

AN ACT

To amend sections 4735.01, 4735.02, 4735.06, 4735.07, 4735.09, 4735.10, 4735.12, 4735.13, 4735.14, 4735.141, 4735.15, 4735.18, and 4735.20 and to enact sections 4735.022 and 4735.052 of the Revised Code to allow a real estate broker licensed in another state to transact business on commercial property in Ohio in cooperation with an Ohio licensed real estate broker, to modify conditions under which compensation for real estate transactions may be paid, to permit the Ohio Real Estate Commission to assess a civil penalty against a person operating without a license required under the Real Estate Broker Law, and to implement a three-year license and renewal system for real estate salespersons and brokers not later than January 1, 2004.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4735.01, 4735.02, 4735.06, 4735.07, 4735.09, 4735.10, 4735.12, 4635,13, 4735.14, 4735.141, 4735.15, 4735.18, and 4735.20 be amended and sections 4735.022 and 4735.052 of the Revised Code be enacted to read as follows:

Sec. 4735.01. As used in this chapter:

(A) "Real estate broker" includes any person, partnership, association, limited liability company, limited liability partnership, or corporation, foreign or domestic, who for another, whether pursuant to a power of attorney or otherwise, and who for a fee, commission, or other valuable consideration, or with the intention, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration does any of the following:

(1) Sells, exchanges, purchases, rents, or leases, or negotiates the sale, exchange, purchase, rental, or leasing of any real estate;

(2) Offers, attempts, or agrees to negotiate the sale, exchange, purchase, rental, or leasing of any real estate;

(3) Lists, or offers, attempts, or agrees to list, or auctions, or offers, attempts, or agrees to auction, any real estate;

(4) Buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate;

(5) Operates, manages, or rents, or offers or attempts to operate, manage, or rent, other than as custodian, caretaker, or janitor, any building or portions of buildings to the public as tenants;

(6) Advertises or holds self out as engaged in the business of selling, exchanging, purchasing, renting, or leasing real estate;

(7) Directs or assists in the procuring of prospects or the negotiation of any transaction, other than mortgage financing, which does or is calculated to result in the sale, exchange, leasing, or renting of any real estate;

(8) Is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby the broker undertakes primarily to promote the sale, exchange, purchase, rental, or leasing of real estate through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both, except that this division does not apply to a publisher of listings or compilations of sales of real estate by their owners;

(9) Collects rental information for purposes of referring prospective tenants to rental units or locations of such units and charges the prospective tenants a fee.

(B) "Real estate" includes leaseholds as well as any and every interest or estate in land situated in this state, whether corporeal or incorporeal, whether freehold or nonfreehold, and the improvements on the land, but does not include cemetery interment rights.

(C) "Real estate salesperson" means any person associated with a licensed real estate broker to do or to deal in any acts or transactions set out or comprehended by the definition of a real estate broker, for compensation or otherwise.

(D) "Institution of higher education" means either of the following:

(1) A nonprofit institution as defined in section 1713.01 of the Revised Code that actually awards, rather than intends to award, degrees for fulfilling requirements of academic work beyond high school;

(2) An institution operated for profit that otherwise qualifies under the definition of an institution in section 1713.01 of the Revised Code and that actually awards, rather than intends to award, degrees for fulfilling requirements of academic work beyond high school.

(E) "Foreign real estate" means real estate not situated in this state and any interest in real estate not situated in this state.

(F) "Foreign real estate dealer" includes any person, partnership, association, limited liability company, limited liability partnership, or corporation, foreign or domestic, who for another, whether pursuant to a power of attorney or otherwise, and who for a fee, commission, or other valuable consideration, or with the intention, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, does or deals in any act or transaction specified or comprehended in division (A) of this section with respect to foreign real estate.

(G) "Foreign real estate salesperson" means any person associated with a licensed foreign real estate dealer to do or deal in any act or transaction specified or comprehended in division (A) of this section with respect to foreign real estate, for compensation or otherwise.

(H) Any person, partnership, association, limited liability company, limited liability partnership, or corporation, who, for another, in consideration of compensation, by fee, commission, salary, or otherwise, or with the intention, in the expectation, or upon the promise of receiving or collecting a fee, does, or offers, attempts, or agrees to engage in, any single act or transaction contained in the definition of a real estate broker, whether an act is an incidental part of a transaction, or the entire transaction, shall be constituted a real estate broker or real estate salesperson under this chapter.

