. Show us a bid from one of our competitors and we'll match it. XYZ Distributing will not be undersold.</p> <p>Your order has been filled and will be delivered on Friday, June 1st.</p> <p>MESSAGE B is most likely a <i>commercial message</i> subject to all CAN-SPAM's requirements. Although the subject line is "Your Account Statement" – generally a sign of a transactional or relationship message – the information at the beginning of the message is commercial in nature and the brief transactional or relationship portion of the message is at the end.</p>
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FEDERAL CAN-SPAM ACT

The CAN-SPAM Act (Controlling the Assault of Non-Solicited Pornography and Marketing Act) sets the rules for commercial email, establishes requirements for commercial messages, gives recipients the right to have you stop emailing them, and spells out tough penalties for violations. Despite its name, the CAN-SPAM Act doesn't apply just to bulk email. It covers all commercial messages. That means all email – for example, a message to former customers announcing a new listing– must comply with the law.

It only applies to commercial Email, rather than transactional or relationship mail. This means that if you send warranty information, or in contract agreements via email, for instance, you only need to make sure that your routing information is correct.

Be careful if you add any advertising messages in these types of emails, as they could fall under commercial. Also think about where the email links to, as your customer's destination on their journey from your email also counts when deciding if the overall message is commercial or not. Usually your website will fall under this definition.

CAN-SPAM ACT's main requirements:

1. Commercial email defined as "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an internet website operated for a commercial purpose)."

2. Don't use false or misleading header information. Your "From," "To," "Reply-To," and routing information – including the originating domain name and email address – must be accurate and identify the person or business who initiated the message.
3. Don't use deceptive subject lines. The subject line must accurately reflect the content of the message.
4. Identify the message as an ad. The law gives you a lot of leeway in how to do this, but you must disclose clearly and conspicuously that your message is an advertisement.
5. Tell recipients your location. Your message must include your valid physical postal address. This can be your current street address, a post office box you've registered with the U.S. Postal Service, or a private mailbox you've registered with a commercial mail receiving agency established under Postal Service regulations.
6. Tell recipients how to opt out of receiving future email from you. Your message must include a clear and conspicuous explanation of how the recipient can opt out of getting email from you in the future. Craft the notice in a way that's easy for an ordinary person to recognize, read, and understand. Creative use of type size, color, and location can improve clarity. Give a return email address or another easy Internet-based way to allow people to communicate their choice to you. You may create a menu to allow a recipient to opt out of certain types of messages, but you must include the option to stop all commercial messages from you. Make sure your spam filter doesn't block these opt-out requests.
7. Honor opt-out requests promptly. Any opt-out mechanism you offer must be able to process opt-out requests for at least 30 days after you send your message. You must honor a recipient's request within 10 business days. You can't charge a fee, require the recipient to give you any personally identifying information beyond an email address, or make recipient take any step other than sending a reply email or visiting a single page on an Internet website as a condition for honoring opt-out request. Once someone tells you they don't want more messages from you, you can't sell or transfer their email addresses. The only exception is that you may transfer the addresses to a company you've hired to help you comply with the CAN-SPAM Act.
8. Monitor what others are doing on your behalf. Even if you hire another company to handle your email marketing, you can't contract away your legal responsibility to comply with the law. Both the company whose product is promoted in the message and the company that sends the message may be held legally responsible.

DISCLOSURES

UNDERSTANDING RESPA

The Real Estate Settlement Procedures Act, or RESPA, was enacted by Congress to provide homebuyers and sellers with complete settlement cost disclosures. The Act was also introduced to eliminate abusive practices in the real estate settlement process, to prohibit kickbacks, and to limit the use of escrow accounts. RESPA is a federal statute now regulated by

RESPA § 9

- *"No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company"*
- *"Title Company" = any institution which is qualified to **issue title insurance**, directly or through its agents; also any **duly authorized agent of a title company***

the Consumer Financial Protection Bureau (CFPB).

1. From its inception, RESPA has regulated mortgage loans attached to one-to-four family residential properties. “Settlement services” definition. The types of loans covered by RESPA include the majority of purchase loans, assumptions, refinances, property improvement loans, and equity lines of credit.
2. Business relationships between closing service providers and other parties connected to the settlement process should be disclosed to the borrower.
3. The Act prohibits specific practices such as kickbacks, referrals, and unearned fees. RESPA regulates the use of escrow accounts—such as prohibiting loan servicers to demand excessively large escrow accounts. RESPA also restricts sellers from mandating title insurance companies.
4. Real estate brokers and agents are subject to the Real Estate Settlement Procedures Act (RESPA) when engaging in transactions involving federally related mortgage loans. RESPA generally prohibits any person from giving or receiving any “thing of value” in exchange for the referral of settlement service business. Liabilities for RESPA violations may be severe, ranging from significant fines to imprisonment.

RESPA DOs

Real estate brokers and agents must comply with the Real Estate Settlement Procedures Act, or RESPA. Violators of RESPA may receive harsh penalties, including triple damages, fines, and even imprisonment. Here are a few examples of what RESPA allows.

RESPA...

Allows a title agent to provide, during an open house, a modest food tray in connection with the title company’s marketing information indicating that the refreshments are sponsored by the title company.

Allows a home inspection company to sponsor association events when representatives from that company also attend and to post a sign identifying its services and sponsorship of the event.

Allows you to jointly advertise with a mortgage broker if you pay a share of the costs in proportion with your prominence in the advertisement.

Allows a lender to pay you fair market value to rent a desk, copy machine and phone line in your office to prequalify applicants.

Allows a hazard insurance company to give you marketing materials such as notepads, pens, and desk blotters, which promote the hazard insurance company’s name.

Allows a title agent to pay for your dinner when business is discussed, provided that such dinners are not a regular occurrence.

Speak with a RESPA attorney to make sure you comply with all applicable laws. Some state and local laws prohibit activities that are permissible under RESPA.

RESPA DON'Ts

RESPA prohibits giving or receiving anything for the referral of settlement services, subject to certain exceptions. Violators of RESPA may receive harsh penalties, including triple damages, fines, and even imprisonment. Here are a few of the examples of what RESPA prohibits.

RESPA...

Prohibits a title company from regularly providing dinner and receptions for real estate agents.

Prohibits acceptance of discounted or free business equipment, such as a free lockbox.

Prohibits acceptance of reimbursement of the cost for an open house lunch from a mortgage broker who does not display any marketing materials at the event.

Prohibits acceptance of a dinner paid for by a home inspector who does not attend the dinner to market his/her services to you.

Prohibits acceptance of contributions from a title company to offset the cost of a real estate agent’s promotional event except to the extent of the value of any marketing done by the title company during that event.

Prohibits accepting gifts from mortgage brokers, such as paying your greens fees.

Prohibits a mortgage broker or title company from paying for your tickets to a sporting event.

Prohibits participation in a tropical “getaway” weekend, the cost of which is underwritten by a title company, during which only two hours is dedicated to marketing by the title company and the remainder is recreation.

Don't EVER accept payment from a mortgage lender just for taking a loan application.

BROKER RELATIONSHIPS

1. The Broker Relationships Act allows licensees to enter into a brokerage agreement, which may be either oral or written, to provide services to a party. If a

broker does not enter into a written brokerage agreement, certain mandatory duties and responsibilities are still required.

2. A broker may provide brokerage services to one or both parties in a transaction. In addition to other disclosure required under the law, certain specified written disclosures are required to be provided by the broker to each party in a transaction in which the broker is providing services to both sides.
3. Should a licensee be involved in a transaction in which she did not prepare the offer to purchase, she would still have the duty to document compliance of the Oklahoma Broker Relationship Disclosure Act's requirements.
4. Training and discussions with sales associates involving different situations and the proper way to handle broker relationship disclosures will greatly improve your compliance with the law. It will also demonstrate your practice of proper supervision; proof of associate training by the broker will be important if you are accused of 'failure to supervise' when one of your associates violates this law.
5. No agency. The Broker Relationships section in OK Real Estate License Code replaced the fiduciary or other duties of a broker based on common law principles of Agency.

