

Real Estate Manual

TABLE OF CONTENTS

1. Broker Relationships Act.....	2
2. Laws Affecting Real Estate Practices and Code and Rules.....	9
3. Contracts and Forms.....	23
4. Ethics.....	26
5. Fair Housing.....	32
6. Business Plan.....	37
7. Real Estate Market Place.....	42
8. Qualities of a Sales Person.....	45
9. Employment Contracts.....	48
10. Prospecting.....	51
11. Working with Buyers.....	62
12. Negotiations.....	70
13. Competitive Market Analysis.....	73
14. Property Management.....	78
15. Risk Management.....	81
16. Finance, Investments, Exchanges and Related Addenda.....	86
17. Disclosures.....	97

CHAPTER ONE

BROKER RELATIONSHIPS ACT

(With Parties)

The Broker Relationships Act 2013 is the Oklahoma Statute which regulates the relationship between real estate licensees and members of the Public. It was written by and lobbied for by the Oklahoma Association of REALTORS as a means of giving real estate licensees guidelines of practice as a result of several decades and court cases which demonstrated licensees' apparent inability to practice legally under the Common Law of Agency.

The Oklahoma Broker Relationships Act represents a positive evolution in the practice of real estate. It is not a lengthy law and it gives licensees guidelines and protections in the conduct of real estate relationships which were not available under Agency Law. It is written in language any literate person may understand and put into practice. While it has abrogated the Law of Agency, it must be pointed out that it exclusively regulates the relationship between licensees and members of the public. The relationship between real estate associates and their respective principal brokers remains the Common Law of Agency.

OKLAHOMA BROKER RELATIONSHIPS ACT

TITLE 59, OKLAHOMA STATUTES,

SECTION 858-351 THROUGH 858-363

EFFECTIVE NOVEMBER 1, 2000

AMENDED AS OF NOVEMBER 1, 2013

Section 858-351. Definitions.

Unless the context clearly indicates otherwise, as used in Section 851-351 through 858-363 of the Oklahoma Real Estate Code:

1. "Broker" means a real estate broker, an associated broker associate, sales associate, or provisional sales associate authorized by a real estate broker to provide brokerage services;
2. "Brokerage Services" means those services provided by a broker to a party in a transaction;
3. "Party" means a person who is a seller, buyer, landlord or tenant or a person who is involved in an option or exchange;
4. "Transaction" means an activity or process to buy, sell, lease, rent, option, or exchange real estate. Such activities or processes may include, without limitation, soliciting, advertising, showing or viewing real property, presenting offers or counteroffers, entering into agreements and closing such agreements; and
5. "Firm" means a sole proprietor, corporation, association or partnership.

Section 858-352.*Repealed by Laws 2012, HB2524, c251, Section 9, eff. November 1, 2013*

Section 858-353. Broker Duties and Responsibilities.

A. A broker shall have the following duties to all parties in a transaction, which are mandatory and may not be abrogated or waived by a broker:

1. Treat all parties with honesty and exercise reasonable skill and care;
2. Unless specifically waived in writing by a party to the transaction:
 - a. receive all written offers and counteroffers,

- b. reduce offers or counteroffers to a written form upon request of any party to a transaction, and
 - c. present timely all written offers and counteroffers;
- 3. Timely account for all money and property received by the broker;
- 4. Keep confidential information received from a party or prospective party confidential. The confidential information shall not be disclosed by a firm 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 firm, The following information shall be considered confidential and shall be the only information considered confidential in a transaction:
 - a. that a party or prospective party is willing to pay more or accept less than what is being offered;
 - b. that a party or prospective party is willing to agree to financing terms that are different from those offered;
 - c. the motivating factors of the party or prospective party purchasing, selling, leasing, optioning, or exchanging, the property; and
 - d. information specifically designated as confidential by a party unless such information is public.
- 5. Disclose information pertaining to the property as required by the Residential Property Condition Disclosure Act; and
- 6. Comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules.

B. A broker shall have the following duties and responsibilities only to a party for whom the broker is providing brokerage services in a transaction which are mandatory and may not be abrogated or waived by a broker;

- 1. Inform the party in writing when an offer is made that the party will be expected to pay certain costs, brokerage service costs and approximate amount of costs; and

2. Keep the party informed regarding the transaction.

C. When working with both parties to a transaction, the duties and responsibilities set forth in this section shall remain in place for both parties.

Section 858-354. *Repealed by Laws 2012, HB2524, c. 251, Section 9, eff. November 1, 2013*

Section 858-355. *Repealed by Laws 2012, HB 2524, c 252, Section 9, eff. November 1,2013*

Section 858-355.1. Brokerage agreements – services provided to both parties in a transaction – Disclosures.

A. All brokerage agreements shall incorporate as material terms the duties and responsibilities set forth in Section 858-353 of the Oklahoma Real Estate License Code.

B. A broker may provide brokerage services to one or both parties in a transaction.

C. A broker who is providing brokerage services to one or both parties shall describe and disclose in writing the broker's duties and responsibilities set forth in Section 858-353 of the Oklahoma Real Estate License Code prior to the party or parties signing a contract to sell, purchase, lease, option, or exchange real estate.

D. A firm that provides brokerage services to both parties in a transaction shall provide written notice to both parties that the firm is providing brokerage services to both parties prior to the parties signing a contract to purchase, lease, option or exchange real estate.

E. 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 brokerage services. Such disclosures shall include a description of those steps in the transaction for which the broker will not provide brokerage services, and also state that the broker assisting the other party in the transaction is not required to provide assistance with these steps in any manner.

Section 858-356. Disclosures – Confirmation in writing.

The written disclosure as required by subsection C of Section 858-355.1 of this title shall be confirmed by each party in writing in a separate provision, incorporated in or attached to the contract to purchase, lease, option or exchange real estate. In those cases, where a broker is involved in a transaction but does not prepare the contract to purchase, lease, option, or exchange real estate, compliance with the disclosure requirements shall be documented by the broker.

Section 858-357. *Repealed by Laws 2012, HB2524, c.251, Section 9 eff. November 1, 2013.*

Section 858-358. Duties of broker following termination, expiration or completion of performance.

Except as may be provided in a written brokerage agreement between the broker and a party to a transaction, the broker owes no further duties or responsibilities to the party after termination, expiration, or completion of performance of the transaction, except:

1. To account for all monies and property relating to the transaction; and
2. To keep confidential all confidential information received by the broker during the broker's relationship.

Section 858-359. Broker compensation – Determining Relationship – Breach of Duty.

- A. The payment or promise of payment or compensation by a party to a broker does not determine what relationship, if any, has been established between the broker and a party to a transaction.
- B. In the event a broker receives a fee or compensation from any party to the transaction based on a selling price or lease cost of a transaction, such receipt does not constitute a breach of duty or obligation to any party to the transaction.
- C. Nothing in this section requires or prohibits a broker from charging a separate fee or other compensation for each duty or other brokerage services provided during a transaction.

Section 858-360. Abrogation of common law of agency – Remedies Cumulative.

A. The duties and responsibilities of a broker specified in Section 858-351 through 858-363 of the Oklahoma Real Estate License Code shall replace and abrogates the fiduciary or other duties of a broker to a party based on common law principles of agency. The remedies at law and equity supplement the provisions of Sections 858-351 through 858-363 of the Oklahoma Real Estate License Code.

B. A broker may cooperate with other brokers in a transaction. Pursuant to Section 858-351-858-363 of the Oklahoma Real Estate License Code, a broker shall not be an agent, subagent, or dual agent and an offer of sub-agency shall not be made to other brokers.

C. Nothing in this act shall prohibit a broker from entering into an agreement for brokerage services not enumerated herein so long as the agreement is in compliance with this act, the Oklahoma Real Estate Code and the Oklahoma Real Estate Commission Administrative Rules.

Section 858-361. Use of “agent” in trade name.

A real estate broker and the associates of a real estate broker are permitted under the provisions of this title to use the word “agent” in a trade name and as a general reference for designating themselves as real estate licensees.

Section 858-362. Vicarious liability for acts or omissions of real estate licensee.

A party to a real estate transaction shall not be vicariously liable for the acts or omissions of a real estate licensee who is providing brokerage services under Section 858-361 through 858-363 of the Oklahoma Real Estate License Code.

Section 858-363. Associates of real estate broker – Authority.

Each broker associate, sales associate, and provisional sales associate shall be associated with a real estate broker. Associates shall not enter into a brokerage agreement with a party in the associate's name and shall only be allowed to enter into the agreement in the name of the real estate broker. A real estate broker may authorize associates to provide brokerage services in the name of the broker as permitted under the Oklahoma Real Estate License Code, which may include the execution of written agreements.

SPECIAL NOTE ABOUT "PARTIES"

The "parties" to a real estate transaction are stated on page one of the usual real estate purchase contract. The parties are the persons who have an interest in and are directly involved in the transaction. In the usual situation the "parties" are the buyer(s) and seller(s). These "parties" are decision makers in the transaction. Unless the real estate licensee is a buyer or seller, the licensee's ability to make decisions about the transaction is seriously limited. In fact, it is limited by the Oklahoma Real Estate License Code and Rules, which specifically presents the mandate to present offers.

If a real estate licensee manipulates or interferes with a buyer's or seller's ability to access offers and counteroffers, they may have violated a state law. Title 15 of Oklahoma Statutes is about Contract Law. It contains a provision concerning "Interference with Contracts." A real estate licensee's job is to present offers and counteroffers and not "interfere" with the parties' ability to make decisions. Implicit in the Oklahoma Real Estate Code and Rules is the mandate for licensees to explain the offers and counteroffers in such a way that the "parties" understand them without the licensee becoming a decision maker. The "net to seller" and the "cost to buyer" worksheets are valuable tools in assisting licensees to accomplish this legitimate function. In some states, licensees are referred to a "facilitators." Facilitating the transaction for the benefit of buyers and/or sellers seems to "sum up" the licensee's role in the transaction.

CHAPTER TWO

REGULATIONS AFFECTING REAL ESTATE PRACTICE

AND

CODE AND RULES

CONSUMER FINANCE PROTECTION BUREAU

The Consumer Finance Protection Bureau was created by the Dodd-Frank financial protection law. It is only marginally accountable to Congress and has sweeping regulatory powers. The agency officially began operations on July 21, 2011. Its purpose is to consolidate and expand regulatory authority over credit cards, mortgages, and many other financial products formerly regulated by seven federal agencies.

The Consumer Finance Protection Bureau is a part of the Federal Reserve Bank and its budget is not subject to Congressional control. Its funding is a fixed percentage of the Federal Reserve's operating budget. Its budget is approximately 12 percent of the Federal Reserve's budget. The CFPB may request an additional \$200 million in additional funding from Congress. Since the CFPB is within the Federal Reserve, there is effectively no presidential oversight and the Federal Reserve is prohibited from "intervening" in the CFPB's affairs.

The purpose of the CFPB is to punish business practices which are construed to be "unfair and abusive." These terms remain undefined leaving the CFPB with discretion. Its regulatory purview is "Any financial product or service that is offered or provided for use by consumers primarily for personal, family, or household purposes and is delivered, offered, or provided in connection with a consumer financial product or service..." These "products or services" include:

“Extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit;

“Extending or brokering leases of personal or real property that are functional equivalent of purchase finance agreements;

“Real estate settlement services;

“Deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

“Selling, providing, or issuing stored value or payment instruments;

“Providing check cashing, check collection, or check guaranty services;

“Providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network;

“Providing financial advisory services to consumers on individual financial matters of relating to proprietary financial products or services, including: providing credit counseling to any consumer and to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

“Collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service;

“Collecting debt related to any consumer financial product or service; and

“Such other financial product or service as may be defined by the Bureau, by regulation if the Bureau finds that such financial product or service is entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law, or permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.”

The CFPB rules have introduced a “new” class of mortgages. These are called “Qualified Mortgages.” They are designed to be safer and more understandable than many of the types of loans which contributed to the consumer debt bubble of the first decade of the 21st Century. Lenders who offer QM loans must meet CFPB rules. A QM loan must:

Be a loan a borrower should be able to repay;

Be a loan which is safer and easier for the borrower to understand;

Be a loan that limit the points and fees lenders charge.

The CFPB declares that QM loans are not difficult to find. They can be issued by any mortgage lender. QM loans provide for a way to meet the ability-to-repay requirement but do not allow no documentation or low documentation loans. Lenders are required to make a reasonable, good faith effort to determine the borrower’s ability to repay the loan based on income, assets, debts, etc.

The CFPB has several requirements of mortgage servicers:

Servicers must send borrowers a monthly statement so the borrower can see how the payments are being credited.

Servicers are required to promptly correct mistakes.

If the borrower has an adjustable rate mortgage, servicers are required to give notice of a change in the interest rate.

Servicers must contact borrowers by the time the borrower is 36 days late on payment.

Servicers can not initiate a foreclosure action until the borrower is more than 120 days delinquent.

If a borrower has submitted an application for help, the servicer can no longer start a foreclosure while they are still working with the borrower.

When a borrower calls a mortgage servicer about a problem with the loan, the mortgage services must make sure the servicer's employee who takes the call must have access to pertinent documents relating to the loan.

When borrowers ask questions about the status of a foreclosure action, the mortgage servicer must give the borrower accurate information.

Mortgage servicers are required to inform borrowers who have fallen behind in their payments about the options the borrower has. If the borrower files a completed application for assistance (called a "loss mitigation application") early enough, the servicer must review and evaluate all the options that may be available to the borrower.

If the “loss mitigation application” is denied, the servicer must explain why the borrower was rejected.

The purpose of Congress for the CFPB is to make sure financial services work for consumers by giving mortgage services and borrowers specific rules for the process. The CFPB accepts complaints about mortgages. The CFPB can be contacted at (855) 411-2372.

KNOW BEFORE YOU OWE FORMS

The CFPB has made available two forms which are to be given to consumers. They are the LOAN ESTIMATE and the CLOSING DISCLOSURE.

The LOAN ESTIMATE form is required to be given to consumers within three business days after they make application for a loan. It replaces the Truth-in-Lending statement and the Good Faith Estimate and provides a summary of the loan terms and estimated loan and closing costs. It is expected that consumers will use this form to compare the costs and features of different loans. Obviously, consumers are encouraged to “shop” for a loan.

The CLOSING DISCLOSURE is required to be given to consumers three business days before the loan is closed. It replaces the HUD-1 and the Truth-in-Lending statement. It is a detailed final accounting of the transaction. If there are changes on the form, it may delay the closing for three days.

The Real Estate Settlement Procedures Act is now effectively under the jurisdiction of the Consumer Finance Protection Bureau.

OKLAHOMA REAL ESTATE COMMISSION CODE AND RULES

The Oklahoma Real Estate Commission is a state agency created by Senate Bill 13 and became effective on January 1, 1950. The law is codified under Title 59, Oklahoma Statutes of 1974 Section 858-101 through 858-605 as amended...

The Oklahoma Real Estate Commission's Administrative Law, known as the RULES, are codified under Title 605.

Title 59, Section 858-208. **Powers and duties of the Commission** is, in effect, the jurisdiction of the Commission. It gives the OREC the extent of its ability to regulate in the real estate industry.

"The Commission shall have the following powers and duties:

1. To promulgate rules, prescribe administrative fees by rule, and make orders as it may deem necessary or expedient in the performance of its duties;
2. To administer examinations to persons who apply for the issuance of licenses;
3. To sell to other entities or governmental bodies, not limited to the State of Oklahoma, computer testing and license applications to recover expended research and development costs;
4. To issue licenses in the form the Commission may prescribe to persons who have passed examinations or who otherwise are entitled to such licenses;
5. To issue licenses to and regulate the activities of real estate brokers, provisional sales associates, sales associates, branch offices, nonresidents, associations, corporations, and partnerships;
6. Upon showing good cause as provided for in the Oklahoma Real Estate License Code, to discipline licensees, instructors and real estate school entities by:
 - a. reprimand,
 - b. probation for a specified period of time,
 - c. required education in addition to the educational requirements provided by Section 858-307.2 of this title,
 - d. suspending real estate licenses and approvals for specified periods of time,
 - e. revoking real estate licenses and approvals,
 - f. imposing administrative fines pursuant to Section 858-402 of this title, or
 - g. any combination of discipline as provided by subparagraphs a through f or this paragraph;
7. Upon showing good cause, to modify any sanction imposed pursuant to the provisions of this section and to reinstate licenses;
8. To conduct, for cause disciplinary proceedings;

9. To prescribe penalties as it may deem proper to be assessed against licensees for the failure to pay the license renewal fees as provided for in this Code;
10. To initiate the prosecution of any person who violates any of the provisions of this Code;
11. To approve instructors and organizations offering courses of study in real estate and to further require them to meet standards to remain qualified as is necessary for the administration of this Code;
12. To contract with attorneys and other professionals to carry out the functions and purposes of this Code;
13. To apply for injunctions and restraining orders for violations of the Code or the rules of the Commission;
14. To create an Oklahoma Real Estate Contract Form Committee by rule that will be required to draft and revise real estate purchase and/or lease contracts and any related addenda for voluntary use by real estate licensees;
15. To enter into contracts and agreements for the payment of food and other reasonable expenses as authorized in the State Travel Reimbursement Act necessary to host, conduct, or participate in meetings of training sessions as is reasonable for the administration of this Code; and
16. To conduct an annual performance review of the Executive Director and submit the report to the Legislature; and
17. To enter into reciprocal agreements with other real estate licensing regulatory jurisdictions with equivalent licensing, education and examination requirements

Section 858-301. License required; Exceptions, 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, nor shall anything in this section prevent any person, partnership, trust, association or corporation, or the partners, officers or employees, of any person, partnership, trustees or beneficiaries of any trust, association or corporation, as owner, lessor or lessee or real estate, 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 any acts under the order of any court, or acting as a trustee under the terms of 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 the 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, including any and all amendments thereto, and other similar interests in real estate, for the purpose of, 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, public or private, 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 to a family member, friend, or coworker; or
8. Apply to any person or entity managing a transient lodging facility. For purposes of this paragraph, "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 who lease residential housing units only to eligible persons who qualify through a state or federal housing subsidized program to lease the property to an affordable housing development project. "Affordable housing development project" means a housing development of four or more units constructed for lease to specifically eligible persons as required by the particular federal or state housing program, including, but not limited to, the U.S. Department of Housing and Urban Development, the U. S. Department of Agriculture Rural Development, the U. S. Department of Treasury Internal Revenue Service, or the Oklahoma Housing Finance Agency.

