

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1178

By: Bryant, Calvey, Fields,
Perry, Phillips, Roach,
Sullivan (Leonard), Nance,
Beutler, Wells, Matlock,
Turner, Covey and Braddock
of the House

and

Long, Capps, Helton,
Herbert, Leftwich, Maddox,
Brown and Haney of the
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to real estate brokers; defining terms; authorizing certain written brokerage agreements; limiting brokerage services under certain conditions; providing for certain powers and duties of transaction brokers; requiring brokers providing services as a single-party broker to enter into written brokerage agreement; providing for duties and responsibilities of single-party brokers; eliminating threat of breach of duty or obligation for receipt of certain fee or compensation to single-party broker under certain condition; requiring broker to enter into certain relationship when assisting one party to a transaction; authorizing broker to enter into certain relationship when assisting both parties to a transaction; authorizing cooperation of a broker with other brokers in a transaction but prohibiting certain agency relationship with other brokers; requiring transaction broker to have written brokerage agreement with party containing certain disclosure about such broker prior to signing certain contracts by party; requiring certain disclosure by transaction broker or single-party broker prior to entering written brokerage agreement; requiring disclosure to party containing certain vicarious liability of a transaction broker; requiring disclosure to party containing certain vicarious liability of a single-party broker; requiring certain disclosure and consent provisions be confirmed by each party in writing on or in certain contracts; providing that under certain conditions such disclosure requirements must be documented by the broker; providing that certain information shall be confidential and not disclosed except under certain conditions; specifying such information; providing that broker owes no further duties or

1 responsibilities to party after termination of the
2 transaction; providing exceptions; requiring
3 replacement and abrogation of certain duties and
4 responsibilities of common law principles of agency
5 by provisions of this act; authorizing certain real
6 estate brokers to use the term "agent" in a trade
7 name; prohibiting party in a real estate transaction
8 of being held as vicariously liable for acts of a
9 transaction broker; requiring certain associates in
10 real estate be associated with a real estate broker;
11 authorizing real estate broker to authorize such
12 associates to enter certain real estate to provide
13 brokerage services in the name of a real estate
14 broker; amending 59 O.S. 1991, Section 858-312, as
15 last amended by Section 2 of Enrolled House Bill No.
16 1321 of the 1st Session of the 47th Oklahoma
17 Legislature, which relates to causes for suspension
18 or revocation of licenses; modifying causes;
19 providing for codification; and providing an
20 effective date.

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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 858-351 of Title 59, unless
there is created a duplication in numbering, reads as follows:

Unless the context clearly indicates otherwise, as used in
Sections 1 through 13 of 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. "Party" means a person who is a seller, buyer, landlord, or
tenant or a person who is involved in an option or exchange;

3. "Single-party broker" means a broker who has entered into a
written brokerage agreement with a party in a transaction to provide
services for the benefit of that party;

1 4. "Transaction" means those real estate activities enumerated
2 in Section 858-102 of Title 59 of the Oklahoma Statutes which are
3 performed by a broker; and

4 5. "Transaction broker" means a broker who provides services by
5 assisting a party in a transaction without being an advocate for the
6 benefit of that party.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 858-352 of Title 59, unless
9 there is created a duplication in numbering, reads as follows:

10 A broker may enter into a written brokerage agreement to provide
11 services as either a single-party broker or a transaction broker.
12 If a broker does not enter into a written brokerage agreement with a
13 party, the broker shall perform services only as a transaction
14 broker.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 858-353 of Title 59, unless
17 there is created a duplication in numbering, reads as follows:

18 A transaction broker shall have the following duties and
19 responsibilities:

20 1. To perform the terms of the written brokerage agreement, if
21 applicable;

22 2. To treat all parties with honesty;

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

25 4. To exercise reasonable skill and care including:

26 a. timely presentation of all written offers and
27 counteroffers,

28 b. keeping the party for whom the transaction broker is
29 providing services fully informed regarding the
30 transaction,

31 c. timely accounting for all money and property received
32 by the broker,

- 1 d. keeping confidential information received from a party
2 confidential as required by Section 7 of this act, and
3 e. disclosing information pertaining to the property as
4 required by the Residential Property Condition
5 Disclosure Act.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 858-354 of Title 59, unless
8 there is created a duplication in numbering, reads as follows:

9 A. A broker shall enter into a written brokerage agreement
10 prior to providing services as a single-party broker.

11 B. The single-party broker shall have the following duties and
12 responsibilities:

- 13 1. To perform the terms of the brokerage agreement;
14 2. To treat all parties with honesty;
15 3. To comply with all requirements of the Oklahoma Real Estate
16 License Code and all applicable statutes and rules; and
17 4. To exercise reasonable skill and care including:
18 a. timely presentation of all written offers and
19 counteroffers,
20 b. keeping the party for whom the single-party broker is
21 performing services fully informed regarding the
22 transaction,
23 c. timely accounting for all money and property received
24 by the broker,
25 d. keeping confidential information received from a party
26 confidential as required by Section 7 of this act,
27 e. performing all brokerage activities for the benefit of
28 the party for whom the single-party broker is
29 performing services unless prohibited by law,
30 f. disclosing information pertaining to the property as
31 required by the Residential Property Condition
32 Disclosure Act, and

1 g. obeying the specific directions of the party for whom
2 the single-party broker is performing services that
3 are not contrary to applicable statutes and rules or
4 contrary to the terms of a contract between the
5 parties to the transaction.

6 C. In the event a broker who is a single-party broker for a
7 buyer or a tenant receives a fee or compensation based on a selling
8 price or lease cost, such receipt does not constitute a breach of
9 duty or obligation to the buyer or tenant if fully disclosed to the
10 buyer or tenant in the written brokerage agreement.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 858-355 of Title 59, unless
13 there is created a duplication in numbering, reads as follows:

14 A. When assisting one party to a transaction, a broker shall
15 enter into one of the following relationships:

16 1. As a transaction broker without a written brokerage
17 agreement;

18 2. As a transaction broker through a written brokerage
19 agreement; or

20 3. As a single-party broker through a written brokerage
21 agreement.

22 B. When assisting both parties to a transaction, a broker may
23 enter into the following relationships:

24 1. As a transaction broker for both parties;

25 2. As a single-party broker for one party and as a transaction
26 broker for the other party. In this event, a broker shall disclose
27 in writing to the party for whom the broker is providing services as
28 a transaction broker, the difference between a transaction broker
29 and a single-party broker, and that the broker is a single-party
30 broker for the other party and performs services for the benefit of
31 the other party in the transaction; or
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1 3. As a transaction broker where the broker has previously
2 entered into a written brokerage agreement to provide services as a
3 single-party broker for both parties. In this event, the broker
4 shall obtain the written consent of each party before the broker
5 begins to perform services as a transaction broker. The written
6 consent may be included in the written brokerage agreement or in a
7 separate document and shall contain the following information:

- 8 a. a description of the transaction or type of
9 transactions that might occur in which the single-
10 party broker seeks to obtain consent to become a
11 transaction broker,
12 b. a statement that in such transactions the single-party
13 broker would perform services for more than one party
14 whose interest could be different or even adverse and
15 that such transactions require the broker to seek the
16 consent of each party to such transactions to permit a
17 change in the brokerage relationship,
18 c. a statement that by giving consent in such
19 transactions:
20 (1) the party will allow the broker to change the
21 broker's relationship from performing services as
22 a single-party broker to performing services as a
23 transaction broker,
24 (2) the broker will no longer provide services for
25 the benefit of the party, but may only assist in
26 such transactions,
27 (3) the broker will not be obligated to obey the
28 specific directions of the party but will assist
29 all parties to such transactions,
30 (4) the party will not be vicariously liable for the
31 acts of the broker and associated associates, and
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1 (5) the broker's obligation to keep confidential
2 information received from the party confidential
3 is not affected,

4 d. a statement that the party is not required to consent
5 to the change in the brokerage relationships in such
6 transactions and may seek independent advice,

7 e. a statement that the consent of the party to change
8 the brokerage relationship in such transactions has
9 been given voluntarily and that the written consent
10 has been read and understood by the party, and

11 f. a statement that the party authorizes the broker to
12 change the brokerage relationship in such transactions
13 and to assist all parties to such transactions as a
14 transaction broker.

15 C. 1. If neither party gives consent as described in paragraph
16 3 of subsection B of this section, the broker shall withdraw from
17 providing services to all but one party to a transaction. If the
18 broker refers the party for whom the broker is no longer providing
19 services to another broker, the broker shall not receive a fee for
20 referring the party unless written disclosure is made to all
21 parties.

