



# OKLAHOMA REAL ESTATE COMMISSION COMMENT

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## Commission Web site

It is our hope that within the next four months we will have developed our web site for your interaction. We plan to have some Commission "action" forms available for licensees and various publications, i.e., Commission Comment newsletter, License Code and Rules, Residential/Nonresidential Landlord and Tenant Act and the Residential Property Condition Disclosure Act and related forms. We also will include a listing of licensees for the public and licensees with limited information such as licensee name, sponsoring broker, business address, license number and license expiration.

## COMMISSIONERS RECONFIRMED TO SERVE ANOTHER TERM

Governor Keating reappointed John Mosley, broker member of Chickasha, Martin VanMeter, broker member of Durant and John Snodgrass, public member of Oklahoma City to serve another term on the Commission. Their terms will expire July 1, 2003. Congratulations, Gentlemen.

## Standardized Contracts

The Commissioners at the November business meeting voted to support the concept of requiring standardized contract forms for the industry. Commissioners John Mosley of Chickasha, John Snodgrass of Oklahoma City and Joseph McGraw of Tulsa as well as staff from the Oklahoma Association of Realtors and Realtors abroad visited the Texas Real Estate Commission and Texas Association of Realtors to gain insight on Texas' experience of requiring standardized contracts. The Commissioners indicated that after such review, standardizing forms would benefit both the public and licensees. Texas has utilized standard forms since the 1970s.

A current task force exists between the Oklahoma Association of Realtors and the Commission and they have been meeting to discuss the possibilities of proposing legislation for next year.

OAR presented this matter to their Board of Directors in March and it was their decision to support standardizing contracts and move forward in this endeavor. We will keep you posted.

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## The Oklahoma Real Estate Commission Comment

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### THE COMMISSION

John R. Mosley, Chairman .....Chickasha  
Martin VanMeter, Vice Chairman .....Durant  
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Joseph McGraw .....Tulsa  
John Snodgrass .....Okla. City  
Charles T. Harris .....Okla. City  
Norris Price, Executive Director .....Staff  
Anne M. Woody, Deputy Director .....Staff

Address all communications to the  
Commission Office

"Use your zip code and ours  
when you write to us"

## Education Advisory Committee

The Commission at their November business meeting voted to approve the formation of an Education Advisory Committee consisting of three members appointed by the Real Estate Commission, three members appointed by the Oklahoma Association of Realtors (OAR), and three members appointed by the Oklahoma Real Estate Educators Association (OKREEA).

At the January business meeting, the Commission as well as OAR and OKREEA appointed their members. The Commission appointed Commissioner Bud Engstrom of Tulsa to serve a 3-year term, Commissioner E. R. Andrew of Enid to serve a 2-year term, Commissioner Charles Harris of Oklahoma City to serve a one year term, and Commissioner Martin VanMeter of Durant to serve as an alternate. OAR appointed Mary Johnson from Edmond to serve a 3-year term, Bill Poertner of Oklahoma City to serve a 2-year term, and Joe Whitaker of Tulsa to serve a one year term. OKREEA appointed Jerry Huggins of Muskogee to serve a 3-year term, Connie Miller of Del City to serve a 2-year term, Jean Smith of Shawnee to serve a one year term, and Mylo

## CHAIRMAN'S CORNER



*John R. Mosley  
Chairman*

It is a good time to be in the real estate business. We have reasonable loan rates, property is selling, and we possess the willingness to change to "make good things happen." Three opportunities for change have or will occur in the near future.

First, a committee comprised of members of OREC and OAR has made a study of current education requirements. The committee is now ready to present their findings to the Real Estate Commission for its approval. The Commission is very aware of its duty to the public and will review this report in that light.

Second, the new "broker relationships" law will take effect in November. This law has some significant advantages for the public and removes many of the confusing issues found in the law of agency. Classes will soon be offered to train licensees on how to use the new law.

The last change is as comprehensive as changing the law of agency. OREC and OAR approved a task force recommendation to construct a "common" contract to be used by all licensees. We have two remaining steps to bring the "common contract" to life. First, we will work with the legislature to gain their approval. The second step will be the designing of the contract by a professional committee. Neither task will be easy but with our "make good things happen" attitude and because of the logic of a common contract we will be successful.

All of the above was accomplished through the cooperation of OREC and OAR dedicated individuals and the attitude to "make good things happen." I am convinced that because of the demonstrated cooperation and willingness to change, Oklahoma will continue to be a good place to be in the real estate business.

Sincerely,  
John R. Mosley  
Chairman

Wilson of Pauls Valley to serve as an alternate.

The committee was formed to review and make recommendations to the Commission on future education endeavors which may include:

1. Periodically critique the examination test bank.
2. Research nationally published textbooks (materials) for use in delivery of prelicense and postlicense education.
3. Research national license examination sources recognized by ARELLO to determine viability of a national testing source vs. Commission administered examinations.

4. Review topics covered in prelicense, postlicense and continuing education courses and revise/update as appropriate.
5. Review number of hours of required continuing education in specific subjects and consider specifying a minimum/maximum number of hours in any one subject.
6. Critique the testing environment on a periodic basis.
7. Review instructor approval procedures and criteria.
8. Review other areas of education as requested by the Commission.
9. Report to the Commission on a quarterly basis.

# Broker Relationships Act To Become Effective November 1, 2000

## Articles Relating to the new Broker Relationships Act:

- Service Contracts That Are In Existence Before And On November 1, 2000
- Broker Relationships Act in its Entirety plus Pamphlet Availability
- Rule Pertaining to the Broker Relationships Act
- Questions and Answers and Addendum Availability
- Seminars to be Offered Across the State
- Brief Summary of the New Law
- What Can I Be? (When working with parties to the transaction)
- Listing Agreement Addendum
- Listing Agreement Addendum (Authorization to change broker relationship from single-party broker to transaction broker)
- Buyer Broker Agreement Addendum
- Buyer Broker Agreement Addendum (Authorization to change broker relationship from single-party broker to transaction broker)

## Service Contracts That Are in Existence Before and on November 1, 2000

The Commission on March 8, 2000 considered a rule at the public hearing to address the issue of brokerage service agreements that are in effect before and on November 1, 2000. Such rule states in part that "A brokerage service agreement entered into prior to November 1, 2000, shall remain in full force and effect until the agreement expires or is otherwise terminated by the parties to the agreement." This rule addresses situations wherein all that has to occur in a transaction on or after November 1, is to consummate the sale and close the transaction.

Service Agreements were defined as oral or written agreements to provide brokerage services entered into by a broker and a person who is a party to a real estate transaction and includes, but is not limited to, listing agreements, buyer broker agreements and property management agreements.

The next issue to be addressed pertains to servicing both parties in a transaction but under different laws. This would occur wherein a broker or the broker's affiliated associates enter into a brokerage agreement on and after November 1, 2000 with a party who is inter-

ested in a property that is currently being serviced by the broker under the traditional agency concept – thereby servicing one party under the old law and one party under the new. Rule language was amended to address the issue which reads as follows:

If a brokerage service agreement is entered into prior to November 1, 2000, it may contain an addendum or other attachment that allows the parties on or after November 1, 2000 to change their relationship with the real estate broker to those types of relationships permitted under the Broker Relationships Act. Such addendum or attachment must contain all relevant disclosures, consents and other requirements mandated by the Broker Relationships Act.

This rule will allow the broker to present an addendum at the same time the broker presents the party with a brokerage service agreement which takes effect prior to the effective date of the new law. This will work much like the "dual agency" procedure that has been utilized in the past when the licensee took a listing.

**Example:** Broker, or broker's affiliated associates, on June 30 approaches a seller for a property listing that will be in effect until December 31, 2000. (This of course covers a span of time that will involve both the old and new law.) The broker explains that a new brokerage relationship act becomes effective on November 1 which is in midstream of this relationship. The broker explains that an addendum is attached to the service agreement for the party's consideration of changing the relationship on November 1, 2000 to one of the types of relationships that is afforded by the new law.

[The broker has an option here. The broker can wait until November 1 and then approach all clients and inquire if they desire to change their relationship to those as offered in the new law; or the broker can offer the new types of relationships afforded by the new law in advance of November 1, 2000 and thereby avoid having to rush and change all relationships on and after November 1.]

The last rule clarifies that relationship(s) with any party or parties to any transaction shall be determined by the real estate broker only and not by the associated broker associates, sales associates or provisional sales associates.

