

1 ENGROSSED SENATE AMENDMENT  
TO

2 ENGROSSED HOUSE  
BILL NO. 1245

By: Martin (Steve) of the House

3  
4 and

Marlatt of the Senate

5  
6  
7 An Act relating to real estate brokers; \*\*\* The  
8 Oklahoma Real Estate License Code; modifying  
definition; and providing an effective date.

9  
10 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
11 entire bill and insert

12 "An Act relating to real estate brokers; amending 15  
13 O.S. 2011, Section 136, which relates to statute of  
frauds; modifying conditions which make certain  
14 contracts invalid; amending 59 O.S. 2011, Sections  
858-351, 858-353, 858-355.1 and 858-356, as amended  
15 by Sections 1, 2, 3 and 4, Chapter 251, O.S.L. 2012  
(59 O.S. Supp. 2012, Sections 858-351, 858-353, 858-  
16 355.1 and 858-356), which relates to the Oklahoma  
Real Estate License Code; modifying definition;  
17 modifying broker duties to parties; clarifying  
language; updating references; and providing an  
18 effective date.

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

21 SECTION 1. AMENDATORY 15 O.S. 2011, Section 136, is  
22 amended to read as follows:

23 Section 136. The following contracts are invalid, unless the  
24 same, or some note or memorandum thereof, be in writing and

1 subscribed by the party to be charged, by an agent of the party or  
2 by a ~~single-party~~ broker of the party pursuant to Sections 858-351  
3 through 858-363 of Title 59 of the Oklahoma Statutes:

4 1. An agreement that, by its terms, is not to be performed  
5 within a year from the making thereof;

6 2. A special promise to answer for the debt, default or  
7 miscarriage of another, except in the cases provided for in the  
8 article on guaranty;

9 3. An agreement made upon consideration of marriage, other than  
10 a mutual promise to marry; or

11 4. An agreement for the leasing for a longer period than one  
12 (1) year, or for the sale of real property, or of an interest  
13 therein; and such agreement, if made by an agent or a ~~single-party~~  
14 broker of the party sought to be charged, is invalid, unless the  
15 authority of the agent or the ~~single-party~~ broker be in writing,  
16 subscribed by the party sought to be charged.

17 SECTION 2. AMENDATORY 59 O.S. 2011, Section 858-351, as  
18 amended by Section 1, Chapter 251, O.S.L. 2012 (59 O.S. Supp. 2012,  
19 Section 858-351), is amended to read as follows:

20 Section 858-351. Unless the context clearly indicates  
21 otherwise, as used in Sections 858-351 through 858-363 of The  
22 Oklahoma Real Estate License Code:  
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24

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

4 2. "Brokerage services" means those services provided by a  
5 broker to a ~~consumer~~ party in a ~~consumer~~ transaction;

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;

8 4. "Transaction" means an activity or process to buy, sell,  
9 lease, rent, option or exchange real estate. Such activities or  
10 processes may include, without limitation, soliciting, advertising,  
11 showing or viewing real property, presenting offers or  
12 counteroffers, entering into agreements and closing such agreements;  
13 and

14 5. "Firm" means a sole proprietor, corporation, association or  
15 partnership.

16 SECTION 3. AMENDATORY 59 O.S. 2011, Section 858-353, as  
17 amended by Section 2, Chapter 251, O.S.L. 2012 (59 O.S. Supp. 2012,  
18 Section 858-353), is amended to read as follows:

19 Section 858-353. A. A broker shall have the following duties  
20 and responsibilities to ~~a party~~ all parties in a transaction, which  
21 are mandatory and may not be abrogated or waived by a broker:

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

24

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

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

13 ~~5. Timely account for all money and property received by the~~  
14 ~~broker;~~

15 ~~6.~~ 4. Keep confidential information received from a party or  
16 prospective party confidential. The confidential information shall  
17 not be disclosed by a ~~broker~~ firm without the consent of the party  
18 disclosing the information unless consent to the disclosure is  
19 granted in writing by the party or prospective party disclosing the  
20 information, the disclosure is required by law, or the information  
21 is made public or becomes public as the result of actions from a  
22 source other than the ~~broker~~ firm. The following information shall  
23 be considered confidential and shall be the only information  
24 considered confidential in a transaction:

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

11 ~~7.~~ 5. Disclose information pertaining to the property as  
12 required by the Residential Property Condition Disclosure Act; and

13 ~~8.~~ 6. Comply with all requirements of The Oklahoma Real Estate  
14 License Code and all applicable statutes and rules.

15 B. A broker shall have the following duties and  
16 responsibilities only to a party for whom the broker is providing  
17 brokerage services in a transaction which are mandatory and may not  
18 be abrogated or waived by a broker:

19 1. Inform the party in writing when an offer is made that the  
20 party will be expected to pay certain costs, brokerage service costs  
21 and approximate amount of the costs; and

22 2. Keep the party informed regarding the transaction.

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1        C. When working with both parties to a transaction, the duties  
2 and responsibilities set forth in this section shall remain in place  
3 for both parties.

