

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2926

By: Armes

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5  
6 AS INTRODUCED

7 An Act relating to professions and occupations;  
8 creating the Broker Relationships Act; defining  
9 terms; providing for duties and responsibilities of  
10 broker; providing for broker service agreements;  
11 providing for written disclosure for certain  
12 agreements; requiring certain confirmation be in  
13 writing; providing for duties upon completion of  
14 performance; providing for compensation of services;  
15 allowing cooperation of brokers; authorizing use of  
16 certain term; prohibiting certain liability;  
17 prohibiting certain agreements; requiring certain  
18 associates be associated with broker; providing for  
19 codification; and providing an effective date.

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

21 SECTION 1. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 858-371 of Title 59, unless  
23 there is created a duplication in numbering, reads as follows:

24 This act shall be known and may be cited as the "Broker  
Relationships Act".

SECTION 2. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 858-372 of Title 59, unless  
there is created a duplication in numbering, reads as follows:

1       When used in the Broker Relationships Act, unless the context  
2 clearly indicates otherwise, the following words and terms shall be  
3 construed as having the meanings ascribed to them in this section:

4       1. "Broker" means a real estate broker, an associated broker  
5 associate, sales associate, or provisional sales associate  
6 authorized by a real estate broker to provide brokerage services;

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

9       3. "Party" means a person who is involved in a transaction; and

10       4. "Transaction" means any or all of the steps that may occur  
11 by or between parties when a party seeks to buy, sell, lease, rent,  
12 option or exchange real estate. Such steps may include, without  
13 limitation, soliciting, advertising, engaging a broker to list a  
14 property, showing or viewing a property, making offers or  
15 counteroffers, entering into agreements and closing such agreements.

16       SECTION 3.       NEW LAW       A new section of law to be codified  
17 in the Oklahoma Statutes as Section 858-373 of Title 59, unless  
18 there is created a duplication in numbering, reads as follows:

19       A. A broker shall have the following duties and  
20 responsibilities to a party, which are mandatory and shall not be  
21 abrogated or waived by a broker:

22       1. To treat all parties with honesty and exercise reasonable  
23 skill and care;

1        2. To, unless specifically waived in writing by a party to the  
2 transaction:

- 3            a. receive all written offers and counteroffers,
- 4            b. reduce offers or counteroffers to a written form upon  
5                request of any party to a transaction, and
- 6            c. present timely all written offers and counteroffers;

7        3. To inform in writing the party for whom the broker is  
8 providing brokerage services when an offer is made that the party  
9 will be expected to pay certain closing costs, brokerage service  
10 costs and approximate amount of the costs;

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

13        5. To account timely for all money and property received by the  
14 broker;

15        6. To keep confidential information received from a party  
16 confidential. The following information shall be considered  
17 confidential and shall not be disclosed by a broker without the  
18 consent of the party disclosing the information unless consent to  
19 disclosure is granted by the party or prospective party disclosing  
20 the information, the disclosure is required by law, or the  
21 information is made public or becomes public as the result of  
22 actions from a source other than the broker:

- 23            a. that a party or prospective party is willing to pay  
24                more or accept less than what is being offered,

1           b.    that a party or prospective party is willing to agree  
2                   to financing terms that are different from those  
3                   offered, and

4           c.    the motivating factors of the party or prospective  
5                   party purchasing, selling, leasing, optioning, or  
6                   exchanging the property;

7           7.    To disclose information pertaining to the property as  
8 required by the Residential Property Condition Disclosure Act; and

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

11          B.    When working with both parties to a transaction, the duties  
12 and responsibilities set forth in this section shall remain in place  
13 for both parties.

14          SECTION 4.       NEW LAW       A new section of law to be codified  
15 in the Oklahoma Statutes as Section 858-374 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 3 of the Broker  
19 Relationships Act.

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 3 of the Broker

1 Relationships Act prior to the party or parties signing a contract  
2 to purchase, lease, option, or exchange real estate.

3 D. If a broker intends to provide fewer brokerage services than  
4 those required to complete a transaction, the broker shall provide  
5 written disclosure to the party for whom the broker is providing  
6 brokerage services. The disclosure shall include a description of  
7 those steps in the transaction for which the broker will not provide  
8 brokerage services, and also state that the broker assisting the  
9 other party in the transaction is not required to provide assistance  
10 with these steps in any manner.

