

SHORT TITLE: Real estate; addressing brokerage relationships and responsibilities. Effective date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1030

By: Maddox

AS INTRODUCED

An Act relating to real estate sales; amending 59 O.S. 1991, Section 858-312, as last amended by Section 3, Chapter 159, O.S.L. 1996 (59 O.S. Supp. 1997, Section 858-312), which relates to investigations and to cause for suspension or revocation of license; listing additional cause; requiring association with a real estate broker by certain licensees; authorizing certain brokerage service agreements; defining terms; stating presumption regarding broker relationships; authorizing certain broker relationships if certain conditions are met; requiring written confirmation of certain disclosure and consent; prohibiting certain broker relationships; stating duties and responsibilities of certain brokers; providing for certain confidentiality of certain information, and providing exception; exempting brokers from certain duties, obligations, or liabilities; stating that certain promises or payments do not establish certain relationship; stating that certain provisions of this act replace and abrogate certain common law principles of agency; making certain remedies at law and equity supplemental to certain provisions of this act; denying certain liability; clarifying references; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-303.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

Each broker associate, sales associate, and provisional sales associate shall be associated with a real estate broker. A real estate broker may authorize associates to enter into written agreements to provide brokerage services in the name of the real estate broker.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 858-312, as last amended by Section 3, Chapter 159, O.S.L. 1996 (59 O.S. Supp. 1997, Section 858-312), is amended to read as follows:

Section 858-312. The Oklahoma Real Estate Commission may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any real estate broker or real estate sales associate, and may, upon showing good cause, impose sanctions as provided for in Section 858-208 of this title. Cause shall be established upon the showing that any licensee has performed, is performing, has attempted to perform, or is attempting to perform any of the following acts:

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 this act;

4. Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts;

~~4.~~ 5. Accepting a commission or other valuable consideration as a real estate associate for the performance of any acts as a real estate associate, except from the real estate broker with whom the licensee is associated;

~~5.~~ 6. Representing or attempting to represent a real estate broker other than the broker with whom the licensee is associated without the express knowledge and consent of the broker with whom the licensee is associated;

~~6.~~ 7. 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.~~ 8. Paying a commission or valuable consideration to any person for acts or services performed in violation of ~~this Code~~ the Oklahoma Real Estate License Code;

~~8.~~ 9. Any other conduct which constitutes untrustworthy, improper, fraudulent, or dishonest dealings;

~~9.~~ 10. Disregarding or violating any provision of ~~this Code~~ the Oklahoma Real Estate License Code;

~~10.~~ 11. Guaranteeing or having authorized or permitted any real estate broker or associate to guarantee future profits which may result from the resale of real estate;

~~11.~~ 12. 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.~~ 13. 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.~~ 14. 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 his or her interest is disclosed in the report. All appraisals ~~will~~ shall be in compliance with the Oklahoma real estate appraisal law, and the person performing the appraisal or report ~~will~~ shall disclose to the employer whether the person performing the appraisal or report is licensed or certified by the ~~Oklahoma Real Estate Appraisal Board~~ Oklahoma Real Estate Appraiser Board;

~~14.~~ 15. Paying a commission or any other valuable consideration to any person for performing the services of a real estate broker or associate as defined in ~~this Code~~ the Oklahoma Real Estate License Code who has not first secured a real estate license pursuant to ~~this Code~~ the Oklahoma Real Estate License Code;

~~15.~~ 16. Unworthiness to act as a real estate broker or associate, whether of the same or of a different character as specified in this section, or because the real estate broker or associate has been convicted of a crime involving moral turpitude;

~~16.~~ 17. Commingling with the licensee's own money or property the money or property of others which is received and held by the licensee, unless the money or property of others is received by the licensee and held in an escrow account that contains only money or property of others;

~~17.~~ 18. ~~Having been convicted~~ 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.~~ 19. ~~Failing, within a reasonable time~~ Failure by a real estate broker, after the receipt of a commission ~~by a real estate broker~~, to render an accounting to and pay to a real estate licensee his or her earned share of the commission received;

~~19.~~ 20. ~~Having been convicted~~ 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.~~ 21. Advertising to buy, sell, rent, or exchange any real estate without disclosing that he or she is a real estate licensee;

~~21.~~ 22. Paying any part of a fee, commission, or other valuable consideration received by a real estate broker or associate licensed pursuant to ~~this Code~~ the Oklahoma Real Estate License Code for services performed by the licensee in buying, selling, exchanging, leasing, or renting of any real estate, to any person not licensed;

~~22.~~ 23. 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 a real estate transaction; and

~~23.~~ 24. ~~Violating~~ Violation of the Residential Property Condition Disclosure Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-351 of Title 59, unless there is created a duplication in numbering, reads as follows:

Unless the context clearly indicates otherwise, as used in this act:

1. "Broker" means a real estate broker as defined in Section 858-102 of Title 59 of the Oklahoma Statutes, and means, further, except where the context refers only to 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 agreement" means a written agreement wherein a person engages a broker as a single broker or transaction broker;

3. "Client" means a party who has entered into a single brokerage agreement with a single broker;

4. "Customer" means a party who is provided services by a transaction broker;

5. "Party" means a person who is a seller, buyer, landlord, or tenant or a person who is involved in an option or exchange;

6. "Person" means a person as defined in Section 858-102 of Title 59 of the Oklahoma Statutes;

7. "Real estate" means real estate as defined in 858-102 of Title 59 of the Oklahoma Statutes;

8. "Single broker" means a broker who has entered into a single brokerage agreement with a client in a transaction to provide services as set forth in Section 6 of this act;

9. "Single brokerage agreement" means a written brokerage agreement between a client and a single broker;

10. "Transaction" means those activities enumerated in Section 858-102 of Title 59 of the Oklahoma Statutes which are performed by a broker;

11. "Transaction broker" means a broker who assists a customer in a transaction without being an advocate for the interests of the customer to the transaction as set forth in Section 5 of this act; and

12. "Transaction brokerage agreement" means a written brokerage agreement between a customer and a transaction broker.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-352 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A broker is presumed to be a transaction broker under the Oklahoma Real Estate License Code unless the broker has entered into a single brokerage agreement.

B. When assisting a party to a transaction, a broker is authorized to enter into the following relationships:

1. As a transaction broker under the presumption of the Oklahoma Real Estate License Code, provided the broker describes and discloses in writing the broker's role as a transaction broker as soon as practicable but not later than the signing of a contract to

purchase, lease, option, or exchange real estate, and provided that the disclosure includes information that the customer is not vicariously liable for the acts or omissions of the broker;

2. As a transaction broker through a transaction brokerage agreement provided the broker has described and disclosed in writing the relationship to the customer as soon as practicable prior to entering into the transaction brokerage agreement, and provided that the disclosure includes information that the customer is not vicariously liable for the acts or omissions of the broker; and

3. As a single broker through a single brokerage agreement provided the broker has described and disclosed in writing the relationship to the client as soon as practicable prior to entering into the single brokerage agreement, and provided that the disclosure includes information that the client may be vicariously liable for the acts or omissions of the broker.

C. When assisting more than one party to a transaction, a broker is authorized to enter into the following relationships:

1. As either a transaction broker under the presumption of the Oklahoma Real Estate License Code or a transaction broker through a transaction brokerage agreement for more than one customer provided the broker has satisfied the applicable disclosure requirements of paragraph 1 or paragraph 2 of subsection B of this section;

2. As a single broker for a client and as a transaction broker for a customer provided the broker has satisfied the applicable disclosure requirements of paragraphs 1, 2, or 3 of subsection B of this section, and provided that the broker, in addition to the disclosure requirements of paragraph 1 or paragraph 2 of subsection B of this section, discloses in writing to the customer that the broker is a single broker for the other party and performs services for the benefit of the other party in the transaction;

3. As a transaction broker where the broker has previously entered into a single brokerage agreement with more than one client,

has satisfied the disclosure requirements of paragraphs 2 and 3 of subsection B of this section, and has obtained the written consent of each client before the broker begins to perform services as a transaction broker, which written consent may be in the single brokerage agreement or in a separate document and shall contain the following information:

- a. a description of the transaction or type of transactions that might occur in which the single broker seeks to obtain consent to become a transaction broker,
- b. a statement that in such transactions the single broker would perform services for more than one client whose interest could be different or even adverse, and that such transactions require the broker to seek the consent of each client to such transactions to permit a change in the brokerage relationship,
- c. a statement that by giving consent in such transactions:
 - (1) the client will allow the broker to change the broker's relationship from performing services as a single broker to performing services as a transaction broker,
 - (2) the broker will no longer provide services for the benefit of the client, but may only assist in such transactions,
 - (3) the broker will not be obligated to disclose to the client material adverse facts concerning such transactions,
 - (4) the broker will not be obligated to obey the specific directions of the client but will assist all parties to such transactions,

- (5) the client will not be vicariously liable for the acts of the broker and associated associates, and
 - (6) the broker's obligation to keep confidential information received from the client confidential is not affected,
- d. a statement that the client is not required to consent to the change in the brokerage relationships in such transactions and may seek independent advice,
 - e. a statement that the consent of the client to change the brokerage relationship in such transactions has been given voluntarily, and that the written consent has been read and understood by the client, and
 - f. a statement that the client authorizes the broker to change the brokerage relationship in such transactions and to assist all parties to such transactions as a transaction broker;

