

**EHB 1178**

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**THE STATE SENATE**  
**Thursday, March 25, 1999**

**ENGROSSED**  
**House Bill No. 1178**  
**As Amended**

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.

**[ real estate brokers - relationships - written confirmation - disclosure and consent - duties - responsibilities - confidentiality - exception - causes - codification - 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;

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

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

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

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

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

15           A broker may enter into a written brokerage agreement to provide  
16 services as either a single-party broker or a transaction broker.  
17 If a broker does not enter into a written brokerage agreement with a  
18 party, the broker shall perform services only as a transaction  
19 broker.

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

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

3           1. To perform the terms of the written brokerage agreement, if  
4 applicable;

5           2. To treat all parties with honesty;

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

8           4. To exercise reasonable skill and care including:

9           a. timely presentation of all written offers and  
10 counteroffers,

11           b. keeping the party for whom the transaction broker is  
12 providing services fully informed regarding the  
13 transaction,

14           c. timely accounting for all money and property received  
15 by the broker, and

16           d. keeping confidential information received from a party  
17 confidential as required by Section 7 of this act.

18           B. Knowledge or information known or received shall not be  
19 imputed by operation of law among or between the party or parties  
20 for whom the transaction broker is providing services, the  
21 transaction broker, or other brokers.

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

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

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

8 1. To perform the terms of the brokerage agreement;

9 2. To treat all parties with honesty;

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

12 4. To exercise reasonable skill and care including:

13 a. timely presentation of all written offers and  
14 counteroffers,

15 b. keeping the party for whom the single-party broker is  
16 performing services fully informed regarding the  
17 transaction,

18 c. timely accounting for all money and property received  
19 by the broker,

20 d. keeping confidential information received from a party  
21 confidential as required by Section 7 of this act,

- 1 e. performing all brokerage activities for the benefit of  
2 the party for whom the single-party broker is  
3 performing services unless prohibited by law,  
4 f. disclosing to the party for whom the single-party  
5 broker is performing services adverse material facts  
6 concerning the transaction actually known by the  
7 broker unless disclosure of such information is  
8 prohibited by law, and  
9 g. obeying the specific directions of the party for whom  
10 the single-party broker is performing services that  
11 are not contrary to applicable statutes and rules or  
12 contrary to the terms of a contract between the  
13 parties to the transaction.

14 C. In the event a broker who is a single-party broker for a  
15 buyer or a tenant receives a fee or compensation based on a selling  
16 price or lease cost, such receipt does not constitute a breach of  
17 duty or obligation to the buyer or tenant **if fully disclosed to the**  
18 **buyer or tenant prior to the buyer or tenant incurring any**  
19 **obligation.**

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

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

3           1. As a transaction broker without a written brokerage  
4 agreement;

5           2. As a transaction broker through a written brokerage  
6 agreement; or

7           3. As a single-party broker through a written brokerage  
8 agreement.

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

11           1. As a transaction broker for both parties;

12           2. As a single-party broker for one party and as a transaction  
13 broker for the other party. In this event, a broker shall disclose  
14 in writing to the party for whom the broker is providing services as  
15 a transaction broker that the broker is a single-party broker for  
16 the other party, **the differences between a transaction broker and a**  
17 **single-party broker**, and performs services for the benefit of the  
18 other party in the transaction; or

19           3. As a transaction broker where the broker has previously  
20 entered into a written brokerage agreement to provide services as a  
21 single-party broker for both parties. In this event, the broker  
22 shall obtain the written consent of each party before the broker  
23 begins to perform services as a transaction broker. The written

1 consent may be included in the written brokerage agreement or in a  
2 separate document and shall contain the following information:

3 a. a description of the transaction or type of  
4 transactions that might occur in which the single-  
5 party broker seeks to obtain consent to become a  
6 transaction broker,

7 b. a statement that in such transactions the single-party  
8 broker would perform services for more than one party  
9 whose interest could be different or even adverse and  
10 that such transactions require the broker to seek the  
11 consent of each party to such transactions to permit a  
12 change in the brokerage relationship,

13 c. a statement that by giving consent in such  
14 transactions:

15 (1) the party will allow the broker to change the  
16 broker's relationship from performing services as  
17 a single-party broker to performing services as a  
18 transaction broker,

19 (2) the broker will no longer provide services for  
20 the benefit of the party, but may only assist in  
21 such transactions,

- 1 (3) the broker will not be obligated to disclose to  
2 the party material adverse facts concerning such  
3 transactions,  
4 (4) the broker will not be obligated to obey the  
5 specific directions of the party but will assist  
6 all parties to such transactions,  
7 (5) the party will not be vicariously liable for the  
8 acts of the broker and associated associates, and  
9 (6) the broker's obligation to keep confidential  
10 information received from the party confidential  
11 is not affected,  
12 d. a statement that the party is not required to consent  
13 to the change in the brokerage relationships in such  
14 transactions and may seek independent advice,  
15 e. a statement that the consent of the party to change  
16 the brokerage relationship in such transactions has  
17 been given voluntarily and that the written consent  
18 has been read and understood by the party, and  
19 f. a statement that the party authorizes the broker to  
20 change the brokerage relationship in such transactions  
21 and to assist all parties to such transactions as a  
22 transaction broker.