§858-351 through 858-363. Broker Relationships Rule 605:10-15-2 Broker Relationships

Disclosure

Use this with every transaction

OKLAHOMA REAL ESTATE COMMISSION

DISCLOSURE TO SELLER OR BUYER OF BROKERAGE DUTIES, RESPONSIBILITIES AND SERVICES

This notice may be part of or attached to any of the following:

<input type="checkbox"/> Buyer Brokerage Agreement	<input type="checkbox"/> Listing Brokerage Agreement	<input type="checkbox"/> Option Agreement
<input type="checkbox"/> Sales Agreement	<input type="checkbox"/> Exchange Agreement	<input type="checkbox"/> Other _____

1. Duties and Responsibilities. A Broker who provides Brokerage Services to one or both parties shall describe and disclose in writing the Broker's duties and responsibilities prior to the party or parties signing a contract to sell, purchase, option, or exchange real estate.

A Broker shall have the following duties and responsibilities which are mandatory and may not be abrogated or waived by a Broker, whether working with one party, or working with both parties:

- A. treat all parties to the transaction with honesty and exercise reasonable skill and care;
- B. unless specifically waived in writing by a party to the transaction:
 - 1) receive all written offer and counteroffers;
 - 2) reduce offers or counteroffers to a written form upon request of any party to a transaction; and
 - 3) present timely all written offers and counteroffers.
- C. inform, in writing, the party for whom the Broker is providing Brokerage Services when an offer is made that the party will be expected to pay certain closing costs, Brokerage Service costs and the approximate amount of the costs;
- D. keep the party for whom the Broker is providing Brokerage Services informed regarding the transaction;
- E. timely account for all money and property received by the Broker;
- F. keep confidential information received from a party or prospective party confidential. The confidential information shall not be disclosed by a Broker without the consent of the party disclosing the information unless consent to the disclosure is granted in writing by the party or prospective party disclosing the information, the disclosure is required by law, or the information is made public or becomes public as the result of actions from a source other than the Broker. The following information shall be considered confidential and shall be the only information considered confidential in a transaction:
 - 1) that a party or prospective party is willing to pay more or accept less than what is being offered,
 - 2) that a party or prospective party is willing to agree to financing terms that are different from those offered,
 - 3) the motivating factors of the party or prospective party purchasing, selling, optioning or exchanging the property, and
 - 4) information specifically designated as confidential by a party unless such information is public.
- G. disclose information pertaining to the Property as required by Residential Property Condition Disclosure Act;
- H. comply with all requirements of the Oklahoma Real Estate Code and all applicable statutes and rules;
- I. when working with one party or both parties to a transaction, the duties and responsibilities set forth in this section shall remain in place for both parties.

2. Brokerage Services provided to both parties to the transaction. The Oklahoma broker relationships law (Title 59, Oklahoma Statutes, Section 658-351 - 658-363) allows a real estate Firm to provide brokerage services to both parties to the transaction. This could occur when a Firm has contracted with a Seller to sell their property and a prospective Buyer contacts that same Firm to see the property. If the prospective Buyer wants to make an offer on the property, the Firm must now provide a written notice to both the Buyer and Seller that the Firm is now providing brokerage services to both parties to the transaction. The law states that there are mandatory duties and responsibilities that must be performed by the broker for each party.

3. Broker providing fewer services. If a Broker intends to provide fewer Brokerage Services than those required to complete a transaction, the Broker shall provide written disclosure to the party for whom the Broker is providing services. The disclosure shall include a description of those steps in the transaction that the Broker will not provide and state that the Broker assisting the other party in the transaction is not required to provide assistance with these steps in any manner.

4. Confirmation of disclosure of duties and responsibilities. The duties and responsibilities disclosed by the Broker shall be confirmed in writing by each party in a separate provision, incorporated in or attached to the contract to purchase, option or exchange real estate.

I understand and acknowledge that I have received this notice on _____ day of _____, 20____.

(Print Name) _____ (Signature) _____

(Print Name) _____ (Signature) _____

This form was created by the Oklahoma Real Estate Contract Form Committee and approved by the Oklahoma Real Estate Commission
OREC DISCLOSURE TO SELLER OR BUYER OF DUTIES AND RESPONSIBILITIES (11-2013)

Match Licensee Requirement to Law

Draw a line from item on left to match appropriate law on right;
a responsibility may apply to more than one law.

Your Job	Law
<ol style="list-style-type: none">1. Make seller aware of obligations under this law.2. Submit prospective buyer's written request for information to seller.3. Disclose any defects known to licensee.4. Describe and disclose licensee's duties and responsibilities to party prior to obtaining party's signature on contract.5. See that sale's contract contains required information and/or prescribed wording.6. Licensee has no duty to provide information under this Act.7. Inform all parties where escrow money or other items of value are held.8. Ensure that buyer receives this disclosure prior to seller's acceptance of offer.9. Disclose license status and/or broker's reference in every form of internet real estate communication.10. Give buyers the opportunity to conduct an inspection.	<ol style="list-style-type: none">A. Broker Relationship ActB. Lead Based-Paint DisclosureC. Mary Rippy Violent Crime Offenders Registration ActD. Oklahoma Real Estate License Code and RulesE. Psychologically Impacted Real EstateF. Residential Property Condition Disclosure ActG. Sex Offender's Registration Act (Megan's Law)

DISCLOSURE OF BENEFICIAL INTEREST OR REFERRALS

605:10-15-1. Disclosure of beneficial interest or referrals

- (a) No licensee shall, without disclosing such fact in writing to all parties on both sides of the transaction, either:
- (1) Accept or receive any fee, commission, salary, rebate, kickback or other compensation or consideration allowed by law in connection with the recommendation, referral or procurement of any product or service, including financial services.
 - (2) Own any beneficial interest in any entity which provides any product or service, including financial services to home owners, home buyers or tenants, in connection with the sale, lease, rental or listing of any real estate. Activities or interests of associates shall ordinarily be disclosed to his or her broker who shall have the primary responsibility to make written disclosures covered by this Section to the parties.
- (b) If any associate owns any beneficial interest in any entity which provides any product or service, including financial services, to home owners, home buyers, or tenants, the associate shall disclose the nature and extent of such interest to his or her broker. The obligation to make such disclosure shall be a continuing one.
- (c) Notwithstanding the provisions of this Section, disclosure of a beneficial interest shall not be required if either:
- (1) The beneficial interest consists solely of a stock or other equity ownership in a publicly traded company where such ownership is less than one percent (1%) of the total equity value of such entity.
 - (2) Such beneficial interest consists solely of a stock or other equity interest in a privately held company in which the aggregate ownership of all licensees employed by the firm otherwise required to make the disclosure does not exceed ten percent (10%) of the equity value of the company and where the licensee is not an officer, director, managing partner or otherwise directly or indirectly is in control of the entity which provides any product or service covered by this Section.
- (d) No particular form of disclosure shall be prescribed by the Commission. All disclosures required by this Section shall be made:
- (1) Either prior to or at the time that any recommendation, referral or procurement of any product or service is made in instances in which the licensee may receive any compensation or consideration in connection therewith.
 - (2) At or before the time that it becomes apparent to the licensee that any entity in which the licensee owns any beneficial interest may provide any product or service in instances in which the disclosure of any such ownership is required under this Section. All disclosures required by this Section shall be judged by the standard of whether the disclosure was adequate to inform all parties on both sides of the transaction of the existence of a beneficial interest covered by this Section or, if a party claims not to have been adequately informed, whether the form and manner in which the disclosure was made was adequate under the circumstances to inform a person of ordinary intelligence and understanding, not possessing expertise in real estate or financial matters, of the existence of any fee, compensation, salary, rebate, kickback or other compensation or consideration or the ownership of a beneficial interest in an entity providing products or services covered by this Section.
- (e) The failure by a licensee to observe any provision of this Section shall be deemed to be a violation of subsections 2, 3, 8 and 15 of Section 858-312 of the Code and in the case of an associate, a violation of subsection 4 of Section 858-312 of the Code as well.

RESIDENTIAL PROPERTY CONDITION DISCLOSURE ACT(RPCDA)

Title 60 O.S. §831-839

This Act is a modification of the doctrine of *caveat emptor*. It modifies the common law rights, duties and liabilities of the parties and the nature of their potential recoveries. Traditionally, the doctrine of *caveat emptor* has been applied by Oklahoma courts, to impose the burden of property inspection and the risk of defects on the purchaser, when certain circumstances were met. This Act:

1. Shifts some of the traditional risks for purchasers to the seller. Prior to this, unless the seller fraudulently concealed a defect, a seller had no affirmative duty to disclose the condition of or any defects in the property being sold. This left the burden on the purchaser to inspect the property and discover problems with the physical condition
2. By shifting these burdens to the seller, who is presumably more familiar with the property than the purchaser, the Disclosure Act benefits the purchaser by dramatically increasing the level of required disclosure, BUT at the cost of significant changes to the structure of the purchaser's legal remedies.
3. Limits the remedies of aggrieved purchaser.
4. The transactional burdens of buyer and seller, as well as financial risks, may depend in part on whether they are represented by a real estate licensee.

