

1 **SENATE FLOOR VERSION**

2 February 28, 2012

3 SENATE BILL NO. 1672

By: Newberry of the Senate

4 and

5 Denney of the House

6
7
8 An Act relating to real estate brokers; amending 59
9 O.S. 2011, Sections 858-351, 858-352, 858-353, 858-
10 354, 858-355, 858-356, 858-357, 858-358, 858-359,
11 858-360, 858-361, 858-362 and 858-363, which relate
12 to definitions, transaction and single-party
13 transactions, written agreements, broker duties and
14 responsibilities, disclosures, confidential
15 information, and authority for transactions;
16 modifying language and references; deleting single-
17 party and transaction broker definitions and broker
18 responsibilities; modifying definitions; providing
19 for written agreements and disclosures; modifying
20 broker duties and responsibilities; authorizing
21 brokerage services for one or more parties to a
22 transaction; requiring certain disclosure to multiple
23 parties to a transaction; allowing limited brokerage
24 services by agreement; requiring written confirmation
of certain disclosures; allowing certain compensation
for certain brokerage services; construing effects of
certain provisions and actions; prohibiting subagency
agreements with brokers; prohibiting associate making
brokerage agreements in own name; requiring broker
agreements in broker name; and providing an effective
date.

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

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

1 Section 858-351. Unless the context clearly indicates
2 otherwise, as used in Sections 858-351 through 858-363 of this
3 title:

4 1. "Broker" means a real estate broker ~~as defined in Section~~
5 ~~858-102 of this title, and means, further, except where the context~~
6 ~~refers only to a real estate broker,~~ an associated broker associate,
7 sales associate, or provisional sales associate authorized by a real
8 estate broker to provide brokerage services;

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

11 3. "Party" means a person who is a seller, buyer, landlord, or
12 tenant or a person who is involved in an option or exchange a
13 transaction; and

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

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

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

4 SECTION 2. AMENDATORY 59 O.S. 2011, Section 858-352, is
5 amended to read as follows:

6 Section 858-352. A. A broker may enter into a written
7 brokerage agreement to provide services ~~as either a single-party~~
8 ~~broker or~~ for one or more parties to a transaction broker. ~~If a~~
9 ~~broker does not enter into a written brokerage agreement with a~~
10 ~~party, the broker shall perform services only as a transaction~~
11 ~~broker.~~ All written brokerage agreements shall be deemed to
12 incorporate as material terms the duties and responsibilities set
13 forth in subsection A of Section 858-353 ~~or subsection B of Section~~
14 ~~858-354 of this title, based upon whether the relationship~~
15 ~~established by the brokerage agreement is a transaction broker~~
16 ~~relationship or single-party broker relationship.~~

17 B. A broker shall, in writing, describe and disclose the
18 mandatory broker duties and responsibilities set forth in Section
19 858-353 of this title prior to any party signing a contract to buy,
20 sell, purchase, lease, option or exchange real estate.

21 C. A broker shall provide written notice to all parties for
22 whom the broker is providing brokerage services to a transaction
23 prior to any party signing a contract to buy, sell, purchase, lease,
24 option or exchange real estate.

1 SECTION 3. AMENDATORY 59 O.S. 2011, Section 858-353, is
2 amended to read as follows:

3 Section 858-353. A. A ~~transaction~~ broker shall have the
4 following duties and responsibilities, ~~which~~ to a party for whom the
5 broker is providing brokerage services. The duties and
6 responsibilities are mandatory and may not be abrogated or waived by
7 ~~a transaction~~ the broker:

8 1. To treat all parties with honesty and exercise reasonable
9 skill and care;

10 2. ~~To be available to,~~ unless specifically waived in writing by
11 a party to the transaction:

12 a. receive all written offers and counteroffers,

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

15 c. present timely ~~such~~ all written offers and
16 counteroffers;

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

21 4. To keep the party or parties for whom the broker is
22 providing brokerage services informed regarding the transaction;

23 5. To account timely for all money and property received by the
24 broker;

1 ~~5.~~ 6. To keep confidential information received from a party
2 confidential ~~as required by~~ unless otherwise provided by law or
3 rule; confidential information shall be that information stated in
4 Section 858-357 of this title;

5 ~~6.~~ 7. To disclose information pertaining to the property as
6 required by the Residential Property Condition Disclosure Act; and

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

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

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

17 D. ~~If a transaction broker intends to perform fewer services~~
18 ~~than those required to complete a transaction, written disclosure~~
19 ~~shall be provided to the party for whom the broker is providing~~
20 brokerage services. ~~Such disclosure shall include a description of~~
21 ~~those steps in the transaction for which the broker will not perform~~
22 ~~services, and also state that a broker assisting the other to a~~
23 ~~party in the or parties to a transaction is not required to provide~~
24 ~~assistance with these steps in any manner, the duties and~~

1 responsibilities set forth in subsection A of this section shall be
2 required for all parties for whom the broker is providing brokerage
3 services.