SECTION 858-312. Investigations-Cause for suspension or revocation of license. The Oklahoma Real Estate Commission, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any real estate licensee, any 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 pas performed, is performing, has attempted to perform, or is attempting to perform any of the following acts:

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;
3. Failing to comply with the requirements of Section 858-351 through 858-363 of this title;
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;
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 s associated;
6. Failing, within a reasonable time, to account for or to remit any monies, documents, or other property coming into possession of the licensee which belong to others;
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;
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;

12. Soliciting, selling, or offering for sale real estate by offering "free lots," conducting lotteries or contests or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate;
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;
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 in this section, or because the real estate licensee has been convicted of, or pleaded guilty or nolo contendere to, a crime involving moral turpitude;
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 hand 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 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.
23. Violation of the Residential Property Condition Disclosure Act.

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.

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 the 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.
- (4) Procuring the signature to a purchase offer or contract or to any lease or lease and proposal which has no definite purchase price or lease rental, or no method of payment, termination date, 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 any associate; permitting an associate to operate as a broker; or failure of a broker to properly supervise the activities of an associate. A broker permitting the use of the broker's license to enable an associate licensed with the broker to, in fact, establish and conduct a brokerage business wherein the broker's only interest is the receipt of a fee for the use of the broker's sponsorship.
- (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.
- (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 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 are properly licensed.

(22) An associate shall not perform licensed activities outside of 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.

Section 858-515.1 Size of property for sale

A. In connection with any real estate transaction, the size or area, in square footage or otherwise, of the subject property shall not be required to be provided by any real estate licensee, and if provided, shall not be considered any warranty or guarantee of the size or area information, in square footage or otherwise, of the subject property.

B. 1. If a real estate licensee provides any party to a real estate transaction with third-party information concerning the size or area, in square footage or otherwise, of the subject property involved in the transaction, the licensee shall identify the source of the information.

2. For the purposes of this subsection, "third-party information" means:

a. an appraisal or any measurement information prepared by a licensed appraiser,

b. a survey or developer's plan prepared by a licensed surveyor,

c. a tax assessor's public record,

d. a builder's plan used to construct or market the property, or

e. a plan, drawing or stated square footage provided by the owner or agent of the owner, as it relates to commercial buildings or structures for sale or for lease only.

Commercial land shall be verified by one of the methods provided for in subparagraphs a through d of this paragraph.

C. A real estate licensee has no duty to the seller or purchaser of real property to conduct an independent investigation of the size or area, in square footage or otherwise, of a subject property, or to independently verify the accuracy of any third-party information as such term is defined in paragraph 2 of subsection B of this section.

D. A real estate licensee who has complied with the requirements of this section, as applicable, shall have no further duties to the seller or purchaser of real property regarding disclosed or undisclosed property size or area information, and shall not be subject to liability to any party for any damages sustained with regard to any conflicting measurements or opinions of size or area, including exemplary or punitive damages.

Section 858-515.2. Violation of duty to Disclose-Source Information-Damages.

A. If a real estate licensee has provided any third-party information, as defined in paragraph 2 of subsection B of 858-515.1 of this act, to any party to a real estate transaction concerning size or area of the subject real property a party to the real estate transaction may recover damages from the licensee in a civil action only when a licensee knowingly violates the duty to disclose the source of information, as required in paragraph 1 of subsection B of 858-515.1 of this act.

B. The sole and exclusive civil remedy at common law or otherwise for a violation of paragraph 1 of subsection B of 858-515.1 of this act by a real estate licensee shall be an action for actual damages suffered by the party as a result of such violation and shall not include exemplary or punitive damages.

C. For any real estate transaction commenced after the effective date of this act, any civil action brought pursuant to this section shall be commenced within two (2) years after the date of transfer of the subject real property.

D. In any civil action brought pursuant to this section, the prevailing party shall be allowed court costs and reasonable attorney fees to be set by the court and collected as costs of the action.

E. A transfer of a possessory interest in real property subject to the provisions of this act may not be invalidated solely because of the failure of any person to comply with the provisions of this act.

F. The provisions of this act shall apply to, regulate and determine the rights, duties, obligations and remedies, at common law or otherwise, of the seller marketing his or her real property for sale through a real estate licensee, and of the purchaser of real property offered for sale through a real estate licensee, with respect to disclosure of third-party information concerning the subject property's size or area, in square footage or otherwise, and this act hereby supplants and abrogates all common law liability, rights, duties, obligations and remedies of all parties therefore.

CHAPTER THREE

CONTRACTS AND FORMS

The activities of professional real estate licensees seem to focus around and be driven by contracts. It begins with the broker-associate agreement wherein the broker and associate establish the terms of their mutually beneficial enterprise. Following the employment agreement with the broker, the associate often enters into another “employment/service” agreement called a “listing contract.” The purpose of this contract is to create an agreement between the broker and the seller to accomplish the marketing the property on terms acceptable to the seller.

The next contract in the usual real estate sales process is the “purchase/sales” agreement. This is created by the negotiations between the seller and the buyer. The buyer and the seller are the “parties” to the contract and the licensee is the professional hired to “facilitate” the contract for the benefit of the parties. This negotiations process is generally referred to as the “contract formation” process. Essential to the contract formation process is the offer-acceptance. Without an offer and an acceptance, a contract can not be formed.

Once the contract formation is accomplished, the parties enter into the “executory” phase of the contract. In the real estate transaction, the executory process may include several additional contracts. Depending on the terms of the contract, surveyors, inspectors, repair persons, and many other service providers may be employed through contracts.

The final phase of the contract process is referred to as “execution.” It is sometimes called performance or termination. No matter what it is called, in successful real estate transactions, the parties “go to closing.” Closing is the final accounting wherein the buyer’s closing expenses, and the seller’s closing expenses are itemized. Hopefully, the seller will be given the “proceeds of the sale” and the buyer will be given the deed.

Contracts are defined as an agreement between two or more competent persons, having for its purpose a legal objective wherein the parties agree to act in a certain manner. A contract may also be defined as a voluntary agreement supported by legal consideration between legally competent parties to do or refrain from doing some legal act. In essence, a contract is a set of promises that courts can enforce.

In Oklahoma the Oklahoma Real Estate Commission maintains a standing committee for the purpose of making effective contracts available in the marketplace. Oklahoma, unlike some other states, does not require these particular contracts to be used. Licensees may use contract forms as they and their parties elect. However, because the OREC contracts are readily available and effective contracts, many licensees encourage their use. These contract forms are available to any person who wishes to download them. All Oklahoma real estate licensees are encouraged to explore the variety of forms which are available on this site.

There are three phases in the contract process. There is “contract formation”, the “executory period”, and “termination or consummation or performance.”

In the contract formation phase, there must be an offer and an acceptance. If no offer is made, acceptance can not happen. If no acceptance, no contract can be formed. It is during this phase wherein negotiations (offers and counteroffers) take place. Contract law requires that an offer meet three requirements. It must be serious. It is often referred to as “bona fide”. This is a Latin term which means in good faith without fraud or deceit.

The second requirement of an offer is that it must be of “serious intent.” This means the offeror must be making a serious offer and not in jest.

The third requirement of an offer is that it must be “reasonably definite and complete.” This means that the offeror and offeree are accepting the terms finally agreed to and not other items which may have been discussed. In real estate, for example, the offeror and offeree may discuss many items in many ways during the preliminary discussions/negotiations. Specifically, in real estate, the only thing that is enforceable in the contract is what is written in the contract. Any preliminary discussions the buyer and seller have prior to the “writing” are nice but, not a part of the contract unless they are written in the contract.

In creating a contract, not only must there be a genuine (bona fide) offer, there must be a genuine acceptance. Acceptance is both a matter of intention and an overt act of manifestation. In the real estate business, licensees often make a grammatically incorrect statement which, in fact, conveys the intention of this part of real estate contracting: “If it ain’t wrote down, it don’t exist.” Therefore, the buyer and seller are offering and accepting the same terms and conditions on the same level – ergo, having a “Meeting of the minds.”

The whole idea of offer and acceptance is summed up in the legal term “reality of consent.” This means there is no misrepresentation, fraud, mistake, duress, menace, undue influence in the offer and acceptance.

During the executory phase of the contract many of the terms of the contract may be accomplished. In fact, it is possible for some re-negotiations to take place during this phase. Inspections, repairs, etc. may take place. The OREC contract has a section called "INVESTIGATIONS, INSPECTIONS AND REVIEWS" which deals with these possible issues.

The final phase of the contract process is referred to as "execution." It is sometimes called "termination" or "performance." For real estate licensees, this usually accomplished at and by a "closing company." As a general policy, the OREC considers the closing company/closing agent to be an agent of the listing broker.

The usual process is for the deed to be delivered and accepted by the buyer and the buyer delivers valuable consideration as agreed to in the contract.

CHAPTER FOUR

ETHICS

Ethics are commonly defined as a set of standards setting forth what is commonly accepted as good conduct. Norman D. Flynn, former president of the NATIONAL ASSOCIATION OF REALTORS, made the following statement regarding ethics in the real estate industry:

“Since the founding of the National Association in 1908, the assurance of integrity and enhanced professionalism have been guiding lights of our organization. The NAR Code of Ethics was adopted in 1913 and since that time has been the distinguishing hallmark of REALTORS and REALTOR-ASSOCIATES. The Code has been described both as a gift of vision and as the golden thread that unites REALTORS everywhere.

“In an increasingly litigious society, there is no safer guide for the real estate professional than the Code of Ethics...”

Ethical practices, by the definition given above, must be those practices which are commonly accepted as being “good.” What constitutes “good” may vary according to the mind in which the definition is contained. However, there are two attempts to delineate what constitutes “good” behavior in the real estate business. One is the NAR Code of Ethics. The other is the Oklahoma Real Estate Commission Code and Rules.

The Code of Ethics is a set of behavioral standards that are ascribed to by members of the NAR. Violations of these standards may result in censure or removal from the Association. The Code of Ethics of the National Association of REALTORS is administered by the NAR, its state and local boards and has no relation to the Oklahoma Real Estate Commission.

The Oklahoma Real Estate Commission License Code and Rules are a set of state statutes and Administrative Law passed by the Oklahoma Legislature. These apply to all real estate licensees in Oklahoma whether they are members of the National Association of REALTORS or not. Violation of the Code and Rules may result in suspension or revocation of a license, reduction from broker to associate, or an administrative fine. The Oklahoma Real Estate License Code and Rules are administered by the Oklahoma Real Estate Commission. The Commission is an agency of Oklahoma State Government and has no relation to the National Association of REALTORS or its state or local boards.

State statutes such as the OREC Code and Rules are the minimum acceptable standard of behavior the Oklahoma Real Estate Commission will tolerate. Ethical behavior represents a standard of behavior that is far above the minimum standards set by law. All real estate licensees are encouraged to practice real estate activities according to the standards set forth in the NAR Code of Ethics regardless of their membership in the Association. They contribute to a

higher standard of quality service provided to both customers and clients and a more satisfactory career in the real estate industry.

CODE OF ETHICS

NATIONAL ASSOCIATION OF REALTORS

PREAMBLE

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose great social responsibility and a patriotic duty to which REALTORS should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS.

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS believe that comment is necessary, their opinion if offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below.

Duties to Clients and Customers

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS pledge to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS remain obligated to treat all parties honestly.

Article 2

REALTORS shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law.

Article 3

REALTORS shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker.

Article 4

REALTORS shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any members thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property, they own, or in which they have any interest, REALTORS shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative.

Article 5

REALTORS shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6

REALTORS shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g. homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS shall disclose to the client or customer to whom the recommendation is made any financial benefits, fees, other than real estate referral fees, the REALTOR or REALTOR's firm may receive as a direct result of such recommendations.

Article 7

In a transaction, REALTORS shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR's client or clients.

Article 8

REALTORS shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 9

REALTORS, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished upon their signing or initialing.

Duties to the Public

Article 10

REALTORS shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS shall not be parties to any plan or agreement to discriminate against a person or

persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

REALTORS, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

Article 11

The services which REALTORS provide to their clients and customers shall conform to the standards of practice and competence which are reasonable expects in the specific real estate disciplines in which hey engage, specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.

Article 12

REALTORS shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS shall ensure that their status as real estate professionals are readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are or have been notified that those communications are from a real estate professional.

Article 13

REALTORS shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

If charged with unethical practices or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS shall place all pertinent facts before the proper tribunals of the Member Board of affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes.

DUTIES TO REALTORS

Article 15

REALTORS shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices.

Article 16

REALTORS shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS have with clients.

Article 17

In the event contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALORS (principals) associated with different firms, arising out of their relationship as REALTORS, the REALTORS shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

CHAPTER FIVE

FAIR HOUSING

The Fair Housing Laws have as their primary purpose the creation and assurance of fair housing opportunity for everyone.

The Civil Rights Act of 1866 provides: “All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.”

Under the Civil Rights Act of 1866 by the interpretation of the United States Supreme Court as indicated in the landmark case of **Jones vs. Mayer**. The distinction between the **Federal Fair Housing Law of 1968** exempting certain owners or groups and the **Civil Rights Act of 1866** is that the 1866 law prohibits all racial discrimination without exception or exemption.

The Federal Fair Housing Law of 1968, as amended, also known as the **Open Housing Law**, contained in Title VIII of the **Civil Rights Act of 1968** provided that it is unlawful to discriminate on the basis of race, color, religion, sex, or national origin when selling or leasing residential property. The 1968 act expressly prohibits discriminatory acts including:

1. Refusing to sell or rent to, deal or negotiate with any person.
2. Discriminating in terms or conditions for buying or renting housing.
3. Discriminating by advertising that housing is available only to persons of a certain race, color, religion, sex, or national origin.
4. Denying that housing is available for inspection, sale, or rent when it really is available.
5. Blockbusting, commonly known as “panic selling” or “panic peddling,” defined as persuading owners to sell or rent housing because minority groups are moving into the neighborhood and property values will be affected.
6. Denying or making different terms or conditions for home loans by commercial lenders, such as banks, savings and loan associations, and insurance companies.
7. Denying to any the use or participation in any real estate services such as brokers’ organizations, multiple-listing services, or other facilities related to the selling or renting of housing.
8. Steering prospects to or from certain geographic areas based on race.

9. Redlining, the practice of restricting the number of loans or the loan-to-value ratio in certain areas of a community based on the fact that the area is becoming racially integrated.

The Federal Fair Housing Law applies to single family as well as multi-family housing. Single-family housing owned by private individuals is covered when a broker or other person in the business of selling or renting units is used and discriminatory advertising is used. Single-family houses owned by other than private individuals or a private individual who owns more than three houses or who in any two-year period sells more than one in which he is not a most recent resident are also covered under the act. Those multi-family structures of five or more units or the multi-family structures containing four or fewer units, if the owner does not reside in one of those units, are covered under the act.

Certain acts are not covered by the **Federal Fair Housing Law**.

1. Single-family units owned by a private individual owner of three or fewer units if:
 - a. a broker is not used,
 - b. discriminatory advertising is not used, and
 - c. no more than one house in which the owner was not the most recent resident is sold during any two-year period.
2. Rental units or rooms in an owner-occupied multi-family structure of two to four families and discriminatory advertising is not used.
3. Limiting the sale, rental or occupancy of dwelling which a religious organization owns or operates for other than commercial purposes to persons of the same religion, if membership in that religion is not restricted on the basis of race, color or national origin.
4. Limiting to its own members the rental or occupancy of lodgings that a private club owns or operates for other than a commercial purpose.

The 1968 act provides three ways of obtaining compliance:

1. Complaints can be sent to the U.S. Department of Housing and Urban Development in Washington, D.C. or any Regional Housing and Urban Development Office within one year of the alleged grievance.
2. Any individual may take a complaint directly to the United States District Court or State or local county court within two years of the alleged discriminatory act, whether or not a complaint has been filed with HUD. In some cases, an attorney may be appointed for the complainant and the payment of fees, costs of security can be waived.

3. The Attorney General of the United States may file a court action when information about possible discrimination comes to the attention of the office. Complaints that are brought under the **Civil Rights Act of 1866**, however, must be taken directly to a federal court.

