

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 2524, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Newberry

Newberry-NP-FS-Req#3341
4/4/2012 1:08 PM

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 2524

By: Martin (Steve) and Armes of
the House

6 and

7 Newberry of the Senate

8
9 FLOOR SUBSTITUTE

10 [real estate brokers - modifying duties and
11 responsibilities - codification - effective date]

12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 59 O.S. 2011, Section 858-351, is
15 amended to read as follows:

16 Section 858-351. Unless the context clearly indicates
17 otherwise, as used in Sections 858-351 through 858-363 of ~~this title~~
18 The Oklahoma Real Estate License Code:

19 1. "Broker" means a real estate broker ~~as defined in Section~~
20 ~~858-102 of this title, and means, further, except where the context~~
21 ~~refers only to a real estate broker,~~ an associated broker associate,
22 sales associate, or provisional sales associate authorized by a real
23 estate broker to provide brokerage services;

1 2. "Brokerage services" means those services provided by a
2 broker to a consumer in a consumer transaction;

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

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

8 4. "Transaction" means ~~any or all of the steps that may occur~~
9 ~~by or between parties when a party seeks~~ an activity or process to
10 buy, sell, lease, rent, option or exchange real estate ~~and at least~~
11 ~~one party enters into a broker relationship subject to this title.~~
12 Such ~~steps~~ activities or processes may include, without limitation,
13 soliciting, advertising, ~~engaging a broker to list a property,~~
14 showing or viewing a real property, ~~making~~ presenting offers or
15 counteroffers, entering into agreements and closing such agreements;
16 and

17 5. ~~"Transaction broker" means a broker who provides services by~~
18 ~~assisting a party in a transaction without being an advocate for the~~
19 ~~benefit of that party~~ "Firm" means a sole proprietor, corporation,
20 association or partnership.

21 SECTION 2. AMENDATORY 59 O.S. 2011, Section 858-353, is
22 amended to read as follows:

23 Section 858-353. A. A ~~transaction~~ broker shall have the
24 following duties and responsibilities to a party, which are

1 mandatory and may not be abrogated or waived by a ~~transaction~~
2 broker:

3 1. ~~To treat~~ Treat all parties with honesty and exercise
4 reasonable skill and care;

5 2. ~~To be available to~~ Unless specifically waived in writing by
6 a party to the transaction:

7 a. receive all written offers and counteroffers,

8 b. reduce offers or counteroffers to a written form upon
9 request of any party to a transaction, and

10 c. present timely ~~such~~ all written offers and
11 counteroffers;

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

16 4. Keep the party for whom the broker is providing brokerage
17 services informed regarding the transaction;

18 ~~To account timely~~ 5. Timely account for all money and property
19 received by the broker;

20 5. ~~To keep~~ 6. Keep confidential information received from a
21 party or prospective party confidential ~~as required by Section 858-~~
22 ~~357 of this title.~~ The confidential information shall not be
23 disclosed by a broker without the consent of the party disclosing
24 the information unless consent to the disclosure is granted in

1 writing by the party or prospective party disclosing the
2 information, the disclosure is required by law, or the information
3 is made public or becomes public as the result of actions from a
4 source other than the broker. The following information shall be
5 considered confidential and shall be the only information considered
6 confidential in a transaction:

- 7 a. that a party or prospective party is willing to pay
8 more or accept less than what is being offered,
- 9 b. that a party or prospective party is willing to agree
10 to financing terms that are different from those
11 offered,
- 12 c. the motivating factors of the party or prospective
13 party purchasing, selling, leasing, optioning or
14 exchanging the property, and
- 15 d. information specifically designated as confidential by
16 a party unless such information is public;

17 ~~6. To disclose~~ 7. Disclose information pertaining to the
18 property as required by the Residential Property Condition
19 Disclosure Act; and

20 ~~7. To comply~~ 8. Comply with all requirements of the Oklahoma
21 Real Estate License Code and all applicable statutes and rules.

22 B. ~~Except as provided in Section 858-358 of this title, such~~
23 ~~duties and responsibilities set forth in this section shall be~~
24 ~~performed by a transaction broker if such duties and~~

1 ~~responsibilities relate to the steps of the transaction which occur~~
2 ~~while there is a broker relationship.~~

3 ~~C. Nothing in this section requires or prohibits a transaction~~
4 ~~broker from charging a separate fee or other compensation for each~~
5 ~~duty or other services provided during a transaction.~~

6 ~~D. If a transaction broker intends to perform fewer services~~
7 ~~than those required to complete a transaction, written disclosure~~
8 ~~shall be provided to the party for whom the broker is providing~~
9 ~~services. Such disclosure shall include a description of those~~
10 ~~steps in the transaction for which the broker will not perform~~
11 ~~services, and also state that a broker assisting the other party in~~
12 ~~the transaction is not required to provide assistance with these~~
13 ~~steps in any manner~~ When working with both parties to a transaction,
14 the duties and responsibilities set forth in this section shall
15 remain in place for both parties.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 858-355.1 of Title 59, unless
18 there is created a duplication in numbering, reads as follows:

19 A. All brokerage agreements shall incorporate as material terms
20 the duties and responsibilities set forth in Section 858-353 of The
21 Oklahoma Real Estate License Code.