(I) The terms "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson" do not include a person, partnership, association, limited liability company, limited liability partnership, or corporation, or the regular employees thereof, who perform any of the acts or transactions specified or comprehended in division (A) of this section, whether or not for, or with the intention, in expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

(1) With reference to real estate situated in this state or any interest in it owned by such person, partnership, association, limited liability company, limited liability partnership, or corporation, or acquired on its own account in the regular course of, or as an incident to the management of the property and the investment in it;

(2) As receiver or trustee in bankruptcy, as guardian, executor, administrator, trustee, assignee, commissioner, or any person doing the things mentioned in this section, under authority or appointment of, or incident to a proceeding in, any court, or as a public officer, or as executor,

trustee, or other bona fide fiduciary under any trust agreement, deed of trust, will, or other instrument creating a like bona fide fiduciary obligation;

(3) As a public officer while performing the officer's official duties;

(4) As an attorney at law in the performance of the attorney's duties;

(5) As a person who engages in the brokering of the sale of business assets, not including the negotiation of the sale, lease, exchange, or assignment of any interest in real estate;

(6) As a person who ~~enages~~ engages in the sale of manufactured homes as defined in division (C)(4) of section 3781.06 of the Revised Code, or of mobile homes as defined in division (O) of section 4501.01 of the Revised Code, provided the sale does not include the negotiation, sale, lease, exchange, or assignment of any interest in real estate;

(7) As a person who engages in the sale of commercial real estate pursuant to the requirements of section 4735.022 of the Revised Code.

(J) "Physically handicapped licensee" means a person licensed pursuant to this chapter who is under a severe physical disability which is of such a nature as to prevent the person from being able to attend any instruction lasting at least three hours in duration.

(K) "Division of real estate" may be used interchangeably with, and for all purposes has the same meaning as, "division of real estate and professional licensing."

(L) "Superintendent" or "superintendent of real estate" means the superintendent of the division of real estate and professional licensing of this state. Whenever the division or superintendent of real estate is referred to or designated in any statute, rule, contract, or other document, the reference or designation shall be deemed to refer to the division or superintendent of real estate and professional licensing, as the case may be.

(M) "Inactive license" means the license status in which a salesperson's license is in the possession of the division, ~~annually~~ renewed as required under this chapter or rules adopted under this chapter, and not associated with a real estate broker.

(N) "Broker's license on deposit" means the license status in which a broker's license is in the possession of the division of real estate and professional licensing and ~~annually~~ renewed as required under this chapter or rules adopted under this chapter.

(O) "Suspended license" means the license status that prohibits a licensee from providing services that require a license under this chapter for a specified interval of time.

(P) "Reactivate" means the process prescribed by the superintendent of real estate and professional licensing to remove a license from an inactive,

suspended, or broker's license on deposit status to allow a licensee to provide services that require a license under this chapter.

(Q) "Revoked" means the license status in which the license is void and not eligible for reactivation.

(R) "Commercial real estate" means any parcel of real estate in this state other than real estate containing one to four residential units. "Commercial real estate" does not include single-family residential units such as condominiums, townhouses, manufactured homes, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even when those units are a part of a larger building or parcel of real estate containing more than four residential units.

(S) "Out-of-state commercial broker" includes any person, partnership, association, limited liability company, limited liability partnership, or corporation that is licensed to do business as a real estate broker in a jurisdiction other than Ohio.

(T) "Out-of-state commercial salesperson" includes any person affiliated with an out of state commercial broker who is not licensed as a real estate salesperson in Ohio.

Sec. 4735.02. ~~No~~ Except as provided in section 4735.022 of the Revised Code, no person, partnership, association, limited liability company, limited liability partnership, or corporation shall act as a real estate broker or real estate salesperson, or advertise or assume to act as such, without first being licensed as provided in this chapter. No person, partnership, association, limited liability company, limited liability partnership, or corporation shall provide services that require a license under this chapter if the licensee's license is inactive, suspended, or a broker's license on deposit, or if the license has been revoked. Nothing contained in this chapter shall be construed as authorizing a real estate broker or salesperson to perform any service constituting the practice of law.

No partnership, association, limited liability company, limited liability partnership, or corporation holding a real estate license shall employ as an officer, director, manager, or principal employee any person previously holding a license as a real estate broker, real estate salesperson, foreign real estate dealer, or foreign real estate salesperson, whose license has been placed in inactive status, suspended, or revoked and who has not thereafter reactivated the license or received a new license.

Sec. 4735.022. (A) An out-of-state commercial broker, for a fee, commission, or other valuable consideration, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, may perform those acts that require a license under this

chapter, with respect to commercial real estate, provided that the out-of-state commercial broker does all of the following:

(1) Works in cooperation with an Ohio real estate broker who holds a valid, active license issued under this chapter;

(2) Enters into a written agreement with the Ohio broker described in division (A)(1) of this section that includes the terms of cooperation and compensation and a statement that the out-of-state commercial broker and its agents will agree to adhere to the laws of Ohio;

(3) Furnishes the Ohio broker described in division (A)(1) of this section with a copy of the out-of-state commercial broker's current certificate of good standing from any jurisdiction where the out-of-state commercial broker maintains an active real estate license;

(4) Files an irrevocable written consent with the Ohio broker described in division (A)(1) of this section that legal actions arising out of the conduct of the out-of-state commercial broker or its agents may be commenced against the out-of-state commercial broker in the court of proper jurisdiction of any county in Ohio where the cause of action arises or where the plaintiff resides;

(5) Includes the name of the Ohio broker described in division (A)(1) of this section on all advertising in accordance with section 4735.16 of the Revised Code;

(6) Deposits all escrow funds, security deposits, and other money received by either the out-of-state commercial broker or Ohio broker described in division (A)(1) of this section in trust or special accounts maintained by the Ohio broker;

(7) Deposits all documentation required by this section and records and documents related to the transaction with the Ohio broker described in division (A)(1) of this section.