THE OKLAHOMA FAIR HOUSING LAW, 1985 covers essentially the same information as the federal law except that it prohibits discrimination based on age and handicap. The Oklahoma Fair Housing Law also makes it illegal to:

1. Refuse to consider any public assistance, alimony, or child support, awarded by a court that can be verified (“seasoned”) as to the amount regularity and length of time to be received as a valid source of income.
2. Refuse to rent or lease to a handicapped person based on the person’s use of a bona fide properly trained guide, service or signal dog. This includes other “service” animals.
3. Demand an additional non-refundable fee or an unreasonable deposit for rent from a handicapped person for such service animal. However, the handicapped person may still be liable for damage done to the dwelling by such animal.

The act specifically directs the Oklahoma Real Estate Commission to review the cases of licensees convicted of discrimination in housing and to take appropriate action, such as suspending or revoking licenses. The same exemptions to the original federal act are found in the Oklahoma act with the addition of the following exemptions:

1. The act does not prohibit any person from refusing to sell or rent any housing which has been planned exclusively for persons and occupied exclusively by elderly persons.
2. Ordering punitive damages in an amount not to exceed \$5,000.
3. Ordering a person to rehire, reinstate, and/or provide back pay to any employee or licensee discriminated against because of obedience to the fair housing laws of the state.

The 1988 amendment to the **Civil Rights Act** adds familial status (families with children) and handicapped as bases on which discrimination is illegal. The law affects sales and rentals as well as protective covenants banning children in condominiums, subdivisions and planned communities. Exemptions include owners (not licenses) who own three or fewer houses, owners who have four or fewer units and who occupy one unit, and certain types of housing occupied by the elderly.

Rental or financing of housing and buildings that were previously “adults only” can exclude children only if the managers or owners have adopted a policy to rent or sell to the elderly only. Housing for the elderly is defined as a community where at least 80 percent of the dwellings are occupied by at least one-person age 55 or older, and significant facilities and services are provided; or those occupied solely by people age 62 and older.

The definition of “handicapped” includes mentally and physically handicapped, alcoholics and persons with communicable diseases not transferable through occupancy. It does not include current drug abusers, persons who have one or more prior felony drug convictions, or sexual preference. A landlord is not required to rent to a person who poses a direct threat to the health, safety or property of others.

Disabled tenants have the right to make modifications to a dwelling at their own expense. The tenants have to agree to restore the property to its original condition when they leave. Landlords will be held in violation if they refuse to make reasonable modifications in the premises to accommodate the handicapped.

AMERICANS WITH DISABILITIES ACT

New construction of multi-family housing units in buildings of four or more units with an elevator, or first floor units in other buildings consisting of four or more units, must contain certain features of accessibility for the handicapped. These features are:

1. An accessible rout into and through the dwelling;
2. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
3. Reinforcements in bathroom walls to allow later installations of grab bars; and
4. Usable kitchen and bathrooms such that an individual in a wheelchair can maneuver about the space.

In addition to these features in each unit, all multi-family dwellings are required to have their public and common use portions readily accessible to and usable by handicapped persons, and all doors will be designed to allow passage into and within multi-family dwellings by handicapped persons in wheelchairs.

COMPLIANCE TESTING

From time-to-time real estate offices are visited by individuals or organizations testing or checking compliance with fair housing laws. The “testers” or “auditors” play the role of persons looking for housing to buy or rent. They observe whether fair housing laws are being followed, and if not, they lodge complaints with appropriate fair housing agencies.

The following steps are usually involved in the testing procedure following a complaint that a particular broker has been acting in a discriminatory manner:

1. A Caucasian couple of certain socio-economic status is sent to the suspected broker and shows interest in the property in question.
2. Soon after, a minority couple of the same socio-economic background will come to the same real estate broker. They will answer the same essential questions with the same essential answers as did the earlier couple.
3. After the minority couple has finished, a different Caucasian couple will come and repeat the same procedure.
4. The attitudes and representations of the broker to all three couples would now be compared and these findings will all be admissible in court procedures.

Testing for fair housing compliance is a recognized investigative technique and has been held legal by the Supreme Court. The argument that it is an unconstitutional appropriation of a real estate salesperson's time or an interference with free speech has been rejected. It must, therefore, be recognized as a risk and a cost of business.

CHAPTER SIX

BUSINESS PLAN

A business plan is one of the most important things a real estate licensee can develop. It serves the purpose of helping the licensee to evaluate the feasibility of an idea in an objective and unemotional way.

Three of the first things to be considered are (1) whether there is a market and how much of it can the licensee secure; (2) are the management skills of the licensee sufficient to the demands of the product, the customers and the market; (3) will this project yield a profit?

In developing a plan, the licensee should develop an operating plan. The operating plan identifies opportunities and helps avoid mistakes, develop marketing plans and plans for developing production and administration of activities, and develops budgets and projections for possible financial outcomes.

The business plan also helps the licensee to communicate. It helps to serve as a tool for selling and a basis for possible financing. The plan should determine the amount of financing needed, forecast profitability and cash flow, showing liquidity and the ability to repay a debt.

If the licensee's business plan is not to be used to raise money, it will be what is known as an "internal business plan" and may be less formal. If presented to outsiders, the business plan should be of high quality and thorough in its financial analysis.

A business plan is going to have three sections. Section one describes management and marketing aspects of the business. Section two describes the financial projections. Section three is a summary called the "Executive Summary." This may be three to five pages in length and may appear at the beginning of the plan.

When writing the plan, the following suggestions are helpful.

The first section should be thorough but to the point with graphs, bullet points and readability.

The second section is the financial projections and should be based on research and facts and not opinions. Justification of the numbers may be required if the plan is a formal plan presented to a lender.

The third section is the supporting information described in the first two sections and will vary according to the type of business.

A good business plan has been shown to be a significant help in improving the potential for success in any business.

When writing a business plan, the following is a generally acceptable method.

Design a cover sheet. This will contain the business name, address, phone number, and names of principals.

Write an "Executive Summary" which is a statement of purpose.

Write section one. This will be about the business. A general plan to use follows:

1. Describe the business
2. Describe the products or services
3. Develop a market analysis
4. Write a marketing plan
5. Describe location
6. Describe competition
7. Describe management and operations
8. Describe personnel requirements
9. Define the business application and the effect of loan or investment

Write section two. This will be specifically and in detail about financial data.

Project financial statements. This will include income projections, cash flow expectations, and a discussion of balance.

Analysis of the break-even point.

Analysis of sources and applications of funds.

Section three will contain a history of finances with documentation, tax returns, resumes, references, personal financial statements, diagrams of physical facilities, letters of intent, purchase orders, contracts, etc.

Obviously, some parts of these suggestions may not apply to a real estate business, in which case, they may be ignored.

In writing the DESCRIPTION OF YOUR BUSINESS, be clear and to the point. Answer basic questions:

1. What type of business?
2. Is the business startup, expansion, etc.?

3. Is the business sole proprietorship, Limited Liability Company, Subchapter S corporation, etc.?
4. What are the products or services provided by the company?
5. Who are the customers?

Additional things which may be discussed in this area include why you will be successful, what your experience is, what is special or unique about the product or service, and why will it be successful.

In the second part of the business plan there will be a detailed description of the product/services the company will be offering. This may include features and an overview of anything unique in the process and discuss why customers will want to buy.

Since real estate services are not unique, it is helpful to find a way to position services in the minds of customers to differentiate them from competition. Consider: quality, price, selection, customer service, knowledge of the real estate process and marketplace.

When writing market analysis consider who are the customers. Perhaps listing customers or categories and what exactly do they buy from your company. Also analyze why they might buy from you.

Some basic questions to deal with in this section are:

1. Who are your customers and where are they?
2. How large is the market and is it growing or shrinking?
3. How much of the market can you capture?
4. What is the overall outlook for the market in this area?
5. Are there segments of the marketplace which may be underserved?
6. Are there other opportunities?

In writing a marketing plan consider:

1. What do you have to sell?
2. Who wants what you are selling?
3. How do you reach your target market?

4. How will your product be “packaged”?
5. How does your service/product compare to the competitions and how will they respond?
6. Why will customers pay what you ask?
7. Can you compete on something other than price?

Consider some of the following in your promotional strategies:

1. Who and where is your target market?
2. How do you reach your target market?
3. How do you motivate them to buy?
4. What is your cost and timetable for implementation of the marketing plan?

SAMPLE MARKETING PLAN

PREPARED FOR _____

ADDRESS _____

PREPARED BY _____

MAKE LISTING PRESENTATION

PRESENT MARKETING SYSTEM

PLACE SIGN IN YARD, LOCK BOX ON DOOR

PLACE BROCHURE BOX ON SIGN

PROCESS PAPERWORK

PLACE IN MLS AND OFFICE LISTING BOOK

PLACE HOME WITH PICTURE ON INTERNET

PLACE MLS SHEET IN MAIL BOX OF ALL LICENSEES IN OFFICE

FAX MLS SHEET TO 15 TOP PRODUCING LICENSEES IN AREA

CREATE FULL COLOR AND BLACK AND WHITE FLYER

CREATE "DO YOU KNOW WHAT YOUR NEIGHBOR DID LAST NIGHT?" FLYER

WRITE ADS FOR APPROPRIATE NEWSPAPER

MAIL ANNOUNCEMENT TO 20 OF YOUR CLOSEST FRIENDS AND FAMILY

MAIL "JUST LISTED" CARD TO YOUR TROPHY DATA BASE

CALL SHOWING AGENTS FOR INPUT AND FEEDBACK FROM SHOWINGS

CALL OWNER WITH RESULTS (will leave on voicemail unless otherwise instructed)

SCHEDULE OPEN HOUSE WITH SELLER

PLACE AD FOR OPEN HOUSE

MAIL OPEN HOUSE INVITATION TO NEIGHBORHOOD AND FEEDER NEIGHBORHOOD

CALL 15 NAMES FROM TROPHY DATA BASE

CALL SHOWING AGENTS FOR FEEDBACK

HOLD OPEN HOUSE

CALL HOMEOWNER WITH RESULTS OF OPEN HOUSE AND FEEDBACK

MAIL THANK YOU NOTES TO ALL WHO VISITED OPEN HOUSE

CHAPTER SEVEN

THE REAL ESTATE MARKETPLACE

A marketplace is simply a place where sales and purchases take place. In this text we are specifically referring to the real estate marketplace wherein, obviously, all types of real estate are purchased and sold. However, it is often said that real estate is “local in nature.” While this is true in regard to the physical characteristic of real estate’s immobility, the real estate market includes local ordinances, state laws and federal regulations/laws. When the financing aspect of real estate is considered, the real estate marketplace begins to take on national and international aspects. These wider market forces have significant influences on the local real estate marketplace. However, for most of us, a consideration of the characteristics of the “local” real estate marketplace is of significance because that is where we live and practice the business.

The marketplace for non-real estate goods and services are said to have “efficient” markets. In order to be an “efficient” market the following characteristics include:

1. Products and/or services are easily exchangeable for other goods and/or services.
2. The marketplace needs to have a sufficient supply of buyers and sellers who are knowledgeable concerning the products.
3. Government regulation of the marketplace is minimal.
4. The price structure is relatively stable and not subject to radical swings positively or negatively.
5. Transportation of the product is relatively easy and efficient.

Real estate is somewhat different to the usual personal property goods and services. One of the economic characteristics of real estate is that every parcel is unique and not interchangeable with any other parcel. Buyers and sellers have personal preferences concerning real estate and these preferences have the effect of making some parcels of real estate more valuable than others. Frequently buyers and sellers move away from equilibrium creating either a “buyer’s market” (more buyers than sellers) or a “seller’s market (more sellers than buyers).” Since real estate is highly regulated with regard to the uses to which it is put (zoning ordinances, for example) and the complex process by which its ownership is transferred. These all work together to make the prices of real property somewhat volatile.

Since real estate is unique and immobile, the laws of supply and demand are unique as compared to personal property. Personal property is “deliverable” while real estate is not. Land can not be delivered to where it is in high demand nor can it be stored in a warehouse. However, real estate can be increased in value by adding improvements to it or renovating improvements. Since the licensee can not move the property to a more desired location, the licensee can advertise and promote the availability of the property to the greatest number of prospects.

The most important consideration in marketing real estate is demography. Demography is a scientific study of people and where they are and what they are doing. It includes population statistics, such as birth, deaths, marriages, etc. An important source of demographic information for real estate licensees is the U. S. Census Bureau's web site. It includes demographic information arranged by states and counties and a variety of other categories. Licensees can avail themselves of this information for the purpose of information about the demographic makeup of their specific market area.

By keeping track of such demographic trends, licensees can make forecasts concerning the possible demand for real estate in an area. Such real estate projections are published regularly by the government and several private sources. Of course, licensees may make their own forecasts based on what they see happening in their marketplace.

Absorption analysis is a look at the number of residential or nonresidential property that can be sold or leased over a particular period in an area. Such information may be available through local multi-listing systems. Additionally, the licensee can watch the market and keep track of the volume of transactions in the area of interest.

The absorption analysis is an essential part of a feasibility study. A feasibility study will include a cost analysis of possible construction and potential return on the investment to investors. It is a projection of the likelihood of the success of proposed projects. In essence, the absorption analysis of a licensee's marketplace can be accomplished by tracking local sales in terms of how many, what kind and where.

Obviously, considering the local government's master plan and proposals for new streets and infrastructure projects is essential to completing a feasibility study. The municipality's master plan will reveal the city's plans for residential, commercial and industrial development.

The cost of credit is also an essential element of any marketplace, especially the real estate marketplace. The availability of financing is essential to examining the condition of the real estate marketplace. The policies of the Federal Reserve Bank influence the economy of the country perhaps more than any other organization. The "Fed" is responsible for controlling the supply of money in the economy. It has three basic ways of doing this. It can raise or lower the reserve requirements of banks, or it can increase or decrease the interest rate they charge to banks for borrowing money and it can require banks to buy or sell government securities. Each of these methods has the effect of making more or less money available to be loaned to consumers.

Of course, consumers are interested in the primary mortgage market and the availability of loans as influenced by the "Fed." Consumers go to banks, savings and loans, credit unions, etc. to borrow money. The lending institutions have their own lending policies which may be influenced by the overall condition of the money market.

CHAPTER EIGHT

QUALITIES OF A SALESPERSON

There are no hard and fast rules for what individual qualities make for a good sales associate. Thomas C. Neil, Ph.D., in a study for the Georgia Real Estate Commission, shows that successful licensees tend to be well-educated, relatively young, work fifty or more hours per week, value flexibility in the work and rely on former clients and business referrals for leads.

Dr. Neil additionally reports that the average licensee tends to be slightly younger, has spend less time in the community he/she is servicing, and tends to put in fewer hours of work as compared to the successful licensees.

Other studies have reported such qualities as a high level of energy, self-confidence, interest in money, able to deal with rejection, good organizational and communication skills which enhance the success of the licensee.

IMPORTANCE OF FACTORS WHICH INFLUENCE SELLERS' SELECTION OF REAL ESTATE PROFESSIONAL

Source: NAR

1. Used a real estate professional and received good service	66%
2. Real estate professional is a friend/relative/neighbor	58%
3. Recommendations of friends/neighbors/relatives	56%
4. Met real estate professional at open house	41%
5. Don't know – just ended up with real estate professional	29%
6. Direct contact by real estate professional (mail, phone, personal)	28%
7. Newspaper/magazine advertisements	25%
8. Licensee listing presentation best of those interviewed	17%
9. Real estate professional's eagerness	16%
10. Real estate professional was knowledgeable and competent	15%

BUYERS' FIRST CONTACT WITH THE REAL ESTATE PROFESSIONAL WHO FIRST ASSISTED THEM

1. Real estate professional referred by friend/relative/neighbor	27%
2. Real estate professional was friend/neighbor/relative	20%
3. Phone office regarding ad in newspaper	13%
4. Phoned office regarding yard sign	11%
5. Met real estate professional at open house	9%
6. Went to office and professional was on duty	6%
7. Used real estate professional before	5%

PERSONAL MARKETING KIT

Personal items

Personal vehicle

Car signs (optional)

Career apparel

Professional photographs

Organizational tools

Personal planner, appointment book or calendar

Calculator

Computer

Print material

Business cards

Business stationary

Guest register for open house

Door hangers

Latest mortgage schedules

Personal brochures

Marketing tools

Fact sheet and disclosure statement about each listing

Open house signs and flags

Signs

Sign riders

Miscellaneous items

Notepads, pens and pencils

Flashlight

Measuring device

Clipboard

Small tool kit containing hammer, pliers, screwdriver, wrench, duct tape, WD-40

Folding table and chairs for vacant open houses

CHAPTER NINE

EMPLOYMENT CONTRACTS

In the real estate business, there are three primary employment contracts. They are the listing contract, the buyer brokerage agreement and the property management agreement.

Obviously, the listing contract is the most commonly recognized employment contract wherein the seller employs a real estate licensee to facilitate the sale of the seller's property.

The buyer brokerage agreement has been in place for many decades and is not new. However, in recent years, the buyer brokerage arrangement has become more common. In the buyer brokerage agreement, the buyer employs a licensee for the purpose of facilitating the purchase of property. This arrangement has been most commonly used in commercial and industrial real estate and has only become prominent in residential real estate practices in the last few years.

The property management agreement has been in common use for many decades. In this situation, the owner of the property employs a real estate licensee to facilitate the process of acquiring a tenant and managing the property for the benefit of the owner. This has been a normal part of commercial and residential real estate for many decades.

Real estate licensees may find themselves involved in any one or two or all three of these situations depending upon market circumstances and willingness of the licensee.

