



OKLAHOMA REAL ESTATE COMMISSION COMMENT

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EPA Now Inspecting Real Estate Companies For Compliance of Lead-Based Paint Disclosure

For the last several years the Environmental Protection Agency (EPA) has been reviewing the records of real estate companies in Oklahoma in relation to lead-based paint disclosure in connection with the real estate transaction. EPA is checking to insure that the proper disclosure form is in the file and that the form is fully completed.

EPA will review sales and leasing contracts involving non-HUD residential properties built prior to 1978. HUD performs their own review of HUD insured properties. EPA may impose a fine for failure to comply with the regulation.

Licenses can find the required pamphlet "Protect Your Family From Lead in Your Home" and the required Seller's or Lessor's Disclosure Forms on the Commission web site (www.orec.state.ok.us) under the 4th Door. Go to "Industry Forms, Lead-Based Paint—Residential Disclosure" and click on the listed web site. Scroll down to the [Forms and Instructions](#) for the disclosure forms; the pamphlet can be found under [Information: Press Releases, Fact Sheets, etc.](#) as the last entry.

Clarification on Residential Property Condition Disclosure Form

• **Under Section "Appliances/Systems/Services"**—Listed across from Source of Household Water is "Other Items." Other Items are items that may need to be disclosed by the seller if known. If the seller is not aware of "other items," the seller can mark Unk.

• **A licensee is required to provide the purchaser a signed copy** of the disclosure or disclaimer form. Read the statement just above the "Purchaser's Signature." In part it reads, "the purchaser acknowledges that the Purchaser has read and received a signed copy of this statement."

• **Question number 27**—Another example of a "regulated material" is mercury.

Oklahoma State Portal

www.youroklahoma.com

This site allows you to reach any Oklahoma state agency. The future goal for this site is to allow you to be able to transact business you have with Oklahoma government online—or should we say, one stop shopping.

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Shepherd Mall
2401 N.W. 23rd, Suite 18
Oklahoma City, Okla. 73107-2431
(405) 521-3387
www.orec.state.ok.us

THE COMMISSION

E. R. Andrew, ChairmanEnid
Pat Schafer, Vice ChairmanBartlesville
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Address all communications to the
Commission Office

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

***Senate Confirms Governor
Appointments to
Real Estate Commission***

Governor Frank Keating made two appointments to the Commission this past legislative session. The Senate confirmed the appointments of Mr. E. R. Andrew of Enid and Mr. William (Bill) Mizener of Tulsa.

Mr. Andrew is serving his second consecutive term on the Commission and serves as a broker member. He is the broker/owner and founder of Andrew Real Estate established in 1967. He is a past president and member of the Enid Metro Board of Realtors and holds a CRB and GRI designation. An Enid native, Mr. Andrew serves on several community boards, including the Greater Enid Chamber of Commerce, the Enid Convention and Visitors Bureau, Wheatland Mental Health, and Red Carpet Country. He has a B.S. Degree from Oklahoma State University in economics and marketing.

Mr. Mizener will be serving his first term and serves as a broker member. He founded Tulsa Properties, Inc. in 1978 followed by Tulsa Properties Management, Inc. in 1986. In January, 2000, Tulsa Properties entered into an equity partnership agreement with CB Richard Ellis, the world's largest commercial real estate company. His prior career

**CHAIRMAN'S
CORNER**



*E. R. Andrew
Chairman*

It is an honor to serve as the 2002-2003 Chairman of the Oklahoma Real Estate Commission. The Commission is constantly striving to improve our industry and to make it more professional in dealing with the public and each other. The continuing education structure has changed to 12 required hours instead of nine previously, and these hours consist of Professional Conduct, Broker Relationships Act, Fair Housing, and Hot Topics including License Law and Rule changes. We hope this will encourage a better understanding of issues in our industry.

I would like to extend a "special thanks," to the Educational Advisory Committee for the excellent job they have done in arriving at these changes in our continuing education requirements. Members include, Joe Whitaker of Tulsa, Mary Johnson of Edmond, Andy Newman of Norman, Jean Smith of Shawnee, Jerry Huggins of Muskogee, Dale Baze of Oklahoma City, Commissioner members Pat Schafer of Bartlesville and Bud Engstrom of Tulsa, and the Education Director for the Commission Connie Miller.

Another important change is the Residential Property Condition Disclosure Form which now requires disclosure of knowledge of meth lab residue, mold and other issues. Be sure your offices are using the new disclosure forms which can be found on the Commission's web site.

The real estate future looks good at this time with interest rates low and remaining constant—which benefits the consumer and the industry. I look forward to serving as Chairman and solicit your concerns.

