

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 673

By: Gumm

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 858-351, 858-352, 858-353, and 858-354, which relate to the Oklahoma Real Estate License Code; modifying and adding definitions; clarifying what may be a written brokerage agreement; prohibiting the abrogation or waiver of certain duties or responsibilities by certain party relating to a transaction broker; 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; 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 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~~ all of the steps that occur by or between parties who are, or who intend to be, buying, selling, leasing, renting, optioning or exchanging real estate, including, without limitation, advertising or listing a property, showing or viewing a property, making offers or counteroffers, entering into agreements and closing such agreements. Whenever a broker assists any party with any of the steps of a transaction, the Oklahoma Real Estate License Code applies to the relationship of the broker with any party whom that broker assists with any aspect or step of the transaction; 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 a written brokerage agreement which provides that a broker has the exclusive right to provide services to the party selling, buying or leasing a specific property. A broker who has entered into an exclusive brokerage agreement shall abide by those duties and responsibilities enumerated in Section 858-353 or subsections A and B of Section 858-354 of this title through the closing of the transaction; and

7. "Open brokerage agreement" means a brokerage agreement that allows more than one broker to provide services to a party in a real estate transaction, while retaining the right of the owner to personally sell the property.

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 a written exclusive 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. 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 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;
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,
  - d. keeping confidential information received from a party confidential as required by Section ~~7 of this act~~ 858-357 of this title, and
  - e. disclosing information pertaining to the property as required by the Residential Property Condition Disclosure Act.

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 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;
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. being available to:
    - (1) receive all written offers, counteroffers or other communications concerning a transaction,  
and
    - (2) reduce offers or counteroffers to a written form upon request of any party to a transaction,
  - b. timely presentation of all written offers and counteroffers,
  - ~~b.~~ c. keeping the party for whom the single-party broker is performing services fully informed regarding the transaction,
  - ~~e.~~ d. timely accounting for all money and property received by the broker,
  - ~~d.~~ e. keeping confidential information received from a party confidential as required by Section 7 of this act 858-357 of this title,
  - ~~e.~~ f. performing all brokerage activities for the benefit of the party for whom the single-party broker is performing services unless prohibited by law,

~~f.~~ g. disclosing information pertaining to the property as required by the Residential Property Condition Disclosure Act, and

~~g.~~ h. 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 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. This act shall become effective November 1, 2005.

50-1-1164

LKS

6/13/2015 8:51:57 AM