



OKLAHOMA REAL ESTATE COMMISSION COMMENT

OFFICIAL PUBLICATION OF THE OKLAHOMA REAL ESTATE COMMISSION

VOLUME 40

OKLAHOMA CITY, OKLAHOMA

4th QUARTER 2005

NO. 2

Commission to Consider Work Performed by Contract Forms Committee

The Contract Forms Committee shall provide the Commission their work products at the January Commission meeting to seek approval for distribution to licensees. Included in the work products are the following:

Consumer Information Pamphlet [provides additional information in regard to the Contract and financing addenda to include word definitions used throughout the transaction process]

Contract Cover Sheet [confirms broker relationship, acknowledges receipt by Buyer or Seller that they have received their estimate of costs, Residential Property Condition Disclosure Form and Lead-Based Paint Disclosure, if applicable]

Standard Contract of Sale of Real Estate [the Contract is 6 pages (8½ x 11) and a type size that is readable and it contains 17 contract provisions—without any financing supplement, it is a Cash Contract]

Supplemental Financing Addenda [FHA, VA and Conventional Financing Supplements]

Transaction Broker Disclosure [complies with the written requirement in the law even though the broker does not have a written transaction broker relationship with the party. If the broker has a written agreement, this disclosure can be attached to the written listing or buyer broker agreement.]

Single-Party Broker Disclosure

Disclosure to Parties When Broker is Providing Services to Both Parties—One Party as a Transaction Broker and the Other as a Single-Party Broker

Other forms to be completed:

Seller's Counter-offer to Contract of Sale of Real Estate
Estimated Costs to Buyer/Seller
Buyer's Request for Repairs

In the event the Commission approves the above documents, the Commission anticipates mailing a complete packet of the forms to each broker office on or before March, 2006. The forms will be available on the Commission's website, under the Publications area, probably titled Contract Forms.

Each Committee member deserves a star and recognition for a job well done. I have personally kept a diary of all comments made during the development of this project—pretty interesting if I must say so myself. Members to be commended are:

John Mosley, Chairman
Martin VanMeter, Commission
Bud Engstrom, Commission
Jean Thornton, Realtor
Robert Nichols, Attorney
John Jones, Realtor

Sam Rader, Vice-Chairman
John Munkacsy, Attorney
Vic Kennemer, Attorney
Barbara Morton, Realtor
Carolyn Rodgers, Realtor

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The Commission's new website went live November 30, 2005. We solicit your comments and suggestions by completing an online Customer Service Survey.

The Oklahoma Real Estate
Commission Comment

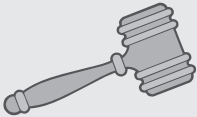
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THE COMMISSION

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**BY ORDER OF THE
COMMISSION
DISCIPLINARY ACTIONS
AS OF DECEMBER 7, 2005**

MARK ALAN JORDAN, SA from Ponca City. On November 9, 2005, under case C-2003-10, Commission Ordered Mr. Jordan’s license placed on Probation for a period of eighteen (18) months. Violations: Title 59 O.S. §858-312, Subsections 8 and 15, for engaging in conduct which constituted untrustworthy, improper, fraudulent and dishonest dealings, and exhibiting untrustworthiness to act as a real estate licensee. Mr. Jordan entered into a Consent Order with the Insurance Commission to Revoke his license; this Order contained admissions that he misappropriated funds from his insurance business while he was licensed as a provisional sales associate; further, the matter had been turned over to the Attorney General’s office. Mr. Jordan also entered into a plea in the District Court of Kay County to a Misdemeanor Plea of No Contest to

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**CHAIRMAN’S
CORNER**



*Pete Galbraith
Chairman*

Let me begin by saying what an honor it is to serve as the Chairman of the Oklahoma Real Estate Commission. As I enter my third year as a Commissioner, I have a deeper understanding of the role that the Commission plays in the regulation of the real estate industry. Aside from testing and administering continuing education, the Commission’s core function is to “...safeguard the public interest and provide quality services by assisting and providing resources; encouraging and requiring high standards of knowledge and ethical practices...”