The Ohio broker described in division (A)(1) of this section shall retain the documentation that is provided by the out-of-state commercial broker as required under division (A)(7) of this section, and the records and documents related to a transaction, for a period of three years after the date the documentation is provided, or the transaction occurred, as appropriate.

(B) An out-of-state commercial salesperson may perform those acts that require a real estate salesperson license under this chapter with respect to commercial real estate, provided that the out-of-state commercial salesperson meets all of the following requirements:

(1) Is licensed with and works under the direct supervision of the out-of-state commercial broker;

(2) The out-of-state commercial broker with whom the salesperson is

associated meets all of the requirements of division (A) of this section:

(3) Provides the Ohio broker who is working in cooperation with the out-of-state broker with whom the salesperson is associated, with a copy of the commercial salesperson's current certificate of good standing from the jurisdiction where the out-of-state commercial salesperson maintains an active real estate license in connection with the out-of-state commercial broker:

(4) Collects money, including commissions, deposits, payments, rentals, or otherwise, only in the name of and with the consent of the out-of-state commercial broker under whom the out-of-state commercial salesperson is licensed.

(C) By filing a consent-to-jurisdiction document as described under division (A)(4) of this section, the person giving the consent makes and constitutes the secretary of state as an agent for service of process in this state including service of summonses and subpoenas. Service of process upon any person may be initiated by leaving with the secretary of state or an assistant secretary of state four copies of the process, an affidavit stating the address of the person given on the consent-to-jurisdiction document, and a fee of five dollars. Upon receipt of the process, affidavit, and fee, the secretary of state immediately shall give notice of the process to the person, at the address given in the affidavit and forward to that address by certified mail, return receipt requested, a copy of the process. Service is considered to be complete upon the mailing of the notice and copy of process in accordance with this division.

(D) A person, partnership, association, limited liability company, limited liability partnership, or corporation licensed in a jurisdiction where there is no legal distinction between a real estate broker license and a real estate salesperson license must meet the requirements of division (A) of this section before engaging in any activity described in this section that requires a real estate broker license in this state.

Sec. 4735.052. (A) Upon receipt of a written complaint or upon the superintendent's own motion, the superintendent may investigate any person that has allegedly violated section 4735.02 or 4735.25 of the Revised Code, except that the superintendent shall not initiate an investigation, pursuant to this section, of any person who held a valid license under this chapter any time during the twelve months preceding the date of the alleged violation.

(B) If, after investigation, the superintendent determines there exists reasonable evidence of a violation of section 4735.02 or 4735.25 of the Revised Code, within seven business days after that determination, the superintendent shall send the party who is the subject of the investigation, a

written notice, by regular mail, that includes all of the following information:

(1) A description of the activity in which the party allegedly is engaging or has engaged that is a violation of section 4735.02 or 4735.25 of the Revised Code;

(2) The applicable law allegedly violated;

(3) A statement informing the party that a hearing concerning the alleged violation will be held at the next regularly scheduled meeting of the Ohio real estate commission, and a statement giving the date and place of that meeting;

(4) A statement informing the party that the party or the party's attorney may appear in person at the hearing and present evidence and examine witnesses appearing for and against the party, or the party may submit written testimony stating any positions, arguments, or contentions.

(C) The commission shall hear the testimony of all parties present at the hearing and consider any written testimony submitted pursuant to division (B)(4) of this section, and determine if there has been a violation of section 4735.02 or 4735.25 of the Revised Code. If the commission finds that a violation has occurred, the commission may assess a civil penalty, in an amount it determines, not to exceed one thousand dollars per violation. Each day a violation occurs or continues is a separate violation. The commission shall determine the terms of payment. The commission shall maintain a transcript of the proceedings of the hearing and issue a written opinion to all parties, citing its findings and grounds for any action taken.

(D) Civil penalties collected under this section shall be deposited in the real estate recovery fund, which is created in the state treasury under section 4735.12 of the Revised Code.

(E) If a party fails to pay a civil penalty assessed pursuant to this section within the time prescribed by the commission, the superintendent shall forward to the attorney general the name of the party and the amount of the civil penalty, for the purpose of collecting that civil penalty. In addition to the civil penalty assessed pursuant to this section, the party also shall pay any fee assessed by the attorney general for collection of the civil penalty.