In an effort to assist all licensees with the Broker Relationships Act the Greater Tulsa Association of Realtors has agreed to make available for this issue of the Comment, copies of their addendums that can be utilized by all licensees. These forms modify agreements that are in existence before and on November 1, 2000. (See addendums on pages 10–13.)

# Broker Relationships Act In Its Entirety

Effective November 1, 2000

## New Law

**858-351. Definitions.** Unless the context clearly indicates otherwise, as used in Section 858-351 through 858-363 of this act:

1. "Broker" means a real estate broker as defined in Section 858-102 of Title 59 of the Oklahoma Statutes, and means, further, except where the context refers only to 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. "Party" means a person who is a seller, buyer, landlord, or tenant or a person who is involved in an option or exchange;
3. "Single-party broker" means a broker who has entered into a written brokerage agreement with a party in a transaction to provide services for the benefit of that party;
4. "Transaction" means those real estate activities enumerated in Section 858-102 of Title 59 of the Oklahoma Statutes which are performed by a broker; and
5. "Transaction broker" means a broker who provides services by assisting a party in a transaction without being an advocate for the benefit of that party.

**858-352. Written brokerage agreement.** A broker may enter into a written brokerage agreement to provide services as either a single-party broker or a transaction broker. If a broker does not enter into a written brokerage agreement with a party, the broker shall perform services only as a transaction broker.

**858-353. Transaction broker—Duties and responsibilities.** A transaction broker shall have the following duties and responsibilities:

1. To perform the terms of the written brokerage agreement, if applicable;
2. To treat all parties with honesty;
3. To comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules; and
4. To exercise reasonable skill and care including:
  - a. timely presentation of all written offers and counteroffers,
  - b. keeping the party for whom the transaction broker is providing services fully informed regarding the transaction,
  - c. timely accounting for all money and property received by the broker,
  - d. keeping confidential information received from a party confidential as required by 858-357 of this act, and
  - e. disclosing information pertaining to the property as required by the Residential Property Condition Disclosure Act.

**858-354. Single-party broker—Duties and responsibilities.**

A. A broker shall enter into a written brokerage agreement prior to providing services as a single-party broker.

B. The single-party broker shall have the following duties and responsibilities:

1. To perform the terms of the brokerage agreement;
2. To treat all parties with honesty;
3. To comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules; and
4. To exercise reasonable skill and care including:
  - a. timely presentation of all written offers and counteroffers,
  - b. keeping the party for whom the single-party broker is performing services fully informed regarding the transaction,
  - c. timely accounting for all money and property received by the broker,
  - d. keeping confidential information received from a party confidential as required by 858-357 of this act,
  - e. performing all brokerage activities for the benefit of the party for whom the single-party broker is performing services unless prohibited by law,
  - f. disclosing information pertaining to the property as required by the Residential Property Condition Disclosure Act, and
  - g. obeying the specific directions of the party for whom the single-party broker is performing services that are not contrary to applicable statutes and rules or contrary to the terms of a contract between the parties to the transaction.

C. In the event a broker who is a single-party broker for a buyer or a tenant receives a fee or compensation based on a selling price or lease cost, such receipt does not constitute a breach of duty or obligation to the buyer or tenant if fully disclosed to the buyer or tenant in the written brokerage agreement.

**858-355. Alternative relationships entered into where broker assists one or both parties—Written disclosure—Written consent—Contents of brokerage agreement—Withdrawal by broker—Referral fees—Cooperation with other brokers.**

A. When assisting one party to a transaction, a broker shall enter into one of the following relationships:

1. As a transaction broker without a written brokerage agreement;
2. As a transaction broker through a written brokerage agreement; or
3. As a single-party broker through a written brokerage agreement.

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

1. As a transaction broker for both parties;
2. As a single-party broker for one party and as a transaction broker for the other party. In this event, a broker shall disclose in writing to the party for whom the broker is providing services as a transaction broker, the difference

between a transaction broker and a single-party broker, and that the broker is a single-party broker for the other party and performs services for the benefit of the other party in the transaction; or

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

- a. a description of the transaction or type of transactions that might occur in which the single-party broker seeks to obtain consent to become a transaction broker,
  - b. a statement that in such transactions the single-party broker would perform services for more than one party whose interest could be different or even adverse and that such transactions require the broker to seek the consent of each party to such transactions to permit a change in the brokerage relationship,
  - c. a statement that by giving consent in such transactions:
    - (1) the party will allow the broker to change the broker's relationship from performing services as a single-party broker to performing services as a transaction broker,
    - (2) the broker will no longer provide services for the benefit of the party, but may only assist in such transactions,
    - (3) the broker will not be obligated to obey the specific directions of the party but will assist all parties to such transactions,
    - (4) the party will not be vicariously liable for the acts of the broker and associated associates, and
    - (5) the broker's obligation to keep confidential information received from the party confidential is not affected,
  - d. a statement that the party is not required to consent to the change in the brokerage relationships in such transactions and may seek independent advice,
  - e. a statement that the consent of the party to change the brokerage relationship in such transactions has been given voluntarily and that the written consent has been read and understood by the party, and
  - f. a statement that the party authorizes the broker to change the brokerage relationship in such transactions and to assist all parties to such transactions as a transaction broker.
- C. 1. If neither party gives consent as described in paragraph 3 of subsection B of this section, the broker shall withdraw from providing services to all but one party to a transaction. If the broker refers the party for whom the broker is no longer providing services to another broker, the broker shall not receive a fee for referring

the party unless written disclosure is made to all parties.

2. If only one party gives consent as described in paragraph 3 of subsection B of this section, the broker may act as a transaction broker for the consenting party and continue to act as a single-party broker for the non-consenting party. In this event, the broker shall disclose in writing to the consenting party that the broker remains a single-party broker for the nonconsenting party and performs services for the benefit of the non-consenting party.

D. A broker may cooperate with other brokers in a transaction. Under Sections 858-351 through 858-363 of this act, a broker shall not be an agent, subagent, or dual agent and an offer of subagency shall not be made to other brokers.

**858-356. Disclosures—Confirmation in writing.**

A. Prior to the signing by a party of a contract to purchase, lease, option or exchange real estate, a broker who is performing services as a transaction broker without a written brokerage agreement shall describe and disclose in writing the broker's role to the party.

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

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

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

E. The disclosure required by this section and the consent required by Section 858-355 of this act must 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 must be documented by the broker.

**858-357. Confidential information.** The following information shall be considered confidential and shall not be disclosed by a broker without the consent of the party disclosing the information unless consent to disclosure is granted by the 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:

1. That a party is willing to pay more or accept less than what is being offered;
2. That a party is willing to agree to financing terms that are different from those offered; and
3. The motivating factors of the party purchasing, selling, leasing, optioning, or exchanging the property.

**858-358. Duties of broker following termination, expiration, or completion of performance.** Except as may be provided in a written brokerage agreement between the broker and a party to a transaction, the broker owes no further

duties or responsibilities to the party after termination, expiration, or completion of performance of the transaction, except:

1. To account for all monies and property relating to the transaction; and
2. To keep confidential all confidential information received by the broker during the broker's relationship with a party.

**858-359. Payment to broker not determinative of relationship.** The payment or promise of payment or compensation by a party to a broker does not determine what relationship, if any, has been established between the broker and a party to a transaction.

**858-360. Abrogation of common law principles of agency—Remedies cumulative.** The duties and responsibilities of a broker specified in Sections 858-351 through 858-363 of this act shall replace and abrogate the fiduciary or other duties of a broker to a party based on common law principles of agency. The remedies at law and equity supplement the provisions of Sections 858-351 through 858-363 of this act.

**858-361. Use of word "agent" in trade name.** A real estate broker is permitted under the provisions of Sections 858-351 through 858-363 of this act to use the word "agent" in a trade name.

**858-362. Vicarious liability for acts or omissions of real estate licensee.** A party to a real estate transaction shall not be vicariously liable for the acts or omissions of a real estate licensee who is providing services as a transaction broker under Section 858-351 through 858-363 of this act.

**858-363. Associates of real estate broker—Authority.** Each broker associate, sales associate, and provisional sales associate shall be associated with a real estate broker. A real estate broker may authorize associates to enter into written agreements to provide brokerage services in the name of the real estate broker.