4 SECTION 4. AMENDATORY 59 O.S. 2011, Section 858-354, is
5 amended to read as follows:

6 Section 858-354. A. ~~A broker shall enter into a written~~
7 ~~brokerage agreement prior to providing services as a single-party~~
8 ~~broker, which shall be deemed to include, and which may not abrogate~~
9 ~~or waive, the mandatory duties and responsibilities set forth in~~
10 ~~this section.~~

11 B. ~~The single party broker shall have the following duties and~~
12 ~~responsibilities:~~

13 1. ~~To treat all parties with honesty and exercise reasonable~~
14 ~~skill and care;~~

15 2. ~~To be available to:~~

16 a. ~~receive all written offers and counteroffers,~~

17 b. ~~reduce offers or counteroffers to a written form upon~~
18 ~~request of any party to a transaction,~~

19 c. ~~present timely all written offers and counteroffers;~~

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

- 1 ~~4. To keep the party for whom the single party broker is~~
2 ~~performing services informed regarding the transaction;~~
- 3 ~~5. To account timely for all money and property received by the~~
4 ~~broker;~~
- 5 ~~6. To keep confidential information received from a party~~
6 ~~confidential as required by Section 858-357 of this title;~~
- 7 ~~7. To perform all brokerage activities for the benefit of the~~
8 ~~party for whom the single party broker is performing services unless~~
9 ~~prohibited by law;~~
- 10 ~~8. To disclose information pertaining to the property as~~
11 ~~required by the Residential Property Condition Disclosure Act;~~
- 12 ~~9. To obey the specific directions of the party or parties for~~
13 ~~whom the single party broker is performing brokerage services that~~
14 ~~are not contrary to applicable statutes and rules or contrary to the~~
15 ~~terms of a contract between the parties to the transaction; and~~
- 16 ~~10. To comply with all requirements of the Oklahoma Real Estate~~
17 ~~License Code and all applicable statutes and rules.~~
- 18 ~~C. In the event a broker who is a single party broker for a~~
19 ~~buyer or a tenant receives a fee or compensation based on a selling~~
20 ~~price or lease cost of a transaction, such receipt does not~~
21 ~~constitute a breach of duty or obligation to the buyer or tenant if~~
22 ~~fully disclosed to the buyer or tenant in the written brokerage~~
23 ~~agreement.~~
- 24

1 ~~D. Except as provided in Section 858-358 of this title, such~~
2 ~~duties and responsibilities set forth in this section shall be~~
3 ~~performed by a single party broker if such duties and~~
4 ~~responsibilities relate to the steps of the transaction which occur~~
5 ~~while there is a broker relationship.~~

6 ~~E. Nothing in this section requires or prohibits a single party~~
7 ~~broker from charging a separate fee or other compensation for each~~
8 ~~duty or other services provided during a transaction.~~

9 ~~F.~~ B. If a ~~single party~~ broker intends to perform fewer
10 brokerage services than those required to complete a transaction,
11 the broker shall provide written disclosure ~~shall be provided~~ to the
12 party or parties for whom the broker is providing brokerage
13 services. ~~Such~~ The required disclosure shall include a description
14 of those steps in the transaction for which the broker will not
15 perform brokerage services, and shall also state that the broker
16 assisting the other party or parties in the transaction is not
17 required to provide assistance with these steps in any manner.

18 SECTION 5. AMENDATORY 59 O.S. 2011, Section 858-355, is
19 amended to read as follows:

20 Section 858-355. ~~A. When assisting one party to a transaction,~~
21 ~~a broker shall enter into one of the following relationships:~~

22 ~~1. As a transaction broker without a written brokerage~~
23 ~~agreement;~~

1 ~~2. As a transaction broker through a written brokerage~~
2 ~~agreement; or~~

3 ~~3. As a single party broker through a written brokerage~~
4 ~~agreement.~~

5 ~~B. When assisting both parties to a transaction, a broker may~~
6 ~~enter into the following relationships:~~

7 ~~1. As a transaction broker for both parties;~~

8 ~~2. As a single party broker for one party and as a transaction~~
9 ~~broker for the other party. In this event, a broker shall disclose~~
10 ~~in writing to the party for whom the broker is providing services as~~
11 ~~a transaction broker, the difference between a transaction broker~~
12 ~~and a single party broker, and that the broker is a single party~~
13 ~~broker for the other party and performs services for the benefit of~~
14 ~~the other party in the transaction; or~~