The Listing Agreement

There are four kinds of listing agreements. The most commonly used one is the Exclusive Right-to-sell contract. In this contract, the broker and the seller have agreed that the broker (usually through one of the broker's associates) has agreed to exert his/her best effort to market the property for the benefit of the seller. The seller has agreed, that when the licensee produces a buyer on terms and conditions acceptable to the seller, the seller will pay the broker an agreed upon commission. Of course, the method of payment does not always take the form of a percentage of the sales price. It could be a fixed rate if agreed to by the seller and the broker.

In this situation, the "client" is the one with whom the licensee has an employment contract. A buyer is generally considered to be a "customer" unless the licensee has a buyer brokerage with the buyer. In Oklahoma, it is acceptable to work for both the buyer and the seller in the same transaction, in which case, the licensee is serving "two masters." In this situation, the licensee is encouraged to refer to the "Confidential Information" requirements of the Oklahoma Brokerage Relationships Act.

The “parties” to an employment contract are the broker and the seller/owner of the property. Often this contract is signed by the broker’s associate who creates the relationship between the parties. The objective of the contract is to accomplish the owner’s goals.

The Exclusive Brokerage listing contract accomplishes everything the Exclusive Right-to-sell listing accomplishes but the seller/owner reserves the right to sell the property and not pay the broker any commission.

The Open Listing is not commonly use by real estate licensees. In this employment contract, the owner/seller has given permission to many brokers to attempt to sell the property and will pay a commission the licensee who finds a buyer. In this type of listing the seller reserves the right to sell the property and not pay any licensee any commission.

The Net Listing is, in fact, not legal in some states. It is legal in Oklahoma but is considered dangerous. In this kind of listing, the seller tells the licensee that the seller must “walk away with” or “net” a specific amount from the sale and the licensee receives any amount above that amount. The risk is this is that if a licensee receives an offer for the amount of the “net” the licensee did not make any money. In the event the licensee receives an amount greatly above the “net” amount, the seller will possibly sue the licensee stating the licensee “knew the property was worth more than the net amount” when the licensee took the listing. In all likelihood, a judge will award the licensee only what would be a “normal” commission for the sale. Again, this kind of listing is, for this reason, illegal in some states.

Availability of listing contract forms

For the past several years, the Oklahoma Real Estate Commission has not made listing contracts available through their web site. Therefore, it has been common practice for licensees to obtain forms from local boards of REALTORS or other sources. However, the Oklahoma Real Estate Commission has made a listing contract available effective November 1, 2015. Since this is a new form, expect extensive revisions over the next several years.

Forms needed for listing appointment

Obviously, a copy of a listing contract appropriate to the circumstances of the purpose of the appointment will be available.

The licensee will have done much research prior to the meeting. If the licensee has access to a Multi-Listing Service, similar properties for sale in the neighborhood which are similar the subject property will be printed out. In addition, many county treasurer’s web sites have helpful information which can be helpful in assisting the seller in arriving at a marketable price. This is a critical aspect of the listing process and licensees are encouraged to accurately research market conditions relating to pricing.

The licensee should also have a copy of the “Seller’s Property Condition Disclosure” form for the seller to fill out. Licensees may answer questions about this form but can only fill out the form when the licensee is the seller. In all other circumstances, the seller fills it out.

In some occasions, seller may desire to complete the “Seller’s Property Disclaimer” form. In this case, the licensee should help the owner of the property that the form and the law specifies that the only time this form may be used is when the seller has NEVER lived in the house, makes no disclosures about defects in the property and has now knowledge of material defects in the property,

If the property was built in 1978 or before, a copy of “**Protect Your Family from Lead in Your Home.**” It is required by law that a copy of this pamphlet be given to prospective purchasers of the house. Buyers have the choice of buying the house with lead-based paint as they desire. The law, however, requires that buyers be informed that there may be lead-based paint in the property. Tests may be performed to determine the presence of lead-based paint in any property. One test is done through an instrument, which when pressed against the suspect object produces a “read-out” regarding the amount of lead present. The other method of testing requires scraping a sample of the suspected paint and sending it to a laboratory for testing.

In the “Prohibited Dealings” section of the OREC Administrative Law (the Rules) it is required that licensees give sellers a copy of a form known as “Net to seller” for the purpose of disclosing the amount of money the seller may have to pay as part of closing costs and how much the seller may “walk away” with.

CHAPTER TEN

PROSPECTING

25 WAYS TO EFFECTIVELY USE YOUR BUSINESS CARDS

1. Be sure all your friends and relatives have a supply of your business cards.
2. All past buyers and current sellers should have a supply of your cards.
3. If possible, put your picture on your business card. People can remember faces better than they can remember names.
4. When giving out phone numbers or information, write them on the back of your card.
5. Give your card to all the clerks you meet in hardware stores, department stores, etc. Tell the clerks you would appreciate referrals.
6. Keep extra cards in your wallet, purse, suit pockets and briefcase.
7. If you have two cars, keep a supply of cards in the glove compartments of each car.
8. Exchange a supply of your cards with friends in related fields such as banking, insurance, law, etc.
9. Give a supply of your cards to any contractor or one who remodels homes in your area.
10. Enclose a card and a copy of the announcement of those college graduates mentioned in the newspaper.
11. Send your card and a congratulatory note, together with a copy of the wedding announcement from the local newspaper, to the parents of the bride and groom.
12. Include a business card when sending a congratulatory note to those who have been promoted or who have won awards.
13. Attach your card to company literature and distribute to personnel offices of local companies.
14. Make sure all attorneys you know have a supply of your cards.
15. All convenience stores near your home and office are good locations for a stack of your cards.
16. Be sure your favorite beauty salon or barber shop has a supply of your cards.
17. Make sure your car mechanic, druggist, dry cleaner, doctor, dentist, etc. know you are in the real estate business. Tell them and give them your card.

18. Leave a card with your tip whenever you eat out. (Be sure to leave a “good” tip.)
19. Have your cards printed with a calendar on the back.
20. Make sure every For Sale by Owner (FSBO) has your card – either deliver it or mail it.
21. Pass out cards when cold canvassing.
22. When holding an open house, place a supply of cards in every room.
23. Leave an ample supply in all homes you have listed.
24. If you have a vacant listing, stick your card in a prominent place (front door, front window, doorbell, etc).
25. Attach your card to any promotional material you hand out, mail out or put in display stands.

PROSPECTING METHODS

FACE-TO-FACE

PROS

1. Personal contact accelerates the process of building rapport.
2. Face-to-Face contact provides opportunity to showcase licensee’s professionalism.

CONS

1. Takes more time.
2. Dependent upon good weather.

PREPARATION

1. Target a specific area.
2. Use internet to get names of householders.
3. Prepare marketplace information and/or other personalized items to hand out.
4. Be knowledgeable about current listings, recently sold listings and expired listings.
5. Have advertising brochures, business cards and appointment book/planner.

6. Have an MLS printout of nearby listings, portfolio, and listing folder available in car.

GUIDELINES

1. Plan presentation. Have reason to be there. Licensee needs to know exactly what to say or do.
2. Make a professional first impression. Wear appropriate apparel.
3. Use sidewalk. Don't walk on lawn.
4. Take a step back after knocking on the front door. Allow homeowner the comfort of his/her own space.
5. Look the person in the eye and smile.
6. Begin building rapport by involving the person in the conversation.
7. Take notes.
8. Send a follow-up note to anyone who takes the time to speak to you.

CONVERSATION

1. Introduce yourself and use the company name immediately.
2. Complement the home or area, if appropriate.
3. Ask open-end questions.
4. Let them talk.
5. Talk about what you can do for them.
6. Break off negative conversation quickly and courteously.
7. Ask for their business and referral.
8. Leave business card, brochures and marketplace information or personalized information with homeowner.
9. Thank them for their time and help.

MAIL

PROS

1. Can geographically target an area.
2. Can contact a large number of people at the same time.

3. Requires a minimum investment of time.
4. Well suited for out-of-area owners.

CONS

1. No personal contact unless followed up following their response.
2. Low response rate.
3. Can be expensive

PREPARATION

1. Target a specific area or group.
2. Use internet to get names and addresses.
3. Be knowledgeable of all current listing, recently sold, and expired listings in the area.
4. Gather materials: stamps, envelopes, addresses, etc.
5. Plan your follow up.
6. Set up follow up system to follow up and determine the effectiveness of the effort.

GUIDELINES

1. Create mailings
 - a. Create mailing to be professional
 - b. Make it personal
 - c. Have a good reason to write
 - d. Write copy that gets the reader's attention in the first line
 - e. Send frequent mailings
 - f. Follow up based on response
2. Send frequent mailings.
3. Follow up as response indicates.

CONTENT

1. Update homeowners on market trends, financing information, and community information.
2. Consider using prepared layouts and camera-ready art when designing a flyer/brochure. Discuss these items with broker.

NOTE: Since mail contact has a generally low response rate, it is best to use it for image building rather than “call to action” advertising.

FOR SALE BY OWNERS (FSBO)—HOW TO FIND THEM

1. Newspaper ads

Almost every licensee who works FSBO’s will see an ad in the newspaper. Licensees often call the seller and ask him/her to list his/her house with the licensee. When the FSBO says “No,” many licensees have no more contact with the seller nor does the licensee send the homeowner a letter-a-day.

2. Drive the streets

Many licensees do not drive the streets in their farm or their neighborhood looking for FSBOs – they may be simply too lazy, or the idea has not occurred to them. Sometimes they feel they simply do not have the time. Remember, however, some FSBOs have never placed an ad in their lives and would not know how to do it. Some cannot make the necessary decision to advertise. Some may not have enough funds to afford advertising.

A. Licensees will find FSBOs by driving the streets before someone else finds them.

B. Licensees will see the property before he/she sees the owners; therefore, licensee can talk knowledgeably about the property, the neighborhood and how to market the property.

C. Licensee will find many FSBOs before they have spent money on advertising. Once they have spent advertising money, they may be more likely to be committed to the “sell-it-yourself” idea.

D. Some FSBOs licensees find will have the “Wow – do we need your help” attitude. These have generally experienced some frustration and, perhaps, unpleasant experiences.

E. Many FSBOs are two-income couples who have never sold a home and do not realize that someone needs to be available to respond to callers. They may have effectively kept the house off the market during the week and have cut themselves off from a significant part of the buying stream. People who hunt for houses during the week are serious buyers. Sellers tend to get more “carpet kickers” and bargain hunters during the weekends.

Licensees should watch both newspaper ads and the drive-the-streets methods and let results decide the best method.

SELECT A FSBO TACTIC THAT MAKES MONEY FOR YOU

1. Letter-a-day: Once you have identified a FSBO in your area or farm and learned the FSBO's name, address and phone number, follow the following schedule and be sure to include a business card.

A. Day one: In a large envelope, send a blank copy of the OREC purchase contract. Hand write on one of your imprinted scratch pad sheets (so your name and phone number will be there) the words, "Sorry you are leaving us! Here's a copy of the form you'll need to sell your house. If you would like an explanation of any of its terms, please give me a call at no obligation."

B. Day two: In a regular-size envelop, send the seller a blank seller's net sheet and this note (also on your printed scratch pad): "Here is the form we use to figure your net walk- away dollars. Please feel free to give me al call if you don't have the formulas to figure any of these items. Again, at no obligation."

C. Day three: In a regular envelope, send a bland Residential Seller's Property Condition Disclosure form with the message, "Here is a form you are required to provide prospective purchasers should they ask for it prior to acceptance of an offer to purchase. If you have questions about this form, please give me a call. Of course, no obligation."

There are no guarantees with this letter-a-day method, but it does improve the possibility of the FSBO calling you.

An alternative to the letter-a-day method is the letter-every-Saturday. In this method the licensee sends the FSBO something about selling their home once a week. Mail it on Saturday so they will receive it on Monday, right after the house did not sell over the weekend. Each week send them a handwritten update on the market plus one of your newsletters, and/or other publications suitable to the circumstances.

FREE SERVICE PACKAGE

Work up written material that will help the FSBO market the house, and then offer it to the FSBO without charge. The package should provide information which can be used, and it should also introduce the FSBO to the complexity of real estate transactions.

Once you have the free service package ready, you need only compile a list of FSBOs you want to approach

A free service package may contain:

FORMS:

- Real estate sales contract
- Buyers' cost worksheet
- Sellers' net sheet
- Residential Property Condition Disclosure

PAMPHLETS:

- Protect Your Family from Lead in Your Home (pre 1978)
- Brokerage Relationships Act
- OREC's Contracts booklet
- About home inspections
- About termite inspections
- Mortgage insurance
- Hazard insurance
- Miscellaneous flyers available at OREC

FLYERS

- Advertising rates and numbers to call to place ads in local newspaper
- Preparing a house for sale
- 35 Ways to Make an Open House More Successful
- Mortgage Rate Charts
- Your latest newsletter

REASONS FOR FSBO TO WORK WITH SALES ASSOCIATE

SPECIALIZED KNOWLEDGE

The Sales Associate can access market data and help set a competitive price. By updating the information constantly, the sales associate stays in tune with the marketplace so that the sellers and the listing may adapt quickly to change.

Can provide selling strategies and tips that will make the home more marketable.

Is knowledgeable about the financial aspects of the transaction so the seller's interests can be protected.

Is knowledgeable about financing so that the maximum number of potential buyers may be able to afford the home are shown the property.

Is knowledgeable about real estate law and practice.

Knows how to pre-qualify buyer. The sales associate works to understand the prospective buyer's financial situation before showing property so that showings are targeted toward people who have approached lender(s) in order to qualify for a loan.

Understands the home selling process and knows what needs to be done, when, where and how.

RESOURCES:

The sales associate

Has access to knowledgeable professionals for support, opinions, and advice in the process.

Has a pool of potential buyers through his/her client base, office leads, the client bases of other associates and referral networks.

Has access to market tools such as "just listed" and "just sold" cards, flyers, signs, banners, etc.

Has marketing power through the Multiple Listing Service, newspaper and home magazines ads, mailings, etc., and the knowledge to target their use effectively.

Has connections. The sales associate has a network of professionals in all aspects of selling – lenders, title representatives, termite companies, cleaning services, handymen, etc., whose services may be called on.

SELLER REPRESENTATION

The sales associate

Is a buffer. The sales associate represents the seller's interest to a potential purchaser while insulating the seller from difficult or tricky problems.

Provides freedom of movement for the seller by being on call 24 hours a day so the sellers can leave their house if they want.

Saves the seller time. The sales associate orchestrates the marketing plan, trouble shoots, and manages the details throughout the entire transaction.

SPHERE OF INFLUENCE

Your “sphere of influence” is a list of “everyone you know.” When you develop your “sphere of influence” you are looking for

People with whom you can do business directly

People who are willing to give you names of potential prospects they know

The advantages of “sphere of influence” prospecting are

They know you as a licensee and think of you when their real estate needs change

They become your cheerleaders among THEIR sphere of influence

Referrals from your “sphere of influence” help to introduce you to new prospects in a positive way. You have an opportunity to develop a trusting relationship sooner, and they usually become qualified prospects faster and easier.

The ideal sphere of influence

Has extensive and favorable acquaintances with many people.

Is interested in helping people solve problems/

Appreciates the services you can offer to your customers.

Is interested in helping you achieve your objectives.

MEMORY JOGGERS TO HELP DEVELOP SPHERE OF INFLUENCE

Family Members

Out-of-town Family

Your spouse’s family members

Children’s friends

PTA members

Former Co-workers

Current neighbors	Friends
Neighbors in previous homes	School classmate
Church members	Club members
Hobbyists	Recreational partners
Fellow civic activists	Lawyers you know
Past customers	Local merchants
Your spouse's contacts	Your plumber
Fellow card players	Your barber/beautician
Politicians you know	Corporate executives you know
Insurance agents	The person who sold you your car
Furniture salesperson	Appliance sales person
Your clothier	Your family doctor
Your dentist	Members of your wedding
Gas station personnel	Your clergy
Your letter carrier	People at your bank
Local motels and hotels	Clerks at convenience stores
Your electrician	Your painter
ETC.	ETC.

SOURCES OF SELLERS, BUYERS AND LEADS

Cold canvassing	Open houses
Target market area	For sale by owners
Expired listings	Apartment managers
Bulleting boards	Hotels and motels
Moving companies	Buildings

Garage sales

Rentals

Newspapers

Employment agencies

Cashier at grocery/convenience store

Clerk in gift shop in hotel

Standing in line in grocery store

Guest at cocktail party

CHAPTER ELEVEN

WORKING WITH BUYERS

When working with a prospective buyer, the first thing the licensee is concerned with is discovering exactly, as much as possible, what and where the buyer is looking for and can afford. Licensees need to always remember that the first thing to be accomplished when working with buyers after discovering their housing needs and wants to send them to a qualified lender. Unless a real estate licensee is licensed as a mortgage broker or lender, the licensee does not attempt to “qualify” the prospect for a loan. Federal law prohibits a real estate licensee from making statements such as “You can’t qualify for a loan.”

There are three phases to the “qualifying the buyer” process. Again, the part involving the real estate professional regarding the kind of property the buyer desires. The second part is the discovery by the lender of the reality of the financial capability of the borrower/buyer. This may have the effect of introducing an unexpected change in the buyer’s wants. The “financial qualifying” process leads naturally into the third phase of the buyer qualifying process. After shopping for a lender and finally acquiring a financial qualification, the buyer and licensee may be in the position of reassessing the buyer’s needs and wants with regard to a possible property.

