ENGROSSED SENATE
BILL NO. 673

By: Gumm and Garrison of the Senate

and

Miller (Doug) of the House

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 858-351, 858-352, 858-353, 858-354, and 858-359, which relate to the Oklahoma Real Estate License Code; clarifying cites; modifying and adding definitions; clarifying what may be a written brokerage agreement; providing all brokerage agreements shall be deemed to incorporate certain duties and responsibilities; prohibiting the abrogation or waiver of certain duties or responsibilities by certain party relating to a transaction broker; modifying duties and responsibilities of a transaction broker; clarifying language; prohibiting the abrogation or waiver of certain duties or responsibilities relating to a single-party broker; adding certain duties and responsibilities; clarifying what does not constitute certain breach of duty or obligation; providing that existence of certain agreements are not determinative of certain relationships; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 858-351, is amended to read as follows:

Section 858-351. Unless the context clearly indicates otherwise, as used in Sections ~~1 through 13 of this act~~ 858-351 through 858-363 of this title:

1. "Broker" means a real estate broker as defined in Section 858-102 of ~~Title 59 of the Oklahoma Statutes~~ this title, 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~~ any or all of the steps that may occur by or between parties when a party seeks to buy, sell, lease, rent, option or exchange real estate and at least one party enters into a broker relationship subject to this title. Such steps may include, without limitation, soliciting, advertising, engaging a broker to list a property, showing or viewing a property, making offers or counteroffers, entering into agreements and closing such agreements; ~~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;

6. “Exclusive brokerage agreement” means any written agreement of specific duration between a broker and a party which expressly provides the broker with the right to compensation regardless of whether the broker is the cause of the transaction and so long as the broker fulfills the broker’s duties and responsibilities as provided in this title, although such an agreement may include exceptions to the broker’s exclusive right to compensation regarding transactions with specifically identified persons or properties or specific transaction types; and

7. “Open brokerage agreement” means any agreement between a broker and a party other than an exclusive brokerage agreement, in which case the broker is entitled to compensation only if the broker performs the agreed services or is the cause of the transaction and

otherwise fulfills the broker's duties and responsibilities as provided in this title.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 858-352, is amended to read as follows:

Section 858-352. A broker may enter into a written brokerage agreement, which may be an exclusive brokerage agreement or an open 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. All brokerage agreements, whether exclusive or open, shall be deemed to incorporate as material terms the duties and responsibilities set forth in Section 858-353 or subsection B of Section 858-354 of this title, based upon whether the relationship established by the brokerage agreement is a transaction broker relationship or single-party broker relationship.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 858-353, is amended to read as follows:

Section 858-353. A transaction broker shall have the following duties and responsibilities, which are mandatory and may not be abrogated or waived by any party for whom the transaction broker performs any services:

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

2. To treat all parties with honesty and exercise reasonable skill and care;

3. To ~~comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules~~ be available to receive all written offers, counteroffers or other communications concerning a transaction, and reduce offers or counteroffers to a written form upon request of any party to a transaction; ~~and~~

4. To ~~exercise reasonable skill and care including: a.~~ present timely ~~presentation of~~ all written offers and counteroffers~~,~~;

~~b. keeping~~ 5. To inform in writing the party for whom the broker is providing services when an offer is made that the party will be expected to pay certain closing costs, brokerage service costs and approximate amount of said costs;

6. To keep the party for whom the transaction broker is providing services ~~fully~~ informed regarding the transaction~~,~~;

~~c. timely accounting~~ 7. To account for all money and property received by the broker~~,~~;

~~d. keeping~~ 8. To keep confidential information received from a party confidential as required by Section ~~7 of this act, and~~ 858-357 of this title;

~~e. disclosing~~ 9. To disclose information pertaining to the property as required by the Residential Property Condition Disclosure Act; and

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

SECTION 4. AMENDATORY 59 O.S. 2001, Section 858-354, is amended to read as follows:

Section 858-354. A. A broker shall enter into a written brokerage agreement prior to providing services as a single-party broker, which shall be deemed to include, and which may not abrogate or waive, the mandatory duties and responsibilities set forth in this section.

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 and exercise reasonable skill and care;

3. To ~~comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules~~ be available to receive all written offers, counteroffers or other communications

concerning a transaction, and reduce offers or counteroffers to a written form upon request of any party to a transaction; ~~and~~

4. To ~~exercise reasonable skill and care including: a.~~ present timely ~~presentation of~~ all written offers and counteroffers~~,~~;

~~b. keeping~~ 5. To inform in writing the party for whom the broker is providing services when an offer is made that the party will be expected to pay certain closing costs, brokerage service costs and approximate amount of said costs;

6. To keep the party for whom the single-party broker is performing services ~~fully~~ informed regarding the transaction~~,~~;

~~c. accounting~~ 7. To account timely for all money and property received by the broker~~,~~;

~~d. keeping~~ 8. To keep confidential information received from a party confidential as required by Section ~~7 of this act,~~ 858-357 of this title;

~~e. performing~~ 9. To perform all brokerage activities for the benefit of the party for whom the single-party broker is performing services unless prohibited by law~~,~~;

~~f. disclosing~~ 10. To disclose information pertaining to the property as required by the Residential Property Condition Disclosure Act~~, and~~;

~~g. obeying~~ 11. To obey 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; and

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

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 of a transaction, such receipt does not constitute a breach of duty or obligation to the buyer or tenant if

fully disclosed to the buyer or tenant in the written brokerage agreement.

SECTION 5. AMENDATORY 59 O.S. 2001, Section 858-359, is amended to read as follows:

Section 858-359. 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. The existence of an exclusive brokerage agreement or an open brokerage agreement does not determine whether the relationship between a broker and a party is a single-party broker relationship or a transaction broker relationship.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 16th day of March, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

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Presiding Officer of the House
of Representatives