15 ~~3. As a transaction broker where the broker has previously~~
16 ~~entered into a written brokerage agreement to provide services as a~~
17 ~~single party broker for both parties. In this event, the broker~~
18 ~~shall obtain the written consent of each party before the broker~~
19 ~~begins to perform services as a transaction broker. The written~~
20 ~~consent may be included in the written brokerage agreement or in a~~
21 ~~separate document and shall contain the following information:~~

22 ~~a. a description of the transaction or type of~~
23 ~~transactions that might occur in which the single-~~

24

1 ~~party broker seeks to obtain consent to become a~~
2 ~~transaction broker,~~

3 ~~b. a statement that in such transactions the single party~~
4 ~~broker would perform services for more than one party~~
5 ~~whose interest could be different or even adverse and~~
6 ~~that such transactions require the broker to seek the~~
7 ~~consent of each party to such transactions to permit a~~
8 ~~change in the brokerage relationship,~~

9 ~~e. a statement that by giving consent in such~~
10 ~~transactions:~~

11 ~~(1) the party will allow the broker to change the~~
12 ~~broker's relationship from performing services as~~
13 ~~a single party broker to performing services as a~~
14 ~~transaction broker,~~

15 ~~(2) the broker will no longer provide services for~~
16 ~~the benefit of the party, but may only assist in~~
17 ~~such transactions,~~

18 ~~(3) the broker will not be obligated to obey the~~
19 ~~specific directions of the party but will assist~~
20 ~~all parties to such transactions,~~

21 ~~(4) the party will not be vicariously liable for the~~
22 ~~acts of the broker and associated associates, and~~

1 ~~(5) the broker's obligation to keep confidential~~
2 ~~information received from the party confidential~~
3 ~~is not affected,~~

4 ~~d. a statement that the party is not required to consent~~
5 ~~to the change in the brokerage relationships in such~~
6 ~~transactions and may seek independent advice,~~

7 ~~e. a statement that the consent of the party to change~~
8 ~~the brokerage relationship in such transactions has~~
9 ~~been given voluntarily and that the written consent~~
10 ~~has been read and understood by the party, and~~

11 ~~f. a statement that the party authorizes the broker to~~
12 ~~change the brokerage relationship in such transactions~~
13 ~~and to assist all parties to such transactions as a~~
14 ~~transaction broker.~~

15 ~~C. 1. If neither party gives consent as described in paragraph~~
16 ~~3 of subsection B of this section, the broker shall withdraw from~~
17 ~~providing services to all but one party to a transaction. If the~~
18 ~~broker refers the party for whom the broker is no longer providing~~
19 ~~services to another broker, the broker shall not receive a fee for~~
20 ~~referring the party unless written disclosure is made to all~~
21 ~~parties.~~

22 ~~2. If only one party gives consent as described in paragraph 3~~
23 ~~of subsection B of this section, the broker may act as a transaction~~
24 ~~broker for the consenting party and continue to act as a single-~~

1 ~~party broker for the nonconsenting party. In this event, the broker~~
2 ~~shall disclose in writing to the consenting party that the broker~~
3 ~~remains a single party broker for the nonconsenting party and~~
4 ~~performs services for the benefit of the nonconsenting party.~~

5 D. A broker ~~may~~ shall comply with the rules promulgated by the
6 Oklahoma Real Estate Commission and shall cooperate with other
7 brokers providing brokerage services in a transaction. ~~Under~~
8 ~~Sections 1 through 13 of this act, a broker shall not be an agent,~~
9 ~~subagent, or dual agent and an offer of subagency shall not be made~~
10 ~~to other brokers.~~

11 SECTION 6. AMENDATORY 59 O.S. 2011, Section 858-356, is
12 amended to read as follows:

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

18 B. ~~Prior to entering into a written brokerage agreement as~~
19 ~~either a transaction broker or single party broker, the broker shall~~
20 ~~describe and disclose in writing the broker's relationship to the~~
21 ~~party.~~

22 C. ~~A transaction broker shall disclose to the party for whom~~
23 ~~the transaction broker is providing services that the party is not~~
24

1 ~~vicariously liable for the acts or omissions of the transaction~~
2 ~~broker.~~

3 ~~D. A single party broker shall disclose to the party for whom~~
4 ~~the single party broker is providing services that the party may be~~
5 ~~vicariously liable for the acts or omissions of a single party~~
6 ~~broker.~~

7 ~~E. The All broker disclosures required by this section and the~~
8 ~~consent required by Section 5 of this act must Sections 858-352 and~~
9 ~~858-354 of this title or another provision of law shall be~~
10 ~~confirmed, in writing, by each party ~~in writing~~ for whom the broker~~
11 ~~is providing brokerage services. The confirmation shall be in a~~
12 ~~separate provision, incorporated in or attached to the contract to~~
13 ~~sell, purchase, lease, or for an option, or to exchange real estate.~~
14 In those cases where a broker is involved in a transaction but does
15 not prepare the contract to purchase, lease, or for an option, or to
16 exchange real estate, compliance with the mandatory disclosure
17 requirements ~~must~~ should be documented otherwise by the broker not
18 preparing the contract.