22 B. A broker may provide brokerage services to one or both
23 parties in a transaction.

24

1 C. A broker who is providing brokerage services to one or both
2 parties shall describe and disclose in writing the broker's duties
3 and responsibilities set forth in Section 858-353 of The Oklahoma
4 Real Estate License Code prior to the party or parties signing a
5 contract to sell, purchase, lease, option, or exchange real estate.

6 D. A firm that provides brokerage services to both parties in a
7 transaction shall provide written notice to both parties that the
8 broker is providing brokerage services to both parties to a
9 transaction prior to the parties signing a contract to purchase,
10 lease, option or exchange real estate.

11 E. If a broker intends to provide fewer brokerage services than
12 those required to complete a transaction, the broker shall provide
13 written disclosure to the party for whom the broker is providing
14 brokerage services. Such disclosure shall include a description of
15 those steps in the transaction for which the broker will not provide
16 brokerage services, and also state that the broker assisting the
17 other party in the transaction is not required to provide assistance
18 with these steps in any manner.

19 SECTION 4. AMENDATORY 59 O.S. 2011, Section 858-356, is
20 amended to read as follows:

21 Section 858-356. ~~A. Prior to the signing by a party of a~~
22 ~~contract to purchase, lease, option or exchange real estate, a~~
23 ~~broker who is performing services as a transaction broker without a~~
24

1 ~~written brokerage agreement shall describe and disclose in writing~~
2 ~~the broker's role to the party.~~

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

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

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

15 ~~E. The written disclosures as required by ~~this section and the~~~~
16 ~~consent required by Section 5 subsection C of Section 3 of this act~~
17 ~~must shall be confirmed by each party in writing in a separate~~
18 ~~provision, incorporated in or attached to the contract to purchase,~~
19 ~~lease, option, or exchange real estate. In those cases where a~~
20 ~~broker is involved in a transaction but does not prepare the~~
21 ~~contract to purchase, lease, option, or exchange real estate,~~
22 ~~compliance with the disclosure requirements must shall be documented~~
23 ~~by the broker.~~

24

1 SECTION 5. AMENDATORY 59 O.S. 2011, Section 858-359, is
2 amended to read as follows:

3 Section 858-359. A. The payment or promise of payment or
4 compensation by a party to a broker does not determine what
5 relationship, if any, has been established between the broker and a
6 party to a transaction.

7 B. In the event a broker receives a fee or compensation from
8 any party to the transaction based on a selling price or lease cost
9 of a transaction, such receipt does not constitute a breach of duty
10 or obligation to any party to the transaction.

11 C. Nothing in this section requires a broker to charge, or
12 prohibits a broker from charging, a separate fee or other
13 compensation for each duty or other brokerage services provided
14 during a transaction.

15 SECTION 6. AMENDATORY 59 O.S. 2011, Section 858-360, is
16 amended to read as follows:

17 Section 858-360. A. The duties and responsibilities of a
18 broker specified in Sections ~~±~~ 858-351 through ~~±~~ 858-363 of ~~this~~
19 ~~act~~ The Oklahoma Real Estate License Code shall replace and abrogate
20 the fiduciary or other duties of a broker to a party based on common
21 law principles of agency. The remedies at law and equity supplement
22 the provisions of Sections ~~±~~ 858-351 through ~~±~~ 858-363 of ~~this act~~
23 The Oklahoma Real Estate License Code.

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1 B. A broker may cooperate with other brokers in a transaction.
2 Pursuant to Sections 858-351 through 858-363 of The Oklahoma Real
3 Estate License Code, a broker shall not be an agent, subagent, or
4 dual agent and an offer of subagency shall not be made to other
5 brokers.

6 C. Nothing in this act shall prohibit a broker from entering
7 into an agreement for brokerage services not enumerated herein so
8 long as the agreement is in compliance with this act, the Oklahoma
9 Real Estate Code and the Oklahoma Real Estate Commission
10 Administration Rules.

11 SECTION 7. AMENDATORY 59 O.S. 2011, Section 858-362, is
12 amended to read as follows:

13 Section 858-362. A party to a real estate transaction shall not
14 be vicariously liable for the acts or omissions of a real estate
15 licensee who is providing brokerage services ~~as a transaction broker~~
16 under Sections ~~4~~ 858-351 through ~~13~~ 858-363 of ~~this act~~ The Oklahoma
17 Real Estate License Code.

18 SECTION 8. AMENDATORY 59 O.S. 2011, Section 858-363, is
19 amended to read as follows:

20 Section 858-363. Each broker associate, sales associate, and
21 provisional sales associate shall be associated with a real estate
22 broker. Associates shall not enter into a brokerage agreement with
23 a party in the associate's name and shall only be allowed to enter
24 into the agreement in the name of the broker. A real estate broker

1 may authorize associates to provide brokerage services in the name
2 of the real estate broker as permitted under The Oklahoma Real
3 Estate License Code, which may include the execution of written
4 agreements; ~~however, such associates shall not refer to themselves~~
5 ~~as a broker.~~

6 SECTION 9. REPEALER 59 O.S. 2011, Sections 858-352, 858-
7 354, 858-355 and 858-357, are hereby repealed.

8 SECTION 10. This act shall become effective November 1, 2013.

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10 53-2-3341 NP 4/4/2012 1:08:24 PM

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