4. As a single broker for a client where the broker has previously entered into a single brokerage agreement with more than one client and has satisfied the disclosure requirements of paragraph 3 of subsection B of this section, only if neither party has consented to allow the broker to perform services as a transaction broker and the broker has withdrawn from providing brokerage services to all but one party to the transaction, provided that when a withdrawal occurs, as contemplated in this subsection, the withdrawing broker shall not receive a referral fee for referring any such client to another broker unless written disclosure is made to all parties; and

5. As a single broker for a client who has not consented to a transaction broker relationship and as a transaction broker for a client who has given written consent in accordance with the requirements of paragraph 2 of subsection C of this section to allow a transaction broker relationship, provided that the broker has

satisfied the disclosure requirements of paragraphs 2 and 3 of subsection B of this section, and provided that, in addition to the disclosure requirements of paragraphs 2 and 3 of subsection B of this section, the broker discloses in writing to the client who has given written consent that the broker is a single broker for the other party and performs services for the benefit of the other party in the transaction.

D. The disclosure or disclosures and the consent required by this section must 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 must be documented by the broker.

E. A broker may cooperate with other brokers in a transaction. Under Sections 3 through 11 of this act, a broker shall not be an agent, subagent, or dual agent, and an offer of subagency shall not be made to other brokers.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-353 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A transaction broker shall have the following duties and responsibilities:

1. To perform the terms of any transaction brokerage agreement with a customer;

2. To treat all parties with honesty;

3. To comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules; and

4. To exercise reasonable skill and care including:

a. timely presentation of all offers and counteroffers,

- b. fully informing the customer regarding the transaction,
- c. timely accounting for all money and property received by the broker, and
- d. keeping confidential information received from the customer confidential as required by Section 7 of this act.

B. Knowledge or information known or received shall not be imputed by operation of law among or between the customer, the transaction broker, or other brokers.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-354 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A broker shall enter into a single brokerage agreement prior to providing services as a single broker.

B. The single broker shall have the following duties and responsibilities:

- 1. To perform the terms of the single brokerage agreement;
- 2. To treat all parties with honesty;
- 3. To comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules; and
- 4. To exercise reasonable skill and care including:
 - a. performing all brokerage activities for the benefit of the client unless prohibited by law,
 - b. timely presenting all offers and counteroffers to and from the client,
 - c. keeping the client fully informed regarding the transaction,
 - d. disclosing to the client adverse material facts concerning the transaction actually known by the broker unless disclosure of such information is prohibited by law,

- e. timely accounting for all money and property received in which the client has or may have an interest,
- f. obeying the specific directions of the client that are not contrary to applicable statutes and rules or contrary to the terms of a contract between the client and another party, and
- g. keeping confidential information received from the client confidential as required by Section 7 of this act.

C. In the event a broker who is a single broker for a buyer or tenant receives a fee or compensation based on a selling price or lease cost, such receipt does not constitute a breach of duty or obligation to the client.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-355 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The following information shall be considered confidential and shall not be disclosed by a broker without the consent of the party disclosing the information unless consent to disclosure is granted by the party disclosing the information, the disclosure is required by law, or the information is made public or becomes public as the result of actions of a source other than the broker:

1. That a party is willing to pay more or accept less than what is being offered;

2. That a party is willing to agree to financing terms that are different from those offered; and

3. The motivating factors of the party purchasing, selling, leasing, optioning, or exchanging the property.

B. Any other information may be designated as confidential by a party. Such information shall be designated in writing and must be delivered to the party's broker.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-356 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A broker has no duty or obligation to any customer or client to conduct an independent inspection of the real estate or to verify the accuracy or completeness of any statement, oral or written, made by a seller, landlord, or independent inspector.

B. A broker shall not be liable to any customer or client for providing false information to the customer or client if the false information was provided to the broker by another party or independent inspector unless the broker had actual knowledge that the information was false.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-357 of Title 59, unless there is created a duplication in numbering, reads as follows:

Except as may be provided in a written brokerage agreement between the broker and a customer or client, the broker owes no further duties or responsibilities to the customer or client 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 with a customer or client.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-358 of Title 59, unless there is created a duplication in numbering, reads as follows:

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.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-359 of Title 59, unless there is created a duplication in numbering, reads as follows:

The duties and responsibilities of a broker specified in Sections 3 through 10 of this act or in rules promulgated under such sections shall replace and abrogate 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 3 through 9 of this act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 830 of Title 60, unless there is created a duplication in numbering, reads as follows:

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 services as a transaction broker under Sections 3 through 11 of this act.

SECTION 13. This act shall become effective November 1, 1998.

46-2-1934 WHT