The function of real estate licensees in the real estate process is to become an educator. Typically, buyers and sellers are largely uninformed as to the complexity of the real estate transaction. Therefore, licensees are the professional in the process to inform buyers and sellers about the many aspects of the transaction so that the “parties to the contract” can make appropriate decisions for themselves. Real estate licensees are not decision maker in the real estate process. Their function is to give expert information and allow the parties to the transaction make decisions. Therefore, the following is for the purpose of helping licensees to have some general guidelines as related to educating buyers about the process. Obviously, every transaction is unique, and the licensee’s expertise will be called upon in each transaction.

EXPLAINING THE BUYING PROCESS TO THE BUYERS

Begin the process with a discussion of how the buyer plans to pay for the proposed purchase. If the buyer has cash, the process is vastly simplified. If the buyer intends to borrow the money, as most do, the licensee should begin the education process by discussing various financing options. The licensee will discuss the various sources of financing which may be available to the buyer. Under no circumstances will the licensee tell the buyer that the buyer must borrow the money from a specific lender. This may be considered “steering” and is not an acceptable/legal

activity. Rather, the licensee will discuss commercial banks, savings and loans (yes, one still exists in Oklahoma), credit unions, mortgage bankers, mortgage brokers, etc.

Explain how you help them find their new home

Explain how the MLS works.

Explain how homes are shown, keys, lockboxes, appointments.

Explain how you will screen/preview homes to meet their requirements.

Explain the benefits of working with only one REALTOR.

Explain procedures of making and presenting their offer.

Who, when, where and why?

Discuss earnest money and what it will be used for.

Explain down payment and closing costs.

Explain the various sources of financing.

Discuss the loan application process.

Discuss the closing/consummation process

Discuss possible variables

Discuss fluctuations in points and interest rates.

Discuss credit checks and FICO scores.

Explain the appraisal process and possible requirements.

Discuss requirements the lender may have.

Discuss the possibility of buyer's remorse.

SHOWING PROPERTIES

Once the licensee is familiar with the buyer's needs and ability to buy, and after they have been qualified by a lender, the licensee is in the position to show properties that meet the buyer's requirements.

Finding properties to show

Current office/company listings

Describe needs at office sales meeting.

Search MLS.

Look for FSBOs

Preview and select the properties to show

Preview every property you plan to show.

Know each property.

Know the route.

Develop the buyer's knowledge.

Show only what you need to.

Make appointments following local customs/procedures.

Set range of time.

Confirm appointments and meetings with buyers.

Possibly helpful language:

"Mr. and Mrs. Buyer, we may see a property that you absolutely do not fit your needs. I would appreciate it if you would do me the favor of looking at it anyway, because I don't want to disappoint the seller. We'll take a quick tour of the property, and you can help me by telling me what it was that you objected to so I won't show you the same type of home again."

PREPARING TO MEET THE PROSPECTIVE BUYERS

Review the property information

Review Buyer Data Sheet and Pre-qualification worksheet.

Preview the market and the properties.

Review pertinent financial information.

Prepare a packet that includes property information, paper, and a pen for taking notes.

Make showing arrangements

- Obtain keys or lockbox information, as needed.
- Schedule approximate appointment times with sellers/co-brokers.
- Arrange for sellers to be absent or inconspicuous.
- Plan appointments to allow enough time between properties.

Prepare the prospective buyers

- Reinforce that you can show any available listing.
- Be prepared to accommodate children and infants.
- Always be flexible.

MEETING THE PROSPECTIVE BUYERS

- Disclose your brokerage relationship if you have not already done so
- Give the buyer information folder, flyers, pen and paper for note taking \.

SPECIAL NOTE: In years past real estate licensees put the buyers in the licensee's car and took the buyer on a tour of houses. However, law suits involving accidents have encouraged licensees to avoid having clients or customers in their cars. If a licensee finds him/herself with customers in the licensee's car, be sure you have appropriate insurance coverage and drive with extreme caution with seat belts. As a general rule, the current practice is to have the prospective buyer meet the licensee at the property.

Buyer signs to watch for

Watching body language of the prospective buyer is a critical activity of the licensee. In fact, there are courses available on reading body language and licensees are encouraged to take them.

Verbal signs

- Asking specific questions
- Presenting minor concerns
- Asking about personal property

Imagining furniture in rooms

Wanting to show it to a friend or relative

Nonverbal signs

Lingering

Nervousness

Touching each other

Touching things in the house

Facial expressions

Narrowing the choice

Ask questions to refine the list of properties to show. Good questions give you insight.

What did you like best about the house?

Would you consider this house as your next home?

Why did you like the second house better than the first one?

BUYER DATA SHEET

NAME _____

ADDRESS _____

PHONE __ (HOME) _____ (WORK) _____ (CELL) _____

OWN/RENT _____ TIME LOOKING _____

EMPLOYER _____ LENGTH OF TIME _____

SPOUSE'S EMPLOYER _____ LENGTH OF TIME _____

FAMILY INFORMATION

NUMBER IN FAMILY _____

NAMES/AGES OF CHILDREN _____

OTHERS _____

HOUSING NEEDS

URGENCY _____

SIZE DESIRED _____

SPECIAL
FEATURES/STYLE _____

PREFERRED PRICE RANGE \$ _____

LOCATION DESIRED

NEIGHBORHOOD _____

SCHOOLS _____

WORK _____

PREQUALIFYING INFORMATION

INCOME _____ SPOUSE'S INCOME _____

LONG TERM DEBT _____

MUST SELL BEFORE BUYING YES NO

LISTED OR PENDING _____

DOWNPAYMEN AVAILABLE _____

PREFERRED MONTHLY PAYMENT _____

ALREADY PREQUALIFIED _____ BY WHOM _____

SERVICE CONTRACTS

There are three service contracts real estate licensees can expect to become involved with. The first and most obvious one is the listing contract. Specifically, this is an agreement between the broker and the seller wherein the broker agrees to exert maximum effort to market the seller's property and the seller agrees to compensate the broker. The next most common service contract is the buyer's brokerage agreement. This is simply the agreement of the buyer to pay the broker to help the buyer find a suitable property. The third service agreement is the property management agreement wherein the seller agrees to pay the broker to manage rental property for the owner.

Inspecting the property

From the point of view of effectively marketing the property, it is incumbent upon the listing licensee to "know the product." This implies the licensee will spend some time with the owner of the property doing an inspection. This is not the same kind of inspection which would be done by a licensed home inspector. The licensee will be looking at the property from the point of view of marketability.

The licensee is encouraged to have the owner of the property take the licensee on a tour of the property. This will put the licensee in the position of making suggestions to the owner about things to do to make the property more "showable" and more likely to appeal to prospective buyers.

In addition, the seller will show the licensee both positives and negatives about the property. The licensee should make notes about the property for the purpose of being able to effectively

show the property. Included in this will be items which are merely maintenance items and items which are improvement items. Remember, licensees do not own the property and do not do either maintenance or improvement projects.

One thing licensee should be very particular about when viewing the property with the seller. Take notes about which items may stay with the property and which do not. In the case of fixtures, the seller wishes to take with him/her when the title transfer takes place, the licensee may suggest the owner replace the item with a suitable item which will likely be suitable to the buyer.

CHAPTER TWELVE

NEGOTIATIONS

There are several definitions of negotiations; some of them are:

The intentional use of power differences to achieve a certain need or interest short of physical aggression or violence.

Getting what you want by helping someone else get some of what they want.

Where disagreeing parties agree to reconcile the disagreements.

The intelligent, responsible use of power.

Striking a good deal.

Fair verbal and nonverbal warfare.

Use of verbal/nonverbal power strategies and tactics to resolve problems and differences with solutions that are practical and durable.

A verbal/nonverbal relationship between power player roles and power object roles.

A means of arriving at a social or legal contract.

Redefining or eliminating “positions” in order to get to “interests” or “needs” between parties. Then meeting those interests or needs with mutually acceptable options.

In the process of negotiating the sale of a real property, the licensee should bear in mind at all times that the parties to the transaction are the parties to the negotiations. The licensee, unless the licensee is a buyer or seller, is a facilitator. In some cases, the licensee, will be aligned with the seller or buyer or, possibly, both, depending on service/employment contracts. It is for licensee to “take sides” with the parties but should always strive to remain objective.

Many people recognize that adoption of hard positions in the negotiating process come with high costs. Rather, a gentle style of negotiations may accomplish more for the parties in the real estate “contract formation” process. Instead of seeing the others as adversaries, perhaps it works better to see them as friends who have needs and wants also. Rather than attempting to achieve “total victory” a goal of reaching agreement is more effective. In this kind of negotiations, the standard moves are offers and concessions, to trust the other side, to be friendly, and to yield as necessary to avoid confrontation.

In general, there are two styles of positional negotiating strategies. They are referred to as “hard” and “soft.” People tend to “lean” toward one or the other, but, the possibility of a middle ground still exists.

The soft negotiations method emphasizes the importance of building a relationship. This kind of negotiations takes place on a daily basis between family and friends. It tends to be an efficient process and is likely to produce results quickly. As each party competes with the other in being generous and forthcoming, and agreement becomes more likely. However, this may not be the wisest one. The results may not be as “clean” and efficient as may be desired.

On one level, the soft and friendly form of positional negotiations may make the negotiator vulnerable to a “hard” bargainer. In positional negotiations, hard negotiations tend to dominate soft negotiations. In negotiations, emotions tend to dominate rational thought and “giving” gives way to troublesome agreements. If the hard negotiator demands concessions and makes threats while the softer negotiator yields for the purpose of avoiding confrontation and insists on agreement, the hard negotiator has the advantage. This process may produce agreement, but not necessarily a favorable one to both parties. There will be a winner and a loser.

Change the Game

Negotiations take place on a couple of levels. On one level, negotiations deal with substance. On another level, negotiations deal with the process for dealing with the substance. The first level may be concerned with the terms of a lease or a purchase contract. The second part of the negotiations concerns how the substantive question will be negotiated, by hard or soft negotiations or through some other method. The second part of the negotiations becomes a game within a game. Each move in the negotiations process deals with substance (such as the rent or the purchase price) but also helps structure the rules of the game you are currently playing within these negotiations. Your move may cause the negotiations to continue in mode or become a change in the game.

The Harvard Negotiation Project has developed alternatives to hard and soft negotiations. Their method is called “Principled Negotiations” or “Negotiating on Merits.” It includes four basic points.

These four points are: PEOPLE, INTERESTS, OPTIONS, AND CRITERIA. The objective with people is to separate them from the problem. The objective with interests is to make them the focus of the negotiations, not positions negotiators may take. The objective with options is to generate a variety of possibilities before the final decision. The objective of criteria is to make sure the result of the negotiations is based on a set of objective standard(s).

The first point of principled negotiations is to remember that negotiator are people and much given to emotions and perceptions. People become emotionally involved with the objective merits of the problem. When negotiators take positions and their egos become identified with

their emotional positions, they may have separated from their rational positions. Therefore, the “people problem” should be separated and dealt with separately. The negotiating participants should see themselves as dealing with the “problem/issue” rather than with each other. One basic rule of negotiations is to never lose control of your emotions. If you lose your emotional control and the other party retains theirs, you probably lose.

The second point is to focus on interests, not positions. A position in negotiations often obscures what the negotiator really wants. Since communication is a difficult thing to accomplish, negotiators do not always know the best way to state their needs in the negotiations.

In the second point of negotiations, listening to the other negotiator’s position and getting to it. Communication feedback is helpful. Restate what you think you heard and get the other to do the same. This may help in avoiding a classic communication problem.

The third point is to plan to have a variety of possibilities in mind before negotiations begin. Trying to develop alternatives while under the pressure of active negotiations is a difficult thing to do.

The fourth point is to insist on objective criteria. If it is not measurable, you may never have a satisfactory conclusion.

CHAPTER THIRTEEN

COMPETITIVE MARKET ANALYSIS

The Competitive Market Analytical process whereby information is gathered in order to establish a range of market value for a particular property. The CMA is a tool licensee use to inform sellers about how to establish a price for their property in a particular market.

CMA TERMS

COST: Cost is historical. It is the amount of money expended to build or acquire a property. Cost should not be confused with value.

VALUE: Value results from anticipated future benefits. The benefits of ownership are usually expressed in dollars.

PRICE: Price is the amount of money asked for a home. It may (or may not) be reasonable and it

SOLD PROPERTIES: Recently sold properties are indicators of market value because they represent actual agreements between buyers and sellers in a competitive marketplace.

LISTING PRICE OF HOUSES ON MARKET NOW: (competing properties): These prices may be less accurate because a home's listing price may be higher than the price it eventually sells for in the marketplace.

EXPIRED LISTINGS: These listings may be helpful because they may be indicators that they were priced too high for the current market. Of course, there may be other reasons for listings to not sell and licensees need to be aware of possible other reasons for not selling.

MARKET VALUE DEFINED: "Market value is the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus." (Fanny Mae's definition)

Real estate licensees use a Competitive Market Analysis (CMA) to help sellers set listing prices. A CMA is usually a less formal version of the market data approach to appraising used by licensed appraisers. A real estate licensee performing a CMA may use certain data that an appraiser would not rely on. In addition to using actual sales as comparables, the real estate licensee might use properties that are listed for sale but have not yet sold. In an appraisal, although the appraiser may analyze current listings as supporting data, the main comparables must be actual sales.

IMPORANCE OF A GOOD MARKET ANALYSIS

A good market analysis gives the broker/sales associate a competitive edge, credibility and a substantial reduction of risk. For sellers, a licensee's CMA provides the necessary information to assist sellers in making an intelligent pricing decision. Property must be viewed through the eyes of the potential buyer and a property prices according to current market conditions is more likely to sell in a reasonable time.

FOUR STEP APPROACH TO A PROFESSIONAL CMA

The first step is to compare the subject property to legitimate comparable sales. Sales almost always make better comparables than current unsold listings, and some sales make better comparables than others. When evaluating a sold property to see if it qualifies as a legitimate comparable, a licensee should be concerned with five issues.

DATE OF SALE: The sale should be recent, within the past six months if possible. Recent sales give a more accurate indication of what is happening in the marketplace currently. As a general rule, use at least three comparables. If the market has been inactive or there are not enough sold property sales within the last six months, licensees can go back farther. However, sales over one- year old are not acceptable. Should it be necessary to make adjustments for the time factor, allow for up or down trends that have affected prices in the area.

Whenever possible sales should be selected from the neighborhood where the subject property is located. In the absence of any legitimate comparables in the neighborhood, licensees may look elsewhere, but the properties selected should at least come from comparable neighborhoods.

PHYSICAL CHARACTERISTICS: To qualify as a comparable, a property should have physical characteristics similar to those of the subject property. Features most commonly compared and/or adjusted are floor plans, garages, bedrooms, baths, levels, construction style and quality, amenities, and square footage living area.

When a comparable has a feature that the subject property lacks, or lacks a feature the subject property has, it is necessary to adjust the comparable's prices. It is only after adjusting the comparable's price up or down for each difference in this way that licensees will be able to use the resulting figure as an indication of the value of the subject property.

TERMS OF SALE: The terms of sale can affect the price a buyer will pay for the property. Attractive financing concessions (such as seller-paid discount points or seller financing with an especially low interest rate) can make a buyer willing to pay a higher price than they would be willing to pay otherwise.

Licensees must take into account the influence the terms of sale may have had on the price paid for a comparable property. If the seller offered the property on very favorable terms, there is an excellent chance that the sales price did not represent the true market value in the open market value of the comparables.

ARM'S LENGTH TRANSACTION: A comparable sale can only be relied on as an indication of what the subject property is worth if it was an arm's length transaction. In an arm's length transaction, both the buyer and seller are informed of the property's attributes and deficiencies, both parties acting free of unusual pressure, and the property has been offered for sale on the open market for a reasonable length of time.

The second step is to adjust the comparable properties for differences. Remember, it is never an acceptable to adjust the subject property. Always adjust the comparable properties.

Rarely will licensees find three ideal comparables – three homes exactly like the subject property. So, it is reasonable to assume that licensees will always have to make adjustments, taking into account the specific differences in time, physical characteristics, location or terms of sale. It stands to reason that the more adjustments licensees have to make, the less reliable the resulting estimate of value will be. If the necessary adjustments add up to a significant percentage of a comparable's sale price (over 10%-15% of the price), then that property is not similar enough to the subject property to make a good comparable. Adjustments are an inevitable part of the process but keep them to a minimum by selecting the best comparables available.

Step three is to recommend a price range.

After researching for legitimate comparables and making the necessary adjustments, a range of values will tend to emerge. This is the indicated sale price range for the subject property. Many sellers insist on building in "negotiating room" into their asking price. Discussion of this in terms of market indicators – sales prices of comparables to listing price- is a legitimate area of discussion. Pricing property outside of the range of prices may not be wise. Licensees can list properties at any price sellers insists on, but licensees should be aware of possible consequences of over or under pricing a property. price range of comparable properties.

Step four is market placement:

When licensees cannot use competing properties as indicators of value, they may look at them to help the seller with market placement of the subject property. This can only be done by looking at the seller's goal and urgency in relationship to the marketplace. Price and time are coordinates. Other factors will also affect the placement of the subject property for sale. New home competition may have a direct impact on the marketability

of the subject property. In addition, many builders pay buyers mortgage discount points and/or closing costs.

Prospective buyers who would be interested in the subject property also look at and compare similar properties in other nearby neighborhoods. This competition must be analyzed. How many homes for sale (existing and new) in these neighborhoods are competing for buyers with the subject property. What are the list prices of these homes?