The seller and real estate licensees

1. Imposes specific duties on sellers and real estate licensees
2. Requires a "seller" of "property" to deliver, or cause to be delivered, the disclaimer or disclosure statements (statutory forms) to the purchaser.
3. Liability is limited under the Act.
4. Other parties, including home inspectors, may have liability under other, traditional causes of action, i.e. fraud, negligence and/or other potential causes of action.
5. The scope of the Act depends in part on whether a licensee is involved in the sale.

The buyer

5. Definition of 'seller' under the Act is limited.
6. No licensee involved = no requirement to provide disclosure.
7. Buyer must make a written request for the disclosure, or,
8. the Act will not apply to this seller and he may be insulated from liability for transferring defective property.

The Act limits the recovery available to the purchaser to "actual damages," including the cost of repair. Prior to the Act, the purchaser had other broader remedies under the law, such as fraud.

JURISDICTION

The Oklahoma Real Estate Commission (OREC) does not have jurisdiction over the Act but does have jurisdiction over a real estate licensee who fails to comply with this Act. The OREC is responsible for developing and amending the disclosure and disclaimer forms and making them available.

Any alleged dispute or violation of this Act of a civil nature must be adjudicated in a court of proper jurisdiction. Further, if the violation involves a real estate licensee, individuals should contact the Real Estate Commission.

CASE STUDY: WHITE VS LIM

Plaintiffs: Steve and Nikki White (purchasers)

Defendants: Heng and Rachel Lim; (sellers) and
Karla Yates and Action Real Estate, LLC

Decided: 10/13/2009 Ok Supreme Court

In *White*, Steve R. White (purchaser) sued Heng Ly Lim (seller), along with Karla Yates and Action Real Estate, LLC, her brokerage firm (as real estate licensees), alleging that the residential property they bought had severe termite damage which was not disclosed in the disclosure statement or related communications. The purchasers sought actual and punitive damages, and discovery as to the defendants' tax returns and other financial information. After some procedural sparring by the parties, the trial court certified the issue of punitive damages for appeal.

The basic issue on appeal was whether the Disclosure Act limits a purchaser's remedies for disclosure violations to actual damages under the Act, or alternatively allows separate claims to be asserted under common law or other statutes (e.g., for fraud and punitive damages). In arguing the latter, the purchasers relied on the Oklahoma Supreme Court's holding in a previous case allowing common law fraud claims as a supplement to the Disclosure Act on facts legally indistinguishable from those in *White*. But, HB 1319 intervened between these two cases and enacted amendments to the Disclosure Act limiting recovery to actual damages (and attorney fees).

The Supreme Court noted the obvious point that the Court's role is to give effect to the intention of the Legislature, and "If the legislature amends a statute whose meaning has been judicially determined, we may presume that the Legislature's intent was to alter the law." The Court concluded, the Legislature "utilized mandatory, clear and unmistakable language limiting the right of a purchaser to recover for failure to disclose known defects in residential property to those provided in the Disclosure Act."

This one thing we know:

There can no longer be any reasonable doubt that the exclusive remedy for a purchaser, for disclosure violations governed by the Disclosure Act, is to recover "actual damages, including the cost of repairing the defect."

CASE STUDY: CARBAJAL V. SAFARY

Broker: Baham Safary, licensee; Prestigious Properties, Inc., wholly owned by Safary

Buyer: Victor Carbajal

Seller: Dennis and Yvonne Hobus

In Carbajal v. Safary, a real estate licensee (Safary), represented Carbajal (the Purchaser) in Carbajal's purchase of a home. The sales contract provided a 10-day inspection period for the purchaser, but Carbajal chose not to obtain a structural inspection, instead relying on an oral description by Safary of a six-month old structural report provided by the sellers. The sellers had obtained this structural report and provided it to Safary (as agent for Carbajal). Safary orally advised Carbajal that the report was "clean" and did not indicate any structural defects. Carbajal did not receive a copy of the structural report until after the sale was closed. He subsequently discovered foundation cracks and alleged there were "profound structural and foundation problems" with the property, with estimated repair costs of \$70,000. Carbajal sued Safary, alleging violations of the Disclosure Act and seeking damages including these repair costs. The trial court dismissed the complaint and the Oklahoma Court of Civil Appeals affirmed, on grounds that Carbajal had not provided any evidence that the licensee's disclosure duties were triggered or violated by the receipt of the six-month old engineer's report. The Oklahoma Supreme Court affirmed, noting that the six-month old structural report provided no indication of structural damage or defects, and there was no other evidence that Safary had any knowledge of such defects. The Supreme Court concluded that "Safary did all that was required under (section) 836 by informing Carbajal that the report was 'clean.' The basis of the decision appears to be that the structural report indicated there were in fact no structural deficiencies, and this was the only information Safary had. Safary told Carbajal that the report was 'clean,' which was accurate, so he did not have a duty to disclose anything else. This complied with the requirements of the Act sections 833 (required form of disclosure) and 836 (agent's duty to disclose).

This one thing we know:

A real estate licensee's duty to disclose is limited to his or her actual knowledge of defects in the property, defined as a condition with a "materially adverse effect on the monetary value of the property."

THE TAKEAWAY

The basis of the decision appears to be that the structural report indicated there were in fact no structural deficiencies, and this was the only information Safary had. Safary told Carbajal that the report was 'clean,' which was accurate, so he did not have a duty to disclose anything else. This complied with the requirements of the Act sections 833 (required form of disclosure) and 836 (agent's duty to disclose).

The Court's opinion in Carbajal approvingly quotes language from the court of appeals decision, noting that a real estate licensee's duty to disclose is limited to his or her actual knowledge of defects in the property, defined as a condition with a "materially adverse effect on the monetary value of the property."

The Structural Inspection Report

This house appears to be in relatively good structural condition with evidence indicated by the minor defects of slight and minor foundation settlements. Minor slab deflections were indicated, particularly adjacent to the north wall and the east wall. This engineer did not consider these deflections as structurally significant.

The exterior defects noted at the northwest corner are indicating minor foundation rotation but the patch on the masonry was apparently done some time ago, it appears to be relatively old. The crack has not re-opened (sic) and the movement does not appear to be an active foundation settlement problem. The interior defects associated with the slab deflection were relatively minor. No structural significance was attributed to any of these defects.

The slab deflection can be cosmetically corrected. It is possible to place a grout or mortar cap on top of the slab to level the slab around the perimeter, particularly along the north wall in the northeast and northwest bedrooms, and the southeast bedroom. Since there were no significant structural implications related to the slab deflection, the cap installation would simply be a cosmetic repair of this defects (sic).

It is neither a structural requirement nor a structural recommendation to cap the slab or to raise the elevation of the slab. Underpinning of the slab can also be installed to lift and level the slab.

However, the problem of underpinning would be that the slab is not constructed to support point loading that would be accomplish by underpinning. A void would likely be created under the slab, which would require under slab pressure grouting to completely fill the void and provide uniform support from the slab. This engineer does not recommend underpinning of the slab, particularly because there are no interior defects of structural significance attributed to the slab deflections.

The engineer, at the end of his report, listed the "Requirements" which state in their entirety: "There are no structural requirements at this residence."

LEAD BASED PAINT DISCLOSURE

The Lead-Based Paint Disclosure Form is required on all housing transactions for pre-1978 properties.

This is a Federal law (Section 1018 of Title X). Agents must ensure that sellers and landlords are made aware of their obligations under this rule. Brokers must also see that sellers and landlords disclose the property information to lessees, buyers and tenants and give purchasers the opportunity to conduct an inspection. Lease and sale contracts must contain the appropriate notification and disclosure language and proper signatures.

Sellers and landlords must disclose known lead-based paint and lead-based paint hazards and provide available reports to buyers or renters.

Sellers and landlords must give buyers and renters the pamphlet, developed by EPA, HUD, and the Consumer Product Safety Commission (CPSC), titled *Protect Your Family from Lead in Your Home*. Home buyers will get a 10-day period to conduct a lead-based paint inspection or risk assessment at their own expense. The rule gives the two parties flexibility to negotiate key terms of the evaluation. Sales contracts and leasing agreements must include certain notification and disclosure language.

