

# Flash Course

## On the New Brokerage Relationships Act

Effective 1 November 2000

# Agency Outlawed

You Can No Longer Be an Agent for Buyers, Sellers, Landlords, Tenants, and other Parties to a Real Estate Transaction.

*Note:* The principal/agent relationship between the principal broker and associates remains the same.

- Don't call yourself an Agent. Don't allow others to call you an agent. Politely correct buyers or sellers who call you their "Real Estate Agent."
- Don't use "Agency Specific" terminology. Don't call the Party you are performing services for your Principal or Client.
- Don't call yourself an "Advocate" of the Party for whom you are performing services. Transaction brokers are not allowed by law to call themselves advocates. Single Party brokers who claim to be advocates risk becoming "agents" by their actions.
- Don't accept or offer agency, sub-agency, dual agency, or co-agency to any other brokerage. (That is, another company.)

# Just Two Choices

You Now Have Just Two Brokerage Relationship Choices:

## Single Party Broker or Transaction Broker

### 1. Single Party Broker



A Single-party broker has entered into a written brokerage agreement with a party in a transaction to provide services for the benefit of that Party.

#### **Duties of the Single Party Broker:**

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
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.

Accept Service    May have Vicarious Liability    Agreement must be in writing

## 2. Transaction Broker



A Transaction Broker provides services by assisting a party in a transaction without being an advocate for the benefit of that party.

### Duties of the Transaction Broker:

1. To perform the term 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 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, and
  - e. disclosing information pertaining to the property as required by the Residential Property Condition 1 Disclosure Act.

Not Accept Service without written approval

No Vicarious Liability

Agreement need not be in writing but should always be

# Relationships Allowed

in same transaction within the same company

| For The Buyer       | For The Seller      |
|---------------------|---------------------|
| Transaction Broker  | Transaction Broker  |
| Single Party Broker | Transaction Broker  |
| Transaction Broker  | Single Party Broker |

# NOT ALLOWED

in same transaction within the same company

| For The Buyer       | For The Seller      |
|---------------------|---------------------|
| Single Party Broker | Single Party Broker |

**In addition you cannot be an agent of buyers or sellers  
or any Parties to the Real Estate Transaction.**

Read the OREC Brochure OKLAHOMA BROKER RELATIONSHIPS ACT to learn what disclosure need to be made and how to handle a situation when one of your Single Party buyers wants to buy a house you have listed as a Single Party listing.

# Keep Confidential

## New & Different

A higher standard of confidentiality.

Brokers must now keep some information confidential which in the past they were required to disclose their principal. This is very different and presents a definite risk of liability if a broker forgets the new law and acts on “automatic pilot” based on past practice. Here’s The Law:

838-337. 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.

### **The Way it Was Under the Old Law:**

In the past, if you knew the above information, you were obligated to tell your client. For example:

If you were a listing agent for the seller and you learned any of the above information from a buyer customer, you were obligated to tell your seller. You had a duty under the law of agency to disclose all material information relative to the agency unless other wise precluded under the law.

### **The Way it IS under the new law:**

Now, if you know the above information about a Party to a transaction which you are performing services for, you must keep this information confidential from the other party to the transaction for which you are also providing services. For example:

If you are a Single Party broker for the seller and a transaction broker for the buyer, and the buyer tells you any of the above information, you must keep it confidential. This is true even though you are working for the primary benefit of the seller and not the buyer.

Where once you had a duty to disclose, now you have a duty to keep confidential. This is like changing the positions of the break and accelerator in a car.

**Warning: Be Sure You understand the new rules on confidentiality.**

This is a very high-risk area of the new law. May be the riskiest.