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August 2020

Real Estate Agent Licensing in Oklahoma

By Mike Davis

Real Estate "Agents" are licensed by the Oklahoma Real Estate Commission (OREC). The Commission sunsets on July 1, 2021.¹

Current Law

The governor appoints each of seven Real Estate Commissioners from a list of at least two names provided to him by "a statewide organization representing realtors." These commissioners must then be confirmed by the Senate. Five commissioners must be real estate brokers, one must be a layperson, and one must be a representative of an OREC-approved real estate school. Each commissioner serves a four year term. The commissioners may be removed by the governor for good cause.²

The Real Estate Commission is required to pay 10 percent of all license fees collected into the General Fund. This is a well-hidden tax on buying a home (as if that enterprise were not already an expensive enough proposition). If at any time the Commission's secondary discretionary fund (The Real Estate Education and Recovery Fund) has more than \$250,000 in it, the excess can be spent, at the commission's discretion, on one of four realtor-related educational endeavors. Returning the excess to OREC licensees is not among the options.³

Licenses and Costs

Oklahoma's Real Estate "Agents" are licensed in four tiers: Provisional Sales Associate, Sales Associate, Broker Associate, and Broker. The three lower tiers must work under a full Broker. Brokers must maintain an office. A separate license is required for each additional office. Each office must have its own licensed Broker In Charge. The Commission licenses Brokerages, and tracks the licensed activities of sales "teams" - those who hold themselves out as jointly sharing the work of a sales associate. The Commission may charge a registration fee, currently \$100, for tracking these activities.⁴

To qualify for a Provisional Sales Associate License, an applicant must be 18 years old, have completed, within the last three years, 90 clock hours of "basic real estate instruction," and pass an exam. The exam has both national and Oklahoma specific components, and there are provisions of Oklahoma law that directly conflict with what is tested at the national level.⁵

After earning a Provisional Sales Associate License, an applicant for full Sales Associate must complete an additional 45 hours of training within 12 months.⁶ The license may not be renewed as a second "provisional" license - licensees must graduate to a Sales Associate License. Once licensed, Provisional Sales Associates have one year to complete additional post-license coursework.⁷

In order to renew a full Sales Associate or Broker license, a licensee must obtain 21 hours of Continuing Education each year. Continuing education is required by statute, but it is the OREC that sets the number of hours required. A license for any of the three non-provisional tiers lasts for three years. Nonresidents of Oklahoma who are licensed in their home state may obtain a nonresident license.⁸

Penalties

Violation of the Real Estate License Code by someone without a license can result in a misdemeanor criminal conviction that carries a fine of \$1,000 and up to six months in jail per violation. The Commission may impose a regulatory fine of \$5,000, or the amount of the commission earned, for each violation - on top of the civil and criminal penalties. These fines are directed to the Real Estate Education and Recovery fund, which OREC oversees. Someone acting as a broker or agent may not sue over nonpayment or other contractual breach unless they can show they were licensed at the time of the licensed activities.⁹

On the other hand, *licensees* who violate the Code face lesser penalties. Fines are capped at \$2,000 per violation, and \$5,000 per transaction; no violation of the code by a licensee carries a criminal penalty or results in jail time. Criminal laws outside the Real Estate License Code, such as fraud, do still apply.¹⁰

Consumer Protection or Consumer Deception?

In Oklahoma, the basic duties of a broker are to facilitate real estate transactions. Legally speaking, a broker is expected to be the line of communication between the parties to a sale. A broker may represent the buyer, the seller, or both. If a broker is

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representing both sides, certain disclosures are required.¹¹