*Note: Law pamphlets are being printed and will be available for a postage and handling charge. See order form on page 20.*

## Rule Pertaining to the Broker Relationships Act

**NOTICE:** This rule will have an effective date of July 1, 2000 to allow brokers to effectively implement the new Broker Relationships Act

### SUBCHAPTER 15. DISCLOSURES

#### **605:10-15-2. Brokerage relationship disclosure; Broker Relationships Act to become effective November 1, 2000.**

(a) After July 1, 1990, in every real estate sales transaction involving a licensee, the licensee must clearly disclose to the buyer and seller the brokerage relationship(s). The disclosure must be made prior to the buyer and seller entering into a binding agreement with each other; and when a binding agreement is signed, the prior brokerage disclosure must be confirmed in a separate provision, incorporated in or attached to that agreement.

(b) The licensee's conduct in the real estate transaction shall be in conformity with the disclosure made. The payment of compensation or the obligation to pay compensation to a broker is not necessarily determinative of a particular brokerage relationship.

(c) **Broker Relationships Act effective November 1, 2000.** A new law, Title 59, O. S., Sections 858-351 through 858-363 of the License Code, becomes effective on November 1, 2000, which law shall be referred to as the Broker Relationships Act.

(1) **Brokerage service agreement defined.** The term "brokerage service agreement" shall mean an oral or written agreement to provide brokerage services entered into by a real estate broker and a person who is a party to a real estate transaction and shall include, but not be limited to, listing agreements,

buyer broker agreements and property management agreements.

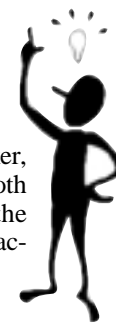
(2) **Validity of a brokerage service agreement existing before and on November 1, 2000.** A brokerage service agreement entered into prior to November 1, 2000, shall remain in full force and effect until the agreement expires or is otherwise terminated by the parties to the agreement.

(3) **Addendum or attachment to a brokerage service agreement existing before and on November 1, 2000.** If a brokerage service agreement is entered into prior to November 1, 2000, it may contain an addendum or other attachment that allows the parties on or after November 1, 2000 to change their relationship with the real estate broker to those types of relationships permitted under the Broker Relationships Act. Such addendum or attachment must contain all relevant disclosures, consents and other requirements mandated by the Broker Relationships Act.

(4) **Real estate broker determines relationships under the Broker Relationships Act.** Under Title 59, O.S., Section 858-355, the relationship(s) with any party or parties to any transaction shall be determined by the real estate broker only and not by the associated broker associates, sales associates or provisional sales associates.



## Questions and Answers



*Greater Tulsa Association of Realtors drafted these to help their members clarify some of the provisions in the Act.*

**Q** Does the new Broker Relationships Act abrogate the “common law principles of agency?”

**A** Yes. A real estate licensee’s duties are now specifically set out in the statutes.

**Q** What about listing agreements and buyer broker agreements that are already in effect?

**A** Listing and buyer broker agreements entered into prior to November 1 that do not expire until after November 1 are “grandfathered” in. However, this could present a problem on an in-house transaction. You could find yourself working under conflicting laws. Forms have been developed by the Association’s Standard Forms Committee to avoid this problem. (See attached addendums on pages 10–13.)

**Q** I was told that under the new law I can no longer be an agent, subagent or a disclosed dual agent. Is this true?

**A** Yes. Under the new law there are only two possible broker relationships with buyers and sellers: Transaction broker (with or without a written agreement) and Single-party broker.

To provide Single-party broker services, *you must have a written agreement. Otherwise, you are presumed to be a Transaction broker.*

**Q** What is the difference between Transaction broker and Single-party broker?

**A** A Transaction broker is a broker who provides services by *assisting a party without being an advocate for the benefit of the party. The broker is not obligated to obey the instructions of the party. The party employing a Transaction broker cannot be held vicariously liable for the actions and omissions of the broker.*

A Single-party broker is a broker who has entered into a written brokerage agreement with the party *to provide real estate services for the benefit of the party. The broker is obligated to obey the specific directions of the party. The party employing a Single-party broker may be held vicariously liable for the actions and omissions of the broker.*

**Q** If I have a Single-party broker agreement with a seller and a member of my firm has a Single-party broker agreement with a buyer. If the buyer is interested in my seller’s property can I continue to provide the seller with Single-party broker services and the other licensee in the firm continue as a Single-party broker for the buyer?

**A** No. Although different licensees are involved, you are both licensed with the same broker. Consequently, the broker would be a Single-party broker for both parties, which is prohibited by the law. The broker can be a Transaction broker to

both parties or a Transaction broker to one party and a Single-party broker to the other. The broker, however, cannot be a Single-party broker to both parties to the transaction. Further, if neither the buyer nor the seller agree to change to a Transaction broker, one of them will have to be referred to another firm.

**Q** When do I disclose my broker relationship?

**A** In the absence of a written agreement by a transaction broker, such disclosure must occur prior to the signing by a party of a contract to purchase, lease, option or exchange of real estate. Further, the broker is to disclose that the party is *not* vicariously liable for the acts or omissions of the broker.

In the case of a written agreement for services, such disclosure must occur prior to entering into such written agreement. Further, the broker is to disclose that the party is vicariously liable for the acts or omissions of the broker.

**Q** Under *today’s law*, I have an obligation to the party I represent, to disclose any information that will help him negotiate the most advantageous deal. This information includes:

- *The other party will pay more or take less than the asking price.*
- *The other party will accept less favorable financing terms.*
- *The other party’s motivation.*

Is it true that the new law classifies this information as “*confidential*” and *prohibits* disclosing it regardless of whether my relationship with a party is a Single-party broker or Transaction broker?

**A** Yes. You *cannot* disclose this information *without consent of the party* unless disclosure is required by law, *or* the information is made public or becomes public from a source other than the broker.

**Note from the Commission:** This question and answer section regarding the new Broker Relationships Act is only the beginning. We urge all licensees to participate with their brokers and assist us in addressing problem areas with the new law and rules. With your help and involvement we can correct industry problems—but we must have your input and suggestions. Thank you

**Addendum Availability**—It is our understanding that the Oklahoma City Metropolitan Association of Realtors will develop forms and disclosures for non-Realtors to utilize for implementation of this Act. These forms may be very similar to the addendum forms which were developed by the Tulsa Association which are reprinted in this issue for your use. However, we are advising you that you may contact the Oklahoma City Association to inquire about additional form availability. Further, the Oklahoma City Association is currently modifying their existing forms so as to comply with all requirements of the new law. The Oklahoma City Metropolitan Association of Realtors can be reached by calling (405) 840-1493.

## Seminars to Be Offered Across the State

The Commission and the Oklahoma Association of Realtors (OAR) joined together in an effort to effectively administer the Broker Relationships Act to all licensees prior to the effective date of the act. OAR originally contracted with Bruce Aydt who is an attorney and educator from St. Louis, Missouri to develop instruction materials and provide course presentations. Mr. Aydt previously developed similar materials for Missouri in relation to their new legislation on a brokerage relationship act. Mr. Aydt has been involved in the management of real estate brokerages for over 20 years, most recently as Senior Vice-President and General Counsel of Prudential Alliance, Realtors.

Mr. Aydt has been scheduled for four seminars, two in Oklahoma City on June 15 and the other two in Tulsa on June 16. As of this printing, the seminars are full.

Other sessions are being planned by the Commission by offering the Commission's Course of the Month seminar which visits remote areas of the state and the Commission is cooperating with the State's Vo-Tech system to make course presentations available over the interactive television system. Further several private real estate schools and the State's Community College's Virtual College System will make the course available on the internet. Enrollment information regarding these presentations will be sent to you by the Commission or your area educational entity—act immediately on your invitation, as classes will fill up quickly.

Each person attending will receive a law pamphlet, and student guide which includes worksheets and "Do's and Don'ts" in relation to the act.

## Brief Summary of the New Law

*Compliments of the Oklahoma Association of Realtors.*

### **TRANSACTION BROKER—A broker who assists a consumer in a transaction without being an advocate.**

- A broker is presumed to be a transaction broker unless the broker has a written agreement with a consumer to be a single-party broker.
- A transaction broker does not provide services for the benefit of a consumer but may only provide services by assisting.
- A consumer working with a transaction broker is not vicariously liable for the acts of the transaction broker, thereby affording a protection to the consumer which they do not have under current law.

