



GENTNER DRUMMOND
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION
2024-20

B. Grant Cody, Executive Director
Oklahoma Real Estate Commission
1915 N. Stiles Ave., Ste 200
Oklahoma City, OK 73105

December 31, 2024

Dear Executive Director Cody:

This office has received your request for an Attorney General Opinion in which you ask, in effect, the following questions:

- 1. Does title 59, section 858-353 of the Oklahoma Statutes, as amended by Senate Bill 1920, 2024 Okla. Sess. Laws ch. 326, require a broker providing brokerage services only to a seller to reduce offers to a written form upon request from an unrepresented prospective purchaser? If so, does reducing such an offer to writing subject the broker to the mandatory duties and responsibilities provided for in section 858-353, subsections A and B, with respect to the prospective purchaser? If the answers to the previous questions are yes, does the seller have the right to waive the requirement that their broker must reduce offers from a prospective purchaser to a written form as well as the mandatory duties and responsibilities in title 59, section 858-353, subsections A and B (Supp. 2024)?**
- 2. When does an unrepresented prospective purchaser effectively become a “party to the transaction” with respect to title 59, section 858-353?**
- 3. Is it an express violation of title 59, section 858-353(A)(4) when a broker providing brokerage services to a buyer provides a copy of a signed buyer broker agreement to a third party, such as a listing broker, without written consent from the buyer?**
- 4. Is marketing an equitable interest in a property via private social media group or by opt-in email campaigns considered “publicly marketing” pursuant to title 59, section 858-102? Do such activities require a real estate license pursuant to title 59, section 858-301?**

I. SUMMARY

Where a broker enters into a written agreement that specifies the broker will only provide brokerage services to the seller whom the broker represents, nothing in the Oklahoma Real Estate License Code, 59 O.S.2021, §§ 858-101–858-605 (the “Code”), requires the broker to provide services to an unrepresented potential purchaser. However, suppose a broker provides such services to a potential purchaser for payment or with the expectation of receiving compensation; the broker then assumes the duties and responsibilities listed in title 59, section 858-353 of the Oklahoma Statutes regarding the potential purchaser.

The Code does not identify the conditions under which a “prospective party” becomes a “party” with respect to title 59, section 858-353. As such, whether an individual or entity is a party or merely a prospective party to a real estate transaction is a fact-intensive inquiry which is beyond the scope of an official Attorney General Opinion. *See* 74 O.S.2021, § 18b(A)(5). However, courts would likely apply general contract law principles to determine whether an individual or entity is a party to a real estate transaction.

A broker violates title 59, section 858-353(A)(4) if he or she discloses any “confidential information” as defined by the Code without the consent of the party whose confidential information the broker discloses. Whether disclosure of a buyer-broker agreement constitutes an impermissible disclosure of confidential information depends on the content of the buyer-broker agreement and what information, if any, the buyer has instructed the broker to keep confidential.

Whether marketing an equitable interest in real property through private social media groups or opt-in email chains constitutes “publicly marketing” as defined by the Code and, therefore, requires a real estate license, is a fact-intensive inquiry and outside the scope of an official Attorney General Opinion. *See* 74 O.S.2021, § 18b(A)(5). However, courts would likely consider the size of the group or email chain and preexisting relationships, or the lack thereof, between the group or email chain members to determine whether such activities constitute impermissible public marketing of real property by unlicensed individuals or entities.

II. BACKGROUND

The questions presented concern the duties and responsibilities of real estate brokers to parties in a real estate transaction. The Code defines the duties and responsibilities of a real estate broker and “replace[s] and abrogate[s] the fiduciary or other duties of a broker to a party based on common law principles of agency.” 59 O.S.2021, § 858-360(A). Previous iterations of the Code distinguished “transactional brokers” from “single-party brokers” and imposed duties and responsibilities on the broker depending on his or her classification. *See* 59 O.S.Supp.2005, § 858-351. This office previously relied on the transactional/single-party distinction when issuing an official opinion on issues substantially similar to those in your inquiry. *See* 2002 OK AG 32. In 2012, the Legislature amended the Code to eliminate the transactional/single-party distinction. *Compare* 59 O.S.Supp.2005, § 858-351, *with* 59 O.S.Supp.2012, § 858-351.