Neighborhood desirability and characteristics will affect the salability of the seller's subject property. How does the subject compare with other homes in terms of pride of ownership, conformity with the neighborhood, amenities compare with the neighbors, etc.?

Listing history of the subject property is a factor in developing licensee's marketing placement decisions. Has the subject property been listed before? Has it been on the market several times or has it had the price reduced several times without success? If marketing strategies must compensate for these adverse factors.

WHERE TO FIND COMPARABLES:

- Multiple Listing Services
- Market Data Research (MDR)
- Appraisers
- Other licensees
- Lenders
- For Sale by Owners
- County records

WHAT TO PUT IN A LICENSEE'S CMA

- Market Analysis
- Competition Analysis
- Courthouse printout on subject property
- Photo of comparables
- MLS printout (or other source) for each comparable

- Any supporting articles, documents, etc., that will provide a picture of market conditions that have an impact on the sale of the subject property.

CHAPTER FOURTEEN
PROPERTY MANAGEMENT

“Title 59, Oklahoma Statutes, section 858-301. Licensed Required; Exceptions. It shall be unlawful for any person to act as a real estate broker or sales associate, or to hold himself out as such, unless he shall have been licensed to do so under this Code.”

With the exception of RESIDENT MANAGERS of apartment complexes, Section 858-301 includes property managers.

Virtually all real estate licensees, at some time in their careers consider adding a property management or service as a means of increasing cash flow and net profit. Desirable as this may be, several questions require answer before such a decision is concluded.

1. Is there a need for property management in the service area?
2. What evidence is there to indicate a desirable volume of property management business?
3. Exactly what does the property manager do?
4. Which area of property management should become the specialty?

The primary function of real estate property management is to operate residential, commercial, or industrial property for owners who are unable or unwilling to handle the details of renting, collecting rents, property maintenance and repair, and record keeping associated with property ownership. In fulfilling his/her responsibilities to the owner, however, the property manager cannot ignore the obligation to seek accomplishment of the owner’s goals regarding the property, including his/her desire to maximize the profitability of the property and to protect the owner from liability. The property manager is also charged with social concerns, such as safeguarding the civil rights, health and safety of the tenants.

THE CLASSIFICATIONS OF REAL PROPERTY

Commercial properties consist of those places where things are sold, or services are rendered. They are usually open to the public and exist for the transaction of business. Examples include offices, retail stores, restaurants, health care facilities recreational facilities.

Industrial properties are those used primarily for the manufacture and distribution of goods and services. Examples include factories, plants and warehouses.

Agricultural properties include farms and ranches and are generally oriented to the production of food and such products.

Duties of the Property Manager

The property manager can provide property owners with expert guidance in acquiring and disposing of investment properties. This may be accompanied by:

1. Developing a pool of potential buyers and sellers, including other property owners and tenants.
2. Keeping abreast of current market conditions and active investors.
3. Helping to minimize selling costs by arranging to exchange properties among clients.
4. Arranging sales to current tenants, which frequently reduces the cost of the sale and sale-related repair work.
5. Identifying undervalued properties or favorably financed properties with immediate cash flow.

AMERICANS WITH DISABILITIES ACT

Title III of the AMERICANS WITH DISABILITIES ACT became effective on January 26, 1992. It requires businesses to be accessible to persons with a disability. The ADA is having a more direct impact upon the real estate industry as it relates to the purchase and leasing of commercial properties. The ADA does not directly impact residential property because Congress believed it had addressed those issues in the FAIR HOUSING AMENDMENTS ACT OF 1988. The importance of being aware and in compliance with the ADA for property managers is best illustrated by the fact that if a business owner is sued because a building he/she leased or purchased through a property manager is not in compliance, the property manager will be named in the suit

In addition, the property manager's place of business must be in compliance with ADA. That means that the building should be **free of barriers** such as steps, narrow doorways, narrow bathroom stalls, high-level water fountains, etc. The ADA standards for accessibility have been issued by the Architectural and Transportation Barriers Compliance Board and are available by contacting their office at (800) USA-ABLE.

Some other accessibility requirements that may affect a property management operation may include having a Telecommunications Device for the Deaf (TDD) available and having any printed material distributed done in Braille, large print or on tape. Of course, having these accessibility

requirements met may have the effect of opening the business to a whole new market of potential customers and clients.

FAIR HOUSING

The Oklahoma Human Rights Commission (a part of the Oklahoma Attorney General's Office) is one of the agencies which regulates discrimination complaints in Oklahoma. It is their experience that many violations of the FAIR HOUSING LAWS stem from property management operations. A professionally operated property management business or department is aware of

Property managers should instruct each of their employees that it is not acceptable to make any type of racial, religions, sexual, national origin, familial status or handicapped slurs to tenants or indicated that children are to be treated as people.

Property managers may discriminate against pets as long as the animal is not a signal or seeing-eye dog or other service animal.

Adult-only housing exists only under closely defined conditions. At least one tenant in each apartment must be 55 or older, or all tenants must be 62 or older and "significant services are provided." Otherwise, children and families with children are not to be discriminated against.

Property managers may still disqualify prospective tenants on the basis of non-ability to pay and references from previous landlords.

OKLAHOMA FAIR HOUSING LAW

Title XXV, Section 1451 of Oklahoma Statutes prohibits discrimination on the basis of all the classes protected under the Federal law and adds AGE as a protected class.

CHAPTER FIFTEEN

RISK REDUCTION

Virtually every human activity carries with it some degree of risk. Taking chances is a part of any person's daily activity. From the very obvious "risks" associated with transportation to the relatively minor "risk" of striking the wrong key on a keyboard, chance of risk is a part of every individual's life style.

Some approach risk as a thing to be avoided at all costs while others consider it a challenge and actually derive some pleasure from it.

In the business community there is a group of individuals who are not "risk averse." They are willing to take "chances" with the hope of achieving some kind of reward as a result. Frequently called entrepreneurs, these "risk takers" are, generally not satisfied with their personal status quo and, as a group, may have been responsible for much of the progress made in human civilization.

Their willingness to "take a chance" does not, however, imply foolhardiness. Rather, in their decision to enter a business or make some kind of alteration in an existing business, the entrepreneur has something in common with a gambler. Any gambler will give consideration to the "odds." "Favorable odds" imply the chances of success are greater while "unfavorable odds" imply the chances of success are less. The gambler and the entrepreneur will consider the "odds" and make a prediction of the probable success of the activity. In betting on a horse race, a gambler has gathered a great amount of information about the horse, the jockey, the weather, track conditions, etc. for the purpose of selecting the best horse with the greatest probability of "win, place, or show," thereby reducing the risk.

The entrepreneur does much the same thing within the business community. After gathering a great amount of information, usually called a business analysis, the entrepreneur will make a prediction as to the greatest probability of success and place his/her "bet" accordingly. This is obviously done for the purpose of "bettering the odds."

In most business activities, risk may be defined as the measurable likelihood or probability that a specific outcome may be achieved. With accurate and appropriate information, risk predictability is placed on a much more highly controlled plane than is betting on horses or other forms of gambling. A real estate firm, for example, can make some rather accurate predictions about risk with the application of correct information. A real estate firm wishes to gain a profit and avoid losses, law suits and entanglements with regulatory agencies. Therefore, the firm will develop a risk management system. This is a system of practice, usually in the firm's policy manual that delineates employee and independent contractor procedures under given situations.

In order to maximize profits and minimize losses, many firms will either shift the risk to another organization by the purchase of insurance or manage the risk by establishing policies and training employees and independent contractors in the application.

MANAGEMENT OF RISK IN A REAL ESTATE FIRM

Independent Contractor/Employee Selection

One of the most significant ways to manage risk is to contract with or employ individuals who are not risk prone themselves. Many real estate firms operate on the concept often described by the term "body shop." These firms take virtually any warm body with a license, give them a desk and phone and hope to sell a few houses to their relatives and friends. The inexperience of the individuals represents potential risk that may easily be avoided, and the individual's productive activity increased with the application of appropriate in-house training. Other real estate firms are more selective in their recruitment programs and are conscientious in training new people when hired. These are the firm's new licensees should be seeking.

Prudent brokers are aware the success of their firms depends directly on the quality of service rendered to both clients and customers. Therefore, brokers have a general concept or mental picture of the associates they like to have associated with them. There have been many studies concerning what makes for a "good" real estate associate. The following is not intended as a complete list of desirable characteristics, but it serves to point out some important areas.

Additional characteristics of successful real estate associates include objectivity, intelligence, common sense, practicality, self-control, persuasive, ability to take risks and are people oriented.

TRAINING

Any prudent broker will recognize the necessity of an effective in-house training program. In the first place, the mistakes poorly trained associates make represent risk to the broker and the associates' licenses and a possible reduction in the firm's profit picture.

In selecting a broker, an associate will investigate the quality of the in-house training program offered by the company. The in-house training program will be designed to improve the ability of licensee to function in the most complex, changing transaction in economics.

Training is a continuous routine in the real estate business. It never ends because change in the real estate business never stops.

ERRORS AND OMISSIONS INSURANCE

Errors and omissions insurance represent one of the ways risks may be managed by “shifting” the risk to someone else. This insurance covers liabilities arising from mistakes and negligence in the normal selling and listing activities of a real estate firm. It does not cover fraudulent activities, intentional torts, or other illegal acts.

In some states, the real estate regulatory agency of state government mandates that all licensees will have errors and insurance. In Oklahoma, it is not required, but recommended.

ENVIRONMENTAL ISSUES

Everyone is aware that environmental issues have been “hot” issues for the past several decades. Persons working in commercial and industrial real estate have long known that environmental audits are required by many lending institutions before making a loan on property. Persons in residential real estate are preparing for the same requirements in the relatively near future.

While environmental audits will not be as lengthy and in-depth in residential as in commercial and industrial sites, they will be just as serious. For example, the potential for a lead-based paint audit is very real in houses built before 1978.

Prudent brokers assure, usually through in-house training, that their associates are aware of federal and state environmental legislation. In addition, making sure of lending institution requirements is essential.

As a part of in-house environmental training, one point will be made with great emphasis: real estate licensees are not environmental auditors. Real estate associates do not render opinions or do environmental audits unless they have been specifically trained to do so.

One of the major problems with contamination is that costs of clean-up may exceed the value of the property. As a general rule, liability follows the property title and new owners may become liable.

FRAUDULENT MISREPRESENTATION

Fraud includes the intent to deceive. Clearly, a licensee is liable if he/she actively participates in an effort to defraud someone. An important question is whether an innocent licensee, unaware of a fraud being perpetrated by the seller, can be held liable by a buyer.

NEGLIGENT MISREPRESENTATION

A negligent misrepresentation is an unintentional one. At the same time, it is a misrepresentation which the ordinary, reasonable and careful licensee would not have made.

INNOCENT MISREPRESENTATION

Innocent misrepresentation is one in which any other ordinary, reasonable and careful licensee would have said or done the same thing. In many states, historically, there has been no liability for a purely innocent misrepresentation. However, licensees are held liable for innocent misrepresentation in Oklahoma, even though they are not fraudulent. Reference Rule 605:10-17-4 **Prohibited Dealings** (3) Repeated misrepresentation, even though not fraudulent, which occur as a result of the failure by the principal broker or associate to inform himself or pertinent facts concerning property, as to which services are being performed.

CASE STUDIES IN MISREPRESENTATION

Termite Inspection

Seller listed his home with broker. Broker negotiated a \$140,000 purchase price with buyer. A contingency clause in the contract involved a termite inspection and gave buyer the right to withdraw from the contract if an active infestation of termites were found.

Broker engaged Pest Control Company which reported that termites were present. After discussing this finding, broker and seller decided to seek a second opinion. Pest Control Firm B inspected the house and gave it a clean bill of health. Buyer was not informed about the first inspection.

Within 60 days after buyer took possession, termites began swarming around a door frame in the home's interior. Buyer spent \$2,000 exterminating termites and repairing the damage.

Buyer sued the seller and the broker seeking \$2,000 in actual damages and \$140,000 in punitive damages.

NOT Termites

Licensed sales associate was seeking to purchase a home for his personal residence. When walking through the house, he noticed a pool of water around the commode in the master bathroom. The sales associate made an offer on the house, writing into the offer that seller must replace the seal under the commode. Seller did so and brought receipts to closing as evidence that this contractual contingency had been complied with. Sales associate also placed a clause in the contract under which the obligation to purchase was made contingent upon an inspection for "an active infestation or damage done by termites."

No termites were found, and sales associate purchased the property. A few weeks later the sales associate walked into the master bathroom and fell through the floor.

The floor had not been weakened by rotten wood from the water around the commode. Moreover, the floor had not been weakened by termites eating into the wood sub-flooring. Rather the floor was weakened by a significant infestation of carpenter ants.

This case resulted in real estate purchase contracts being changed to contain the words, "termites or other wood destroying insects."

All's Well That's Drilled well

Buyer purchased a suburban lot with an unfinished house on it through a broker. Both broker and his associates assured buyer that the well on the property was a "good" well. Unfortunately, the well did not produce enough water to meet the reasonable needs of the residents. It cost approximately \$7,000 to drill an adequate well.

Buyer sued seller, broker and associate alleging both intentional and negligent misrepresentation. The seller apparently knew there was a problem with the well but did not disclose this to the broker and associate.

Seller paid for a sufficient well to be drilled.

CHAPTER SIXTEEN

FINANCING REAL ESTATE

The secondary mortgage market is the second largest money market in the United States. It is second only to the U. S. Government securities market which is the largest borrower of dollars in America to finance the federal government deficit.

The secondary mortgage market is not a single market as the term implies. It is rather, a group of markets operating as a part of the overall capital market.

Perhaps the easiest way to discuss the “secondary mortgage market” is to divide it into two major segments. Some mortgage lenders originate loans and then hold the loans in their own portfolio. These shall be referred to as “portfolio lenders.” Other mortgage lenders originate loans and then sell the loan packages to other lenders or investors.

Portfolio Lenders

Life insurance companies, commercial banks, savings and loans (yes, there are still some left) and credit unions may be portfolio lenders. Though so-called portfolio lenders retain most of their loans, they may also sell mortgages into the secondary market.

Insurance companies generally obtain their lendable funds from the sale of policies.

Commercial banks and Savings and Loans tend to rely on deposits for lendable funds. They also gain lendable funds from returns on other investments.

For portfolio lenders to make funds available for mortgages, mortgages must compete against other lending and investment opportunities. If the expected return on consumer and business loans is higher than the expected return on mortgages, portfolio lenders may be inclined to make fewer mortgage loans and more business and consumer loans.

Lenders Who Sell Mortgages

It is primarily residential mortgages that are sold into the secondary market. Mortgage bankers and savings and loan associations commercial banks mortgage brokers are the lending institutions which are most active in selling mortgage “packages” into the secondary market.

Mortgage bankers are lending institutions which do not have deposits as do commercial banks. They obtain short-term funds from commercial banks or savings and loans or borrow from the money markets by issuing their own commercial paper (IOU's). This system of operation causes them to sell the loans they originate as quickly as possible in order to repay their short-term loans.

Mortgage bankers frequently receive an origination fee and a servicing fee or their part of the transaction. That is, borrowers make their house payments to the mortgage banker who puts the appropriate amount in the escrow account, subtracts a service fee and sends the rest to the investors.

Savings and Loan Associations, on the other hand, have a capital structure, that is, deposits. They may retain some mortgages in their own portfolio or sell into the secondary market.

Individuals desire to purchase houses. They borrow money from a lending institution. This is called the PRIMARY MORTGAGE MARKET. It is the aspect of the mortgage money market with which buyers and sellers of homes and real estate licensees are most familiar.

The secondary mortgage market is a source of mortgage funds for lending institutions. Savings and Loan Associations may be either a buyer or seller in the secondary market. For example, there are periods in the business cycle when they have more deposits than they are able to invest in their local mortgage markets. They then buy mortgages in other mortgage marketplaces. Obviously, when they have less deposits, they may sell on the secondary market.

Mortgage bankers are a major player in the secondary mortgage market. However, mortgage bankers do not have deposits. They package virtually all of the loans they originate for selling the secondary market.

Buyers of Mortgages in the Secondary Market

Before the National Housing Act of 1934, the usual lending requirement for purchase of a house was a 20% down payment. The Act created the Federal Housing Association (FHA) for the purpose of helping home buyers to get a loan with a lower down payment more in the range of three or four percent. Obviously, a more affordable price. The way FHA accomplished the lowering of the down payment requirement was to sell mortgage insurance. FHA sells mortgage insurance. Therefore, lenders became more likely to make loans with a lower down payment. This is called mortgage insurance.

One of the problems with lending is that lenders tend to have a limited amount of money to lend. Therefore, when they have loaned all they can of their deposits, there is no more money available with which to buy a house. Therefore, the National Housing Act created the Federal National Mortgage Association as a part of FHA. FNMA's function was to purchase mortgages from lenders, thereby replenishing the supply of lendable funds the lenders have.

FNMA actually began operations in 1939. She gained the nickname "Fannie Mae" and became the first step in the secondary mortgage market. Fannie was the entire secondary mortgage market until 1969. During that year Fannie left the FHA and became a quasi-public firm. This means that Fannie operated as a private corporation but with a mandate to perform only secondary mortgage activities.

In 1971 Congress realized that Fannie was a monopoly. Therefore, they created the Federal Home Loan Mortgage Corporation specifically to be competition for Fannie. Obviously, the Federal Home Loan Mortgage Corporation quickly earned the nickname of “Freddie Mac.”