Sec. 4735.06. (A) Application for a license as a real estate broker shall be made to the superintendent of real estate on forms furnished by the superintendent and filed with the superintendent and shall be signed by the applicant or its members or officers. Each application shall state the name of the person applying and the location of the place of business for which the license is desired, and give such other information as the superintendent requires in the form of application prescribed by the superintendent.

If the applicant is a partnership, limited liability company, limited liability partnership, or association, the names of all the members also shall be stated, and, if the applicant is a corporation, the names of its president and of each of its officers also shall be stated. The superintendent has the right to reject the application of any partnership, association, limited liability company, limited liability partnership, or corporation if the name proposed to be used by such partnership, association, limited liability company, limited liability partnership, or corporation is likely to mislead the public or if the name is not such as to distinguish it from the name of any existing partnership, association, limited liability company, limited liability partnership, or corporation licensed under this chapter, unless there is filed with the application the written consent of such existing partnership, association, limited liability company, limited liability partnership, or corporation, executed by a duly authorized representative of it, permitting the use of the name of such existing partnership, association, limited liability company, limited liability partnership, or corporation.

(B) A fee of sixty-nine dollars shall accompany the application for a real estate broker's license, which fee ~~shall include the~~ includes the fee for the initial year of the licensing period, if a license is issued. The application fee shall be retained by the superintendent if the applicant is admitted to the examination for the license or the examination requirement is waived, but, if an applicant is not so admitted and a waiver is not involved, one-half of the fee shall be retained by the superintendent to cover the expenses of processing the application and the other one-half shall be returned to the applicant. A fee of sixty-nine dollars shall be charged by the superintendent for each successive application made by an applicant. In the case of issuance of a three-year license, upon passing the examination, or upon waiver of the examination requirement, the applicant shall submit an additional fee of ninety-eight dollars, which fee includes the fee for the second and third year of the licensing period, except that the superintendent shall prorate that additional fee based upon the number of years remaining in a real estate salesperson's licensing period.

(C) Four dollars of each application fee for a real estate broker's license shall be credited to the real estate education and research fund, which is hereby created in the state treasury. The Ohio real estate commission may use the fund in discharging the duties prescribed in divisions (E), (F), and (G) of section 4735.03 of the Revised Code and shall use it in the advancement of education and research in real estate at any institution of higher education in the state, or in contracting with any such institution for a particular research or educational project in the field of real estate, or in

advancing loans, not exceeding eight hundred dollars, to applicants for salesperson licenses, to defray the costs of satisfying the educational requirements of division (F) of section 4735.09 of the Revised Code. Such loans shall be made according to rules established by the commission under the procedures of Chapter 119. of the Revised Code, and they shall be repaid to the fund within three years of the time they are made. No more than ten thousand dollars shall be lent from the fund in any one year.

The governor may appoint a representative from the executive branch to be a member ex officio of the commission for the purpose of advising on research requests or educational projects. The commission shall report to the general assembly on the third Tuesday after the third Monday in January of each year setting forth the total amount contained in the fund and the amount of each research grant that it has authorized and the amount of each research grant requested. A copy of all research reports shall be submitted to the state library of Ohio and the library of the legislative service commission.

(D) If the superintendent, with the consent of the commission, enters into an agreement with a national testing service to administer the real estate broker's examination, pursuant to division (A) of section 4735.07 of the Revised Code, the superintendent may require an applicant to pay the testing service's examination fee directly to the testing service. If the superintendent requires the payment of the examination fee directly to the testing service, each applicant shall submit to the superintendent a processing fee in an amount determined by the Ohio real estate commission pursuant to division (A)(2) of section 4735.10 of the Revised Code.

Sec. 4735.07. (A) The superintendent of real estate, with the consent of the Ohio real estate commission, may enter into agreements with recognized national testing services to administer the real estate broker's examination under the superintendent's supervision and control, consistent with the requirements of this chapter as to the contents of such examination.

(B) No applicant for a real estate broker's license shall take the broker's examination who has not established to the satisfaction of the superintendent that the applicant:

(1) Is honest, truthful, and of good reputation;

(2)(a) Has not been convicted of a felony or crime of moral turpitude, or if the applicant has been so convicted, the superintendent has disregarded the conviction because the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing

that the applicant again will violate the laws involved;

(b) Has not been finally adjudged by a court to have violated any municipal, state, or federal civil rights laws relevant to the protection of purchasers or sellers of real estate or, if the applicant has been so adjudged, at least two years have passed since the court decision and the superintendent has disregarded the adjudication because the applicant has proven, by a preponderance of the evidence, that the applicant's activities and employment record since the adjudication show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will again violate the laws involved.