Commission Elects Officers for Fiscal Year 2003

The Commission in regular session on August 14, 2002, elected a Chairman and Vice Chairman for fiscal year 2003. Elected as Chairman was E. R. Andrew, broker member from Enid and elected as Vice Chairman was Pat Schafer, broker member from Bartlesville. Congratulations Ms. Schafer and Mr. Andrew.

experience includes fifteen years supervising office, industrial, transportation and warehousing construction projects to include Dayton Tire & Rubber, Westinghouse, American Airlines and the Coleman Company, to name a few. Mr. Mizener has been responsible for the sale/leasing of major properties in and around Tulsa to include Xeta Corporation, Advantage Building & Exteriors, Staples, Amazon.com and Composite International. He earned the

Society of Industrial and Office Realtors (SIOR) designation and has been an active member of that organization for over twenty years. The Greater Tulsa Association of Realtors named Mr. Mizener the COMMERCIAL REALTOR of the Year for 2000. Further, he serves on the Board of Directors of the State Chamber of Commerce and the Greater Tulsa Association of Realtors.

Congratulations, Gentlemen.

Recent Court Case Review

When is a commission earned— At contract or at close?

Jesse and Sandra King v. James Arnold, CA01- 853, Court of Appeals of Arkansas, Division Four, 2002

In this case the appeals court was asked at what point the licensee was due a commission, upon finding a “ready, willing and able” buyer or not until the deal closed.

In the trial court, home sellers Jesse and Sandra King were ordered to pay their real estate licensee, James Arnold, \$3,537 in commission and interest for helping in the sale of their house.

The Kings had balked at paying the commission, arguing that the deal had not closed on the date specified in the contract and that Arnold had generally not kept them informed in writing about what was happening in the transaction.

On appeal, however, the higher court reversed the lower court decision—saying there were too many ambiguities in the listing contract and therefore the licensee was not entitled to a commission.

According to testimony, the Kings and Arnold had entered into a listing contract in which the Kings agreed to pay Arnold for professional services rendered in “securing” a real estate contract with the buyer-Shirley Jarrett.

The closing was set for July 15, 1997, but the contract included language that if problems arose, such as obtaining financing or clearing title, the closing date could be extended, provided the buyer and sellers were advised at least three days before the original closing date in writing.

Jarrett, the buyer, testified it did take her longer than expected to secure financing and therefore, the July 15 closing date was missed. She was approved for a loan about a week later.

Arnold conceded that he never advised his clients, the Kings, in writing that the closing was being postponed, but said he had talked with them over the phone and “they were aware of the situation.”

Testimony showed that Arnold set a new closing date, but the Kings did not show up. Other closing dates were set and the Kings still did not show up. Arnold testified that the Kings had been made aware of the new dates.

Ultimately, the transaction did not close. Arnold sued for a commission, claiming he had earned it when he found a buyer.

While the trial court agreed, the appeals court did not.

In issuing its ruling, the appeals court noted that Arnold could not provide proof—a written document—stating that the closing date had been extended.

The appeals court also said it had difficulty determining what was meant in the contract by the word “securing” in the listing agreement. It agreed that if “securing” meant finding a ready, willing and able buyer, then Arnold had earned his commission. If, however, “securing” meant actually closing the deal, then Arnold had not earned his money.

Ultimately the court concluded that the contract language was ambiguous and that it had to look for other evidence to find out what the agreement was between Arnold and the Kings. The court decided, finally, that “securing” a contract meant “closing” the deal and therefore Arnold was not entitled to be paid.

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Relocation Companies Must Complete Property Condition Disclosure Form

The applicable relocation company or seller of Oklahoma property must complete the Oklahoma Residential Property Condition Disclosure Form when an Oklahoma licensee is involved in the transaction.

If a licensee encounters problems with an Oklahoma disclosure form not being completed, please contact the Commission with contact information and we will call the appropriate individuals to ensure compliance.

Remember, in order to qualify to complete the “disclaimer” form instead of the disclosure form, such relocation company or seller has to meet three (3) requirements: 1) they have no actual knowledge of any defect; 2) they

make no disclosures concerning the property because they have no knowledge; and 3) they have never occupied the property.

Don't be afraid to take a big step if one is indicated.

You can't cross a chasm in two small jumps.

—David Lloyd George

HUD Secretary Promises Consumers an End to “Settlement Sticker Shock” *Unprecedented RESPA Reform Could Save Americans \$8 Billion a Year*

WASHINGTON—Consumers have the right to receive upfront and firm cost information that will prevent sticker shock when they buy or refinance their homes, Housing and Urban Development Secretary Mel Martinez said today in testimony before the House Financial Services Committee. Martinez outlined his proposal to overhaul the nation's mortgage settlement process as part of the Bush Administration's efforts to expand home ownership, particularly among minority families.

