

An Act

ENROLLED HOUSE
BILL NO. 1245

By: Martin (Steve) of the House

and

Marlatt of the Senate

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

SUBJECT: Real estate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Unless specifically waived in writing by a party to the transaction:

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

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

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

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

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

- a. that a party or prospective party is willing to pay more or accept less than what is being offered,
- b. that a party or prospective party is willing to agree to financing terms that are different from those offered,

- c. the motivating factors of the party or prospective party purchasing, selling, leasing, optioning or exchanging the property, and
- d. information specifically designated as confidential by a party unless such information is public;

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

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

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

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

2. Keep the party informed regarding the transaction.

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

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

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

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

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

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

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

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

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

SECTION 6. This act shall become effective November 1, 2013.

Passed the House of Representatives the 6th day of May, 2013.

Jean W. Muroby
Presiding Officer of the House
of Representatives

Passed the Senate the 10th day of April, 2013.

A. Y. Shiffin
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 7th

day of May, 20 13, at 2:42 o'clock P M.

By: Kandi E. Babb

Approved by the Governor of the State of Oklahoma this 13th

day of May, 20 13, at 3:24 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 13th

day of May, 20 13, at 5:15 o'clock P M.

By: Chris Dennis