22 2. If only one party gives consent as described in paragraph 3
23 of subsection B of this section, the broker may act as a transaction
24 broker for the consenting party and continue to act as a single-
25 party broker for the nonconsenting party. In this event, the broker
26 shall disclose in writing to the consenting party that the broker
27 remains a single-party broker for the nonconsenting party and
28 performs services for the benefit of the nonconsenting party.

29 D. A broker may cooperate with other brokers in a transaction.
30 Under Sections 1 through 13 of this act, a broker shall not be an
31 agent, subagent, or dual agent and an offer of subagency shall not
32 be made to other brokers.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 858-356 of Title 59, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Prior to the signing by a party of a contract to purchase,
5 lease, option or exchange real estate, a broker who is performing
6 services as a transaction broker without a written brokerage
7 agreement shall describe and disclose in writing the broker's role
8 to the party.

9 B. Prior to entering into a written brokerage agreement as
10 either a transaction broker or single-party broker, the broker shall
11 describe and disclose in writing the broker's relationship to the
12 party.

13 C. A transaction broker shall disclose to the party for whom
14 the transaction broker is providing services that the party is not
15 vicariously liable for the acts or omissions of the transaction
16 broker.

17 D. A single-party broker shall disclose to the party for whom
18 the single-party broker is providing services that the party may be
19 vicariously liable for the acts or omissions of a single-party
20 broker.

21 E. The disclosures required by this section and the consent
22 required by Section 5 of this act must be confirmed by each party in
23 writing in a separate provision, incorporated in or attached to the
24 contract to purchase, lease, option, or exchange real estate. In
25 those cases where a broker is involved in a transaction but does not
26 prepare the contract to purchase, lease, option, or exchange real
27 estate, compliance with the disclosure requirements must be
28 documented by the broker.

29 SECTION 7. NEW LAW A new section of law to be codified
30 in the Oklahoma Statutes as Section 858-357 of Title 59, unless
31 there is created a duplication in numbering, reads as follows:

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

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

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

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

13 SECTION 8. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 858-358 of Title 59, unless
15 there is created a duplication in numbering, reads as follows:

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

20 1. To account for all monies and property relating to the
21 transaction; and

22 2. To keep confidential all confidential information received
23 by the broker during the broker's relationship with a party.

24 SECTION 9. NEW LAW A new section of law to be codified
25 in the Oklahoma Statutes as Section 858-359 of Title 59, unless
26 there is created a duplication in numbering, reads as follows:

27 The payment or promise of payment or compensation by a party to
28 a broker does not determine what relationship, if any, has been
29 established between the broker and a party to a transaction.

30 SECTION 10. NEW LAW A new section of law to be codified
31 in the Oklahoma Statutes as Section 858-360 of Title 59, unless
32 there is created a duplication in numbering, reads as follows:

1 The duties and responsibilities of a broker specified in
2 Sections 1 through 13 of this act shall replace and abrogate the
3 fiduciary or other duties of a broker to a party based on common law
4 principles of agency. The remedies at law and equity supplement the
5 provisions of Sections 1 through 13 of this act.

6 SECTION 11. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 858-361 of Title 59, unless
8 there is created a duplication in numbering, reads as follows:

9 A real estate broker is permitted under the provisions of
10 Sections 1 through 13 of this act to use the word "agent" in a trade
11 name.

12 SECTION 12. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 858-362 of Title 59, unless
14 there is created a duplication in numbering, reads as follows:

15 A party to a real estate transaction shall not be vicariously
16 liable for the acts or omissions of a real estate licensee who is
17 providing services as a transaction broker under Sections 1 through
18 13 of this act.

19 SECTION 13. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 858-363 of Title 59, unless
21 there is created a duplication in numbering, reads as follows:

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

27 SECTION 14. AMENDATORY 59 O.S. 1991, Section 858-312, as
28 last amended by Section 2 of Enrolled House Bill No. 1321 of the 1st
29 Session of the 47th Oklahoma Legislature, is amended to read as
30 follows:

31 Section 858-312. The Oklahoma Real Estate Commission may, upon
32 its own motion, and shall, upon written complaint filed by any

1 person, investigate the business transactions of any real estate
2 licensee, and may, upon showing good cause, impose sanctions as
3 provided for in Section 858-208 of this title. Cause shall be
4 established upon the showing that any licensee has performed, is
5 performing, has attempted to perform, or is attempting to perform
6 any of the following acts:

7 1. Making a materially false or fraudulent statement in an
8 application for a license;

9 2. Making substantial misrepresentations or false promises in
10 the conduct of business, or through real estate licensees, or
11 advertising, which are intended to influence, persuade, or induce
12 others;

13 3. ~~Acting for more than one party in a transaction without the~~
14 ~~knowledge of all parties for whom the licensee acts~~ Failing to
15 comply with the requirements of Sections 1 through 13 of this act;

16 4. Accepting a commission or other valuable consideration as a
17 real estate associate for the performance of any acts as an
18 associate, except from the real estate broker with whom the
19 associate is associated;

20 5. Representing or attempting to represent a real estate broker
21 other than the broker with whom the associate is associated without
22 the express knowledge and consent of the broker with whom the
23 associate is associated;

24 6. Failing, within a reasonable time, to account for or to
25 remit any monies, documents, or other property coming into
26 possession of the licensee which belong to others;

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

30 8. Any other conduct which constitutes untrustworthy, improper,
31 fraudulent, or dishonest dealings;

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- 1 9. Disregarding or violating any provision of ~~this~~ the Oklahoma
2 Real Estate License Code or rules promulgated by the Commission;
- 3 10. Guaranteeing or having authorized or permitted any real
4 estate licensee to guarantee future profits which may result from
5 the resale of real estate;
- 6 11. Advertising or offering for sale, rent or lease any real
7 estate, or placing a sign on any real estate offering it for sale,
8 rent or lease without the consent of the owner or the owner's
9 authorized representative;
- 10 12. Soliciting, selling, or offering for sale real estate by
11 offering "free lots", conducting lotteries or contests, or offering
12 prizes for the purpose of influencing a purchaser or prospective
13 purchaser of real estate;
- 14 13. Accepting employment or compensation for appraising real
15 estate contingent upon the reporting of a predetermined value or
16 issuing any appraisal report on real estate in which the licensee
17 has an interest unless the licensee's interest is disclosed in the
18 report. All appraisals ~~will~~ shall be in compliance with the
19 Oklahoma real estate appraisal law, and the person performing the
20 appraisal or report ~~will~~ shall disclose to the employer whether the
21 person performing the appraisal or report is licensed or certified
22 by the Oklahoma Real Estate ~~Appraisal~~ Appraiser Board;
- 23 14. Paying a commission or any other valuable consideration to
24 any person for performing the services of a real estate licensee as
25 defined in ~~this~~ the Oklahoma Real Estate License Code who has not
26 first secured a real estate license pursuant to ~~this~~ the Oklahoma
27 Real Estate License Code;
- 28 15. Unworthiness to act as a real estate licensee, whether of
29 the same or of a different character as specified in this section,
30 or because the real estate licensee has been convicted of a crime
31 involving moral turpitude;
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1 16. Commingling with the licensee's own money or property the
2 money or property of others which is received and held by the
3 licensee, unless the money or property of others is received by the
4 licensee and held in an escrow account that contains only money or
5 property of others;

6 17. ~~Having been convicted~~ Conviction in a court of competent
7 jurisdiction of having violated any provision of the federal fair
8 housing laws, 42 U.S.C. Section 3601 et seq.;

9 18. ~~Failing, within a reasonable time~~ Failure by a real estate
10 broker, after the receipt of a commission ~~by a real estate broker,~~
11 to render an accounting to and pay to a real estate licensee the
12 licensee's earned share of the commission received;

13 19. ~~Having been convicted~~ Conviction in a court of competent
14 jurisdiction in this or any other state of the crime of forgery,
15 embezzlement, obtaining money under false pretenses, extortion,
16 conspiracy to defraud, fraud, or any similar offense or offenses, or
17 pleading guilty or nolo contendere to any such offense or offenses;

18 20. Advertising to buy, sell, rent, or exchange any real estate
19 without disclosing that the licensee is a real estate licensee;

20 21. Paying any part of a fee, commission, or other valuable
21 consideration received by a real estate licensee to any person not
22 licensed;

23 22. Offering, loaning, paying, or making to appear to have been
24 paid, a down payment or earnest money deposit for a purchaser or
25 seller in connection with a real estate transaction; and

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

28 SECTION 15. This act shall become effective November 1, 2000.

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