

# House Bill No. 1178

HOUSE BILL NO. 1178 -- By BRYANT, CALVEY, FIELDS, PERRY, PHILLIPS, ROACH and SULLIVAN (Leonard) of the House and LONG, CAPPS, HELTON, HERBERT, LEFTWICH and MADDOX of the Senate.

An Act relating to real estate brokers; 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; amending 59 O.S. 1991, Section 858-312, as last amended by Section 18, Chapter 60, O.S.L. 1998 (59 O.S. Supp. 1998, Section 858-312), which relates to causes for suspension or revocation of licenses; modifying causes; 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 858-351 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 12 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;

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

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

SECTION 2. 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 broker may enter into a written brokerage agreement to provide services as either a single-party broker or a transaction broker. If a broker does not enter into a written brokerage agreement with a party, the broker shall perform services only as a transaction broker.

SECTION 3. 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 the written brokerage agreement, if applicable;
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 written offers and counteroffers,
  - b. keeping the party for whom the transaction broker is providing services fully informed regarding the transaction,
  - c. timely accounting for all money and property received by the broker, and
  - d. keeping confidential information received from a party 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 party or parties for whom the transaction broker is providing services, the transaction broker, or other brokers.

SECTION 4. 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 written brokerage agreement prior to providing services as a single-party broker.

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

1. To perform the terms of the 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. timely presentation of all written offers and counteroffers,
- b. keeping the party for whom the single-party broker is performing services fully informed regarding the transaction,
- c. timely accounting for all money and property received by the broker,
- d. keeping confidential information received from a party confidential as required by Section 7 of this act,
- e. performing all brokerage activities for the benefit of the party for whom the single-party broker is performing services unless prohibited by law,
- f. disclosing to the party for whom the single-party broker is performing services adverse material facts concerning the transaction actually known by the broker unless disclosure of such information is prohibited by law, and
- g. obeying the specific directions of the party for whom the single-party broker is performing services that are not contrary to applicable statutes and rules or contrary to the terms of a contract between the parties to the transaction.

C. In the event a broker who is a single-party broker for a buyer or a 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 buyer or tenant.

SECTION 5. 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. When assisting one party to a transaction, a broker shall enter into one of the following relationships:

1. As a transaction broker without a written brokerage agreement;
2. As a transaction broker through a written brokerage agreement; or
3. As a single-party broker through a written brokerage agreement.

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

1. As a transaction broker for both parties;
2. As a single-party broker for one party and as a transaction broker for the other party. In this event, a broker shall disclose in writing to the party for whom the broker is providing services as a transaction broker that the broker is a single-party broker for the other party and performs services for the benefit of the other party in the transaction; or

3. As a transaction broker where the broker has previously entered into a written brokerage agreement to provide services as a single-party broker for both parties. In this event, the broker shall obtain the written consent of each party before the broker begins to perform services as a transaction broker. The written consent may be included in the written 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-party broker seeks to obtain consent to become a transaction broker,
- b. a statement that in such transactions the single-party broker would perform services for more than one party whose interest could be different or even adverse and that such transactions require the broker to seek the consent of each party to such transactions to permit a change in the brokerage relationship,
- c. a statement that by giving consent in such transactions:

- (1) the party will allow the broker to change the broker's relationship from performing services as a single-party broker to performing services as a transaction broker,
  - (2) the broker will no longer provide services for the benefit of the party, but may only assist in such transactions,
  - (3) the broker will not be obligated to disclose to the party material adverse facts concerning such transactions,
  - (4) the broker will not be obligated to obey the specific directions of the party but will assist all parties to such transactions,
  - (5) the party 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 party confidential is not affected,
- d. a statement that the party 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 party to change the brokerage relationship in such transactions has been given voluntarily and that the written consent has been read and understood by the party, and
- f. a statement that the party authorizes the broker to change the brokerage relationship in such transactions and to assist all parties to such transactions as a transaction broker.
4. a. If neither party gives consent as described in paragraph 3 of this subsection, the broker shall withdraw from providing services to all but one party to a transaction. If the broker refers the party for whom the broker is no longer providing services to another broker, the broker shall not receive a fee for referring the party unless written disclosure is made to all parties.

b. If only one party gives consent as described in paragraph 3 of this subsection, the broker may act as a transaction broker for the consenting party and continue to act as a single-party broker for the nonconsenting party. In this event, the broker shall disclose in writing to the consenting party that the broker remains a single-party broker for the nonconsenting party and performs services for the benefit of the nonconsenting party.

C. A broker may cooperate with other brokers in a transaction. Under Sections 1 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 6. 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. Prior to the signing by a party of a contract to purchase, lease, option or exchange real estate, a broker who is performing services as a transaction broker without a written brokerage agreement shall describe and disclose in writing the broker's role to the party.

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

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

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

E. The disclosures required by this section and the consent required by Section 5 of this act 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.

SECTION 7. 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:

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 from 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 858-358 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A broker has no duty or obligation to any party 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 party for providing false information to the party 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 858-359 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 party to a transaction, the broker owes no further duties or responsibilities to the party after termination, expiration, or completion of performance of the transaction, except:

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-360 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 858-361 of Title 59, unless there is created a duplication in numbering, reads as follows:

The duties and responsibilities of a broker specified in Sections 1 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 1 through 10 of this act.

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

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

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-363 of Title 59, 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 1 through 10 of this act.

SECTION 14. 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 15. AMENDATORY 59 O.S. 1991, Section 858-312, as last amended by Section 18, Chapter 60, O.S.L. 1998 (59 O.S. Supp. 1998, 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 licensee, 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. ~~Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts~~ Failing to comply with the requirements of this act;
4. Accepting a commission or other valuable consideration as a real estate associate for the performance of any acts as an associate, except from the real estate broker with whom the associate is associated;
5. Representing or attempting to represent a real estate broker other than the broker with whom the associate is associated without the express knowledge and consent of the broker with whom the associate is associated;
6. Failing, within a reasonable time, to account for or to remit any monies, documents, or other property coming into possession of the licensee which belong to others;
7. Paying a commission or valuable consideration to any person for acts or services performed in violation of ~~this~~ The Oklahoma Real Estate License Code;

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

9. Disregarding or violating any provision of ~~this~~ The Oklahoma Real Estate License Code or rules promulgated by the Commission;

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

11. Advertising or offering for sale, rent or lease any real estate, or placing a sign on any real estate offering it for sale, rent or lease without the consent of the owner or the owner's authorized representative;

12. Soliciting, selling, or offering for sale real estate by offering "free lots", conducting lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate;

13. Accepting employment or compensation for appraising real estate contingent upon the reporting of a predetermined value or issuing any appraisal report on real estate in which the licensee has an interest unless the licensee's interest is disclosed in the report. All appraisals ~~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~~ Appraiser Board;

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

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

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

17. ~~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. ~~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 the licensee's earned share of the commission received;

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

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

22. Failing to obtain a written statement from an out-of-state licensee verifying that the out-of-state licensee will not pay any part of the earned fee, commission, or other valuable consideration to any person not licensed;

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

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

SECTION 16. This act shall become effective November 1, 2000.

COMMITTEE REPORT BY: COMMITTEE ON COMMERCE, INDUSTRY AND LABOR, dated 2-3-99  
-- DO PASS, As Coauthored.