When Fannie Mae left the FHA in 1969, the FHA created the Government National Mortgage Association to take Fannie’s place at FHA. Of course, the Government National Mortgage Association quickly became nicknamed “Ginnie Mae.” Her specialty is to purchase high risk, low interest mortgages at market yield rates and, frequently, sell them to Fannie Mae. The difference in the cost and the yield is absorbed by the agency as a subsidy for the housing industry.

As a result of the consumer debt bubble of the early 2000’s, Fannie Mae and Freddie Mac were nationalized by the U. S. Government and are, therefore, no longer quasi-private corporations.

The Federal Reserve

The Federal Reserve System is the central bank of the United States. It was designed as one tool through which the national economy may be managed. It is made up of twelve Federal Reserve Districts. Oklahoma is in the Federal Reserve District managed by the Federal Reserve Bank of Kansas City, Missouri.

The address of the Kansas City Federal Reserve Bank is:

Federal Reserve Bank of Kansas City

925 Grand Boulevard

Kansas City, Missouri 64198-0001

Oklahoma City has a Federal Reserve Bank. Its address is

Federal Reserve Branch Bank of Oklahoma City

226 Dean A. McGee Avenue

Oklahoma City, Oklahoma 73102

The Federal Reserve Bank regulates federally chartered commercial banks. State chartered banks are generally regulated by the Oklahoma State Banking Commission.

Through its activities the “Fed” has a significant effect on real estate investment activities. It regulates some federal laws. The Consumer Finance Protection Bureau derives some of its funding from the Federal Reserve.

One of the primary functions of the Federal Reserve Bank is to manage the supply of money in the American economy.

The Primary Mortgage Market

The Primary Mortgage Market is the financial market where loans are made directly from lenders to borrowers. The primary mortgage market originates and services the loans. The primary mortgage market is made up of savings and loan associations, commercial banks. The primary mortgage market originates and services the loans.

Savings and Loan Associations are depository institutions which make loans primarily on single family loans. However, since some significant banking legislation in the early 1980's, Savings and Loan Association have been able to make commercial loans.

Commercial banks are depository institutions and they make a wide variety of loans including residential and commercial and some industrial. They are generally portfolio lenders but frequently sell loan packages into the secondary market.

Mortgage bankers are a kind of financial middleman. They originate loans directly to borrowers, then "package" groups of loans and sell them into the secondary market. Mortgage bankers make both residential and commercial loans. They receive an origination fee and, sometimes, a loan servicing fee. In general, they are mortgage brokers who service the loans after they are placed with qualified borrowers.

The function of mortgage brokers is to bring together lenders and borrowers. Mortgage brokers are normally paid a "finders fee" which is often equal to about one percent of the loan amount.

Insurance companies, pension funds and some other sources of mortgage money often use mortgage brokers rather than dealing with the borrowers directly.

Mortgage brokers are normally not involved in servicing the loan after deal is done as mortgage bankers are likely to.

Factors Which Determine Interest Rates and Availability of Funds

Funds for mortgage loans become available either through the deposits on hand in depository institutions, through the sale of securities and, in the case of insurance companies, through the accumulation of funds through the sale of insurance policies.

Mortgage lending institutions are forced to compete with other investment vehicles in order to have funds available for real estate loans. The laws of supply and demand have a great effect on both the availability of funds and the interest rate (price) charged for those funds.

When other investments seem more attractive to investors, there tend to be fewer dollars available for real estate loans. In the cyclical nature of the business world, there come times when investment in real estate mortgages seem more attractive than other investments. During those times, more funds tend to become available for real estate finance.

Interest Rates

Money is much like any other commodity which responds to the laws of supply and demand. Interest is the price charged for the use of the money.

There appear to be four things that influence the interest rate which is charged on borrowed money.

1. **The SUPPLY OF MONEY:** Depository institutions typically rely on their deposits for the availability of funds. Frequently, persons who save money in those accounts discover there are other investments which earn greater interest. They withdraw those funds and place them in other investments. This reduces the availability of funds through portfolio mortgage lenders. When this happens, portfolio lenders tend to participate in the secondary mortgage market and become involved in securities. This has had the effect of making a shortage of money a thing of the past.
2. **Demand for Money:** There appears to be four major demands for money.
 - a. Businesses borrow money for inventory and capital needs.
 - b. Consumers borrow money for financing personal property purchases.
 - c. Government borrows money to finance its overspending habit.
 - d. Home buyers borrow money to buy homes.
3. **Monetary Policies of the Federal Reserve Bank:** The Federal Reserve Bank has the ability to increase or decrease the supply of money in America.
4. **The Fiscal Policies of the U.S. Government:** The way the federal government takes care of its tax and spending policies is called fiscal policy. If the government decides to spend more than is taken in by taxation, the difference is made up by either borrowing more money or printing more money.

The demand for mortgage money must compete with all other demands for borrowed funds. The share of the credit market demanded by mortgage loans normally is between 25% to 35% of the total credit available. Mortgage debt tends to be the largest class of debt in America.

THE LENDING PROCESS

The lending process is controlled by three federal laws: The Equal Credit Opportunity Act of 1974, the Fair Credit Reporting Act of 1970 and the Truth-in-Lending Act. The Truth-in-Lending Act is being modified and incorporated into the enforcement efforts of the Consumer Finance Protection Bureau.

Regulation B of the Equal Credit Opportunity Act provides that lenders may not discriminate against potential borrowers by asking any of the following:

1. Lenders may not ask about sex, race, national origin, religion or discourage a borrower from applying because he/she receives public assistance. However, a lender may ask the borrower to voluntarily disclose sex, race or national origin when application is made for a real estate loan. This information helps federal agencies enforce antidiscrimination laws. A lender may inquire about residence or immigration status.
2. A lender may not ask if the borrower is divorced or widowed.
3. If the borrower is applying for a separate, unsecured account, the lender may not ask about the borrower's marital status. This does not apply in the community property states. Oklahoma is not a community property state. The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.
4. The lender may not ask about the borrower's spouse unless the spouse is also applying for the loan.
5. The lender may not ask about the borrower's plans for having or raising children.
6. The lender may not ask the borrower if he/she receives alimony, child support or separate maintenance. A lender may ask for this information if the borrower is first told that he/she does not have to reveal it if the borrower does not rely on it to get credit. The lender may ask if the borrower must pay alimony, child support, or separate maintenance.

When deciding to give credit, a lender is prohibited from:

1. Considering the borrower's sex, marital status, race, national origin, or religion.
2. Consider whether the borrower has a telephone listing in his/her name.
3. Consider the race of the people who live in the neighborhood where the borrower wants to buy a home or improve a home with borrowed money.

4. Consider the borrower's age unless;
 - a. The borrower is under 18 years of age and, therefore, unable to sign a contract.
 - b. The borrower is 62 or over and the creditor will favor the borrower because of his/her age.
 - c. The age of the borrower is used to determine the meaning of other factors which are important to creditworthiness.
 - d. A lender could use the borrower's age to see if the borrower's income might be reduced because the borrower is about to retire.
 - e. The age of the borrower is used in a scoring system which favors borrowers age 62 and over.

When considering the income of the borrower, the lender may not:

1. Refuse to consider reliable public assistance income in the same manner as other income.
2. Discount income because of sex or marital status. For example, a lender may not count a man's income at 100% and a woman's income at 75%.
3. Assume that a woman of child-bearing age will stop work to have or raise children.
4. Discount or refuse to consider income because it is derived from part-time employment or from pension, annuity, or retirement benefit programs.
5. Refuse to consider consistently received alimony, child support, or separate maintenance payments. A lender may ask for proof that this income has been received consistently.

When making application for a loan, a borrower has the following rights:

1. To have credit in the borrower's birth name, the first name and spouse's last name, or the borrower's first name and a combined last name such as Mary Smith-Jones.
2. To have a co-signer other than a spouse if one is necessary.
3. To keep the borrower's own accounts after a change in name, marital status, reaching a certain age, or retire unless the lender has evidence that the borrower is unable or unwilling to pay.

4. To know whether the loan application was accepted or rejected within 30 days.
5. To know why the application was rejected.
6. If offered less favorable terms than the ones the borrower applied for; the borrower has the right to know why other terms were offered. This does not hold if the borrower accepts the terms.

NOTE" A good credit history or record of how past bills have been paid is often necessary to obtain credit. Unfortunately, this hurts many married, separated, divorced and widowed women. There are two common reasons women do not have credit histories in their own names: they lost their credit histories when they married and changed their names, and creditors reported accounts shared by married couples in the husband's name only.

FAIR CREDIT REPORTING ACT

The Fair Credit Reporting Act is designed to protect borrowers from inaccurate credit information.

The Act provides that an individual has the right to inspect his/her credit "file" and correct any errors, adding explanatory notes as supplementary information.

The Act also provides that if a lender in a real estate transaction refused credit due to the credit report, the lender must provide the borrower with the identity of the credit bureau which made the report.

NOTE: Most derogatory information about a borrower is usually dropped from a credit report after seven years. Bankruptcies may remain on the credit report for 14 years.

BORROWER QUALIFICATION

The ultimate goal on the lender's mind when considering a property and a prospective borrower for a loan is quality. The first question the lender will want answered is, "Is the borrower capable of repaying the debt?" The second question is, "Is the property worth enough to be adequate collateral for the amount loaned?"

The lender will consider the prospective borrower's income and compare that with the amount of existing debt he/she has. The question then becomes, "Is there enough room for an additional burden of debt?"

In general, creditworthiness is based on the borrower's capital, capacity and character.

The borrower's capital includes such assets as savings, real property, car(s) and other property of value.

The borrower's capacity includes his/her job, earnings and continued employment.

The borrower's character includes his/her history of paying debts, promptness in paying debts and straightforward response to creditors if there has been trouble paying debts.

In order to determine capital, capacity and character, a lending institution will usually look at:

1. Whether or not the borrower has a stable monthly income.
2. The pattern of the borrower's employment. Is he/she consistently employed or does he/she "job hop"?
3. The employment stability of the borrower is also considered. This includes whether the type of employment is currently in demand and its prospects for the future are good or otherwise.
4. Income:
 - a. Salaries
 - b. Overtime
 - c. Bonus
 - d. Commissions
 - e. Part time job
 - f. Dividend and/or interest income
 - g. Child support or alimony
 - h. Public assistance
 - i. Retirement income
5. Sources of money for down payment and closing costs.
6. The borrower's desire for housing and his/her willingness to pay.
7. Liabilities:
 - a. Installment debts.
 - b. Loans other than bank loans (credit unions, for example)
 - c. Whether or not there is a co-signer.
 - d. Child support and/or alimony payments.

8. Credit history including credit score.

In considering the above information, the lending institution will make a comparison of income to debt. The institution will consider the amount of income that goes for the housing payment and the long-term debt-to-income ratio.

Though these ratios vary, the Fannie Mae/Freddie Mac designation of a long-term debt is one that extends beyond ten months. This includes child support and alimony payments.

IRS 1031 LIKE-KIND-EXCHANGE

As a general rule, if investment or business property is sold and it generates a gain, there will be taxes to be paid on the gain. However, Internal Revenue Code Section 1031 provides an exception allowing the payment of taxes to be deferred – not avoided. If the investor reinvests the proceeds of the transaction in a property which the IRS considers “Like-Kind” the taxes are deferred, but it is not tax free.

If the transaction generates cash, relief from debt, or property that does not meet the IRS description of “Like-Kind” it may trigger a tax liability.

If property is owned for investment or business purposes it may qualify for the 1031 deferral even if it is owned by a C-corporation, an S-corporation, limited liability company, trust or partnership.

Internal Revenue Code Section 1031 specifies that there are three different structures for these tax deferred exchanges. They are simultaneous exchanges (the simplest kind), deferred exchanges, and Reverse Exchanges.

The simultaneous exchange happens when an exchange is a simultaneous exchange of properties of one or more other “Like-Kind” properties.

The deferred exchange allows the owner to dispose of property and acquire one or more “Like-Kind” property(s) at some time subsequent to the initial transaction. It is a general practice for deferred exchanges to acquire the services of an “exchange facilitator.” These are professionals having expertise in Income Tax Regulations.

The reverse exchange is the most complicated of the kinds of exchanges. The acquiring party acquires the replacement property through an “exchange accommodation titleholder.” The title is “parked” with this exchange accommodation titleholder” for a time not to exceed 180 days. During this “parking” period, the owner disposes of the relinquished to finalize/close the transaction

Both of the properties exchanged under the 1031 exchange rules must be business or investment properties. Properties used principally for residential purposes do not qualify. Both

of the properties must be of similar enough nature to be alike in nature, character or class. Quality is not a consideration.

Both real property and personal property may qualify under the IRC 1031 rules. However, the Code specifically excludes the following as qualifying for “Like-Kind” exchange:

Inventory

Stocks, bonds, notes

Securities or debt

Partnership interests

Certificates of trust

If the exchange is not simultaneous, the Code imposes two-time limits on the transaction. The first-time limitation is that the taxpayer has 45 days from the date the relinquished property is sold to find potential replacement properties. The second time limit requires that the exchange must be completed within 180 days.

IRC 1031 exchanges are reported to the IRS on IRS form 8824. This form is to be filed with the income tax return for the year in which the deferred exchange took place.

CHAPTER SEVENTEEN

DISCLOSURES

Residential Property Condition Disclosure/Disclaimer

Every transaction in real estate is unique. Each buyer and each seller and each property may be very similar to many others, but each has its own unique characteristics and/or requirements. Therefore, a licensee's attention to property condition disclosures is exceedingly important.

Oklahoma law (the Residential Property Condition Disclosure Act, 60 O.S. 831 et.seq. effective July 1, 1995) requires sellers of 1 and/or 2 residential dwelling units to complete either a disclosure or a disclaimer statement if they: 1) are represented by a real estate licensee; or 2) are not represented by a real estate licensee but receive a written request from the purchaser. The seller must complete, sign, and date this disclosure or disclaimer and deliver it or cause it to be delivered to a purchaser as soon as practicable, but in any event no later than before an offer is accepted by the seller.

Also, if a seller become aware of a defect after delivery of the disclosure or disclaimer statement, but before the seller accepts an offer to purchase, then the seller shall promptly deliver a disclosure statement or an amended disclosure statement to the purchaser which discloses the newly discovered defect. As stated, the seller must provide either a disclosure statement or a disclaimer statement. Following is a description of these forms:

DISCLOSURE FORM – Title 60, Section 833 (B) dictates what is to be included on the disclosure statement. The Oklahoma Real Estate Commission has developed a state mandated form to meet the requirements of the law. The disclosure form covers a variety of questions for the seller to answer about the property and its condition. This disclosure should be carefully reviewed by the seller.

DISCLAIMER FORM – In order to complete a disclaimer form on a property, the seller must meet the criteria of: 1) having never occupied the property and make no disclosures concerning the condition of the property (meaning having no knowledge of the condition of the property); and 2) have no actual knowledge of any defect concerning the property.

Once the seller has completed the disclosure or disclaimer statement, the form is only valid for 180 days. Therefore, completion of the disclosure or disclaimer statement form may not be more than 180 days prior to the date the form is received by the buyer.

The only time a real estate licensee may legally complete a disclosure or disclaimer form is when the licensee is, in fact, the seller of the property. In all other circumstances, the form is to be

completed by the seller(s). Should a licensee complete a form for the seller, the licensee runs the risk of the seller alleging that the information contained in the form was not the information that was given by the seller. Therefore, the licensee who did a favor for the seller could be included in any subsequent lawsuit.

Sellers are responsible for the completion of the Residential Property Condition/Disclaimer form. A licensee should never complete this form for the seller. Should the seller be unable to complete the form, or does not understand the form, the seller should seek legal advice or contact a person of their choosing, other than the licensee, to assist the seller in completing the form.

A licensee is responsible for disclosing information about a known defect in the property. OREC Rule 605: 10-17-5 mandates defects be disclosed. The Substantial Misrepresentation Rule states that the, "failure to disclose to a buyer or other cooperative licensee or company a known material defect regarding the condition of a parcel of real estate of which a broker or associate has knowledge" may be punishable by suspension, revocation or fine by the OREC. In addition, such a failure to disclose may be cause for action in court.

The Importance of a Home Inspection

Home inspections are not regulated by the Oklahoma Real Estate Commission. However, the Commission strongly encourages licensees to encourage purchasers to receive a home inspection.

Home inspectors are licenses and regulated by the Oklahoma State Construction Board.

A "home inspection" is a visual examination of any or all of the readily accessible physical real property and improvements to real property consisting of four or fewer dwelling units, including structural, lot drainage, roof, electrical, plumbing, heating and air conditioning and such other areas of concern as are specified in writing to demine if performance is as intended.

A "home inspection report" means a written opinion of the functional and physical condition of a property written by the licensed home inspector pursuant to home inspection. Such a report must be performed by a licensed "home inspector" which means, an individual licensed pursuant to the Home Inspector Licensing Act who, for compensation, conducts home inspections.

Should a prospective purchaser not wish to have a home inspection, such choice should be documented in writing and included in the transaction file.

Real estate licensees should not recommend specific home inspectors. The buyer should make the choice because the buyer is paying for the inspection and is entitled to the services provided

by the home inspector of the buyer chooses. Licensees should not attempt to thwart that relationship either by downplaying the importance of deficiencies noted by property inspectors, or by making disparaging remarks about the buyer's choice of home inspectors.