In addition to limiting entry to the field through the complex, expensive, and time consuming licensing scheme described above, the Oklahoma Real Estate Licensing Code carves out several protections for licensees. For instance, the traditional common law understanding of “agency,” including its fiduciary duties like loyalty, good faith, candor, and obedience are displaced. But although Oklahoma Realtors are not bound by the traditional agent-principle relationship, they are specifically allowed to hold themselves out as “agents” in advertising and client contact. They may also recoup their fees as a percentage of the final sale price, even though this often puts their incentives at odds with their clients’ interests; a buyer wants the lowest price possible, but if their agent is on a commission, they are rewarded, at least in the short term, for talking their client into offering a higher price. This seeming conflict of interest is deemed acceptable by the Act. The Act also specifically disclaims any duty of a licensee to verify the size of any building or lot.¹² Far from protecting consumers, these provisions show a clear intent to protect licensees from consumers, even to the point of allowing consumers to be deceived about the nature of their relationship with their “agent”.

Evaluating Whether to License Real Estate Agents

The 1889 Institute has published *Policy Maker’s Guide to Evaluating Proposed and Existing Professional Licensing Laws*.¹³ It argues that there are two preconditions for licensing an occupation: 1) an occupation’s practices present a real and probable risk of harm to the general public or patrons if practitioners fail to act properly; AND 2) civil-law or market failure makes it difficult for patrons to obtain information, educate themselves, and judge whether an occupation’s practitioners are competent. An occupation should be licensed ONLY if the answer to both questions is yes.

Do Real Estate Brokers present a probable risk of significant harm to the public or patrons if practitioners fail to act properly?

No. Real Estate Brokers are salesmen and facilitators. They help connect sellers to interested buyers. While they are surely educated in the grueling process of buying real property, this expertise does not protect the public from any especially grave dangers. A good realtor can push a tenuous deal to satisfactory completion, help a buyer avoid a money pit, or help a seller position and market their home to maximize its selling price. A bad realtor can cause an otherwise agreeable deal to fall apart, let a buyer make a bad investment, or let a seller take a below-market offer. It is perfectly legal and possible to complete real estate transactions without an agent or broker. In fact it is quite common for one or both parties to work without a realtor.

Most buyers will use a licensed mortgage broker, who will insist on an inspection (by a licensed inspector), an appraisal (by a licensed appraiser), a title insurance policy (issued by a licensed insurer), which also requires an abstractor’s report (created by a licensed abstractor), which must be examined by a licensed attorney. How many layers of licensing are needed to make it “safe” to buy a house? (Keep in mind that each layer make the process harder and more expensive.)

Is there a civil law or market failure that makes it difficult for patrons of these services to obtain information, educate themselves, and judge whether an occupation’s practitioners are competent?

No. In cases of true incompetence or fraud, available civil remedies are exactly what is called for. Property disputes are among the most ancient areas of law, and courts are well-equipped to settle them. If anything, the Oklahoma Real Estate Broker’s Act shields brokers and their agents from consumers, far from the usual narrative that licensing protects consumers.

A third question that should be asked IF both of the first two questions are answered in the affirmative, bears on the specific licensing bill proposed: does the law *as written* substantially alleviate at least one of the harms listed above? Regulation purporting to address a harm that does nothing to mitigate that harm is not only burdensome, it is fraudulent.

The 1889 Institute has outlined a solution to the problem of occupational licensing, including a model bill, in its paper *A Win-Win for Consumers and Professionals Alike: An Alternative to Occupational Licensing*.¹⁴ The proposal would allow the state to register multiple private certification organizations, who then compete for professionals and the attention of consumers. This allows a state to keep the one and only valuable aspect of licensing, the shorthand information consumers get about which practitioners are competent, while discarding the market distortions of monopolized industry. The law keeps certifying agencies honest by allowing additional certifiers to enter the market if those already in place behave badly. Private certifiers are given the protection of criminal fraud laws to lower the cost of defending their credentials. State licenses are not eliminated, instead anyone certified by a qualified certifying agency is exempted from the relevant licensing laws.

Conclusion

Real Estate Brokers should not be licensed. The laws Oklahoma has in place do more to protect realtors from consumers than they do to protect consumers from realtors. The best thing the Legislature could do for homebuyers is deregulate real estate brokers, and allow competition to weed out the bad from the good.

References



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