### **SINGLE-PARTY BROKER—A broker who performs brokerage activities for the benefit of a consumer.**

- A single-party broker is one who has a written agreement with either the buyer or seller to provide services for their benefit and operates much like the traditional real estate licensee does today.
- Under current law, the client of a single-party broker can be held vicariously liable for the acts of the real estate broker. This aspect of the law remains unchanged with exception that the single-party broker is required to disclose this potential liability to the consumer.

### **SINGLE-PARTY BROKER—BUYER & SELLER**

- If the broker is working with both the buyer and seller in a transaction as a single-party broker, the broker must obtain consent from at least one party to become a transaction broker.
- A broker may be single-party broker for one party and a transaction broker for the other party in a transaction provided the broker has disclosed his different relationships to both parties.

### **Other Items of Interest:**

- The law provides for content and timing of detailed disclosures to each consumer.

- When working with a consumer, both a single-party broker and a transaction broker are required to keep certain information received from the consumer confidential.
- The law provides that the duties and responsibilities outlined in the bill replace any duties found in the common law of agency. All legal remedies which are available under current law are specifically retained and will continue to be available to an aggrieved party.

### **What's New in the New Law?**

- a. Existence of transaction brokerage
- b. Presumption of transaction brokerage
- c. No vicarious liability for party if working with transaction broker
- d. Will either be single-party broker (representing a party) or transaction broker (assisting a party)
- e. No "agency"—no "subagency"
- f. Representing or assisting from Day 1
- g. Duties spelled out in black & white (no guessing)
- h. Disclosure—must disclose your role prior to written brokerage agreement
- i. Must have written agreement if acting as single-party broker
- j. If acting as single-party broker for buyer, O.K. to receive fee based on selling price if fully disclosed to buyer in written brokerage agreement.
- k. If broker wants to work with both parties & neither party will agree to transaction brokerage, broker must withdraw from one party—if party is referred to another broker, written disclosure must be made to all parties if broker is to get a referral fee.
- l. "Confidential information is defined in law:
  1. party will pay more or accept less than what's offered
  2. party is willing to agree to financing terms that are different from those offered
  3. motivating factors
- m. Confidential information is not disclosed to anyone (without consent) & remains confidential forever
- n. Definition of duties after transaction is completed

This is a diagram that illustrates your responsibilities when working with parties to a transaction.

## WHAT CAN I BE?

### Types of Relationships When working with one party only—buyer or seller

What you Are	Do You Need a Written Agreement
TB(B)	no, but may
TB(S)	no, but may
BB	yes
SB	yes

### Types of Relationships When working with BOTH parties—buyer and seller

WHAT YOU ARE	WORKING WITH THE		DO YOU NEED A WRITTEN AGREEMENT WITH THE	
	BUYER	SELLER	BUYER	SELLER
	TB(B)	TB(S)	no, but may	no, but may
	TB(B)	SB	no, but may; also must disclose different duties to the seller	yes
	BB	TB(S)	yes	no, but may; also must disclose different duties to the buyer
	BB—>yes to TB(B)	SB—>yes to TB(S)	yes, plus consent to be a TB	yes, plus consent to be a TB
	BB—>no to TB(B)	SB—>no to TB(S)	yes*	yes*
	note: The broker must withdraw from one relationship and provide written disclosure to all parties if receiving a referral fee.			
	BB—> yes to TB(B)	SB—no to TB(S)	yes, plus disclose loyalty to seller	yes
*	BB—>no to TB(B)	SB—>yes to TB(S)	yes	yes, plus disclose loyalty to buyer

#### KEY

<b>SPB</b> Single-Party Broker	<b>TB(B)</b> Transaction Broker for Buyer
<b>BB</b> Buyer's Broker	<b>TB(S)</b> Transaction Broker for Seller
<b>SB</b> Seller's Broker	
<b>TB</b> Transaction Broker	

# LISTING AGREEMENT ADDENDUM

## (BROKER RELATIONSHIPS ACT—EFFECTIVE NOVEMBER 1, 2000)

This Addendum to the Listing Agreement dated \_\_\_\_\_ between

\_\_\_\_\_ (Seller) and \_\_\_\_\_  
(Broker) is as follows:

Under the current law, there are certain obligations a real estate licensee has to a Seller whose property is listed with the licensee. These include disclosing knowledge, if any, the licensee has that *the buyer will pay more, the buyer will accept less favorable financing terms and/or the buyer's motivation*. The Seller may also be held liable for the words and acts of the broker and the sales associates affiliated with the broker of the firm with which the Seller has listed his property (vicarious liability).

However, on November 1, 2000, a new *Broker Relationships Act* will become effective. This Act provides that a real estate licensee shall provide services to buyers and sellers as either a "transaction broker" or a "single-party broker."

**Transaction Broker.** The transaction broker's duties and responsibilities are defined in the new Act as follows:

1. To perform the terms of the written brokerage agreement (if applicable).
2. To treat all parties with honesty.
3. To comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules.
4. To exercise reasonable skill and care including:
  - a) Timely presentation of all written offers and counteroffers.
  - b) Keeping Seller fully informed regarding the transaction.
  - c) Timely accounting for all money and property received by the broker.
  - d) Unless required by law the broker shall not, without the express permission of the respective party, disclose the following confidential information to the other party:
    - ◆ That a party is willing to pay more, or accept less, than what is being offered,
    - ◆ That a party is willing to agree to financing terms that are different from those offered; and
    - ◆ The motivation of either party in selling or purchasing the property.
  - e) The broker must disclose pertinent facts relating to the property, which have not been disclosed by the seller, or are otherwise known by the broker.

Neither the buyer nor the seller can be held liable for the actions or words of the transaction broker or licensees affiliated with the broker's firm.

**Single-party Broker.** The single-party broker performs all of the duties performed by the transaction broker **plus** the following additional duties:

- 1) Perform all brokerage activities for the benefit of the party for whom the single-party broker is performing services unless prohibited by law.
- 2) Obey the specific directions of the party for whom the single-party broker is performing services unless the directions are contrary to applicable statutes and rules or to the terms of the contract between the buyer and seller.

**Another difference is:** The Seller **can** be held vicariously liable for the actions and words of the broker and all affiliated licensees providing services for the Seller.

*(Please complete the following.)*

I have read and understand the above-described differences between "transaction broker" and "single-party broker." I further understand that effective November 1, 2000, the undersigned broker/licensee shall operate under the provisions of the new Broker Relationship Act as either a transaction broker or single party broker. Therefore, effective November 1, 2000, (unless this agreement is cancelled by mutual agreement prior to said effective date) Seller and Broker agree that said broker/licensee shall provide real estate services to Seller as a:

(Check one) Transaction Broker ☐

Single Party Broker ☐

Signed this \_\_\_\_\_ day of \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_

Seller \_\_\_\_\_

Broker \_\_\_\_\_

Seller \_\_\_\_\_

By \_\_\_\_\_

# LISTING AGREEMENT ADDENDUM

## AUTHORIZATION TO CHANGE BROKER RELATIONSHIP FROM SINGLE-PARTY BROKER TO TRANSACTION BROKER (BROKER RELATIONSHIPS ACT—EFFECTIVE NOVEMBER 1, 2000)

**Seller** understands that, as part of Broker's real estate business, Broker and all affiliated licensees enter into written agreements with "Buyers" to serve as a Single-Party Broker for Buyer for the purpose of showing and negotiating for the purchase of real estate. Seller desires that Broker markets and makes Seller's property available to any such potential Buyers. Seller understands that in such a situation, certain differences or conflicts may arise because sellers and buyers have different interests to protect in the negotiating process.

In consideration of Broker's agreement to show Seller's property to such prospective Buyers, and in the event any such Buyer makes an offer to purchase the Seller's property, Seller hereby voluntarily consents to the Broker serving Seller as a "Transaction Broker" rather than a "Single-Party Broker." Seller acknowledges that Seller has been advised that such consent and authorization is not required and Seller can seek independent advice. The Seller and Broker also acknowledge that the Broker will be providing Transaction Broker services to the Seller and Buyer and not Single-Party Broker Services. Further, Seller **cannot** be held vicariously liable for the words and actions of the Broker or the licensees affiliated with the Broker.