11 SECTION 5. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 858-375 of Title 59, unless  
13 there is created a duplication in numbering, reads as follows:

14 The written disclosure as required in subsection C of Section 4  
15 of the Broker Relationships Act shall be confirmed by each party in  
16 writing in a separate provision, incorporated in or attached to the  
17 contract to purchase, lease, option, or exchange real estate. In  
18 those cases where a broker is involved in a transaction but does not  
19 prepare the contract to purchase, lease, option, or exchange real  
20 estate, compliance with the disclosure requirements should be  
21 documented by the broker.

22 SECTION 6. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 858-376 of Title 59, unless  
24 there is created a duplication in numbering, reads as follows:

1        Except as may be provided in a written brokerage agreement  
2 between the broker and a party to a transaction, the broker owes no  
3 further duties or responsibilities to the party after termination,  
4 expiration, or completion of performance of the transaction, except:

5        1. To account for all monies and property relating to the  
6 transaction; and

7        2. To keep confidential all confidential information received  
8 by the broker during the broker's relationship with a party.

9        SECTION 7.        NEW LAW        A new section of law to be codified  
10 in the Oklahoma Statutes as Section 858-377 of Title 59, unless  
11 there is created a duplication in numbering, reads as follows:

12        A. The payment or promise of payment or compensation by a party  
13 to a broker does not determine what relationship, if any, has been  
14 established between the broker and a party to a transaction.

15        B. In the event a broker receives a fee or compensation from  
16 any party to the transaction based on a selling price or lease cost  
17 of a transaction, the receipt does not constitute a breach of duty  
18 or obligation to any party to the transaction.

19        C. Nothing in this section requires or prohibits a broker from  
20 charging a separate fee or other compensation for each duty or other  
21 brokerage services provided during a transaction.

22        SECTION 8.        NEW LAW        A new section of law to be codified  
23 in the Oklahoma Statutes as Section 858-378 of Title 59, unless  
24 there is created a duplication in numbering, reads as follows:

1       A. The duties and responsibilities of a broker specified in the  
2 Broker Relationships Act shall replace and abrogate the fiduciary or  
3 other duties of a broker to a party based on common law principles  
4 of agency. The remedies at law and equity supplement the provisions  
5 of the Broker Relationships Act.

6       B. A broker may cooperate with other brokers in a transaction.  
7 Under the Broker Relationships Act, a broker shall not be an agent,  
8 subagent, or dual agent and an offer of subagency shall not be made  
9 to other brokers.

10       SECTION 9.       NEW LAW       A new section of law to be codified  
11 in the Oklahoma Statutes as Section 858-379 of Title 59, unless  
12 there is created a duplication in numbering, reads as follows:

13       A real estate broker and the associates of a real estate broker  
14 are permitted under the provisions of Title 59 of the Oklahoma  
15 Statutes to use the word "agent" in a trade name and as a general  
16 reference for designating themselves as real estate licensees.

17       SECTION 10.       NEW LAW       A new section of law to be codified  
18 in the Oklahoma Statutes as Section 858-380 of Title 59, unless  
19 there is created a duplication in numbering, reads as follows:

20       A party to a real estate transaction shall not be vicariously  
21 liable for the acts or omissions of a real estate licensee who is  
22 providing brokerage services under the Broker Relationships Act.

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1 SECTION 11. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 858-381 of Title 59, unless  
3 there is created a duplication in numbering, reads as follows:

4 Each broker associate, sales associate, and provisional sales  
5 associate shall be associated with a real estate broker. Associates  
6 shall not enter into a brokerage agreement with a party in the  
7 associate's name and shall only be allowed to enter into the  
8 agreement in the name of the broker. A real estate broker may  
9 authorize associates to provide brokerage services in the name of  
10 the real estate broker as permitted under The Oklahoma Real Estate  
11 License Code, which may include the execution of written agreements.

12 SECTION 12. This act shall become effective November 1, 2012.

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14 53-2-9068 LRB 01/09/12

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