In short, the Commissioners are selected by the Governor as experts in their field to apply their knowledge of the real estate industry to include setting standards and practices to best serve the public’s interest. Each Commissioner dedicates their time and effort to study the issues and cases presented and bring their unique point of view.

One of the more controversial topics is that of minimum duty requirements for licensees, more commonly known as “minimum service laws.” Oklahoma is one of nearly a dozen states that enacted these laws this past year and the Oklahoma Real Estate Commission is very serious about protecting the general public. Minimum duty requirements, while they may seem cumbersome to the proverbial retired real estate attorney, go a long way to provide a minimum level of protection to the consumer. It is important to remember that they are geared to the average consumer who has little knowledge of the role they play as a seller when interacting with a cooperating broker in what is most likely the largest financial transaction of their life.

Oklahoma law states that a consumer is entitled to a financial disclosure of what closing costs they are obligated to pay when an offer is made, and that a broker must be honest and account for all earnest money.

The law also requires that a listing broker must “be available” to accept offers on behalf of his client (the seller) if a cooperating (or buyer’s) broker does not want to deal directly with the seller. In cases where a firm has policies against dealing directly with other broker’s clients or their E & O insurance carrier has advised them of possible increased risks, this clause of the law would likely be invoked.

In addition, the new law does not eliminate “fee for service” brokerage. Brokers still have the flexibility to break out the many individual services that a traditional broker would typically bundle and charge separate prices for those individual services.

The bottom line is that the Commission feels that a buyer’s broker can deal directly with another broker’s client without violating the law as long as all parties, including the buyer’s broker, consent to the arrangement and proper disclosure is made.

The Attorney General is currently reviewing this law and the controversy is far from over. However, one thing is for certain, the “fee for service” brokers are very adamant about not wanting to perform these duties for their clients, and likewise, buyer’s brokers are just as adamant about not wanting to perform those duties for clients they don’t represent.

In conclusion, the Oklahoma Real Estate Commission will continue to find ways to protect consumers and strive to maintain the highest education and standards in our industry.

**Commission Elects Chair and Vice-Chair
for Fiscal Year 2006**

At the regularly scheduled Commission meeting on August 24, 2005, the Commissioners voted into office Mr. Pete Galbraith, broker member of Sapulpa, to be Chairman and Mr. Charles Barnes, school member of Midwest City, to be Vice-Chairman. *Congratulations gentlemen.*

Consumer Required to File Federal Form of Foreign Ownership of Agricultural Land

The Commission was notified recently of the requirement of Form FSA-153, Agricultural Foreign Investment Disclosure Act Report, used to report foreign ownership of US agricultural land. It is the responsibility of the foreign owner to complete and file the form - there is no federal requirement on the real estate licensee; however, it is information the licensee should be knowledgeable of in order to advise the consumer. The form and information handbook "Foreign Investment Disclosure" is available on the Commission's website under Related Links, Agriculture, U.S. Department.

The Act requires any foreign person who acquires or transfers any interest other than a security interest in agricultural land to submit a completed FSA-153 to the Secretary of Agriculture not later than 90 calendar days after the date of acquisition or transfer.

Foreign person is defined as an:

- individual who is not a U.S. citizen
- entity that is:
 - a foreign government
 - an entity formed under the laws of a foreign government
 - an entity formed under a U.S. law in which a foreign person has a reportable direct or indirect interest.

Such foreign person does not have to report if they are:

- a permanent resident of the United States and carry a green card or I-551
- a citizen of the Northern Mariana Islands and the Trust Territory of the Pacific Islands
- a national of the United States
- paroled into the United States under the Immigration and Nationality Act.

A reportable interest is an interest held by a foreign person in agricultural land as:

- a direct landowner
- a direct holder if the lease is for 10 years or more
- an indirect owner or leaseholder.

A reportable indirect interest is any interest held by a foreign person in any entity that has an interest in agricultural land as an owner or leaseholder if the lease is for 10 years or more. The interest held in the entity by the foreign person must be:

- 10 percent or more by a foreign person or group or foreign persons acting in concert
- 50 percent by a group of foreign persons not acting in concert.

Agricultural land is land used for agricultural purposes that is:

- more than 10 acres in size in the aggregate
- 10 acres or less in the aggregate producing gross annual receipts of more than \$1,000 for the sale of farm, ranch, or timber products in total.