(3) Has not, during any period in which the applicant was licensed under this chapter, violated any provision of, or any rule adopted pursuant to, this chapter, or, if the applicant has violated any such provision or rule, has established to the satisfaction of the superintendent that the applicant will not again violate such provision or rule;

(4) Is at least eighteen years of age;

(5) Has been a licensed real estate broker or salesperson for at least two years; during at least two of the five years preceding the person's application, has worked as a licensed real estate broker or salesperson for an average of at least thirty hours per week; and has completed one of the following:

(a) At least twenty real estate transactions, in which property was sold for another by the applicant while acting in the capacity of a real estate broker or salesperson;

(b) Such equivalent experience as is defined by rules adopted by the commission.

(6)(a) If licensed as a real estate salesperson prior to August 1, 2001, successfully has completed at an institution of higher education all of the following:

(i) Thirty hours of classroom instruction in real estate practice;

(ii) Thirty hours of classroom instruction that includes the subjects of Ohio real estate law, municipal, state, and federal civil rights law, new case law on housing discrimination, desegregation issues, and methods of eliminating the effects of prior discrimination. If feasible, the classroom instruction in Ohio real estate law shall be taught by a member of the faculty of an accredited law school. If feasible, the classroom instruction in municipal, state, and federal civil rights law, new case law on housing discrimination, desegregation issues, and methods of eliminating the effects of prior discrimination shall be taught by a staff member of the Ohio civil rights commission who is knowledgeable with respect to those subjects. The

requirements of this division do not apply to an applicant who is admitted to practice before the supreme court.

(iii) Thirty hours of classroom instruction in real estate appraisal;

(iv) Thirty hours of classroom instruction in real estate finance;

(v) Three quarter hours, or its equivalent in semester hours, in financial management;

(vi) Three quarter hours, or its equivalent in semester hours, in human resource or personnel management;

(vii) Three quarter hours, or its equivalent in semester hours, in applied business economics;

(viii) Three quarter hours, or its equivalent in semester hours, in business law.

(b) If licensed as a real estate salesperson on or after August 1, 2001, successfully has completed at an institution of higher education all of the following:

(i) Forty hours of classroom instruction in real estate practice;

(ii) Forty hours of classroom instruction that includes the subjects of Ohio real estate law, municipal, state, and federal civil rights law, new case law on housing discrimination, desegregation issues, and methods of eliminating the effects of prior discrimination. If feasible, the classroom instruction in Ohio real estate law shall be taught by a member of the faculty of an accredited law school. If feasible, the classroom instruction in municipal, state, and federal civil rights law, new case law on housing discrimination, desegregation issues, and methods of eliminating the effects of prior discrimination shall be taught by a staff member of the Ohio civil rights commission who is knowledgeable with respect to those subjects. The requirements of this division do not apply to an applicant who is admitted to practice before the supreme court.

(iii) Twenty hours of classroom instruction in real estate appraisal;

(iv) Twenty hours of classroom instruction in real estate finance;

(v) The training in the amount of hours specified under divisions (B)(6)(a)(v), (vi), (vii), and (viii) of this section.

(c) Division (B)(6)(a) or (b) of this section does not apply to any applicant who holds a valid real estate salesperson's license issued prior to January 2, 1972. Divisions (B)(6)(a)(v), (vi), (vii), and (viii) or division (B)(6)(b)(v) of this section do not apply to any applicant who holds a valid real estate salesperson's license issued prior to January 3, 1984.

(7) If licensed as a real estate salesperson on or after January 3, 1984, satisfactorily has completed a minimum of two years of post-secondary education, or its equivalent in semester or quarter hours, at an institution of

higher education, and has fulfilled the requirements of division (B)(6)(a) or (b) of this section. The requirements of division (B)(6)(a) or (b) of this section may be included in the two years of post-secondary education, or its equivalent in semester or quarter hours, that is required by this division.

(C) Each applicant for a broker's license shall be examined in the principles of real estate practice, Ohio real estate law, and financing and appraisal, and as to the duties of real estate brokers and real estate salespersons, the applicant's knowledge of real estate transactions and instruments relating to them, and the canons of business ethics pertaining to them. The commission from time to time shall promulgate such canons and cause them to be published in printed form.

(D) Examinations shall be administered with reasonable accommodations in accordance with the requirements of the "Americans with Disabilities Act of 1990," 104 Stat. 327, 42 U.S.C. 12101. The contents of an examination shall be consistent with the requirements of division (B)(6) of this section and with the other specific requirements of this section. An applicant who has completed the requirements of division (B)(6) of this section at the time of application shall be examined no later than twelve months after the applicant is notified of admission to the examination.

(E) The superintendent may waive one or more of the requirements of this section in the case of an application from a nonresident real estate broker pursuant to a reciprocity agreement with the licensing authority of the state from which the nonresident applicant holds a valid real estate broker license.

(F) There shall be no limit placed on the number of times an applicant may retake the examination.