Sellers, lessors, and real estate agents share responsibility for ensuring compliance.

What Is Not Required: This rule does not require any testing or removal of lead-based paint by sellers or landlords. This rule does not invalidate leasing and sales contracts.

PSYCHOLOGICALLY IMPACTED PROPERTY

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.

The fact or suspicion that HIV or AIDS is suspected in an occupant of the real estate is not a material fact that must be disclosed; further Oklahoma's Health Privacy Laws apply.

The fact or suspicion that the real estate was the site of a suicide, homicide or other felony, is not a material fact that must be disclosed.

This subject requires careful attention to proper procedure for handling requests due to the potential liability for unlawful disclosure of private information. The handling of such a matter should be carried out 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. 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.

§858-513 AND RULE 605:10-15-3.

SEX OFFENDERS REGISTRATION ACT- OR- MARY RIPPY OR VIOLENT CRIME OFFENDERS ACT

Real estate licensees have no duty to disclose information these Acts. The OREC suggests that if a consumer makes such an inquiry, the licensee should direct them to the local law enforcement agency in the county where the property is located. The law enforcement agency is required to maintain registry.

§858-514

SIZE OF PROPERTY FOR SALE

In a real estate transaction, the size or area of the subject property is not required to be provided by any licensee; but if provided shall not be considered any warranty or guarantee of the size or area information under certain conditions.

If a licensee provides third-party information regarding size or area of the property, the licensee must identify the source of the information. Third-party information means

2. Appraisal or measurement information by a licensed appraiser,
3. A survey or developer's plan by a licensed surveyor,
4. A tax assessor's public record,
5. A builder's plan used to construct or market the property, or

6. A plan, drawing or stated square footage provided by the owner (or agent of owner) as it relates to commercial buildings or structures for sale or lease only. Commercial land shall be verified by one of the methods listed above.

A licensee has no duty to seller or buyer of property to conduct an independent investigation of the size or area of a subject property, or to independently verify any third-party information defined above.

A licensee who has complied with this section shall have no further duties to the seller or buyer regarding disclosed or undisclosed property size or area information; and shall not be subject to liability to any party for any damages (including exemplary or punitive) with regard to any conflicting measurements or opinions of size or area.

§858-515-1; 2.

EARNEST MONEY

The amount of earnest money submitted with an offer to purchase depends on several factors, and Oklahoma law does not require a minimum amount. However, case law in our state indicates that the purchaser can lose only up to 5% of the purchase price as earnest money. This effectively keeps the earnest money deposited with a purchase contract at a figure below five percent of the sale price.

The broker must follow the contract terms as to disposition of the earnest money and may never use it to pay expenses incurred by the parties.

DISPUTED EARNEST MONEY

In the event a dispute arises prior to the disbursement, the broker may use one of the following options:

1. The broker may continue to retain the money in escrow until a written release is signed by all parties consenting to its disposition, or until a civil action is filed to determine its disposition; at which time he may pay it to the court; or
2. In the absence of a pending civil action such as an Interpleader action by the broker or a small claims lawsuit by one of the parties and after thirty (30) days from the date of final termination of the contract, the broker may make a decision as to disposition of the money. In this case, the broker must send written notice via certified mail to the parties that he is making a good faith decision to release the funds to a certain party. Once the notices have been delivered, the broker must wait fifteen (15) days. If none of the parties file a civil action during the 15-day period, the broker may disburse the monies or escrow items as decided. The certified mail dates will give the broker guidance as to the time periods; or

File Interpleader Action. Interpleader is “an equitable proceeding for the determination of adverse claims by rival claimants to the same property or fund held by a third person as stakeholder.” The “stakeholder” here is the real estate broker holding the earnest money. The broker will not ultimately receive the money but is asking the court to determine who among the competing parties will receive it. This may also be used when the broker also claims an interest in part of the funds. For example, if the buyer wrongfully refuses to close, the contract terms may permit the earnest money to be divided between the broker and the seller after deductions for expenses. A broker may file the interpleader at any time after he has tried to obtain a mutual release of contract and consent to disburse funds. **605:10-13-1(o).**

TRUST ACCOUNTS

When a broker accepts money belonging to others, the broker holds the money in a fiduciary capacity.

OREC requires a trust account be established for all checks and monies belonging to other which are received by the broker. These must be deposited in a separate account in an insured financial institution. The broker must be a signor on the account and the account must e in the name of the broker as it appears on the license or trade name registered with the OREC. All escrow funds must be deposited before the end of the third banking day following acceptance of an offer, unless otherwise agreed to in writing by all interested parties. An associate is not allowed to maintain a trust account for other people's money.

Funds referred to as belonging in a trust/escrow account include, but are not limited to earnest money deposits, money received upon final settlements, rents, security deposits, 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.

A broker may not keep any personal funds in the trust account except amounts sufficient to cover any charges made by the financial institution for servicing the trust or escrow account.

A bookkeeping system is required, but no specific accounting or record-keeping system is mandated by the OREC. While the broker may develop /her own accounting system, the following Information must be included:

1. Amount and nature of the deposit.
2. Date of the deposit.
3. Address of the subject property.
4. Date the funds were disbursed.
5. Amount of the disbursement.
6. Number of the disbursement check.
7. A current running balance of all funds held in the trust account.

RETURNED AND POST-DATED CHECKS

In the case of returned or dishonored checks the broker must immediately inform the seller or landlord. The parties should determine which type collection procedure should be pursued. If the returned check is drawn on a property-management account, the property management agreement must include a clause which gives the broker authority to attempt collection; that is, if it is the intent to allow the broker to pursue collection.

Brokers may accept post-dated checks for an earnest money deposit, but the parties must be informed of the risks of post-dated checks. In the event a party elects to accept an offer with a post-dated check, the broker cannot deposit the check until the appropriate date and must maintain the security of the check until it is deposited.

A broker who takes possession of earnest money for a real estate transaction in Oklahoma does so in a fiduciary capacity and must hold the funds in trust until the transaction is complete. When a real estate transaction fails and neither the potential buyer, nor the potential seller lays claim to the earnest money, the broker is still under a fiduciary duty to hold the funds in an escrow account, and may not put the money to use or commingle it with the broker's own.

EARNED COMMISSIONS AND EXCESS FUNDS IN TRUST ACCOUNT

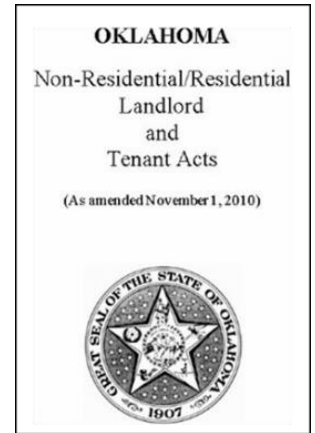
Brokers are prohibited from paying any commission out of the trust account. Any commissions received by the broker should be placed in the business/operating account and disbursed to others from that account.

No personal funds may be kept in the trust account, with the exception of funds sufficient to ensure the integrity of the account to use for bank charges.

FDIC provides protection for trust or escrow accounts only if the broker can prove that the funds in the account are not the brokers and the account has been maintained with integrity. Each depositor's funds will be insured up to \$250,000 if the trust account contained only funds of others.

PROPERTY MANAGEMENT TRUST ACCOUNTS

In accordance with the Non-Residential and Residential Landlord and Tenant Acts of Oklahoma, all damage or security deposits must be kept in a trust or escrow account for the tenant. The account must be maintained within the State of Oklahoma with a federally insured financial institution. Property management trust accounts must be held by the broker in the same manner and integrity as other real estate transactions. Also, any dispute of the damage or security deposit must be resolved in the same manner as earnest money disputes.



As a property manager acting for the owner, a broker must deposit rents collected from tenants into the trust account and then disburse funds as agreed in the property management agreement. The broker should pay his management fee from the trust account at the same time he or she disburses the owner's proceeds.

Title 41, O.S. Sections 101-136 Residential Landlord and Tenant Act

WHAT IS INTERPLEADER?

Interpleader is civil procedure that allows a plaintiff or a defendant to initiate a lawsuit in order to compel two or more other parties to litigate a dispute. An **interpleader** action originates when the plaintiff holds property on behalf of another but does not know to whom the property should be transferred.