The Seller understands and agrees that the Broker's obligations as a Transaction Broker are as follows:

1. To perform the terms of the written brokerage agreement (if applicable).
2. To treat all parties with honesty.
3. To comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules.
4. To exercise reasonable skill and care including:
  - a) Timely presentation of all written offers and counteroffers.
  - b) Keeping Seller fully informed regarding the transaction.
  - c) Timely accounting for all money and property received by the broker.
  - d) Unless required by law the broker shall not, without the express permission of the respective party, disclose the following confidential information to the other party:
    - ◆ That a party is willing to pay more or accept less than what is being offered,
    - ◆ That a party is willing to agree to financing terms that are different from those offered; and
    - ◆ The motivation of either party in selling or purchasing the property.
  - e) The broker must disclose pertinent facts relating to the property, which have not been disclosed by the seller, or are otherwise known by the broker.

The Seller further understands and agrees that as a Transaction Broker, the Broker cannot perform all brokerage activities for the benefit of the Seller and is not obligated to obey the specific directions of the Seller.

Seller confirms that Seller has read and understands the above written consent for Broker to change Broker's services to Seller from Single-Party Broker to Transaction Broker in the event a buyer working with a member of the Broker's firm makes an offer to purchase Seller's property.

SELLER(S)

\_\_\_\_\_

\_\_\_\_\_

DATE \_\_\_\_\_

BROKER

\_\_\_\_\_

BY \_\_\_\_\_

\_\_\_\_\_

# BUYER BROKER AGREEMENT ADDENDUM

(BROKER RELATIONSHIPS ACT—EFFECTIVE NOVEMBER 1, 2000)

This Addendum to the Listing Agreement dated \_\_\_\_\_ between

\_\_\_\_\_ (Buyer) and

\_\_\_\_\_ (Broker) is as follows:

Under the current law, there are certain obligations a real estate licensee has to a Buyer who has entered into a Buyer Broker Agreement with the licensee. These include disclosing knowledge, if any, the licensee has that *the seller will take less, that seller will accept less favorable financing terms and/or the seller's motivation*. The Buyer may also be held liable for the words and acts of the broker and the licensees affiliated with the broker of the firm with which the Buyer has a Buyer Broker Agreement (vicarious liability).

However, on November 1, 2000, a new *Broker Relationships Act* will become effective. This Act provides that a real estate licensee shall provide services to buyers and sellers as either a "transaction broker" or a "single-party broker."

**Transaction Broker.** The transaction broker's duties and responsibilities are defined in the new Act as follows:

1. To perform the terms of the written brokerage agreement (if applicable).
2. To treat all parties with honesty.
3. To comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules.
4. To exercise reasonable skill and care including:
  - a) Timely presentation of all written offers and counteroffers.
  - b) Keeping Buyer fully informed regarding the transaction.
  - c) Timely accounting for all money and property received by the broker.
  - d) Unless required by law the broker shall not, without the express permission of the respective party, disclose the following confidential information to the other party:
    - ◆ That a party is willing to pay more or accept less than what is being offered,
    - ◆ That a party is willing to agree to financing terms that are different from those offered; and
    - ◆ The motivation of either party in selling or purchasing the property.
  - e) The broker must disclose pertinent facts relating to the property, which have not been disclosed by the seller, or are otherwise known by the broker.

Neither the buyer nor the seller can be held liable for the actions or words of the transaction broker or licensees affiliated with the broker's firm.

**Single-party Broker.** The single-party broker performs all of the duties performed by the transaction broker **plus** the following additional duties:

1. Perform all brokerage activities for the benefit of the party for whom the single-party broker is performing services unless prohibited by law.
2. Obey the specific directions of the party for whom the single-party broker is performing services unless the directions are contrary to applicable statutes and rules or to the terms of the contract between the buyer and seller.

*Another difference is:* The Buyer **can** be held vicariously liable for the actions and words of the broker and all affiliated licensees providing services for the Buyer.

(Please complete the following.)

I have read and understand the above-described differences between "transaction broker" and "single-party broker." I further understand that effective November 1, 2000, the undersigned broker/licensee shall operate under the provisions of the new Broker Relationships Act as either a transaction broker or single party broker. Therefore, effective November 1, 2000, (unless this agreement is cancelled by mutual agreement prior to said effective date) Buyer and Broker agree that said broker/licensee shall provide real estate services to Buyer as a:

(Check one) Transaction Broker ☐

Single Party Broker ☐

Signed this \_\_\_\_\_ day of \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_

Buyer \_\_\_\_\_

Broker \_\_\_\_\_

Buyer \_\_\_\_\_

By \_\_\_\_\_

# BUYER BROKER AGREEMENT ADDENDUM

## AUTHORIZATION TO CHANGE BROKER RELATIONSHIP FROM SINGLE-PARTY BROKER TO TRANSACTION BROKER (BROKER RELATIONSHIPS ACT—EFFECTIVE NOVEMBER 1, 2000)

**Buyer** understands that, as part of Broker's real estate business, Broker and all Sales Associates enter into written agreements with "Sellers" to serve as a Single-Party Broker for Seller for the purpose of showing and negotiating for the sale of the Seller's real estate. Buyer desires that Broker make any such Seller's property available for purchase to the Buyer. Buyer understands that in such a situation, certain differences or conflicts may arise because sellers and buyers have different interests to protect in the negotiation process.

In consideration of Broker's agreement to make any such Seller's property available for purchase to Buyer and in the event Buyer makes an offer to purchase such Seller's property, Buyer hereby voluntarily consents to the Broker serving the Buyer as a "Transaction Broker" rather than a "Single Party Broker." Buyer acknowledges that Buyer has been advised that such consent and authorization is not required and Buyer can seek independent advice. The Buyer and Broker also acknowledge that the Broker will be providing Transaction Broker services to the Buyer and Seller and not Single-Party Broker Services. Further, Buyer **cannot** be held vicariously liable for the words and actions of the Broker or the licensees affiliated with the Broker.

The Buyer understands and agrees that the Broker's obligations as a Transaction Broker are as follows:

1. To perform the terms of the written brokerage agreement (if applicable).
2. To treat all parties with honesty.
3. To comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules.
4. To exercise reasonable skill and care including:
  - a) Timely presentation of all written offers and counteroffers.
  - b) Keeping Buyer fully informed regarding the transaction.
  - c) Timely accounting for all money and property received by the broker.
  - d) Unless required by law the broker shall not, without the express permission of the respective party, disclose the following confidential information to the other party:
    - ◆ That a party is willing to pay more or accept less than what is being offered,
    - ◆ That a party is willing to agree to financing terms that are different from those offered; and
    - ◆ The motivation of either party in selling or purchasing the property.
  - e) The broker must disclose pertinent facts relating to the property, which have not been disclosed by the seller, or are otherwise known by the broker.

The Buyer further understands and agrees that as a Transaction Broker, the Broker cannot perform all brokerage activities for the benefit of the Buyer and is not obligated to obey the specific directions of the Buyer.

Buyer also confirms that Buyer has read and understands the above written consent for Broker to change Broker's services to Buyer from Single-Party Broker to Transaction Broker in the event Buyer makes an offer to purchase a property listed with the Broker's firm.

BUYER(S)

BROKER

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

BY \_\_\_\_\_

DATE \_\_\_\_\_

\_\_\_\_\_

# RULE AMENDMENTS TO BECOME EFFECTIVE JULY 1, 2000

Following are rules that were adopted by the Real Estate Commission on March 8, 2000. They were submitted to the Governor and Legislature for consideration. These **rules will become effective on July 1, 2000.**

Underlined language represents new language. Words that are hyphenated through indicates language that is being deleted. Three asterisks indicate that existing language appears before or after the asterisk but the language was not changed and therefore does not appear in this listing.

Revised License Code and Rules booklets will be available in July for a shipping and handling charge (order form on page 20.) There is no charge for booklets picked up at the Commission office.

If you have any questions about the rules, please contact our office.

## CHAPTER 1

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 605:1-1-4. Operational procedures

(a) **Organization.** The organization of the Commission is declared to be that as enumerated in Sections 858-201 through 858-204 of the heretofore described Code.

(b) **Operational procedures.** The general course and method of operation shall be as hereinafter specified in overall provisions of the rules of this Title.