(G)(1) No later than twelve months after the date of issue of a real estate broker's license to a licensee, the licensee shall submit proof satisfactory to the superintendent, on forms made available by the superintendent, of the completion of ten hours of classroom instruction in real estate brokerage at an institution of higher education or any other institution that is approved by the commission. That instruction shall include, but not be limited to, current issues in managing a real estate company or office.

If the required proof of completion is not submitted to the superintendent within twelve months of the date a license is issued under this section, the license of the real estate broker is suspended automatically without the taking of any action by the superintendent. The broker's license shall not be reactivated by the superintendent until it is established, to the satisfaction of the superintendent, that the requirements of this division have

been met and that the licensee is in compliance with this chapter. A licensee's license is revoked automatically without the taking of any action by the superintendent if the licensee fails to submit proof of completion of the education requirements specified under division (G)(1) of this section within twelve months of the date the license is suspended.

(2) If the license of a real estate broker is suspended pursuant to division (G)(1) of this section, the license of a real estate salesperson associated with that broker correspondingly is suspended pursuant to division ~~(B)~~(H) of section 4735.20 of the Revised Code. However, the suspended license of the associated real estate salesperson shall be reactivated and no fee shall be charged or collected for that reactivation if all of the following occur:

(a) That broker subsequently submits satisfactory proof to the superintendent that the broker has complied with the requirements of division (G)(1) of this section and requests that the broker's license as a real estate broker be reactivated;

(b) The superintendent then reactivates the broker's license as a real estate broker;

(c) The associated real estate salesperson intends to continue to be associated with that broker and otherwise is in compliance with this chapter.

Sec. 4735.09. (A) Application for a license as a real estate salesperson shall be made to the superintendent of real estate on forms furnished by the superintendent and signed by the applicant. The application shall be in the form prescribed by the superintendent and shall contain such information as is required by this chapter and the rules of the Ohio real estate commission. The application shall be accompanied by the recommendation of the real estate broker with whom the applicant is associated or with whom the applicant intends to be associated, certifying that the applicant is honest, truthful, and of good reputation, has not been convicted of a felony or a crime involving moral turpitude, and has not been finally adjudged by a court to have violated any municipal, state, or federal civil rights laws relevant to the protection of purchasers or sellers of real estate, which conviction or adjudication the applicant has not disclosed to the superintendent, and recommending that the applicant be admitted to the real estate salesperson examination.

(B) A fee of forty-nine dollars shall accompany the application, which fee ~~shall include the~~ includes the fee for the initial year of the licensing period, if a license if it is issued. The application fee shall be retained by the superintendent if the applicant is admitted to the examination for the license or the examination requirement is waived, but, if an applicant is not so admitted and a waiver is not involved, one-half of the fee shall be retained

by the superintendent to cover the expenses of processing the application and the other one-half shall be returned to the applicant. A fee of forty-nine dollars shall be charged by the superintendent for each successive application made by the applicant. In the case of issuance of a three-year license, upon passing the examination, or upon waiver of the examination requirement, the applicant shall submit an additional fee of seventy-eight dollars, which fee includes the fee for the second and third year of the licensing period. Four dollars of each application fee shall be credited to the real estate education and research fund.

(C) There shall be no limit placed on the number of times an applicant may retake the examination.

(D) The superintendent, with the consent of the commission, may enter into an agreement with a recognized national testing service to administer the real estate salesperson's examination under the superintendent's supervision and control, consistent with the requirements of this chapter as to the contents of the examination.

If the superintendent, with the consent of the commission, enters into an agreement with a national testing service to administer the real estate salesperson's examination, the superintendent may require an applicant to pay the testing service's examination fee directly to the testing service. If the superintendent requires the payment of the examination fee directly to the testing service, each applicant shall submit to the superintendent a processing fee in an amount determined by the Ohio real estate commission pursuant to division (A)(1) of section 4735.10 of the Revised Code.

(E) The superintendent shall issue a real estate salesperson's license when satisfied that the applicant has received a passing score on each portion of the salesperson's examination as determined by rule by the real estate commission, except that the superintendent may waive one or more of the requirements of this section in the case of an applicant who is a licensed real estate salesperson in another state pursuant to a reciprocity agreement with the licensing authority of the state from which the applicant holds a valid real estate salesperson's license.

(F) No applicant for a salesperson's license shall take the salesperson's examination who has not established to the satisfaction of the superintendent that the applicant:

(1) Is honest, truthful, and of good reputation;

(2)(a) Has not been convicted of a felony or crime of moral turpitude or, if the applicant has been so convicted, the superintendent has disregarded the conviction because the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and

t record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant again will violate the laws involved;

(b) Has not been finally adjudged by a court to have violated any municipal, state, or federal civil rights laws relevant to the protection of purchasers or sellers of real estate or, if the applicant has been so adjudged, at least two years have passed since the court decision and the superintendent has disregarded the adjudication because the applicant has proven, by a preponderance of the evidence, that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant again will violate the laws involved.