4        SECTION 4.        AMENDATORY        Section 3, Chapter 251, O.S.L.  
5 2012 (59 O.S. Supp. 2012, Section 858-355.1), is amended to read as  
6 follows:

7        Section 858-355.1. A. All brokerage agreements shall  
8 incorporate as material terms the duties and responsibilities set  
9 forth in Section 858-353 of The Oklahoma Real Estate License Code.

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

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

17        D. A firm that provides brokerage services to both parties in a  
18 transaction shall provide written notice to both parties that the  
19 ~~broker~~ firm is providing brokerage services to both parties to a  
20 transaction prior to the parties signing a contract to purchase,  
21 lease, option or exchange real estate.

22        E. If a broker intends to provide fewer brokerage services than  
23 those required to complete a transaction, the broker shall provide  
24 written disclosure to the party for whom the broker is providing

1 brokerage services. Such disclosure shall include a description of  
2 those steps in the transaction for which the broker will not provide  
3 brokerage services, and also state that the broker assisting the  
4 other party in the transaction is not required to provide assistance  
5 with these steps in any manner.

6 SECTION 5. AMENDATORY 59 O.S. 2011, Section 858-356, as  
7 amended by Section 4, Chapter 251, O.S.L. 2012 (59 O.S. Supp. 2012,  
8 Section 858-356), is amended to read as follows:

9 Section 858-356. The written disclosures as required by  
10 subsection C of Section ~~3~~ 858-355.1 of this ~~act~~ title shall be  
11 confirmed by each party in writing in a separate provision,  
12 incorporated in or attached to the contract to purchase, lease,  
13 option, or exchange real estate. In those cases where a broker is  
14 involved in a transaction but does not prepare the contract to  
15 purchase, lease, option, or exchange real estate, compliance with  
16 the disclosure requirements shall be documented by the broker.

17 SECTION 6. This act shall become effective November 1, 2013."  
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1 Passed the Senate the 10th day of April, 2013.

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3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2013.

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8 \_\_\_\_\_  
9 Presiding Officer of the House  
10 of Representatives



1 ENGROSSED HOUSE  
2 BILL NO. 1245

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3 and

4 Marlatt of the Senate

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7 An Act relating to real estate brokers; amending 15  
8 O.S. 2011, Section 136, which relates to statute of  
9 frauds; modifying conditions which make certain  
10 contracts invalid; amending 59 O.S. 2011, Section  
11 858-351, as amended by Section 1, Chapter 251, O.S.L.  
12 2012 (59 O.S. Supp. 2012, Section 858-351), which  
13 relates to The Oklahoma Real Estate License Code;  
14 modifying definition; and providing an effective  
15 date.

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

17 SECTION 7. AMENDATORY 15 O.S. 2011, Section 136, is  
18 amended to read as follows:

19 Section 136. The following contracts are invalid, unless the  
20 same, or some note or memorandum thereof, be in writing and  
21 subscribed by the party to be charged, by an agent of the party or  
22 by a ~~single-party~~ broker of the party pursuant to Sections 858-351  
23 through 858-363 of Title 59 of the Oklahoma Statutes:

24 1. An agreement that, by its terms, is not to be performed  
within a year from the making thereof;

1           2. A special promise to answer for the debt, default or  
2 miscarriage of another, except in the cases provided for in the  
3 article on guaranty;

4           3. An agreement made upon consideration of marriage, other than  
5 a mutual promise to marry; or

6           4. An agreement for the leasing for a longer period than one  
7 (1) year, or for the sale of real property, or of an interest  
8 therein; and such agreement, if made by an agent or a ~~single-party~~  
9 broker of the party sought to be charged, is invalid, unless the  
10 authority of the agent or the ~~single-party~~ broker be in writing,  
11 subscribed by the party sought to be charged.

12           SECTION 8.           AMENDATORY           59 O.S. 2011, Section 858-351, as  
13 amended by Section 1, Chapter 251, O.S.L. 2012 (59 O.S. Supp. 2012,  
14 Section 858-351), is amended to read as follows:

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

18           1. "Broker" means a real estate broker, an associated broker  
19 associate, sales associate, or provisional sales associate  
20 authorized by a real estate broker to provide brokerage services;

21           2. "Brokerage services" means those services provided by a  
22 broker to a ~~consumer~~ party in a ~~consumer~~ transaction;

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

1 4. "Transaction" means an activity or process to buy, sell,  
2 lease, rent, option or exchange real estate. Such activities or  
3 processes may include, without limitation, soliciting, advertising,  
4 showing or viewing real property, presenting offers or  
5 counteroffers, entering into agreements and closing such agreements;  
6 and

7 5. "Firm" means a sole proprietor, corporation, association or  
8 partnership.

9 SECTION 9. This act shall become effective November 1, 2013.

10 Passed the House of Representatives the 4th day of March, 2013.

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12 \_\_\_\_\_  
13 Presiding Officer of the House  
of Representatives

14 Passed the Senate the \_\_\_ day of \_\_\_\_\_, 2013.

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17 Presiding Officer of the Senate

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