

CS for SB 673

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

**THE STATE SENATE**  
**Tuesday, March 1, 2005**

**Committee Substitute for**  
**Senate Bill No. 673**

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 673 - By: GUMM 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 providing an effective date.

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

1 broker, an associated broker associate, sales associate, or  
2 provisional sales associate authorized by a real estate broker to  
3 provide brokerage services;

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

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

9 4. "Transaction" means ~~those real estate activities enumerated~~  
10 ~~in Section 858-102 of Title 59 of the Oklahoma Statutes which are~~  
11 performed by a broker and any or all of the steps that may occur by  
12 or between parties when a party seeks to buy, sell, lease, rent,  
13 option or exchange real estate and at least one party enters into a  
14 broker relationship subject to this title. Such steps may include,  
15 without limitation, soliciting, advertising, engaging a broker to  
16 list a property, showing or viewing a property, making offers or  
17 counteroffers, entering into agreements and closing such agreements;

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

21 6. "Exclusive brokerage agreement" means any written agreement  
22 of specific duration between a broker and a party which expressly  
23 provides the broker with the right to perform services for

1 compensation regardless of whether the broker is the procuring cause  
2 of a transaction and so long as the broker fulfills the broker's  
3 duties and responsibilities as provided in this title, although such  
4 an agreement may include exceptions to the broker's exclusive right  
5 to compensation regarding transactions with specifically identified  
6 persons or properties or specific transaction types; and

7 7. "Open brokerage agreement" means any agreement between a  
8 broker and a party other than an exclusive brokerage agreement, in  
9 which case the broker is entitled to compensation only if the broker  
10 is the procuring cause of a transaction and otherwise fulfills the  
11 broker's duties and responsibilities as provided in this title.

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

14 Section 858-352. A broker may enter into a written brokerage  
15 agreement, which may be an exclusive brokerage agreement or an open  
16 brokerage agreement, to provide services as either a single-party  
17 broker or a transaction broker. If a broker does not enter into a  
18 written brokerage agreement with a party, the broker shall perform  
19 services only as a transaction broker. All brokerage agreements,  
20 whether exclusive or open, shall be deemed to incorporate as  
21 material terms the duties and responsibilities set forth in section  
22 858-353 or paragraph B of section 858-354 of this title, based upon

1 whether the relationship established by the brokerage agreement is a  
2 transaction broker relationship or single-party broker relationship.

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

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

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

11 2. To treat all parties with honesty;

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

14 4. To exercise reasonable skill and care including:

15 a. being able to:

16 (1) receive all written offers, counteroffers or  
17 other communications concerning a transaction,

18 and

19 (2) reduce offers or counteroffers to a written form  
20 upon request of any party to a transaction,

21 b. ~~timely presentation of~~ presenting all written offers  
22 and counteroffers,

- 1           ~~b.~~ c. keeping the party for whom the transaction broker is  
2                           providing services fully informed regarding the  
3                           transaction,  
4           ~~e.~~ d. timely accounting for all money and property received  
5                           by the broker,  
6           ~~d.~~ e. keeping confidential information received from a  
7                           party confidential as required by Section ~~7 of this~~  
8                           ~~act~~ 858-357 of this title, and  
9           ~~e.~~ f. disclosing information pertaining to the property as  
10                          required by the Residential Property Condition  
11                          Disclosure Act.

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

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

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

- 21           1. To perform the terms of the brokerage agreement;  
22           2. To treat all parties with honesty;

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

3           4. To exercise reasonable skill and care including:

4           a. being available to:

5                   (1) receive all written offers, counteroffers or  
6                           other communications concerning a transaction,  
7                           and

8                   (2) reduce offers or counteroffers to a written form  
9                           upon request of any party to a transaction,

10          ~~b.~~ timely presentation of presenting all written offers  
11                   and counteroffers,

12          ~~b.~~ c. keeping the party for whom the single-party broker is  
13                   performing services fully informed regarding the  
14                   transaction,

15          ~~e.~~ d. timely accounting for all money and property received  
16                   by the broker,

17          ~~d.~~ e. keeping confidential information received from a  
18                   party confidential as required by Section ~~7 of this~~  
19                   ~~act~~ 858-357 of this title,

20          ~~e.~~ f. performing all brokerage activities for the benefit  
21                   of the party for whom the single-party broker is  
22                   performing services unless prohibited by law,

1           ~~f.~~ g. disclosing information pertaining to the property as  
2                           required by the Residential Property Condition  
3                           Disclosure Act, and  
4           ~~g.~~ h. obeying the specific directions of the party for whom  
5                           the single-party broker is performing services that  
6                           are not contrary to applicable statutes and rules or  
7                           contrary to the terms of a contract between the  
8                           parties to the transaction.

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

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

17          Section 858-359. The payment or promise of payment or  
18          compensation by a party to a broker does not determine what  
19          relationship, if any, has been established between the broker and a  
20          party to a transaction. The existence of an exclusive brokerage  
21          agreement or an open brokerage agreement does not determine whether  
22          the relationship between a broker and a party is a single-party  
23          broker relationship or a transaction broker relationship.

1           SECTION 6. This act shall become effective November 1, 2005.  
2   COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 2-14-05  
3   - DO PASS, As Amended and Coauthored.