(3) Has not, during any period in which the applicant was licensed under this chapter, violated any provision of, or any rule adopted pursuant to this chapter, or, if the applicant has violated such provision or rule, has established to the satisfaction of the superintendent that the applicant will not again violate such provision or rule;

(4) Is at least eighteen years of age;

(5) If born after the year 1950, has a high school diploma or its equivalent as recognized by the state department of education;

(6)(a) If beginning instruction prior to August 1, 2001, has successfully completed at an institution of higher education all of the following:

(i) Thirty hours of classroom instruction in real estate practice;

(ii) Thirty hours of classroom instruction that includes the subjects of Ohio real estate law, municipal, state, and federal civil rights law, new case law on housing discrimination, desegregation issues, and methods of eliminating the effects of prior discrimination. If feasible, the classroom instruction in Ohio real estate law shall be taught by a member of the faculty of an accredited law school. If feasible, the classroom instruction in municipal, state, and federal civil rights law, new case law on housing discrimination, desegregation issues, and methods of eliminating the effects of prior discrimination shall be taught by a staff member of the Ohio civil rights commission who is knowledgeable with respect to those subjects. The requirements of this division do not apply to an applicant who is admitted to practice before the supreme court.

(iii) Thirty hours of classroom instruction in real estate appraisal;

(iv) Thirty hours of classroom instruction in real estate finance.

(b) Any person who has not been licensed as a real estate salesperson or broker within a four-year period immediately preceding the person's current application for the salesperson's examination shall have successfully completed the classroom instruction required by division (F)(6)(a) of this

section within a ten-year period immediately preceding the person's current application for the salesperson's examination.

(7) If beginning instruction, as determined by the superintendent, on or after August 1, 2001, has successfully completed at an institution of higher education all of the following:

(a) Forty hours of classroom instruction in real estate practice;

(b) Forty hours of classroom instruction that includes the subjects of Ohio real estate law, municipal, state, and federal civil rights law, new case law on housing discrimination, desegregation issues, and methods of eliminating the effects of prior discrimination. If feasible, the classroom instruction in Ohio real estate law shall be taught by a member of the faculty of an accredited law school. If feasible, the classroom instruction in municipal, state, and federal civil rights law, new case law on housing discrimination, desegregation issues, and methods of eliminating the effects of prior discrimination shall be taught by a staff member of the Ohio civil rights commission who is knowledgeable with respect to those subjects. The requirements of this division do not apply to an applicant who is admitted to practice before the supreme court.

(c) Twenty hours of classroom instruction in real estate appraisal;

(d) Twenty hours of classroom instruction in real estate finance.

(G) No later than twelve months after the date of issue of a real estate salesperson license to a licensee, the licensee shall submit proof satisfactory to the superintendent, on forms made available by the superintendent, of completion, at an institution of higher education or any other institution approved by the commission, of ten hours of classroom instruction in real estate courses that cover current issues regarding consumers, real estate practice, ethics, and real estate law.

If proof of completion of the required instruction is not submitted within twelve months of the date a license is issued under this section, the licensee's license is suspended automatically without the taking of any action by the superintendent. The superintendent immediately shall notify the broker with whom such salesperson is associated of the suspension of the salesperson's license. A salesperson whose license has been suspended under this division shall have twelve months after the date of the suspension of the salesperson's license to submit proof of successful completion of the instruction required under this division. No such license shall be reactivated by the superintendent until it is established, to the satisfaction of the superintendent, that the requirements of this division have been met and that the licensee is in compliance with this chapter. A licensee's license is revoked automatically without the taking of any action by the

superintendent when the licensee fails to submit the required proof of completion of the education requirements under division (G) of this section within twelve months of the date the license is suspended.

(H) Examinations shall be administered with reasonable accommodations in accordance with the requirements of the "Americans with Disabilities Act of 1990," 104 Stat. 327, 42 U.S.C. 12101. The contents of an examination shall be consistent with the classroom instructional requirements of division (F)(6) or (7) of this section. An applicant who has completed the classroom instructional requirements of division (F)(6) or (7) of this section at the time of application shall be examined no later than twelve months after the applicant is notified of the applicant's admission to the examination.

Sec. 4735.10. (A)(1) The Ohio real estate commission may adopt reasonable rules in accordance with Chapter 119. of the Revised Code, necessary for implementing the provisions of this chapter relating, but not limited to, the following:

(a) The form and manner of filing applications for license;

(b) Times and form of examination for license;

(c) Placing an existing broker's license on deposit or a salesperson's license on an inactive status for an indefinite period.