The Code now regards any person or entity providing certain enumerated services to a party to a real estate transaction “with the intention or expectation of receiving a fee, commission, or other valuable consideration” as a broker. 59 O.S.Supp.2024, § 858-102(2). Oklahoma law no longer distinguishes between categories of brokers. Further, the Code does not require brokers to provide services to both parties in a real estate transaction. 59 O.S.2021, § 858-355.1(B). But the Code requires brokers to abide by the administrative rules promulgated by the Oklahoma Real Estate Commission (“OREC”). *Id.* § 858-353(A)(6). And, as is relevant to the questions presented, the OREC’s administrative rules explicitly require brokers to provide services to unrepresented prospective purchasers upon request. *See* OKLA. ADMIN. CODE § 605:10-17-4(11).

Considering the tension between various provisions of the Code and the OREC’s administrative rules, this Opinion applies the rules of statutory construction “to give the statute a reasonable construction that will avoid absurd consequences.” *Estes v. ConocoPhillips Co.*, 2008 OK 21, ¶ 16, 184 P.3d 518, 525. “[C]onstruction of unclear provisions of the Code must be consonant with and in pursuit of” the purpose of the Code, which is to “regulate the real estate business, and those engaged in it, for the protection of the public.” *Loyd v. Saffa*, 1986 OK CIV APP 2, ¶ 7, 719 P.2d 844, 846 (overruled on other grounds by *Commodore Home Systems, Inc. v. Citicorp Acceptance Co., Inc.*, 1989 OK 46, 780 P.2d 674). Further, to the extent possible, this office must interpret the Code in a manner that “renders every word operative.” *Estes*, ¶ 16, 184 P.3d at 525. Finally, “[i]n construing the scope of duties mandated by [s]ection 858-353 we may not impose additional requirements not mandated by the legislature.” 2004 OK AG 37, ¶ 3 (citing *Cox v. State ex rel. Okla. Dep’t of Human Serv.*, 2004 OK 17, ¶ 26, 87 P.3d 607, 617).

III. DISCUSSION

A. Where a written broker-seller agreement specifies that the broker will only provide brokerage services to the seller, the Code does not require the broker to also provide such services to an unrepresented potential buyer.

The Code plainly provides that a party to a real estate transaction may, by written agreement, waive their broker’s duty to “reduce offers or counteroffers to a written form upon request.” 59 O.S.2021, § 858-353(A)(2). But the Code requires brokers to “[c]omply with all requirements of [the Code] and all applicable statutes and rules.” 59 O.S.2021, § 858-353(A)(6). The “rules” referred to are OREC’s promulgated administrative rules. 59 O.S.Supp.2024, § 858-208(1). OREC’s administrative rules require brokers to “reduce an offer to writing[] when a proposed purchaser requests such offer to be submitted.” OKLA. ADMIN. CODE § 605:10-17-4(11). The rules do not provide exceptions based on written waivers between brokers and sellers. As a result, this office must reconcile the apparent conflict between the Code and OREC’s administrative rules.

OREC’s rules must be interpreted and enforced consistently with the Code. *See French v. State ex rel. Dept. of Corrections*, 2010 OK CIV APP 68, ¶ 16, 239 P.3d 195, 200. Therefore, to the extent that the OREC’s rules irreconcilably conflict with the Code, the rules are unenforceable. *Id.*

This office previously reconciled a similar conflict between the Code and OREC’s rules in the following manner:

If the transaction broker receives a request from a purchaser to reduce an offer to writing he or she must do so and present it to the seller. OAC 605:10-17-4(10)-(11). However, if the transaction broker and the seller have agreed that the seller will directly receive offers, the transaction broker is not required to receive offers. If the transaction broker, as a consequence, does not receive any offers, he or she incurs no duty to then submit or present offers to the seller.

2004 OK AG 37, ¶ 10. The Code no longer distinguishes between transaction brokers and single-party brokers. But this office's prior guidance remains instructive to such extent it confirms that a seller may, by written agreement, waive their broker's duty to receive, reduce to writing, and submit offers from prospective purchasers.