(c) **Open Records Act.** In conformance with Title 51, Section 24 A.1., et seq, Oklahoma Statutes, 1985, titled "Oklahoma Open Records Act" all open records of the Real Estate Commission may be inspected and copied in accordance with procedures, policies, and fee as required by the Commission. The Commission shall charge the following:

- (1) A fee of \$.25 for each xerographic copy or micrographic image.
- (2) A fee of \$1.00 for each copy to be certified.
- (3) A fee of \$10.00 per hour for a record or file search.

(d) **Directory of Licensees.** One copy of the Directory of Licensees shall be provided each licensee if Commission funds permit. Additional copies shall be available to licensees and the public from the Commission upon payment of a charge based on actual cost of production and printing. Copies of the Directory may be furnished to governmental agencies without charge as inventory permits.

~~(e) **Study Manual.** The Real Estate Study Manual, compiled by the Commission, shall be made available by the Commission office at a charge prescribed by the Commission.~~

~~(f)~~(e) **Petition for promulgation, amendment or repeal of any rule.** Any person may petition the Commission in writing requesting a promulgation, amendment or repeal of any rule.

- (1) The petition must be in writing in business letter form or in the form of petitions used in civil cases in this State, and shall contain an explanation and the implications of the request and shall be:

- (A) Signed by the person filing the petition and be filed with the Secretary-Treasurer of the Commission.

- (B) Submitted to the Commission at least thirty (30) days prior to a regular meeting.

- (C) Considered by the Commission at its first meeting following such thirty (30) days.

- (D) Scheduled for a public hearing before the Commission within sixty (60) days after being considered by the Commission in a regular meeting.

- (2) Within sixty (60) days after the public hearing, the Commission shall either grant or deny the petition. If the petition is granted, the Commission shall immediately begin the procedure for the promulgation, amendment or repeal of any rule pursuant to Title 75 O.S. 303.

- (3) If the petition is denied the parties retain their rights under 75 O.S. Sec. 318, to proper Judicial Review.

(f) **Petition for declaratory ruling of any rule or order.**

- (1) Any person may petition the Commission for a declaratory ruling as authorized by Section 307 of Title 75 of the Oklahoma Statutes as to the applicability of any rule or order of the Commission. Such petition shall:

- (A) be in writing;

- (B) be signed by the person seeking the ruling;

- (C) state the rule or order involved;

- (D) contain a brief statement of facts to which the ruling shall apply; and

- (E) if known and available to petitioner, include citations of legal authority in support of such views.

- (2) The Commission shall have at least thirty (30) days to review the petition. Following the review period, the Commission shall consider the petition at its next meeting.

- (3) The Commission may compel the production of testimony and evidence necessary to make its declaratory ruling.

- (4) Declaratory rulings shall be available for review by the public at the Commission office.

## CHAPTER 10

### SUBCHAPTER 3. EDUCATION AND EXAMINATION REQUIREMENTS

#### 605:10-3-1. Prelicense education requirements

(a) On and after July 1, 1993, as evidence of an applicant's having satisfactorily completed those education requirements as set forth in Sections 858-302 and 858-303 of the Code, each applicant for licensure shall present with his or her application a certification showing successful completion of the applicable course of study approved by the Commission as follows:

- (1) To qualify an applicant for examination and licensure as a provisional sales associate, the course shall consist of at least forty-five (45) clock hours of instruction or its equivalent as determined by the Commission. Such course of study shall be referred to as the Basic Course of Real Estate and shall encompass the following areas of study:

- (A) Nature of Real Estate
- (B) Rights and Interests in Real Estate
- (C) Agency Concepts
- (D) Listing Contracts and Pricing
- (E) Valuation and Appraisal
- (F) Marketing and Selling
- (G) Contract Law
- (H) Legal Descriptions
- (I) Offer and Purchase Contracts
- (J) Title Search, Encumbrances, and Land Use Control
- (K) Financing Real Estate
- (L) Transfer of Interest in Real Estate
- (M) Duty to Account
- (N) Regulations Affecting Real Estate Transactions.

(2) To qualify an applicant for examination and licensure as a broker, the course shall consist of at least seventy-five (75) clock hours of instruction or its equivalent as determined by the Commission. Such course of study shall be referred to as the Advanced Course in Real Estate and shall encompass the following areas of study:

- (A) Laws Affecting a Real Estate Office
- (B) Office and Personnel Administration
- (C) Brokerage Operations and Accounting
- (D) Risk Management
- (E) Real Estate Insurance
- (F) Real Estate Finance
- (G) Management Practices
- (H) Auditing and Investigative Procedures
- (I) Anti-Trust
- (J) Strategic Planning
- (K) Real Estate Negotiations
- (L) Property Management
- (M) Zoning
- (N) Communications
- (O) Closing Real Estate Transactions.

(b) As evidence of an applicant's having satisfactorily successfully completed those education requirements as set forth in Section 858-304 of the Code, each applicant shall present a certified transcript from an institution of higher education, accredited by the Oklahoma State Regents for Higher Education or the corresponding accrediting agency of another state.

~~(1) To qualify an applicant for examination and licensure as a provisional sales associate, the certified transcript shall certify to the successful completion of a three (3) academic hour basic course of real estate instruction. The basic course of real estate shall be limited to Basic Real Estate Principles and Practices; provided, however, that a course or combination of courses not so titled may be accepted if the course content has been determined by the Commission to be equivalent as one and the same as enumerated in paragraph (1) of subsection (a) of this Section.~~

~~(2) To qualify an applicant for examination and licensure as a broker, the certified transcript shall certify to successful completion of a five (5) academic hour advanced course or courses of real estate instruction. The advanced course of real estate shall be limited to Advanced Real Estate Principles and Practices; provided that a course or combination of courses not so titled may~~

be accepted if the course content has been determined by the Commission to be equivalent as one and the same as that enumerated in ~~paragraph (2) of subsection (a) of this Section.~~

(3) The Commission shall accept in lieu of a certified transcript a course completion certificate as prescribed by the Commission.

(c) **Entities allowed to seek approval.** The education courses required of this Section shall be satisfied by courses approved by the Commission and offered by:

- (1) The Commission
- (2) An area vocational-technical school
- (3) A college or university
- (4) A private school
- (5) The Oklahoma Association of Realtors, the National Association of Realtors, or any affiliate thereof.
- (6) The Oklahoma Bar Association, American Bar Association, or any affiliate thereof; or
- (7) An education provider.

(d) **Attendance and successful completion required for in-class credit.** To complete any in-class offering, a person must physically be present during all of the offering time and successfully complete all course requirements to include an examination.

(e) **Successful completion of materials and examination required for distance education credit.** To complete a distance education course offering, a person must successfully complete all course requirements to include all modules and an examination.

## SUBCHAPTER 5. INSTRUCTOR AND ENTITY REQUIREMENTS AND STANDARDS

### 605:10-5-2. Approval of continuing education offerings

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(i) **Instructor approval requirements.** Each applicant seeking approval as an instructor shall submit an application, education certification(s) and any other information which may reasonably be required by the Commission. An individual determined by the Commission to possess one or more of the following qualifications may be approved as an instructor of continuing education offerings:

- (1) Possession of a bachelor's degree in a related field.
- (2) Possession of a valid teaching credential or certificate from Oklahoma or another state authorizing the holder to teach in an applicable field of instruction.
- (3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.
- (4) An individual determined by the Commission to possess a combination of education and/or experience, in a related field to that in which the person is to teach, which constitute an equivalent to one or more of the qualifications in (1), (2) or (3) of this subsection ~~(4) of this Section.~~

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## SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

### 605:10-7-2. License terms; renewals; reinstatements

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(k) **Continuing education requirement.** On and after July 1, 1984, each licensee with the exception of those as listed in Title 59, O.S., Section 858-307.2 (D) seeking renewal of a license must submit evidence that he or she has completed the continuing education requirements enumerated in 605:10-3-6 Section 858-307.2 of Title 59. Further, on and after July 1, 1984, an applicant seeking active reinstatement of a lapsed license must submit evidence that he or she has completed continuing education requirements. The applicant must meet the continuing education requirement for each term in which an active license is requested.

### 605:10-9-4. Advertising

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#### (b) Associates advertising.

(1) An associate is prohibited from advertising under only his or her name.

(2) All advertising by an associate must be under the direct supervision of his or her broker.

(3) In all advertising, the associate must include the name of his or her broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable by the public. If allowed by a broker, an associate may include in the advertisement:

(A) The associate's personal insignia of which such approval is to be maintained by the broker and which cannot be construed as that of a company name.