Agricultural purposes is defined as land that during the current year or any 1 of the preceding 5 years:

- was used for farming, ranching, pasture, orchards, vineyards, timber production, etc.
- was used for forestry production exceeding 10 acres in size in which 10 percent is stocked by trees of any size, including land that formerly had such tree cover and will be naturally or artificially regenerated. It does not matter whether the foreign person ever intends to cut and sell the trees
- was used for the purposes described in the subparagraph, even if the land has been planned and plotted or re-zoned for nonagricultural purposes
- meets the descriptions of agricultural land in the Standard Industrial Classification Manual.

Such report is not required on nonagricultural land that is no longer 10 percent stocked by forest trees of any size, including land that formerly had such tree cover and will not be naturally or artificially regenerated, and:

- used for industrial development or related purposes
- has been planned and plotted for nonagricultural use

Note: Both of the following must have occurred:

- 1) board of county commissioners or equivalent has approved the recording of the land as nonagricultural
 - 2) land is no longer being used for agricultural purposes.
- has been re-zoned for nonagricultural use.

As previously stated the form must be completed within 90 calendar days of acquisition, disposition, or land use change. The report is to be filed in the county office where the land is located. If the tract of land is located in numerous counties, a report must be filed in each county. For more information contact the Oklahoma State Farm Service Agency, 100 USDA, Suite 102, Stillwater, Oklahoma 74074 (405) 742-1130.

DISCIPLINARY ACTIONS *continued from page 2*

the charge of Embezzlement wherein he received a one (1) year deferred sentence, court costs and restitution of \$1,394.00.

RICHARD W. DOSSETT, SA from Eufaula. On August 24, 2005, under case C-2004-20, Commission Ordered assessment of fines totaling \$600 (\$300 for each violation). Violations: Title 59 O.S. §858-312, Subsections 3, 9 and 23, and Rule 605:10-17-4(12); for failure to provide the Complainants with a Residential Property Condition Disclosure Statement prior to acceptance of the offer; and for disclosing himself as an "agent" in the Contract for Sale.

JUDY ANN CHANDLER, SA from Wynnewood. On August 24, 2005, under case C-2004-84, through Consent, Commission Ordered Ms. Chandler's license placed on Probation until evidence has been provided to the Commission that all court ordered requirements have been fulfilled and completed in reference to Garvin County Court cases: CM-04-0028, CM-04-00529, CM-04-00530, and CF-04-00384. Violations: Title 59 O.S. §858-312, Subsections 8 and 15, in that she may be unworthy to act as a real estate licensee, whether of the same or of a different character as specified in the statutes as she was arrested and charged with one (1) felony count of Unlawful Delivery of Marijuana; and three (3) misdemeanor counts: Unlawful Possession of Controlled Drug; Unlawful Possession of Marijuana, Unlawful Possession of Paraphernalia. She received a one (1) year deferred sentence for the misdemeanor charges; and a two (2) year deferred sentence for the felony, all to run concurrent; with one (1) year supervision by the District Attorney, plus fines/costs of approximately \$1,275.

JACQUELINE MARSHALL, B from Lawton, OK. June 8, 2005, under case C-2005-11, Commission Ordered license REVOKED effective July 18, 2005. Violations: Title 59 O.S. §858-312, Subsections 6, 8 and 9; and Rules 605:10-13-1(e), 605:10-13-1(a)(1)(B), (D), and (E), 605:10-9-1(a) and (g), and 605:10-17-4(12). Respondent made two personal deposits (totaling \$14,450) into her trust account and the account was still deficient after such deposits; failed to register accounts with the Commission wherein security deposits and rental management operating accounts, were maintained; allowed an unlicensed person to conduct licensable activities; failed to insure her brokerage firm was open and available to the public during reasonable business hours; commingled her money with money of others that was held and received by her; failed to make mortgage payments on behalf of property owners for whom she was the managing broker, which failure caused arrearages in mortgage payments.