An interpleader proceeding has two stages. The first stage determines if the stakeholder is entitled to an interpleader and if he, should be discharged from liability. The second stage is like an action at law to determine which of the claimants is entitled to the disputed funds. The stakeholder(broker) no longer has to spend the time or money fighting and the parties have a forum to fight among themselves in court.

An Interpleader Action aims to determine the party who is entitled to receive money or property when a neutral third party (broker) is holding funds or property and is confronted with two or more claimants to the same money or property. The interpleader action allows for the broker (stakeholder) to avoid liability to any of the claimants by forcing the claimants to litigate among themselves and let the Court determine who deserves what. Normally, to be released from the action, broker must deposit the sums with the court which will hold them while the matter is litigated.

Example: a broker, who is the holder in a real estate transaction holds a deposit and the parties are arguing about whether one or the other should receive the deposit back. In such cases, the escrow holder will often file an interpleader action to

The broker may file interpleader action n Small Claims Court if the amount disputed does not exceed the maximum allowable; e.g., in OK county maximum \$10,000 in 2019. The broker should deliver a check from his trust account to the court clerk for the amount of the disputed earnest money along with required forms from the County Clerk. The defendants must be served with a copy of the affidavit and the Order advising them the interpleader action has been filed and the court date. The broker is advised to seek the services of an attorney.

A broker using this action should attend the hearing due to the fact that the judge may desire background information and should have all documents relating to the transaction ready for review. If the broker is claiming an interest in the disputed earnest money, the judge will require specific documentation. Once the matter has been

decided by the court, it is within the court's authority to order the broker to be reimbursed for the filing fee, cost of service, and attorney fees.

There are several advantages to the interpleader action. The broker is relieved of the risk of potential liability for releasing funds to the wrong party. It is quick, inexpensive and provides an efficient resolution of competing claims. When broker claims an interest in any part of the funds this is more equitable to all parties.

ASSOCIATE'S DUTY TO ACCOUNT

The obligation of an associate to remit monies, valuable documents and other property coming into his or her possession within the meaning of subsection six (6), Section 858-312 of the Code shall be construed to include but shall not be limited to the following:

1. Shall turn over all documents, files and monies deposited, payments made, or things of value received by the associate to his or her broker promptly; and
2. Shall deliver a copy of all instruments to any party or parties executing the same when such has been prepared by the associate or pertains to the consummation of a transaction in which he or she participated.
3. Shall not be authorized to open or maintain a trust or escrow account, or be a signer on a trust or escrow account wherein the associate is providing licensed activities as defined in the License Code and Rules; however, an associate may open or maintain a trust or escrow account, or be a signer on a trust or escrow account, when the associate is performing activities as outlined in Section 858-301 of the Code.

Rule 605:10-13-2

COMPLAINT AND INVESTIGATION PROCESS

A complaint about a real estate licensee in Oklahoma may be made by "any person." The complaint must be a formal written complaint on a form prescribed by the real estate commission and notarized. If a person chooses to make the initial contact by telephone, he will be sent complaint form in the mail or the complaint form may be found on the Commission's website at www.orec.ok.gov

The Oklahoma Real Estate Commission will initiate a formal investigation upon the filing of a formal complaint by the public or the "Commission," when the complaint alleges a violation of the licensing law.

The complaint should consist of a brief explanation of the facts, presented in the order in which they occurred (i.e. chronologically). Copies of documents, such as contracts, closing statements, cancelled earnest money checks (front and reverse), or any other article that will assist in validating your grievance should be attached to the complaint. All information submitted to the OREC will be a matter of public record per Oklahoma law.

THE complaint should be printed or typed and should avoid expressing conclusions or opinions. As a requirement for acceptance, complaining party (Complainant) must sign and notarize your complaint if it is not on a form provided by the Commission.

After filing the complaint with our office, the Investigation Department conducts an initial investigation. *(If there is insufficient information obtained through this phase of the investigation, the Commission will schedule a preliminary session in front of a case examiner (attorney) and Complainant's presence **will** be required.)* Upon completion of the investigative process, the investigator or attorney will prepare and submit a report to the Commission for presentation at a regularly scheduled meeting. The Commission

will either dismiss the case or order a formal hearing. The complaining party and Respondent will receive notification as soon as possible after the Commission's decision.

When the Commission orders a formal hearing, the complaining party becomes a witness for the OREC ("Commission") and **will be required** to appear and testify concerning the facts stated in the complaint.

What happens after your complaint is filed?

After the filing of a sworn complaint against a real estate licensee, the licensee receives notification immediately and has an opportunity to file an answer within fifteen (15) days of the notice. Following the fifteen-day answer period, the Commission conducts an investigation or Preliminary Investigative Session. The Investigative Session, in addition to the investigation itself, is under the supervision of the Executive Director of the Commission. A designated Prosecutor may examine the results of the investigation and/or conduct a Preliminary Investigative Session. On the Commission's behalf, the Prosecutor may subpoena witnesses, take testimony by depositions, and compel the production of records or documents bearing upon the complaint.

Upon completion of the investigation or Investigative Session, the Commission receives a written report of all findings. Following receipt of the report, the Commission shall determine whether to proceed with formal charges and to order a Formal Hearing. If a Formal Hearing is ordered, the state becomes the "complainant" and the complainant become a "Witness for the State."

After the Preliminary Investigative Session or the investigation is finished, you may call the Investigations Department during the first week of the month to determine if your case is on the agenda for that month's meeting. The Real Estate Commission normally meets the second Wednesday of each month.

INVESTIGATION DEFINITIONS

1. INVESTIGATION. The Real Estate Commission staff interviews the complainant and respondent and any other relevant parties to the transaction to obtain information in connection with the allegations. The investigator, after researching and compiling information, will subsequently write a report.
2. PRELIMINARY INVESTIGATIVE SESSION. A preliminary session is an Informal meeting, conducted by a Prosecutor, between the complainant and respondent to obtain information relevant to the allegations.
3. FORMAL HEARING. A hearing held in accordance with the Administrative Procedures Act and conducted before a Hearing Examiner with a court reporter present. All witnesses give sworn testimony during a Formal Hearing.
4. PROSECUTOR. The Prosecutor is an attorney for the Commission who reviews investigative reports, or conducts a Preliminary Investigative

OKLAHOMA REAL ESTATE COMMISSION OFFICE INSPECTION FORM	
INSTRUCTION SHEET (CONTINUED)	
FILE AUDIT	
Contract/Lease:	Are contracts leases appropriately and fully executed?
Brokerage agreement:	Are written brokerage agreements contained within transaction files?
Acknowledgment disclosure:	Are Acknowledgement and Confirmation of Disclosures executed and contained within transaction files?
RPC disclosure/disclaimer:	Are Residential Property Condition Disclosure/Disclaimers executed and contained within transaction files?
Lead based paint:	Are lead based paint forms executed and contained within transaction files where applicable?
EM receipt:	Are earnest money receipts executed and contained within transaction files where applicable?
Listing contract:	Are listing contracts fully executed and contained within transaction files where applicable?
Estimated net/cost:	Are estimated net and cost sheets executed and contained within transaction files?
Min service agreement:	Are minimum service agreements in writing and contained within transaction files where applicable?
HUD-1 closing statement:	Are closing statements contained within closed transaction files?

Session, to gather information relevant to the allegations, and then makes recommendations to the Commissioners.

5. HEARING EXAMINER. The Hearing Examiner is an attorney for the Commission who conducts a Formal Hearing and acts as an Administrative Law Judge.

OFFICE INSPECTION PROGRAM

The Oklahoma Real Estate Commission may audit the trust account of a broker either for an office inspection or when a complaint is filed. The Commission investigators and other staff members conduct office inspections with the goal of assisting brokers in understanding what the law requires and to help in compliance.

The OREC office inspection program uses a random selection process for the purpose of assisting brokers in managing their trust accounts and ensures compliance of laws and rules for the purpose of protecting the public.

CHARACTERISTICS OF A LEADER

The following is a list of principles showing the characteristics and values that most people associate with ethical behavior. Ethical decision making incorporates these principles. [Source: Josephson Institute of Ethics]

HONESTY. Ethical executives are honest and truthful in all their dealings and they do not deliberately mislead or deceive others by misrepresentations, overstatements, partial truths, selective omissions, or any other means.

INTEGRITY. Ethical executives demonstrate personal integrity and the courage of their convictions by doing what they think is right even when there is great pressure to do otherwise; they are principled, honorable and upright; they will fight for their beliefs. They will not sacrifice principle for expediency, be hypocritical, or unscrupulous.