(B) The associate's personal nickname or alias which must be registered at the Commission prior to its use and which cannot be construed as that of a company name.

(C) ~~A private, home or mobile telephone number~~  
An associate's contact information.

(D) A team name so long as the name(s) of the associate(s) is included near the team name reference, and which cannot be construed as that of a company name; and

(E) A slogan which cannot be construed as that of a company name.

(4) A sign rider with the associate's ~~name and private, home or mobile telephone number~~ contact information may be attached to a yard sign if the sign contains the name or trade name and office telephone number of the broker.

(5) Open house or directional signs used in conjunction with broker's signs do not have to contain the name or trade name of the associate's broker or trade name and broker's telephone number.

\*\*\*

## SUBCHAPTER 13. TRUST ACCOUNT PROCEDURES

### 605:10-13-1. Duty to account; broker

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(m) **Guidelines for cessation of real estate activities.** Upon a firm ceasing a portion of real estate activities or ceasing all real estate activities the broker shall:

(1) Notify the Commission in writing of the effective date of such action and advise as to the location where records will be stored and comply with the following:

(A) Return the broker's license certificate and pocket identification card and all license certificates of those associated with the broker to the Commission and advise the Commission as to the circumstances involving any not returned.

(B) Release forms must be filed for all licensees affiliated with the firm.

(C) The broker must either transfer to a new firm or place his or her license on inactive status.

(2) Notify in writing all listing and management clients, as well as parties and co-brokers to existing contracts advising them of the date of cessation of real estate activities.

(3) All advertising in the name of the firm must be terminated and offering signs removed within thirty (30) days of cessation of real estate activities.

(4) Funds in trust accounts and pending contracts must be maintained by the responsible broker until consummation of transaction and final proper disbursement of funds. Upon final disbursements of funds the broker is required to close the account and notify the Commission in writing that the account is closed.

(5) Under an emergency situation, In the event the responsible broker is unable to continue to maintain the funds and/or pending contracts, funds and/or pending contracts may be required to be transferred to another authorized broker, entity or legal representative until consummation and proper disbursement of funds. ~~In the this event of an emergency,~~ the broker must submit a request in writing to the Commission for approval to transfer the contracts and/or funds. Upon written approval by the Commission, the broker must secure approval and obtain new agreements from all parties for transfer of the contracts and/or funds.

(6) If funds, items and/or contracts are transferred to another authorized broker, entity or legal representative and approved by the Commission, the broker transferring such shall be required to compile a record of the following, retain a copy for his or her file and give a copy to the receiving authorized broker, entity or legal representative:

(A) A copy of the written approval from the Commission authorizing the transfer of the contracts and/or funds.

(B) The name and address of the authorized broker, entity or legal representative.

(C) A trust account reconciliation sheet indicating ledger balance and bank balance at time of transfer to include the name of each depositor, amount of deposit, date, and purpose of the deposit.

(D) A statement indicating that written agreements were obtained from all parties to each transaction

agreeing to the transfer of the funds and/or contracts to another responsible broker, authorized entity or legal representative and that each depositor was notified of the effective date of transfer, and the name of the responsible person or entity.

## SUBCHAPTER 15. DISCLOSURES

### **605:10-15-2. Brokerage relationship disclosure; Broker Relationships Act to become effective November 1, 2000.**

(a) After July 1, 1990, in every real estate sales transaction involving a licensee, the licensee must clearly disclose to the buyer and seller the brokerage relationship(s). The disclosure must be made prior to the buyer and seller entering into a binding agreement with each other; and when a binding agreement is signed, the prior brokerage disclosure must be confirmed in a separate provision, incorporated in or attached to that agreement.

(b) The licensee's conduct in the real estate transaction shall be in conformity with the disclosure made. The payment of compensation or the obligation to pay compensation to a broker is not necessarily determinative of a particular brokerage relationship.

(c) **Broker Relationships Act effective November 1, 2000.** A new law, Title 59, O. S., Sections 858-351 through 858-363 of the License Code, becomes effective on November 1, 2000, which law shall be referred to as the Broker Relationships Act.

(1) **Brokerage service agreement defined.** The term "brokerage service agreement" shall mean an oral or

written agreement to provide brokerage services entered into by a real estate broker and a person who is a party to a real estate transaction and shall include, but not be limited to, listing agreements, buyer broker agreements and property management agreements.

(2) **Validity of a brokerage service agreement existing before and on November 1, 2000.** A brokerage service agreement entered into prior to November 1, 2000, shall remain in full force and effect until the agreement expires or is otherwise terminated by the parties to the agreement.

(3) **Addendum or attachment to a brokerage service agreement existing before and on November 1, 2000.** If a brokerage service agreement is entered into prior to November 1, 2000, it may contain an addendum or other attachment that allows the parties on or after November 1, 2000 to change their relationship with the real estate broker to those types of relationships permitted under the Broker Relationships Act. Such addendum or attachment must contain all relevant disclosures, consents and other requirements mandated by the Broker Relationships Act.

(4) **Real estate broker determines relationships under the Broker Relationships Act.** Under Title 59, O.S., Section 858-355, the relationship(s) with any party or parties to any transaction shall be determined by the real estate broker only and not by the associated broker associates, sales associates or provisional sales associates.

## **ADDITIONAL LEGISLATION TO BECOME EFFECTIVE NOVEMBER 1, 2000**

The Governor on May 24, 1999 signed House Bill 1178 which included the Brokerage Relationships Act. This is additional legislation that was included in that bill. Underlined language is being added and hyphenated out language is being deleted. **Please retain this amendment language until you obtain an updated License Code and Rule booklet.**

### **Amendment to Title 59, 858-312**

**858-312. Investigations—Cause for suspension or revocation of license.** The Oklahoma Real Estate Commission may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any real estate licensee, and may, upon showing good cause, impose sanctions as provided for in Section 858-208 of this title. Cause shall be established upon the showing that any licensee has performed, is performing, has attempted to perform, or is attempting to perform any of the following acts:

1. Making a materially false or fraudulent statement in an application for a license;
2. Making substantial misrepresentations or false promises in the conduct of business, or through real estate licensees, or advertising, which are intended to influence, persuade, or induce others;
3. ~~Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts~~ Fail-

ing to comply with the requirements of Sections 858-351 through 858-363 of this act;

4. Accepting a commission or other valuable consideration as a real estate associate for the performance of any acts as an associate, except from the real estate broker with whom the associate is associated;

5. Representing or attempting to represent a real estate broker other than the broker with whom the associate is associated without the express knowledge and consent of the broker with whom the associate is associated;

6. Failing, within a reasonable time, to account for or to remit any monies, documents, or other property coming into possession of the licensee which belong to others;

7. Paying a commission or valuable consideration to any person for acts or services performed in violation of ~~this~~ the Oklahoma Real Estate License Code;

8. Any other conduct which constitutes untrustworthy, improper, fraudulent, or dishonest dealings;

9. Disregarding or violating any provision of ~~this~~ the Oklahoma Real Estate License Code or rules promulgated by the Commission;

10. Guaranteeing or having authorized or permitted any real estate licensee to guarantee future profits which may result from the resale of real estate;

11. Advertising or offering for sale, rent or lease any real estate, or placing a sign on any real estate offering it for sale, rent or lease without the consent of the owner or the owner's authorized representative;

12. Soliciting, selling, or offering for sale real estate by offering "free lots", conducting lotteries or contests, or offer

ing prizes for the purpose of influencing a purchaser or prospective purchaser of real estate;

13. Accepting employment or compensation for appraising real estate contingent upon the reporting of a predetermined value or issuing any appraisal report on real estate in which the licensee has an interest unless the licensee's interest is disclosed in the report. All appraisals will be in compliance with the Oklahoma real estate appraisal law, and the person performing the appraisal or report ~~will~~ shall disclose to the employer whether the person performing the appraisal or report is licensed or certified by the Oklahoma Real Estate ~~Appraisal Appraiser~~ Board;

14. Paying a commission or any other valuable consideration to any person for performing the services of a real estate licensee as defined in ~~this the~~ the Oklahoma Real Estate License Code who has not first secured a real estate license pursuant to ~~this the~~ the Oklahoma Real Estate License Code;

15. Unworthiness to act as a real estate licensee, whether of the same or of a different character as specified in this section, or because the real estate licensee has been convicted of a crime involving moral turpitude;

16. Commingling with the licensee's own money or property the money or property of others which is received and held by the licensee, unless the money or property of others is received by the licensee and held in an escrow account that contains only money or property of others;

17. ~~Having been convicted~~ Conviction in a court of competent jurisdiction of having violated any provision of the federal fair housing laws, 42 U.S.C. Section 3601 et seq.;

18. ~~Failing, within a reasonable time~~ Failure by a real estate broker, after the receipt of a commission ~~by a real estate broker~~, to render an accounting to and pay to a real estate licensee the licensee's earned share of the commission received;

19. ~~Having been convicted~~ Conviction in a court of competent jurisdiction in this or any other state of the crime of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, fraud, or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;

20. Advertising to buy, sell, rent, or exchange any real estate without disclosing that the licensee is a real estate licensee;

21. Paying any part of a fee, commission, or other valuable consideration received by a real estate licensee to any person not licensed;

22. Offering, loaning, paying, or making to appear to have been paid, a down payment or earnest money deposit for a purchaser or seller in connection with a real estate transaction; and

23. ~~Violating~~ Violation of the Residential Property Condition Disclosure Act.

