

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2524

By: Martin (Steve)

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5
6 AS INTRODUCED

7
8 An Act relating to professions and occupations;
9 amending 59 O.S. 2011, Sections 858-351, 858-353,
10 858-356, 858-359, 858-360, 858-362 and 858-363, which
11 relate to the Oklahoma Real Estate License Code;
12 modifying definitions; modifying duties and
13 responsibilities of broker; modifying broker service
14 agreements; providing for written disclosure for
15 certain agreements; requiring certain confirmation be
16 in writing; providing for compensation of services;
17 allowing cooperation of brokers; prohibiting certain
18 agreements; repealing 59 O.S. 2011, Sections 858-352,
19 858-354, 858-355 and 858-357, which relate to the
20 Oklahoma Real Estate License Code; providing for
21 codification; and providing an effective date.

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

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

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

1. "Broker" means a real estate broker ~~as defined in Section~~
~~858-102 of this title, and means, further, except where the context~~

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

4 2. "Brokerage services" means those activities which require a
5 real estate license that are provided by a broker;

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

9 3. ~~"Single party broker" means a broker who has entered into a~~
10 ~~written brokerage agreement with a party in a transaction to provide~~
11 ~~services for the benefit of that party; and~~

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

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

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

1 Section 858-353. A ~~transaction~~ broker shall have the
2 following duties and responsibilities to a party, which are
3 mandatory and may not be abrogated or waived by a ~~transaction~~
4 broker:

5 1. To treat all parties with honesty and exercise reasonable
6 skill and care;

7 2. ~~To be available to~~ Unless specifically waived in writing by
8 a party to the transaction, to:

9 a. receive all written offers and counteroffers,

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

12 c. present timely ~~such~~ all written offers and
13 counteroffers;

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

18 4. To keep the party for whom the broker is providing brokerage
19 services informed regarding the transaction;

20 5. To account timely for all money and property received by the
21 broker;

22 ~~5.~~ 6. To keep confidential information received from a party
23 confidential ~~as required by Section 858-357 of this title.~~ The
24 following information shall be considered confidential and shall not

1 be disclosed by a broker without the consent of the party disclosing
2 the information unless consent to the disclosure is granted in
3 writing by the party or prospective party disclosing the
4 information, the disclosure is required by law, or the information
5 is made public or becomes public as the result of actions from a
6 source other than the broker:

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, and

12 c. the motivating factors of the party or prospective
13 party purchasing, selling, leasing, optioning or
14 exchanging the property;

15 ~~6.~~ 7. To disclose information pertaining to the property as
16 required by the Residential Property Condition Disclosure Act; and

17 ~~7.~~ 8. To comply with all requirements of the Oklahoma Real
18 Estate License Code and all applicable statutes and rules.

19 B. ~~Except as provided in Section 858-358 of this title, such~~
20 ~~duties and responsibilities set forth in this section shall be~~
21 ~~performed by a transaction broker if such duties and~~
22 ~~responsibilities relate to the steps of the transaction which occur~~
23 ~~while there is a broker relationship.~~

24

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

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

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

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

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

22 C. A broker who is providing brokerage services to one or both
23 parties shall describe and disclose in writing the broker's duties
24 and responsibilities set forth in Section 858-353 of the Oklahoma

1 Real Estate License Code prior to the party or parties signing a
2 contract to sell, purchase, lease, option, or exchange real estate.

3 D. A broker shall provide written notice to both parties that
4 the broker is providing brokerage services to both parties to a
5 transaction prior to the parties signing a contract to purchase,
6 lease, option or exchange real estate. The broker shall not provide
7 brokerage services to the disadvantage of either party.

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

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

18 Section 858-356. ~~A. Prior to the signing by a party of a~~
19 ~~contract to purchase, lease, option or exchange real estate, a~~
20 ~~broker who is performing services as a transaction broker without a~~
21 ~~written brokerage agreement shall describe and disclose in writing~~
22 ~~the broker's role to the party.~~

23 ~~B. Prior to entering into a written brokerage agreement as~~
24 ~~either a transaction broker or single-party broker, the broker shall~~

1 ~~describe and disclose in writing the broker's relationship to the~~
2 ~~party.~~

3 ~~C. A transaction broker shall disclose to the party for whom~~
4 ~~the transaction broker is providing services that the party is not~~
5 ~~vicariously liable for the acts or omissions of the transaction~~
6 ~~broker.~~

7 ~~D. A single-party broker shall disclose to the party for whom~~
8 ~~the single-party broker is providing services that the party may be~~
9 ~~vicariously liable for the acts or omissions of a single party~~
10 ~~broker.~~

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

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

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

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

7 C. Nothing in this section requires a broker to charge, or
8 prohibits a broker from charging, a separate fee or other
9 compensation for each duty or other brokerage services provided
10 during a transaction.

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

13 Section 858-360. A. The duties and responsibilities of a
14 broker specified in Sections ~~4~~ 858-351 through ~~13~~ 858-363 of ~~this~~
15 ~~act~~ the Oklahoma Real Estate License Code shall replace and abrogate
16 the fiduciary or other duties of a broker to a party based on common
17 law principles of agency. The remedies at law and equity supplement
18 the provisions of Sections ~~4~~ 858-351 through ~~13~~ 858-363 of ~~this act~~
19 the Oklahoma Real Estate License Code.

20 B. A broker may cooperate with other brokers in a transaction.
21 Under Sections 858-351 through 858-363 of the Oklahoma Real Estate
22 License Code, a broker shall not be an agent, subagent, or dual
23 agent and an offer of subagency shall not be made to other brokers.

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

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

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

10 Section 858-363. Each broker associate, sales associate, and
11 provisional sales associate shall be associated with a real estate
12 broker. Associates shall not enter into a brokerage agreement with
13 a party in the associate's name and shall only be allowed to enter
14 into the agreement in the name of the broker. A real estate broker
15 may authorize associates to provide brokerage services in the name
16 of the real estate broker as permitted under the Oklahoma Real
17 Estate License Code, which may include the execution of written
18 agreements; ~~however, such associates shall not refer to themselves~~
19 ~~as a broker.~~

20 SECTION 9. REPEALER 59 O.S. 2011, Sections 858-352, 858-
21 354, 858-355 and 858-357, are hereby repealed.

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

23

24 53-2-8594 LRB 01/16/12