Title 59, section 858-355.1 of the Oklahoma Statutes supports this conclusion because it allows a broker to provide "brokerage services to one or both parties in a transaction" even if such services are "fewer . . . than those required to complete a transaction," so long as the broker "provide[s] written notice to the party for whom the broker is providing brokerage services." 59 O.S.2021, § 858-355.1(A, D-E).

Therefore, a broker is not required to reduce offers from a prospective purchaser to writing if he or she enters into a written agreement with a seller, dictating that the broker will only provide brokerage services to the seller. However, absent a written agreement that explicitly limits the scope of services to be provided by the broker, the Code and OREC's administrative rules require the broker to reduce offers from unrepresented prospective purchasers to writing upon request.

B. A prospective purchaser becomes a party to a real estate transaction upon engaging in any of the steps that occur in the ordinary course of buying or exchanging real estate. Depending on the facts and circumstances, this may include viewing, making offers, or entering into agreements as long as the person is actively involved in the buying or exchanging of the subject real property.

You next ask when an unrepresented prospective purchaser becomes a party to a real estate transaction under title 59, section 858-353 of the Oklahoma Statutes. While the Code distinguishes between a broker's duties to a "party" and his or her duties to a "prospective party," it does not clearly define "prospective party" or how one becomes a "party." However, the Code defines a party as "a person who is a seller, buyer, landlord, or tenant or a person who is involved in an option or exchange." 59 O.S. § 858-351(2). Then, "transaction" is broadly defined as "an activity or process to buy, sell lease, option or exchange real estate . . . includ[ing], without limitation, soliciting advertising, showing or viewing real property, presenting offers or counteroffers, entering into agreements and closing such agreements." 59 O.S.Supp.2012, § 858-351(4). Notably, becoming a party to a transaction may include, but is not necessarily the same as, becoming a party to a contract. *See Anderson v. Garrison*, 1965 OK 72, ¶¶ 8-9, 402 P.2d 873, 876; 15 O.S.2021, § 136.

Under Oklahoma contract law, an individual or entity generally becomes a party to a real estate contract when they execute a written agreement that contains "the parties, the subject-matter, the

price, the description, terms and conditions, and leave[s] nothing to parol.” Put another way, a person may become a party to a real estate transaction without becoming a party to a real estate contract, given the Code’s broad definition of “transaction.” Nevertheless, under the plain language of the Code, the answer to your question is that a prospective purchaser becomes a party to a real estate transaction upon engaging in any of the steps that occur in the ordinary course of buying or exchanging real estate. Depending on the facts and circumstances, this may include viewing, making offers, or entering into agreements as long as the person is *involved* in the buying or exchanging of the subject real property. 59 O.S.2021, § 858-351(3), (4).¹

C. A broker violates title 59, section 858-353(A)(4) of the Oklahoma Statutes only if he or she discloses “confidential information” without the consent of the disclosing party.

The Code identifies the following four categories of information as the only information considered confidential in a transaction:

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

59 O.S.2021, § 858-353(A)(4)(a–d). If a broker agreement contains information which falls into one of the statutorily enumerated categories, including nonpublic information which a party has specifically designated as confidential, then the agreement must be kept confidential. However, if the broker agreement does not contain “confidential information” as defined by the Code, then a broker does not violate section 858-353(A)(4) by providing a signed copy of the agreement to another broker.

D. Whether marketing an equitable interest in real property through private social media groups or opt-in email chains requires a real estate license depends on the size and nature of the group or chain and the relationships between the members.