JONATHAN NICHOLAS, B from Dallas, Texas. June 8, 2005, under case C-2003-34, Commission Ordered license REVOKED effective July 20, 2005. Violations: Title 59 O.S. §858-312, Subsections 6, 8 and 9; and Rules 605:10-17-4(9) and (12), 605:10-13-1(k), and 605:10-13-1(e). Respondent failed to provide Broker Relationship Disclosure as required;

failed to promptly disburse security deposit funds; failed to submit a written response to the complaint filed; permitted an unlicensed person to manage properties; failed to maintain a bookkeeping system which would accurately and clearly disclose full compliance with the law relating to maintaining trust accounts; failed to register his current trust account with the Commission and failed to advise the Commission that the old trust account was no longer in use.

LOY GOOSZEN, SA from Oklahoma City. On June 8, 2005, under case C-2004-16, Commission Ordered assessment of administrative fine of \$350. Violations: Title 59 O.S. §858-312, Subsections 8 and 9; and Rule 605:10-9-4(b)(3). Gooszen failed to reference his name and the name of his broker in an auction advertisement.

ROBERT GREGORY COMPANY, INC., and HOWARD L. RASKIN, B from Tulsa. May 11, 2005, under case C-2004-21, Commission Ordered licenses of Robert Gregory Company, Inc., and Howard L. Raskin REVOKED effective June 30, 2005. Violations: Title 59 O.S. 858-312, Subsections 3, 6, 8 and 9; and Rules 605:10-17-4(12) and 605:10-13-2(1). Respondents filed a Material or Mechanic's Lien on Complainant's property in an attempt to secure a fee; opened an account in the name of the LLC without the broker's knowledge or consent; failed to timely account for all money and property; failed to furnish an accounting after having been requested to do so; failed to maintain an accurate record-keeping system of the bank account; failed to submit earnest money check to his managing broker; failed to register the Bank One account with the Commission; and submitted false information in an attempt to mislead a Commission investigation.

LEONA WILLIAMS, B from Pryor. On May 11, 2005, under case C-2004-04, Commission Ordered a formal reprimand, assessment of administrative fines totaling \$1,200 (\$500, Count 1, \$500, Count 2, and \$200 Count 3), and completion of six (6) hours of additional continuing education. Violations: Title 59 O.S. §858-312, Subsections 3, 9 and 22; and Rule 605:10-17-4(12). Respondent Williams executed documents on behalf of Complainant/Seller although she disclosed herself as a Transaction Broker; referred to herself as listing agent on the Cost Estimate Sheet; and loaned the Complainant/Seller \$1,000 for the use and benefit of the Purchaser as down payment/closing costs.

SANDRA ANN LANE, B from Tulsa. Under case C-2004-12, on May 11, 2005, Commission Ordered a formal reprimand and assessed an administrative fine of \$500. Violations: Title 59 O.S. §858-312, Subsections 8 and 9; and Rule 605:10-17-4(12). Respondent admitted she signed the initials of the Complainant to the front of the Listing Agreement without his knowledge or consent.

HOME FINDERS OF LAWTON, INC., and DAVID ARNOLD NOTTINGHAM, B from Lawton. Under case C-2004-32, on May 11, 2005, Commission Ordered both respondents formally reprimanded and assessment of administrative

continued on page 6

APPEAL COURT RULINGS

Appeals court says seller should have disclosed more

(SAN FRANCISCO) - A California appeals court has ruled that a home seller cannot pick and choose which inspection report he wants to disclose to a buyer, even if the buyer's own inspector finds nothing seriously wrong with the property.

In the case, *Michael Diamond vs. Howard Schwartz* (B179538, 2nd Cal. Appl., Div. 7), the court ruled the guiding principle of property disclosure is that if there is something wrong that could change a buyer's decision to buy, then it should be disclosed.

According to briefs, Schwartz had lived in a home for several years and was aware the foundation was crumbling because he had at least two engineering studies done that both identified the problem as expansive soils.

He also, however, had one home inspection report identifying a fixable crack in the foundation (although it also recommended an engineer be hired to do further inspections).

When Diamond expressed interest in buying the property, he was given a property disclosure form that had

checked "no" to the question of whether there were known foundation problems. Schwartz provided the inspection report that found only the one crack, which by then had been fixed. Diamond hired his own inspector, but that inspector found no issue with the foundation.