1       4. a.     If neither party gives consent as described in  
2                   paragraph 3 of this subsection, the broker shall  
3                   withdraw from providing services to all but one party  
4                   to a transaction.  If the broker refers the party for  
5                   whom the broker is no longer providing services to  
6                   another broker, the broker shall not receive a fee for  
7                   referring the party unless written disclosure is made  
8                   to all parties.

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

18            C.     A broker may cooperate with other brokers in a transaction.  
19     Under Sections 1 through 11 of this act, a broker shall not be an  
20     agent, subagent, or dual agent and an offer of subagency shall not  
21     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

1 contract to purchase, lease, option, or exchange real estate. In  
2 those cases where a broker is involved in a transaction but does not  
3 prepare the contract to purchase, lease, option, or exchange real  
4 estate, compliance with the disclosure requirements must be  
5 documented by the broker.

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

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

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

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

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

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

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

4 A. A broker has no duty or obligation to any party to conduct  
5 an independent inspection of the real estate or to verify the  
6 accuracy or completeness of any statement, oral or written, made by  
7 a seller, landlord, or independent inspector **unless the broker**  
8 **repeats such statements or makes similar representations to a party.**

9 B. A broker shall not be liable to any party for providing  
10 false information to the party if the false information was provided  
11 to the broker by another party or independent inspector unless the  
12 broker **knew or should have known** that the information was false.

13 SECTION 9. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 858-359 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.

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

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

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

10 The duties and responsibilities of a broker specified in  
11 Sections 1 through 10 of this act shall replace and abrogate the  
12 fiduciary or other duties of a broker to a party based on common law  
13 principles of agency. The remedies at law and equity supplement the  
14 provisions of Sections 1 through 10 of this act.

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

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

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

1 A party to a real estate transaction shall not be vicariously  
2 liable for the acts or omissions of a real estate licensee who is  
3 providing services as a transaction broker under Sections 1 through  
4 10 of this act.

5 SECTION 14. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 858-303.1 of Title 59, unless  
7 there is created a duplication in numbering, reads as follows:

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

13 SECTION 15. AMENDATORY 59 O.S. 1991, Section 858-312, as  
14 last amended by Section 18, Chapter 60, O.S.L. 1998 (59 O.S. Supp.  
15 1998, Section 858-312), is amended to read as follows:

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

- 1        1. Making a materially false or fraudulent statement in an  
2 application for a license;
- 3        2. Making substantial misrepresentations or false promises in  
4 the conduct of business, or through real estate licensees, or  
5 advertising, which are intended to influence, persuade, or induce  
6 others;
- 7        3. ~~Acting for more than one party in a transaction without the~~  
8 ~~knowledge of all parties for whom the licensee acts~~ Failing to  
9 comply with the requirements of this act;
- 10       4. Accepting a commission or other valuable consideration as a  
11 real estate associate for the performance of any acts as an  
12 associate, except from the real estate broker with whom the  
13 associate is associated;
- 14       5. Representing or attempting to represent a real estate broker  
15 other than the broker with whom the associate is associated without  
16 the express knowledge and consent of the broker with whom the  
17 associate is associated;
- 18       6. Failing, within a reasonable time, to account for or to  
19 remit any monies, documents, or other property coming into  
20 possession of the licensee which belong to others;
- 21       7. Paying a commission or valuable consideration to any person  
22 for acts or services performed in violation of ~~this~~ The Oklahoma  
23 Real Estate License Code;

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

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

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

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

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

16           13. Accepting employment or compensation for appraising real  
17 estate contingent upon the reporting of a predetermined value or  
18 issuing any appraisal report on real estate in which the licensee  
19 has an interest unless the licensee's interest is disclosed in the  
20 report. All appraisals ~~will~~ shall be in compliance with the  
21 Oklahoma real estate appraisal law, and the person performing the  
22 appraisal or report ~~will~~ shall disclose to the employer whether the



1 person performing the appraisal or report is licensed or certified  
2 by the Oklahoma Real Estate ~~Appraisal~~ Appraiser Board;

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

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

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

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

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

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

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

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

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

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

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

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

21       COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-23-99 - DO  
22       PASS, As Amended and Coauthored.