Subject to certain enumerated exceptions, the Code prohibits unlicensed individuals and entities from publicly marketing “an equitable interest *in a contract* for the purchase of real property between a property owner and a prospective purchaser.” 59 O.S.2021, § 858-301 (emphasis

¹ “The words of a statute will be given their plain and ordinary meaning unless it is contrary to the purpose and intent of the statute when considered as a whole.” *Welch v. Crow*, 2009 OK 20, ¶ 10, 206 P.3d 599, 603; 25 O.S.2021, § 1. The Oklahoma Supreme Court “has relied on dictionary definitions to provide the plain, ordinary meaning of terms.” *Brassfield v. State*, 2024 OK 9, ¶ 8, 544 P.3d 938, 941. The verb form of “involved” as “actively participating in something.” *Involved*, MERRIAM-WEBSTER.COM (last updated Dec. 25, 2024), <https://www.merriam-webster.com/dictionary/involved>. Thus, the ordinary meaning of “involved” establishes that a person must actively participate in the real estate transaction.

added). The Code defines public marketing as “all advertisements and marketing conducted in a public or open manner or place.” *Id.* § 858-102(11).

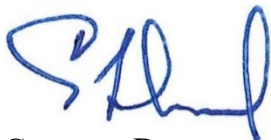
The statutory prohibition on public marketing by unlicensed individuals must be construed in a manner consistent with the Code’s purpose which is “to regulate the real estate business, and those engaged in it, for the protection of the public.” *Loyd v. Saffa*, 1986 OK CIV APP 2, ¶ 7, 719 P.2d 844, 846 (overruled on other grounds by *Commodore Home Systems, Inc. v. Citicorp Acceptance Co., Inc.*, 1989 OK 46; 780 P.2d 674). In *Loyd*, the Court of Civil Appeals held that the Code’s purpose is not “the least bit slighted” by an unlicensed individual’s involvement in a real estate transaction where “both the buyer and seller were long-time acquaintances and presumably friends of [the unlicensed person].” *Id.* ¶ 14, 719 P.2d at 487. Accordingly, courts would likely consider the size of a private social media group or email chain, and preexisting relationships, or the lack thereof, between the members of the group or email chain to determine whether the members are engaged in “public marketing” of real property within the meaning of the Code.

Ultimately, answering whether marketing property via private social media groups or opt-in emails constitutes “public marketing” within the meaning of the Code requires factual analysis, including examining the person’s intent, which is beyond the scope of an official Attorney General Opinion. 74 O.S.2021, § 18b(A)(5). Notwithstanding, under *Loyd*, advertising an equitable interest in real property to a small group of close friends through a private social media group or email chain does not require a real estate license. Conversely, advertising an interest in property to a private social media group or opt-in email chain with many thousands of members, whose only mutual connection to the group or chain is their shared interest in buying and selling property, would likely constitute “public marketing” and thus require licensure if the person intends to “[sell] an equitable interest in a contract for purchase of real property between a property owner and prospective purchaser.” 59 O.S.2021, § 858-301.

* * *

It is, therefore, the official Opinion of the Attorney General that:

- 1. Where a broker enters into a written agreement which specifies that the broker will only provide brokerage services to a seller whom the broker represents, nothing in title 59, section 858-353 of the Oklahoma Statutes, as amended by Senate Bill 1920, 2024 Okla. Sess. Laws ch. 326, requires the broker to reduce offers from unrepresented prospective purchasers to a written form upon request.**
- 2. A prospective purchaser becomes a party to a real estate transaction upon engaging in any of the steps that occur in the ordinary course of buying or exchanging real estate. Depending on the facts and circumstances, this may include viewing, making offers, or entering into agreements as long as the person is actively involved in the buying or exchanging of the subject real property.**
- 3. A broker violates title 59, section 858-353(A)(4) if he or she discloses any “confidential information” as defined by the statute without the consent of the party whose confidential information the broker discloses. Whether disclosure of a buyer-broker agreement constitutes disclosure of confidential information depends on the content of the buyer-broker agreement and what information, if any, the buyer has instructed the broker to keep confidential.**
- 4. Whether marketing an equitable interest in a contract for real property via private social media groups or opt-in emails constitutes “public marketing” within the meaning of title 59, section 858-301 of the Oklahoma Statutes, and therefore requires a real estate license, depends on factual circumstances beyond the scope of an official Attorney General Opinion. *See* 74 O.S.2021, § 18b(A)(5). However, courts would likely consider the size of a private social media group or email chain, and preexisting relationships, or the lack thereof, between the members of a group or email chain to determine whether advertising in such groups requires licensure.**



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