After the deal, evidence of substantial cracking in the foundation was discovered and Diamond sued.

The trial court ruled in favor of the seller, saying Diamond was not entitled to rely on the statements of the seller when he had his own inspection done.

On appeal, however, the court reversed the lower court, saying that Schwartz should have disclosed the earlier engineering reports. The appeals court said it was quite likely that if Diamond had been aware of the foundation problem that he "would have behaved differently," either negotiating a lower price or walking away from the deal. Therefore, it said, he was entitled to see the other reports.

Article reprinted from the
ALQ Intelligence Report—October 2005 Issue.

Agent Should Have Produced Harsh Termite Report

(TOPEKA, Kan.) - The Kansas Court of Appeals has ruled that it is not up to a sales agent to decide which of two home inspection reports to submit to a potential buyer, especially if there is a \$20,000 difference in the recommended repairs.

In *Kelly Fitzmorris vs. Larry Marshall* (No. 92,817, Kan. App. 2005), Marshall was the listing agent for a home owned by Carolyn Pickell.

After the Pickell home was first listed, a buyer began negotiating but dropped out after a home inspection estimated that repair of termite damage could cost \$18,000 to \$25,000. Marshall told Pickell that the inspection report would have to be provided to all future buyers.

Instead, Pickell contracted with another inspection company, which produced a less comprehensive report and estimated needed repairs would cost less than \$5,000. Marshall later contended that because he had no personal knowledge of the termites, he could not know which estimate was more reliable.

A short time later, Fitzmorris entered into negotiations

to purchase the house and was given only the second inspection report. She agreed to buy the house.

After moving in, she discovered the home had massive termite damage and sued. The lower court, however, ruled in favor of the real estate agent and others, saying the termite damage had been properly disclosed.

The appeals court, however, overturned the lower court, ruling that Marshall was obligated to produce both inspection reports.

The high court said the key question was "what constitutes a material fact" that must be disclosed by an agent.

A matter is material if it is "one to which a reasonable person would attach importance in the determination of his or her choice of action in the transaction in question," the court said.

It ruled that damage estimates that differ by as much as \$20,000 constitutes a material fact that should have been disclosed.

Article reprinted from the
ALQ Intelligence Report—August 2005 Issue.

OKLAHOMA REAL ESTATE COMMISSION

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

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

IMPORTANT

Record of Continuing Education Hours

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

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

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

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

DISCIPLINARY ACTIONS *continued from page 4*

finest totaling \$1,200 (each assessed administrative fines of \$300 for each violation). Violations: Title 59 O.S. §858-312, Subsections 6, 8 and 9; and Rules 605:10-13-1(a)(12)(A), 605:10-13-1(k), and 605:10-13-1(l). Respondents failed to deposit Complainant’s checks into a trust account; failed to maintain a bookkeeping system that accurately disclosed expenditures of funds belonging to the Complainant; and failed to maintain records regarding Complainant’s property. **This matter is currently on appeal.**

JUDY LYNN WALLING, SA from Edmond. On May 11, 2005, under case C-2004-42, through Consent, Commission Ordered a formal reprimand and administrative fine of \$200. Violations: Title 59 O.S. §858-312, Subsections 8 and 9; and Rule 605:10-17-4(16), in that she allowed her unlicensed assistant access to or control of the Seller’s property without the Seller’s authorization.

CORRECTION

MARSHA NATION, B from Harrah. An error occurred in the 4th Quarter, 2005 listing of disciplinary actions regarding Ms. Nation. It erroneously stated that disciplinary action was taken against Ms. Nation when in fact the Order imposing discipline was reconsidered by the Commission on March 9, 2005 and the case was dismissed. Ms. Nation received no formal reprimand and was assessed no fine.

*The Commission wishes
you safe and
Happy Holidays!*

This publication, printed by The University of Oklahoma Printing Services, is issued by the Oklahoma Real Estate Commission as authorized by Anne M. Woody, Executive Director. 21,000 copies have been prepared and distributed at no cost to the taxpayers of the State of Oklahoma. The entire cost of preparing this publication has been borne by the Real Estate Licensees through their Education and Recovery Fund Fees. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.