Martinez told committee members that current regulations are outdated and don't adequately protect consumers from a process that is “too complicated, too costly and too much of a mystery for many borrowers.”

“It is time to take the uncertainty out of mortgage financing,” said Martinez. “It isn't right that far too many Americans sit down at the settlement table only to discover unexpected fees that can add hundreds, if not thousands, of dollars to the cost of their loan.”

In June, Martinez announced a plan to reform the regulatory requirements under the Real Estate Settlement Procedures Act (RESPA). Based on HUD's Homebuyer Bill of Rights, the proposal would greatly simplify and clarify the homebuying and refinance process. Americans currently spend \$50 billion a year on settlement costs associated with buying or refinancing a home without fully understanding what it is they're paying for.

An economic analysis of HUD's proposed rule finds the comprehensive proposal could potentially save consumers \$8 billion a year.

Martinez told the Committee, “This Administration is committed to streamlining the process, so consumers can shop for a mortgage and better understand what will happen at the closing table. Reforming the process and avoiding ‘settlement sticker shock’ is simply the right thing to do.”

HUD's proposed reform would:

Clearly Disclose Mortgage Broker Fees. When a borrower qualifies for a home loan with a mortgage broker, but lacks the cash to pay for the upfront loan origination and other settlement costs, the borrower may choose to pay a slightly higher interest rate in exchange for the lender's payment of some or all of these costs. The difference between

the interest rate borrowers qualify for and what they end up agreeing to results in a lender payment to a broker that is often called a ‘Yield Spread Premium.’ Under current rules, these payments are not clearly disclosed to borrowers. Sometimes these payments simply serve to increase broker compensation. HUD is proposing that in brokered loans, these Yield Spread Premiums be clearly disclosed and credited toward the borrower's settlement costs.

Improve the Good Faith Estimate. Shortly after a person applies for a home loan, they receive something called the Good Faith Estimate from their lender that details their estimated settlement expenses. Today, this estimate is more like a Good Faith GUESSTIMATE. HUD wants lenders to provide consumers a more simple, clear and firm Good Faith Estimate, at no or nominal cost, so that they can better understand the charges and use it to shop for a home loan and service providers BEFORE they become so invested in the process that they can't back out. The new Good Faith Estimate would sharply limit lenders' ability to raise their charges at the last minute.

Remove Regulatory Barriers to Lower Costs. Current regulations inhibit the practice of offering consumers a single guaranteed package including the price for total settlement costs and a mortgage interest rate. Under Martinez's proposed reform, any entity would now be able to assemble and offer consumers “guaranteed mortgage packages”—a guaranteed mortgage interest rate and a guaranteed price for a complete package of settlement services. Consumers would know their ultimate costs in time to shop for the best mortgage product BEFORE incurring any out-of-pocket expenses and avoiding last-minute “junk fees” and other unexpected increases in settlement costs.

HUD is the nation's housing agency committed to increasing home ownership, particularly among minorities, creating affordable housing opportunities for low-income Americans, supporting the homeless, elderly, people with disabilities and people living with AIDS. The Department also promotes economic and community development as well as enforces the nation's fair housing laws. More information about HUD and its programs is available on the Internet at www.hud.gov.

Looking for Contact Information on Another Licensing Jurisdiction?

If you are desiring to seek a license in another jurisdiction and need their contact information, you can find this information on the Commission's web site (www.orec.state.ok.us.) Select the 1st door, Related Links, and select the “Association of Real Estate License Law Officials (ARELLO).” Once you are at ARELLO's web site, locate “Regulatory Agencies” which can be

found to the left of this page. You can then scroll through the names and addresses of licensing jurisdictions across the world.

Further, while at the ARELLO site you can obtain two very important resources. One being the “Directory of Real Estate Organizations.” This includes the names, addresses and phone numbers of real estate regula-

tors all over the world and second, the “Digest of Real Estate Laws and Issues” which charts licensing requirements, license recognition/reciprocity, applicable fees, brokerage services, examination requirements, recent case law and other important issues addressed by the jurisdictions. ARELLO does charge a fee for these items.

Survey for Licensees for Continuing Education and Errors & Omissions Insurance

Instructions: There are a variety of ways to transmit your response: (by December 20, 2002)

- 1) Complete the survey on line at www.youroklahoma.com/orec/survey;
- 2) Fax the form to (405) 521-2189; or
- 3) Mail the form to OREC, Shepherd Mall, 2401 N.W. 23rd St., Suite 18, Oklahoma City, Oklahoma 73107.

Each survey must have your identification—if a survey is received without identification, the response will not be counted.