In addition, the OREC has a Prohibited Act in the Rules wherein a licensee who discourages a purchaser from having a home inspection could be subject to disciplinary action by the OREC.

Earnest Money Disbursement

The Oklahoma Real Estate Commission has specific rules regarding trust account procedures under Rule 605: 10-13-1 through 605: 10-13-3.

Rule 605: 10-3-1 Duty to Account; Broker

- (a) Deposit and account of trust/escrow funds
 1. Deposit all checks and monies of whatever kind belonging to others in a separate bank account; the broker is required to be a signor on such account (s).
 2. Account must be in the name of the broker as it appears on the license, or trade name as registered with the Commission.
 3. Escrow funds are to be deposited before the end of the next banking day following acceptance of an offer by an offeree unless otherwise agreed to in writing by all parties.
 4. Broker shall maintain such funds in the trust account until the transaction involved is consummated or terminated and proper accounting made.
 5. Broker shall at all times maintain an accurate detailed record thereof.
- (b) Commingling prohibited – a broker may not keep any personal funds in the trust account except amount sufficient to ensure the integrity of the account and to cover any charges made by the bank for servicing the trust or escrow account.
- (c) Interest bearing account – A broker shall not be prohibited from placing escrow monies in an interest-bearing account; however, he or she must disclose in writing to all parties that the account

bears interest and identify the party receiving the interest. A broker may receive the interest earned, in such event the broker should, upon final consummation of the transaction, immediately disburse the interest from the account or ensure that the amount does not exceed a reasonable amount to cover normal bank charges. Interest bearing account must be demand type accounts.

- (d) A trust account is not mandatory unless funds or items are held.
- (e) Trust account must be registered with the Commission. A broker shall also inform the Commission in writing of any accounts, which are close and no longer in use.
- (f) Settlement statements must be furnished to parties.
- (g) Funds must be promptly paid after the closing of any transaction.
- (h) Return of earnest money or items – In the event a transaction does not consummate, a broker shall promptly disburse the earnest money or items to the proper party in accordance with the terms of the contract in the event a dispute arises prior to the disbursement, the broker shall follow Rule 605: 10-13-3 or the broker may file an interpleader action in the appropriate court.
- (i) Documents furnished to all parties – A broker shall insure the delivery of a copy of all instruments to any party executing the same, where such instrument was prepared by the broker or his or her associates and relates to the agreement with his or her principal or pertains to the real estate transaction in which he or she or one of the associates has participated.
- (j) Inform all parties pertaining to escrow being held – A broker shall insure that all parties of each transaction are informed of the details relating to the escrow including, but not limited to, a statement as to the nature of a nondeposable item, the value of the item, and in whose custody the item is being placed.
- (k) A bookkeeping system is required.
- (l) Transaction records must be retained for a minimum of 5 years after consummation or termination of a transaction.
- (m) Guidelines for cessation of real estate activities – if a broker ceases to exist as a sole proprietorship, corporation, partnership

or limited liability company, the broker must complete the requirements within this section. The broker must also return to the Commission the broker's license certificate and those associated with the broker along with release forms for all associates.

Funds I trust accounts and pending contracts must be maintained by the broker until consummation of the transaction and final proper disbursement of funds. Upon final disbursement of funds, the broker is required to close the account and notify the Commission in writing.

If the broker is unable to continue to maintain the funds and/or pending contracts, the funds may be transferred to another authorized broker, entity or legal representative until consummation and proper disbursement of funds. In this event, the broker must submit a request in writing to the Commission for approval to transfer the contracts and/or funds. Upon written approval by the Commission, the broker must secure approval and obtain new agreements from all parties for transfer of the contracts and/or funds.

If funds, items and/or contracts are transferred to another authorized broker, entity or legal representative and approved by the Commission, the broker transferring such shall be required to compile a record as indicated in the rule and retain a copy for the file and give a copy to the receiving authorized broker, entity or legal representative.

Section 605: 10-13-2. Duty to Account; Associate

An associate shall turn over all monies deposited, payments made, or things of value received by the associate to his/her broker promptly; and an associate 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.

Section 605: 10-13-3. Special Escrow Disbursement

An option always available to a broker is to turn disputed earnest money over to a court using an Interpleader Action, probably in small claims court if the amount is under the maximum.

Another option available to the broker in the event of a dispute over the earnest money is to use the special escrow disbursement rule.

In the event a dispute arises prior to the disbursement of any monies or other valuables held by a broker in escrow in connection with a real estate purchase contract, the broker shall continue to retain said money or valuables in escrow until he or she has a written release form all parties consenting to its disposition or until a civil action is filed.

However, in the absence of the parties filing a civil action and upon the passage of 30 days from the date of final termination of the contract, it shall not be considered grounds for disciplinary action by the Commission against a broker for a broker to disburse escrow monies or valuables to either purchaser or seller when the disbursement has been based on a good faith decision by the broker that the opposite party has failed to perform as agreed, such disbursement to be made, however, only after 15 days written notice to all parties concerned setting forth the broker's proposed action.

The Commission has also published a booklet entitled "Trust Account and Interpleader Action." It is available on the Commission's web site at www.orec.state.ok.us

On a regular basis, the OREC receives calls from consumers complaining that the broker will not release earnest money. According to Rule 605: 10-13-1(a)(1)(C), all escrow funds shall be deposited before the end of the third banking day following acceptance of an offer by an offeree unless otherwise agreed to in writing by all interested parties. In the event the earnest money is deposited after acceptance of an offer and subsequently the contract fails, the broker should wait until the funds have cleared the broker's account to avoid either a shortage in the broker's trust account, or having to commingle the broker's own money to cover a possible shortage.

BENEFICIAL INTEREST OR REFERRALS

From time-to-time the OREC receives calls with the question, "Do I need to disclose that I will be receiving compensation for referring a party to a transaction to a home warranty plan?" Obviously, the answer is in the affirmative. The disclosure must be in writing in accordance with OREC Rule 605:10-15-1.

The rule requires the licensee to disclose in writing to the parties anytime the licensee is to receive compensation due to the recommendation, referral or procurement of any product or service, including financial services.

The rule also requires a licensee to disclose in writing to the parties anytime the licensee owns any beneficial interest in any entity which provides any product or service, including financial services to homeowners, home buyers or tenants in connection with the sale, lease, rent or listing of any real estate. Such disclosure shall be a continuing one. An associate is also required

to advise the licensee's broker of any beneficial interest the licensee has prior to performing any such referral.

However, licensees are cautioned that the Real Estate Settlement Procedures Act (RESPA) has certain prohibitions against receiving compensation for settlement services involving a federally related mortgage loan. RESPA states that any referral of a settlement service is not a compensable service, except as set forth in Section 3500.14(g)(1). It also states, "A company may not pay any other company, or the employees of any other company, for the referral of settlement service business."

The rule on disclosure of beneficial interest or referrals states in part, "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 homeowners, home buyers, or tenants in connection with the sale, lease, rental or listing of any real estate. Activities or interest of associates shall ordinarily be disclosed to his or her broker who has the primary responsibility to make written disclosures covered by this section to the parties..."

The Beneficial Interest or Referrals also states that "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 as well."

MEGAN'S LAW

Megan's Law is named after a 7-year-old New Jersey girl who was assaulted and killed by a convicted sex offender in 1994. The law is actually a series of notifications and withholding of notifications.

A real estate licensee has no duty to disclose information regarding this act. See specifically Title 59, Section 858-514. Registered Sex Offenders – No duty to Provide Notice Regarding. The provisions of the Sex Offenders Registration Act, Section 581 et. Seq. of Title 57 Oklahoma Statutes, "...shall not be construed as imposing a duty upon a person licensed under the Oklahoma Real Estate License Code to disclose any information regarding an offender required to register under such provision."

The OREC suggests that if a consumer makes such inquiry, the licensee should direct the consumer to the local sheriff's office in the county where the property is located. The local law enforcement office is required to maintain a registry of such offenders.

PSYCHOLOGICALLY IMPACTED PROPERTY

Title 59, Section 858-513 provides that residences that are psychologically impacted require no disclosure by the landlord, seller or licensee. Even though this information is not a material fact or defect, in the event that a purchaser or licensee, who is in the process of making a bona fide offer, advises the licensee assisting the owner, in writing, that knowledge of such factor is important to the person's decision to purchase or lease the property, the licensee shall make inquiry of the owner and report any findings to the purchaser or lessee with the consent of the owner and subject to and consistent with applicable laws of privacy. The law also provides that if the owner refuses to disclose, the licensee shall inform the party of the owner's refusal.

The OREC has developed Rule 605:10-15-3 as a means of giving licensees guidance in furnishing psychological factors.

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

1. Purchaser/lessee must be in the process of making a bona fide offer.
2. Licensee must receive request in writing from purchaser/lessee.
3. Purchaser's/lessee's written request must state that such factor is important to the decision of the purchaser/lessee.
4. Licensees shall make inquiry of the owner by submitting the written request to the owner.
5. Licensee shall report any findings to the purchaser/lessee with the consent of the owner.
6. If the owner refuses to furnish information requested, the licensee shall so advise the purchaser/lessee.
7. Further, if a purchaser/lessee is requesting information as to whether or not an occupant of the real estate is, or was at any time suspected to be infected, or has been infected with Acquired Immune Deficiency Syndrome, or any other disease which falls under the privacy laws, the information can only be obtained in

accordance with the Public Health and Safety Statute, Title 63, O.S., 1988, Section 1-502.2A

INDUCEMENTS, KICKBACKS AND REBATES

Inducements, kickbacks and rebates are illegal in Oklahoma. Specifically, OREC Code 858-312, (7), (12), (14), (21) and (22) address these issues.

Investigations – Causes for suspension or revocation of license

- (7) Paying a commission or valuable consideration to any person for acts or series performed in violation of the Oklahoma Real Estate License Code;
- (12) Soliciting, selling, or offering for sale real estate by offering “free lots,” conducting lotteries, or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate;
- (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;
- (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.

As stated in (12), it is a prohibited act to offer a purchaser or prospective purchaser free gifts, a chance in a lottery or contest, or to offer a prize for the purpose of influencing a purchaser or prospective purchaser of real estate, Further, this includes offers made by advertising that is done in connection with the real estate business, i.e., newspapers, business cards, special promotions, trade shows, websites, etc.

It is also illegal to offer a party to the transaction a percentage of the licensee’s commission after closing. This is, obviously, a rebate.

The prohibited act does not apply to inducements to sellers, landlords or prospective tenants.

COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs)

Covenants, conditions and restrictions are recorded against the property and generally empower a homeowners' association to control certain aspects of property use within the development. By purchasing a home in such a development, the buyer agrees to be bound by the CC&Rs. CC&Rs become an enforceable contract. In an association, homeowners as a whole, and as individual homeowners, can enforce the contract. These restrictions are to be made available to the buyer before closing. It is probably a good idea to disclose CC&Rs prior to the prospective buyers making an offer on the property. They could influence the buyers' decision either positively or negatively. Buyer should consult legal counsel if uncertain of the application of particular provisions in the CC&Rs.

The OREC does not make reference to CC&Rs in the License Code and Rules. However, these should assist the buyer with questions regarding the do's and don'ts of the property, including, putting up fences, adding a storage building, and adding a room addition to the home, etc. Such restrictions could prohibit certain businesses being performed from the property location, i.e. day care, automotive repair, etc.

HOMEOWNER'S ASSOCIATION (HOA)

A homeowner's association is governed by its Articles of Incorporation, Bylaws, Rules and Regulations, and often have building control standards. The HOA is in place to enforce these rules for the purpose of preserving the value of homes in a condominium or planned N

What makes a development a condominium or planned community are the "common areas." The common area is a community ownership of real estate for use by community residents the common property is actually deeded as undivided interest to the condominium owners. In a planned community, the ownership of the common property vests in the homeowner's association.

If purchasing a resale home in a condominium or planned community, the seller or the HOA must provide the buyer with a disclosure containing a variety of information. The disclosure should contain information regarding the principal contact for the association, amount of assessment dues, the money held by the association as reserves and, if the statement is being furnished by the association, a statement as to whether the records of the association reflects any alterations or improvements to the unit that violate the declaration. Also, the disclosure should contain information regarding pathways, tree cutting, and maintenance.

LEAD-BASED PAINT

If a home was built prior to 1978, a licensee assisting the seller, or a landlord must provide the buyer or tenant with a lead-based paint disclosure pamphlet and the parties must date and acknowledge a disclosure form. The licensee is required to disclose any lead-based paint knowledge he/she has in regard to the property. The pamphlet and disclosure form are available at <http://www.hud.gov/lea/leadsale.html>. These forms and pamphlets are available in several different languages. Licensees should maintain a copy of the signed form in the transaction file as the Environmental Protection Agency may perform audits of brokers' records from time-to-time and may assess fines if the files are incomplete with regard to environmental issues. This is not an OREC requirement. It is a Federal requirement.

HOME WARRANTY POLICY

A home warranty plan may or may not be part of the sale of a home. In the event a home warranty plan is offered with a home, buyers should read the warranty documents (policy) for coverage and limitation and exclusion information. Pre-existing property are generally not covered under most home warranty policies. These exclusions come into play if a home inspection is performed on the property and a problem is found and not corrected. There is a great possibility that such home warranty plans may not cover pre-existing conditions.

If a real estate licensee is to receive a referral fee for the recommendation of a home warranty plan, the licensee is required to disclose his or her beneficial interest or referral.

COUNTY ASSESSOR'S RECORDS

The County Assessor's records contain a variety of valuable information including the assessed value of the property for tax purposes and some of the physical aspects of the property, such as the reported square footage which should always be verified by the buyers for accuracy. County Assessors offices have differing provisions regarding their web sites. There is considerable variation from county to county.

The Oklahoma County Assessor's web site is www.oklahomacounty.org/assessor/. This is an excellent source of information for Oklahoma County properties. Licensees can discover tax information, tax rates, and on many properties, lot size and a layout of the home on the property.

The Oklahoma County Assessor's Office has stated that their records may not reflect the actual information of the property.

COUNTY CLERK'S OFFICE

The purpose of the County Clerk's Office is to provide a facility for the recordation of important documents such as deeds, contracts for deeds, trusts, wills, etc. for the purpose of giving notice to the world of their existence, constructive notice.

The County Clerk's Office also includes the Uniform Commercial Code facility. The UCC has an important impact on the economy and upon the rights of the public, in this state and throughout the United States. The volume of interstate, international and multistate transactions pursuant to the UCC requires that the administration of the UCC to be conducted in a manner that promotes both local and multi-jurisdictional commerce by striving for uniformity in policies and procedures among the various states. The web site for the Oklahoma County Clerk's Office is www.oklahomacounty.org.

For other county information, see www.state.ok.us/osfdocs/county.html.

TITLE REPORT OR TITLE COMMITMENT

The American system of law recognizes more rights and interests in real estate ownership than it does in personal property. As a result of real estate's uniqueness, those who have an interest in real estate are properly concerned that their rights and interests in the property are clear at the time of purchase, that the transfer is effected expeditiously and correctly, and their interests in the property are safeguarded as such as is possible. The service provided by title insurance companies is designed to further these goals.

The function of attorneys in the traditional conveyance of title is to render an "opinion of title." A title opinion is an opinion rendered by a qualified title examiner estimating the current title status of a particular parcel of real property.

The need for title insurance arose from the concern that traditional methods of conveying real property did not provide adequate protection for the parties involved.

A title report, or title commitment, contains important information to be provided to the purchaser by the title company. This report or commitment lists documents that are exceptions to the title insurance (Schedule B exceptions). Schedule B exceptions may include encumbrances, easements, and liens against the property, some of which may affect the use of the property, such as a future addition or swimming pool. The relevant party to the transaction should receive and review all of the listed documents. A title or escrow officer, legal counsel, or a surveyor may answer questions about the title commitment and Schedule B documents. General information regarding title issues may be obtained from the title/escrow company employed in the transaction.

Some typical title insurance exclusions may include:

Governmental police power including building and zoning ordinances.

Condemnation

Title risks the insured agrees to, or knows about, that result in no loss that affects title after policy date

Failure to pay mortgage

Unrecorded liens

For a complete list of exclusions, each title policy must individually be examined.

Require the buyer to purchase the owner's title insurance from any particular title company as a condition of purchasing the property. In other words, who pays for owner's title insurance is negotiable, but the seller may not select the title company that will provide owners title insurance and then require the buyer to pay for it.

As a general rule, licensees should be aware that there are two title insurance policies. One is the for the purpose of insuring the borrower's interest in the property's title. It is called the "mortgagor's policy." The other policy is for the purpose of insuring the lender's interest in the property on which they are making the loan. It is called the "mortgagee's policy" and covers title problems which may be superior to the mortgagee's first mortgage lien which are not excluded in the policy.

Licensees also should be aware that title insurance covers only title defects which occurred prior to the date of policy issuance. It does not cover defects in title which occur after the date of closing.

violation of HUD's regulation Section 8 (title company giving things of value to one or both real estate licensees to refer business). Particularly, disputes involving counteroffers, on an otherwise good purchase offer, for the sole purpose of disputing the title company. In most cases a Title Company will not accept the title work of another company. Therefore, ordering title work prior to acceptance of an offer could create an additional expense for the seller should the buyer select a different company. There are situations in which the buyer and seller have no choice in the title company, particularly if there is only one abstract/title company in the county. However, there is a possibility that Title One Oklahoma Statutes, Abstracting, may be reactivated creating a state agency to regulate abstracting and abstractors.