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## LICENSING OF RELOCATION COMPANIES

If a relocation company desires to do licensable activities in Oklahoma, such company is required to obtain the appropriate real estate license. In June of 1999, the Commission received a request for a "declaratory ruling" from a relocation company. The request asked the Commission to determine if their activities were considered licensable if performed in Oklahoma. The respective relocation company requested such a ruling so as to determine if they wanted to obtain an Oklahoma nonresident license or change the way they did business in Oklahoma and thereby be exempt from licensing.

Based on the information the Commission received, the Commission identified specific areas in which licensable activities were being performed, i.e., soliciting in the state for prospective tenants, purchasers or sellers; conducting negotiations; performing property management for a fee; and advertising and holding oneself out as engaged in any such activity.

Based on this determination the relocation company restructured the way they performed business in Oklahoma in order to avoid licensing. The changes are as follows:

The relocation company must enter into the chain of title as owner rather than have the employee sign a deed in blank.

The relocation company must forego participating in referral fees on Departure services wherein they do not take title, and forego participating in referral fees on Destination services.

The relocation company must act as power of attorney in regard to the property management activities,

i.e., insuring mortgage and other relevant payments are made on the property, insuring repairs are made as needed, etc. Further, licensed activities, i.e., soliciting for prospective tenants, negotiating leases, etc. must be handled by a local real estate broker.

Amend all advertising material where it appears that the relocation company is holding itself out as a real estate licensee in Oklahoma.

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## ARELLO AND ERC TRY TO RESOLVE AFTER THE FACT FEE COMPLAINTS

ARELLO stands for the Association of Real Estate License Law Officials which is an organization comprised of members from Real Estate Commissions nationwide. ERC stands for the Employee Relocation Council which is an organization that is comprised of relocation companies and other entities.

ARELLO and ERC worked out an arrangement for the creation of a complaint hotline in the form of a Web site where consumers, brokers and third-party companies and others can send disputes regarding after the fact referral fees.

The complaints will be forwarded to senior officers at the relocation companies involved. The coalition promises, "You will receive an e-mail confirmation upon receipt of your message. Your issue will be swiftly brought to the attention of the appropriate coalition contact. The contact will conduct the necessary investigation, evaluation, and recommendation regarding your issue." The web site is located at: <http://coalition.erc.org>. If you have any problems with resolution of the matter, please contact the Commission.

## **WARNING CREATIVE FINANCING SURFACES ONCE AGAIN**

Recently, we received information and documentation wherein mortgage companies are suggesting some very creative financing options. Following are two situations:

1. Lending company was presented a purchase contract and after review and discussion the lending company suggested to the broker, "that the proper way to structure this loan would be to redo purchase contract at a \$130,000.00 sales price. The lending company will loan 70% or \$91,000.00. The seller carries a 2nd mortgage of 25% or \$32,500.00. The seller can forgive this note at the time of closing, if they wish. The borrower provides 5% of their own funds for remaining down payment and closing costs.

In this situation it appears that all parties to the contract are aware of what is happening. Further, the property has appraised at \$130,000.00; however it is left in the air as to whether or not the seller will forgive the 2nd mortgage.

2. Lending company had pre-approved a buyer for a loan and the seller (broker) was informed of the following upon inquiry of the lending company: the seller (broker) would carry a 2nd mortgage that would not be filed at the courthouse until after closing. The lender funding the loan would not be aware of the 2nd mortgage on the property.

Lending company would prepare a promissory note from the buyer to the seller (broker) in the amount of \$2,000.00. Lending company told seller (broker) this would be the evidence needed to satisfy the lender buying the loan that earnest money was put up by the buyer. The lender buying the loan would not be aware that the \$2,000.00 never existed, but was only in the form of a promissory note. The lending company also told the seller (broker) the title company would never see the promissory note.

The lending company would make out a "fake" repair bill from a management company they own, of \$1,100.00. They would show that the buyer had paid this bill and would therefore receive a refund from the lender buying the loan in the form of a credit, against the closing costs charged by "the lending company."

The seller (broker) questioned this practice as to whether or not this was illegal and the lend-

ing company stated it was not illegal but "creative."

These two situations have been referred to the Attorney General's Office Consumer Protection Division, Consumer Credit Department and HUD for their review and/or action. At this time, the Commission is not aware of a licensee having participated or recommended that the public utilize these types of creative financing tactics. If a licensee does become involved in a like situation, the Commission will investigate to determine if such would constitute a violation of the License Code or Rules.

If you become aware of situations similar to the aforementioned, please contact the Commission immediately so that we can forward them onto the proper authorities for review.

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## **RECENT SCAM**

Involved persons posing as a doctor and his wife who indicated they were interested in moving the doctor's clinic to the local area. The couple was only interested in seeing properties in well-to-do areas. Upon arriving at the showing, the couple split up and stole jewelry and other small valuable items. The owners of the property were also at the showing and did not notice the missing items till later that day.

Another incident involved a licensee leaving her purse in the car with a customer she was transporting around. The customer stole the licensee's money and credit cards. The licensee did not realize this until after the customer was long gone.

## **PROCRASTINATION**

A painfully shy man fell in love with a young woman. He sensed that she felt the same way, but he couldn't find the courage to ask her out.

Finally he decided he would mail her a love letter every day for one year, and then ask her for a date.

Faithfully, he followed his plan, and at year's end he was courageous enough to call her—only to discover she'd married the letter carrier.

## **IMPORTANT**

### **Record of Continuing Education Hours**

**NOTE: If you are a Provisional Sales Associate**, the CE requirement does not apply to you, because you are required to complete a Commission approved 45 clock hour post-licensing course prior to the expiration date of your license. Further, if you have converted your license to a sales associate license from a provisional sales associate license and are still in your first license term, you still do not have a continuing education requirement until your second license term.

The continuing education requirement for renewal is 9 clock hours of required subject matter and 12 clock hours of elective subject matter. **The address label above contains information regarding the number of hours we have recorded for you in each category—"R" denotes required hours and "E" denotes elective hours. The center date reflects the expiration date of your current license term.**

If your license is on an **inactive status**, it is possible that these hours may only be applied toward activation of your license.

\* This label only reflects hours which were posted to your record prior to the label being extracted, which occurred approximately 30 days prior to the current date.

## **Oklahoma Real Estate Commission ORDER FORM**

**No charge if picked up at the Commission office.**

Ship to:

Name \_\_\_\_\_

Firm \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_

State/ZIP \_\_\_\_\_

Business Phone \_\_\_\_\_

### **Broker Relationships Act**

#### **Postage & Handling Only**

\_\_\_ 100 \$3.00  
\_\_\_ 200 \$5.00 Maximum Order

### **License Code & Rules Revised 7-2000**

#### **Postage & Handling Only**

1-2 \$1.50 each  
3-10 \$3.50  
11-30 \$5.00  
31-50 \$7.00

Please send the following booklets:

\_\_\_ Broker Relationships Act  
pamphlet at \$ \_\_\_\_\_

\_\_\_ License Code at \$ \_\_\_\_\_ = Total \$ \_\_\_\_\_

**Enclose a check or money order for the exact amount.  
Do not send cash.**

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