Continuing Education

What is your opinion of your peer's knowledge in connection with the real estate transaction?

less than acceptable acceptable excellent

If less than acceptable, do you believe it is due to lack of training or lack of ethics

What is your opinion of your peer's professional behavior when working with you?

less than acceptable acceptable excellent

If less than acceptable, do you believe it is due to lack of training or lack of ethics

Comments

Would additional real estate education benefit you and your peers?

Yes No (Please explain):

If, so, what additional subject matter would promote licensee professionalism and further protect the public?

Errors & Omissions Insurance

Do you or your company currently pay for E & O coverage? Yes No

If so, what amount per year? _____ Company paid amount _____ Associate paid amount

Does the Associate pay the amount _____ yearly or _____ per transaction?

If you do carry E & O, how many times in the past two years has the consumer been able to recover from your E & O carrier?

None # of times

Do you agree with State mandated E & O? (Required for every active licensee)

Yes No

Would you agree with mandatory E & O if it reduced your cost for E & O?

Yes No

Name of Licensee _____
(required to be completed to insure validity of results)

OKLAHOMA REAL ESTATE COMMISSION

Shepherd Mall
2401 N.W. 23rd Street, Suite 18
Oklahoma City, Oklahoma 73107-2431

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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.

—Revocations and Suspensions Since November 20, 2001—

REVOCATIONS

FREDERICK K. DUGGAN, Jr.—SA-135274—Tulsa. Case #C-2001-90. On June 26, 2002, Commission, through consent agreement, Ordered license **REVOKED**. Violations Title 59 O.S. §858-312, Subsections, 8, 9 and 15. Duggan pled guilty and was convicted in a court of competent jurisdiction in Oklahoma of the crime of sexually abusing a minor child, Counts 1 and 2.

DEBORAH A. POUNDS—SA-123163—OKC. Case #C-2001-28. On May 8, 2002, Commission Ordered respondent’s license revoked effective June 20, 2002. Violations: Title 59 O.S. §858-312, Subsections 6, 8, 9 and 16: failure to account for or remit monies coming into her possession which belonged to others; conduct constituted untrustworthy, improper, fraudulent or dishonest dealings; commingled money of her own with money of others.

NAN M. MASCH—SA-113930—Duncan. Case #C-99-21. On March 20, 2002, Commission Ordered respondents found guilty of Revocable offenses (license lapsed November, 2001.) Violations: Title 59 O.S. §858-312, Subsections 6, 8, 9, and 24; and Rules 605:10-17-4(8), (9), and (12), and 605:10-13-2(1): licensee failed to obtain from the buyer and fur-

nish to the seller, a Residential Property Condition Disclosure form prior to executing an offer; failed to provide a written estimate of expenses; furnished the buyers with keys to the property without the sellers knowledge or consent which resulted in damage to the property and additional expenses to the sellers; and failed to produce documents to the Commission upon written demand.

THOMAS F. SELVIDGE—B-119252—Ardmore. Case #C-2000-11. On January 9, 2002, Commission Ordered respondents license revoked effective February 11, 2002. Violations: Title 59 O.S. §858-312, Subsections 8 and 19; and Rule 605:10-17-4(12). On March 22, 2001 Selvidge was convicted in the U.S. District Court for the Eastern District of Oklahoma, of the crime of Wire Fraud, a violation of 18 U.S.C. §1342 and 1343; sentenced to a term of twenty-one (21) months in the United States Federal Prison, and upon release to serve a supervised probation for sixty (60) months; required to make restitution to 63 individuals in the total amount of \$406,197.78.

SUMMARY SUSPENSION

JOHN R. MAYBERRY—B-023653—Tulsa. Under case #C-2001-91 on September 11, 2002 The Commission Ordered respondent’s license summarily sus-

pended effective September 11, 2002, until further Order by the Commission. Possible violations of Title 59 O.S. §858-312, Subsections 2 and 8; and Rules 605:10-17-4(6), (9), and (12), and 605:10-9-5(c). Respondent did not have his current address listed with the Commission and had not been at the location as listed for at least a year; and the Commission was unable to locate him. Complainant alleged that Mr. Mayberry misappropriated large sums of money that belonged to him. The Commission found that public health, safety or welfare imperatively required emergency action.

SUSPENSION

SCOTT T. MUSE, Jr.—B-040164—Stratford. Under case #C-2001-37 on June 26, 2002, the Commission Ordered respondent’s license suspended for a period of six (6) months, until January 27, 2003 and an administrative fine of \$1,500. Violations: Title 59 O.S. §858-312, Subsection 8: he altered a purchase contract without the knowledge or consent of the complainants; failed to obtain written authorization to use complainant’s earnest money as a down payment on a mobile home; and failed to produce and submit to the investigator the entire file covering the transaction.

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