PROMISE-KEEPING & TRUSTWORTHINESS. Ethical executives are worthy of trust. They are candid and forthcoming in supplying relevant information and correcting misapprehensions of fact, and they make every reasonable effort to fulfill the letter and spirit of their promises and commitments. They do not interpret agreements in an unreasonably technical or legalistic manner in order to rationalize non-compliance or create justifications for escaping their commitments.

LOYALTY. Ethical executives are worthy of trust, demonstrate fidelity and loyalty to persons and institutions by friendship in adversity, support and devotion to duty; they do not use or disclose information learned in confidence for personal advantage. They safeguard the ability to make independent professional judgments by scrupulously avoiding undue influences and conflicts of interest. They are loyal to their companies and colleagues and if they decide to accept other employment, they

OKLAHOMA REAL ESTATE COMMISSION OFFICE INSPECTION FORM

FILE No. _____

Broker _____
 Office/Trade Name _____
 Office Address _____
 Office Telephone _____

Entity Controlling Interest _____
 Entity Sec. of State Standing _____
 Number of Associates _____ Unlicensed Assistants _____

OFFICE PRACTICES <i>(below check yes or no to indicate whether or not office is in compliance)</i>	OFFICE POLICIES & PROCEDURES
Franchise <input type="checkbox"/> Y <input type="checkbox"/> N	Office sign <input type="checkbox"/> Y <input type="checkbox"/> N
Main office <input type="checkbox"/> Y <input type="checkbox"/> N	Yard sign <input type="checkbox"/> Y <input type="checkbox"/> N
Branch office <input type="checkbox"/> Y <input type="checkbox"/> N	Promotional material <input type="checkbox"/> Y <input type="checkbox"/> N
Home office <input type="checkbox"/> Y <input type="checkbox"/> N	Associate signs <input type="checkbox"/> Y <input type="checkbox"/> N
Residential sales <input type="checkbox"/> Y <input type="checkbox"/> N	Associate websites <input type="checkbox"/> Y <input type="checkbox"/> N
Commercial sales <input type="checkbox"/> Y <input type="checkbox"/> N	Associate nicknames <input type="checkbox"/> Y <input type="checkbox"/> N
Residential lease <input type="checkbox"/> Y <input type="checkbox"/> N	Associate team names <input type="checkbox"/> Y <input type="checkbox"/> N
Commercial lease <input type="checkbox"/> Y <input type="checkbox"/> N	Social media <input type="checkbox"/> Y <input type="checkbox"/> N
Referrals only <input type="checkbox"/> Y <input type="checkbox"/> N	Broker reference <input type="checkbox"/> Y <input type="checkbox"/> N
Broker/Associate agreements <input type="checkbox"/> Y <input type="checkbox"/> N	Record retention <input type="checkbox"/> Y <input type="checkbox"/> N
Office policy manual <input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> in-house
Closing file checklist <input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> 3rd-party
Associate corp. or assoc. <input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> paper
Broker corp. or assoc. <input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> electronic
Licenses available/displayed <input type="checkbox"/> Y <input type="checkbox"/> N	5-Year record retention <input type="checkbox"/> Y <input type="checkbox"/> N

FILE AUDIT:	INVESTIGATOR COMMENTS:
Contract/Lease <input type="checkbox"/> Y <input type="checkbox"/> N	_____
Brokerage agreement <input type="checkbox"/> Y <input type="checkbox"/> N	_____
Acknowledgment disclosure <input type="checkbox"/> Y <input type="checkbox"/> N	_____
RPC disclosure/disclaimer <input type="checkbox"/> Y <input type="checkbox"/> N	_____
Lead based paint <input type="checkbox"/> Y <input type="checkbox"/> N	_____
EM receipt <input type="checkbox"/> Y <input type="checkbox"/> N	_____
Listing contract <input type="checkbox"/> Y <input type="checkbox"/> N	_____
Estimated net/cost <input type="checkbox"/> Y <input type="checkbox"/> N	_____
Min service agreement <input type="checkbox"/> Y <input type="checkbox"/> N	_____
HUD-1 closing statement <input type="checkbox"/> Y <input type="checkbox"/> N	_____
Number of files reviewed _____	_____
Number of discrepancies _____	_____

This form was approved by the Oklahoma Real Estate Commission.

OREC OFFICE INSPECTION FORM (02-2017) Page 1 of 5

provide reasonable notice, respect the proprietary information of their former employer, and refuse to engage in any activities that take undue advantage of their previous positions.

FAIRNESS. Ethical executives are fair and just in all dealings; they do not exercise power arbitrarily, and do not use overreaching nor indecent means to gain or maintain any advantage nor take undue advantage of another's mistakes or difficulties. Fair persons manifest a commitment to justice, the equal treatment of individuals, tolerance for and acceptance of diversity, they are open-minded; they are willing to admit they are wrong and, where appropriate, change their positions and beliefs.

CONCERN FOR OTHERS. Ethical executives are caring, compassionate, benevolent and kind; they like the Golden Rule, help those in need, and seek to accomplish their business objectives in a manner that causes the least harm and the greatest positive good.

RESPECT FOR OTHERS. Ethical executives demonstrate respect for the human dignity, autonomy, privacy, rights, and interests of all those who have a stake in their decisions; they are courteous and treat all people with equal respect and dignity regardless of sex, race or national origin.

LAW ABIDING. Ethical executives abide by laws, rules and regulations relating to their business activities.

COMMITMENT TO EXCELLENCE. Ethical executives pursue excellence in performing their duties, are well informed and prepared, and constantly endeavor to increase their proficiency in all areas of responsibility.

LEADERSHIP. Ethical executives are conscious of the responsibilities and opportunities of their position of leadership and seek to be positive ethical role models by their own conduct and by helping to create an environment in which principled reasoning and ethical decision making are highly prized.

REPUTATION AND MORALE. Ethical executives seek to protect and build the company's good reputation and the morale of its employees by engaging in no conduct that might undermine respect and by taking whatever actions are necessary to correct or prevent inappropriate conduct of others.

ACCOUNTABILITY. Ethical executives acknowledge and accept personal accountability for the ethical quality of their decisions and omissions to themselves, their colleagues, their companies, and the public.

APPENDIX

Quiz A: Cause for suspension or revocation of license. Refer to Section 858-312

	Scenario: Possible Violation of...	
1.	<p>Barbara loaned money to her first-time homebuyer for the earnest money & down- payment on a home they were purchasing. Barbara was the real estate licensee who handled this transaction. This may be a violation of which clause in Sec. 858-312?</p> <ul style="list-style-type: none">a. 16b. 22c. 12d. Other	
2.	<p>Jon Jones owned a real estate sales company named JJ Realty. In addition to sales, he also acted as a rental agent/property manager on several properties; the income & other monies from this part of his business was paid to him through his management entity called Home Central, LLC. JJ Realty was registered with and licensed by OREC, but Home Central, LLC was not. This may be a violation of which clause in Sec. 858-312?</p> <ul style="list-style-type: none">a. 6b. 8c. 14d. Other	
3.	<p>Prior to the renewal date of her real estate license, Alice was convicted of Aggravated Driving Under the Influence (DUI) and Speeding in Excess of the Lawful Maximum Limit on Oklahoma County District Court. When she renewed her license, she failed to report this on the application for renewal. This may be a violation of which clause in Sec. 858-312?</p> <ul style="list-style-type: none">a. 15b. 19c. 1d. Other	

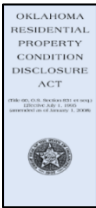
4.	<p>Doris, a sales agent with Busy Bee Realty, had several new homes listed for Builder Bart. Each year when the annual Parade of Homes was held, she hired friends or family to open the home and stay to greet visitors and hand them glossy brochures with sales information and property details. Doris paid them as temporary workers at \$12 per hour for the three days of the event. This may be a violation of which clause in Sec. 858-312?</p> <ul style="list-style-type: none"> a. 21 b. 7 c. 4 d. Other
5.	<p>Broker Manny Walters received a notice of a complaint filed against him from the OREC. Manny knew that his behavior in the incident cited in the complaint was above reproach and he decided to ignore it. All the Commission had to do was check out this disgruntled complainant's situation and they would most certainly drop the case. This may be a violation of which clause in Sec. 858-312?</p> <ul style="list-style-type: none"> a. 9 b. 8 c. 15 d. Other
6.	<p>Sam Safe, a broker, sold a property which he had listed to Harry, the buyer. The Residential Property Condition Disclosure signed by the Seller was delivered to Harry when the seller accepted the offer. A week later, the seller sent a copy of a six-month old structural report to Sam, who then called Harry and told him he had the report. In fact, this Seller's report discussed some structural deficiencies, but the final statement was "There are no structural requirements," so Sam told Harry that it was 'clean.' Harry had home inspections made but did not have a structural inspection since he was relying on the one provided by the seller that Harry said was 'clean', though he did not have a copy. After closing, Harry was re-carpeting the house and found major structural problems. Upon request, Sam then sent the report to Harry. Harry filed a complaint to OREC. This may be a violation of which clause in Sec. 858-312?</p> <ul style="list-style-type: none"> a. 8 b. 2 c. 9 d. Other