19 SECTION 7. AMENDATORY 59 O.S. 2011, Section 858-357, is
20 amended to read as follows:

21 Section 858-357. ~~The following~~ Pursuant to the broker's duty to
22 keep confidential information confidential as provided in Section
23 858-353 of this title, the information stated in this section shall
24 be considered confidential and shall not be disclosed by a any

1 broker without the consent of the party disclosing the information
2 ~~unless consent to disclosure is granted by the party disclosing the~~
3 ~~information, except the information may be disclosed without the~~
4 ~~consent of the party when~~ the disclosure is required by law, or the
5 information is made public or becomes public as the result of
6 actions from a source other than the broker. Confidential
7 information is:

8 1. That a party is willing to pay more or accept less than what
9 is being offered;

10 2. That a party is willing to agree to financing terms that are
11 different from those offered; and

12 3. The motivating factors of the party purchasing, selling,
13 leasing, optioning, or exchanging the property.

14 SECTION 8. AMENDATORY 59 O.S. 2011, Section 858-358, is
15 amended to read as follows:

16 Section 858-358. Except as may be provided in a written
17 brokerage agreement between the broker and a party ~~to~~ or parties
18 whom the broker represents in a transaction or otherwise provides
19 brokerage services, the broker owes no further ~~duties or~~
20 ~~responsibilities~~ duty or responsibility to the party or parties
21 after termination, expiration, or completion of performance of the
22 transaction, except:

23 1. To account for all monies and property relating to the
24 transaction; and

1 2. To keep confidential all confidential information received
2 by the broker during the broker's relationship with a party or
3 parties for whom the broker provided brokerage services.

4 SECTION 9. AMENDATORY 59 O.S. 2011, Section 858-359, is
5 amended to read as follows:

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

10 B. In the event a broker receives a fee or compensation from
11 any party to the transaction based upon a selling price or lease
12 cost of the transaction, the receipt of such fee or compensation
13 does not constitute a breach of duty or obligation to any party to
14 the transaction.

15 C. Nothing in this section requires or prohibits a broker from
16 charging a separate fee or other compensation for each duty or other
17 brokerage service provided during a transaction.

18 SECTION 10. AMENDATORY 59 O.S. 2011, Section 858-360, is
19 amended to read as follows:

20 Section 858-360. A. The duties and responsibilities of a
21 broker specified in ~~Sections 1 through 13~~ Section 858-353 of this
22 ~~act~~ title shall replace and abrogate the fiduciary or other duties
23 of a broker to a party based on common law principles of agency.
24

1 The remedies at law and equity supplement the provisions of Sections
2 ~~± 858-351~~ through ~~± 858-363~~ of this ~~act~~ title.

3 B. Pursuant to Sections 858-351 through 858-363 of this title,
4 a broker shall not be an agent, subagent or dual agent and any offer
5 of a subagency shall not be made to other brokers.

6 SECTION 11. AMENDATORY 59 O.S. 2011, Section 858-361, is
7 amended to read as follows:

8 Section 858-361. A real estate broker, and the associates of a
9 the real estate broker are, shall be permitted under the provisions
10 of Sections 858-351 through 858-363 of this title to use the word
11 "agent" in a trade name and as a general reference for designating
12 themselves as real estate licensees.

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

15 Section 858-362. A party or parties to a real estate
16 transaction shall not be vicariously liable for the acts or
17 omissions of a real estate licensee who is providing brokerage
18 services as a transaction broker under pursuant to any provision of
19 Sections ± 858-351 through ± 858-363 of this act title.

20 SECTION 13. AMENDATORY 59 O.S. 2011, Section 858-363, is
21 amended to read as follows:

22 Section 858-363. Each broker associate, sales associate, and
23 provisional sales associate shall be associated with a real estate
24 broker. An associate shall only be authorized to enter into a

1 brokerage agreement in the name of the broker and shall not enter
2 into any broker agreement in his or her own name. A real estate
3 broker may authorize associates to provide brokerage services in the
4 name of the real estate broker as permitted under the Oklahoma Real
5 Estate License Code, which may include the execution of written
6 brokerage service agreements; ~~however, such associates shall not~~
7 ~~refer to themselves as a broker.~~

8 SECTION 14. This act shall become effective November 1, 2012.

9 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & COMMERCE, dated 2-23-12
10 - DO PASS, As Coauthored.

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