7.	<p>Bobby Bailey did not notice when his license expiration date passed and so failed to renew his license. His broker, Patrick Paulson, also was not aware that Bobby's license was lapsed. Bobby continued his real estate business as usual and closed a hard-fought commercial transaction in which his commission exceeded \$18,000. The buyer of the property was very angry about one aspect of the transaction but could not reach Bobby to discuss it. After a month of trying to get a response from Bobby or his company, the buyer filed a complaint at the OREC. This may be a violation of which clause in Sec. 858-312?</p> <ul style="list-style-type: none"> a. 9 b. 2 c. 6 d. Other
8.	<p>Patrick Paulson, the company broker of record from the case in #6 above, was also investigated when the OREC received the complaint about Bobby Bailey. This may be a violation of which clause in Sec. 858-312?</p> <ul style="list-style-type: none"> a. 9 b. 8 c. 14 d. Other
9.	<p>Cathy Casper had her real estate license suspended for 90 days. As this put her in a real financial hardship, she asked her broker Danny Lakewood to let her help in the office, answer ad calls and hold open houses for an hourly fee. She also had 3 listings coming up and she wanted him to list them without putting her name on them; but also pay her a referral fee along with her other wages for helping in the office. Danny was worried about Cathy's family and he did need help in the office through the summer, so he agreed to this arrangement. This may be a violation of which clause in Sec. 858-312?</p> <ul style="list-style-type: none"> a. 9 b. 21 c. 18 d. Other

QUIZ B, Prohibited Dealings

1. Betty, a licensee, understands that she is required to inform a buyer and/or seller with whom she is working that they will be expected to pay certain closing and brokerage service costs as well as the approximate amount of these costs. When must she provide this information to the party?
 - a. Before closing
 - b. Within 3 days of beginning the transaction
 - c. As soon as possible
 - d. At the time the offer is presented.
2. Jim had a listing interview with Jones, the seller, who wanted to price at \$250,000. Jim knew this too high and told the seller that it was above market value and might take a long time to sell. Jones insisted on trying \$250,000 'for a while' so Jim listed and put it in MLS. The house stayed on the market for 9 months, then the seller lost his job and told Jim he just wanted to "get rid of it, now." Jim offered to buy the property for \$200,000 and seller accepted. To comply with the license law, Jim should:
 - a. Keep a complete paper trail of all conversations with this seller about the transaction.

- b. Make full disclosure of his license status in writing get owner's consent. Contract should also disclose Jim's license status and OREC license number.
 - c. Make full disclosure of his license status and put OREC license number on contract.
 - d. Release the listing before purchasing the property.
3. Before getting her real estate license, Mary Smith owned three rental properties and managed them herself. After she got in the real estate business, she listed a home in Edmond that did not sell before the sellers moved to another city. The owners decided to take the home off the market and rent it until they could get a better price or possibly move back to Edmond. They asked Mary to manage the rental and agreed to pay her 15% of the rental each month. She agreed and managed this property along with her own and simply paid herself the 15% management fee each month from the rent. Which of the following statements is true?
- a. Mary actions in managing someone else's property is an act that would be considered an "untrustworthy, improper, fraudulent or dishonest dealing" in the real estate license law.
 - b. Mary has done nothing wrong.
 - c. Mary has found a useful source of income.
 - d. Mary actions in managing someone else's property is NOT an act that would be considered an "untrustworthy, improper, fraudulent or dishonest dealing" in OREC rules.
4. As a real estate license, you sell a rental property which you own to someone at your church that you have known a long time. Since this is a private transaction, it has nothing to do with your license status and requires no special handling.
- a. True b. False
5. You have a prospective buyer with whom you entered an exclusive Buyer Brokerage Agreement. Since he is planning to buy several properties over an unknown period, the expiration date of the agreement is "upon five days' notice by either party." This is in compliance with the real estate license law.
- a. True b. false
6. You must obtain special authorization of the homeowner of your listing to allow an unlicensed assistant to open a home for an open house and simply hand out brochures.
- a. True b. False
7. Joanie, a sales associate, lives in a suburb about 50 miles from her office. Her market area is her home neighborhood and she found that her clients don't want to drive that far to come into her office. She discussed this with her broker, and he suggested she rent a small office space with no street signage as an unofficial office near her neighborhood to accommodate her customers and clients. He agreed to increase her commission split to help her pay for the space since they would both benefit from the increased business. She does this and places a handmade cardboard sign on the front door which reads "Joanie Jetson, Real Estate Agent, and XYZ Agency." Which of the following statements is true?
- a. This is a good arrangement for Joanie, her broker and her clients.
 - b. This is a violation of the license law and could jeopardize her real estate license.
 - c. She should require the broker to pay for the rent.
 - d. Her broker is really a nice guy to help her this way.



The Oklahoma real estate commission does not have jurisdiction over the residential property condition disclosure act but does have jurisdiction over a real estate licensee who fails to comply with this act. The real estate commission is responsible for developing and amending the disclosure and disclaimer forms and making such forms available. Any alleged dispute or violation of this act of a civil nature must be adjudicated in a court of proper jurisdiction. Further, if the violation involves a real estate licensee, individuals should contact the real estate commission.

THE RESIDENTIAL PROPERTY CONDITION DISCLOSURE ACT

Oklahoma statutes, title 60,
sections 831-839 section
831, short title this act shall
be known and may be cited
as the “Residential Property
Condition Disclosure Act.”

Section 832. Definitions as used in this act:

- 1) “Offer to purchase” means an offer to purchase property made by a purchaser pursuant to a written contract.
- 2) “Seller” means one or more persons who are attempting to transfer a possessory interest in property and who are either:
 - a) represented by a real estate licensee; or
 - b) not represented by a real estate licensee but receive a written request from the purchaser to deliver or cause to be delivered a disclaimer statement or disclosure statement as such terms are defined in paragraphs 11 and 12 of this section:
- 3) “Purchaser” means one or more persons who are attempting to acquire a possessory interest in property;
- 4) “Real estate licensee” means a person licensed under the Oklahoma real estate license code;
- 5) “Transfer” means a sale or conveyance, exchange or option to purchase by

- written instrument of a possessory interest in property for consideration;
- 6) “Person” means an individual, corporation, limited liability company, partnership, association, trust or other legal entity or any combination thereof;
 - 7) “Contract” means a real estate purchase contract for the sale, conveyance or exchange of property, option to purchase property, or a lease with an option to purchase property;
 - 8) “Property” means residential real property improved with not less than one nor more than two dwelling units;
 - 9) “Defect” means a condition, malfunction or problem that would have a materially adverse effect on the monetary value of the property, or that would impair the health or safety of future occupants of the property;
 - 10) “Disclosure” means a written declaration required by this act based on actual knowledge of the seller regarding certain physical conditions of the property. a disclosure for purposes of this act is not a warranty, implied or express, of any kind;
 - 11) “Disclaimer statement” means the statement described in paragraph 1 of subsection a of section 3 of this act; and
 - 12) “Disclosure statement” means the statement described in paragraph 2 of subsection a of section 3 of this act.

Section 833. Disclaimer and Disclosure Statements

- A.** A seller of property located in this state shall deliver, or cause to be delivered, to the purchaser of such property one of the following:
- 1) A written property disclaimer statement on a form established by rule by the Oklahoma real estate commission which states that the seller:
 - a) has never occupied the property and makes no disclosures concerning the condition of the property, and
 - b) has no actual knowledge of any defect; or
 - 2) A written property condition disclosure statement on a form established by rule by the Oklahoma real estate commission which shall include the information set forth in subsection B of this section.
- B.** 1. The disclosure statement shall include an identification of items and improvements which are included in the sale of the property and whether such items or improvements are in normal working order. the disclosures required shall also include a statement of whether the seller has actual knowledge of defects or information in relation to the following:
- a) water and sewer systems, including the source of household water, water treatment systems, sprinkler systems, occurrence of water in the heating and air conditioning ducts, water seepage or leakage, drainage or grading problems and flood zone status,
 - b) structural systems, including the roof, walls, floors, foundation and any basement,
 - c) plumbing, electrical heating and air conditioning systems,
 - d) infestation or damage of wood-destroying organisms,
 - e) major fire or tornado damage,
 - f) land use matters,

- g) existence of hazardous or regulated materials and other conditions having an environmental impact.
 - h) existence of prior manufacturing of methamphetamine,
 - i) other defects known to the seller and
 - j) other matters the Oklahoma Real Estate Commission deems appropriate.
- 2) The disclosure statement shall include the following notices to the purchaser in bold and conspicuous type:
- a. "the information and statements contained in this disclosure statement are declarations and representations of the seller and are not the representations of the real estate licensee.",
 - b. "the information contained in this disclosure statement is not intended to be a part of any contract between the purchaser and the seller.", and
 - c. "the declarations and information contained in this disclosure statement are not warranties, express or implied of any kind, and are not a substitute for any inspections or warranties the purchaser may wish to obtain.
- C.** Either the disclaimer statement either the disclaimer statement or the disclosure statement required by this section must be completed, signed and dated by the seller. the date of completion on either statement may not be more than one hundred eighty (180) days prior to the date of receipt for the statement by the purchaser.
- D.** The Oklahoma Real Estate Commission shall develop by rule the forms for the residential property condition disclaimer and the residential property condition disclosure statement. after development of the initial forms, the Oklahoma Real Estate Commission may amend by rule the forms as is necessary and appropriate. Such forms shall be made available upon request irrespective of whether the person requesting a disclaimer or disclosure form is represented by a real estate

A.

S **Section 834. Delivery of Statements**

- A.** A seller should deliver either the disclaimer statement or disclosure statement to the purchaser as soon as practicable, but in any event, it shall be delivered before acceptance of an offer to purchase.
- B.** If the disclaimer statement or disclosure statement is delivered to the purchaser after an offer to purchase has been made, the offer to purchase shall be accepted only after the purchaser has acknowledged receipt of the disclaimer statement or disclosure statement and confirmed the offer to purchase.
- C.** If the seller becomes aware of a defect after delivery to the purchaser of either a disclaimer statement or a disclosure statement, then the seller shall promptly deliver to the purchaser either a disclosure statement or an amended disclosure statement which discloses the newly discovered defect. The disclosure statement or any amendment shall be in writing and shall be signed and dated by the seller. However, if the required document is delivered to the purchaser after an offer to purchase has been made, the offer to purchase shall be accepted only after the purchaser has acknowledged receipt of the required document and confirmed the offer to purchase.
- D.** The purchaser shall acknowledge in writing receipt of the disclaimer statement or the disclosure statement and any amendment to the disclosure statement. the purchaser shall sign and date any acknowledgement. Such acknowledgement should accompany the offer to purchase the property. If the purchaser confirms the offer to purchase, such confirmation shall be in writing, shall be signed and dated by the purchaser and shall be promptly delivered to the seller.

Section 835. Limitation of Seller's Liability

- A.** The seller shall not be liable for a defect or other condition in the property if the existence of the defect or other condition in the property was disclosed in the disclosure statement or any amendment

delivered to the purchaser before acceptance of the offer to purchase.

- B.** The seller shall not be liable for any erroneous, inaccurate or omitted information supplied to the purchaser as a disclosure required by this act if:
 - 1) the error in accuracy or omission results from an approximation of information by the seller provided:
 - a) accurate information was unknown to the seller at time disclosure was made,
 - b) the approximation was clearly identified as such and was reasonable and based on the best information available to the seller, and
 - c) the approximation was not used to circumvent the disclosure requirements of this act;
 - 2) The error, inaccuracy or omission was not within the actual knowledge of the seller; or
 - 3) The disclosure was based on information provided by public agencies and the seller reasonably believed the information to be correct.
- C.** The delivery by a public agency of any information required to be disclosed by the seller of the property shall satisfy the requirements of this act as to the disclosures to which the information being furnished is applicable.

Section 836. Duties of Real Estate Licensee

- A.** A real estate licensee representing or assisting a seller has the duty to obtain from the seller a disclaimer statement or a disclosure statement and any amendment required by the residential property condition disclosure act and to make such statement available to potential purchasers prior to acceptance of an offer to purchase.
- B.** A real estate licensee representing or assisting a purchaser has the duty to obtain and make available to the purchaser a disclaimer statement or a disclosure statement

- C. A real estate licensee has the duty to disclose to the purchaser any defects in the property actually known to the licensee which are not included in the disclosure statement or any amendment.
- D. A real estate licensee who has complied with the requirements of subsections A, B, and C, of this section, as applicable, shall have no further duties to the seller or the purchaser regarding any disclosures required under the residential property condition disclosure act.

A real estate licensee who has not complied with the requirements of subsections a, b and c of this section shall be subject to disciplinary action by the Oklahoma real estate commission as set forth in paragraph 6 of section 858-208 of title 59 of the Oklahoma statutes.

- E. real estate licensee has no duty to the seller or the purchaser to conduct an independent inspection of the property and has no duty to independently verify the accuracy or completeness of any statement made by the seller in the disclaimer statement or the disclosure statement and any amendment.

Section 837. Remedies

- A. The purchaser may recover in a civil action only in the event of any of the following:
 - 1) The failure of the seller to provide to the purchaser a disclaimer statement or a disclosure statement and any amendment prior to acceptance of an offer to purchase;
 - 2) The failure of the seller to disclose in the disclosure statement or any amendment provided to the purchaser a defect which was

actually known to the seller prior to acceptance of an offer to purchase; or

- 3) The failure of the real estate licensee to disclose to the purchaser any defects in the property actually known to the real estate licensee prior to acceptance of an offer to purchase and which were not included in the disclosure statement or any amendment provided to the purchaser.

- B. The sole and exclusive civil remedy at common law or otherwise for a failure under subsection a of this section by the seller or the real estate licensee 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.
- C. Any action brought under this act shall be commenced within two (2) years after the date of transfer of real property subject to this act.
- D. In any civil action brought under this act, the prevailing party shall be allowed court costs and a reasonable attorney fee to be set by the court and to be collected as costs.
- E. A transfer of a possessory interest in property subject to this act may not be invalidated solely because of the failure of any person to comply with this act.
- F. This act applies to, regulates and determines rights, duties, obligations and remedies at common law or otherwise of the seller, the real estate licensee and the purchaser with respect to disclosure of defects in property and supplants and abrogates all common-law liability, rights, duties, obligations and remedies therefore

Section 838, Exemptions from Application of Act

A. this act does not apply to:

- 1) transfers pursuant to court order, including, but not limited to, transfers pursuant to a writ of execution, transfers by eminent domain and transfers pursuant to an order for partition.
- 2) transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a mortgagee's sale under a power of sale after default in an obligation secured by any instrument containing a power of sale, or transfers by a mortgagee who has acquired the real property at a sale conducted pursuant to a power of sale or a sale pursuant to a decree of foreclosure or has acquired the real property by deed in lieu of foreclosure;
- 3) transfers by a fiduciary who is not an owner occupant of the subject property in the course of the administration of a decedent's estate, guardianship, conservatorship or trust.
- 4) transfers from one co-owner to one or more other co-owners.
- 5) transfers made to a spouse, or to the person or persons in the lineal line of consanguinity of one or more of the owners.
- 6) transfers between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree.
- 7) transfers made pursuant to mergers and from a subsidiary to a parent or the reverse.
- 8) transfers or exchanges to or from any governmental entity; or
- 9) transfers of a newly constructed, previously unoccupied dwelling.

B. Nothing in this act shall be construed to alter or change the requirements of section 858-513 of title 59 of the Oklahoma statutes, regarding psychologically impacted real estate. section 839, notices and acknowledgements any notices or acknowledgements required under this act need not be sworn to, verified or acknowledged.

Section 839, Notices and Acknowledgements

Any notices or acknowledgements required under this act need not be sworn to, verified or acknowledged.