(2) The commission shall adopt reasonable rules in accordance with Chapter 119. of the Revised Code, for implementing the provisions of this chapter relating to the following:

(a) The issuance, renewal, suspension, and revocation of licenses, other sanctions that may be imposed for violations of this chapter, the conduct of hearings related to these actions, and the process of reactivating a license;

(b) By not later than January 1, 2004, a three-year license and a three-year license renewal system;

(c) Standards for the approval of courses of study required for licenses, or offered in preparation for license examinations, or required as continuing education for licenses. The rules shall specify that no standard for the approval of a course of study required as continuing education for licensees shall require that licensees pass an examination as a condition for the successful completion of a continuing education requirement. A person providing a continuing education course may administer examinations for the purpose of evaluating the effectiveness of the course.

(d) Guidelines to ensure that continuing education classes are open to all persons licensed under this chapter. The rules shall specify that an organization that sponsors a continuing education class may offer its members a reasonable reduction in the fees charged for the class.

~~(d)~~(e) Requirements for trust accounts and property management accounts. The rules shall specify that:

(i) Brokerages engaged in the management of property for another may, pursuant to a written contract with the property owner, exercise signatory authority for withdrawals from property management accounts maintained in the name of the property owner. The exercise of authority for withdrawals does not constitute a violation of any provision of division (A) of section 4735.18 of the Revised Code.

(ii) The interest earned on property management trust accounts maintained in the name of the property owner or the broker shall be payable to the property owner unless otherwise specified in a written contract.

~~(e)~~ Annual notice ~~(f)~~ Notice of renewal forms and filing deadlines;

~~(f)~~(g) Special assessments under division (A) of section 4735.12 of the Revised Code.

(B) The commission may adopt rules in accordance with Chapter 119. of the Revised Code establishing standards and guidelines with which the superintendent of real estate shall comply in the exercise of the following powers:

(1) Appointment and recommendation of ancillary trustees under section 4735.05 of the Revised Code;

(2) Rejection of names proposed to be used by partnerships, associations, limited liability companies, limited liability partnerships, and corporations, under division (A) of section 4735.06 of the Revised Code;

(3) Acceptance and rejection of applications to take the broker and salesperson examinations and licensure, with appropriate waivers pursuant to division (E) of section 4735.07 and section 4735.09 of the Revised Code;

(4) Approval of applications of brokers to place their licenses on deposit and to become salespersons under section 4735.13 of the Revised Code;

(5) Appointment of hearing examiners under section 119.09 of the Revised Code;

(6) Acceptance and rejection of applications to take the foreign real estate dealer and salesperson examinations and licensure, with waiver of examination, under sections 4735.27 and 4735.28 of the Revised Code;

(7) Qualification of foreign real estate under section 4735.25 of the Revised Code.

If at any time there is no rule in effect establishing a guideline or standard required by this division, the superintendent may adopt a rule in accordance with Chapter 119. of the Revised Code for such purpose.

(C) The commission or superintendent may hear testimony in matters relating to the duties imposed upon them, and the president of the

mission and superintendent may administer oaths. The commission or superintendent may require other proof of the honesty, truthfulness, and good reputation of any person named in an application for a real estate broker's or real estate salesperson's license before admitting the applicant to the examination or issuing a license.

Sec. 4735.12. (A) The real estate recovery fund is hereby created in the state treasury, to be administered by the superintendent of real estate. Amounts collected by the superintendent as prescribed in this section and interest earned on the assets of the fund shall be credited by the treasurer of state to the fund. The amount of money in the fund shall be ascertained by the superintendent as of the first day of July of each year.

The commission, in accordance with rules adopted under division (A)(2)(~~f~~)(g) of section 4735.10 of the Revised Code, shall impose a special assessment not to exceed ten dollars ~~annually per year~~ per year for each year of a licensing period on each licensee filing a notice of renewal under section 4735.14 of the Revised Code if the amount available in the fund is less than one million dollars on the first day of July preceding that filing. The commission may impose a special assessment not to exceed five dollars ~~annually per year~~ per year for each year of a licensing period if the amount available in the fund is greater than one million dollars, but less than two million dollars on the first day of July preceding that filing. The commission shall not impose a special assessment if the amount available in the fund exceeds two million dollars on the first day of July preceding that filing.

(B)(1) Any person who obtains a final judgment in any court of competent jurisdiction against any broker or salesperson licensed under this chapter, on the grounds of conduct that is in violation of this chapter or the rules adopted under it, and that is associated with an act or transaction that only a licensed real estate broker or licensed real estate salesperson is authorized to perform as specified in division (A) or (C) of section 4735.01 of the Revised Code, may file a verified application, as described in division (B)(3) of this section, in any court of common pleas for an order directing payment out of the real estate recovery fund of the portion of the judgment that remains unpaid and that represents the actual and direct loss sustained by the applicant.

(2) Punitive damages, attorney's fees, and interest on a judgment are not recoverable from the fund. In the discretion of the superintendent of real estate, court costs may be recovered from the fund, and, if the superintendent authorizes the recovery of court costs, the order of the court of common pleas then may direct their payment from the fund.

(3) The application shall specify the nature of the act or transaction

upon which the underlying judgment was based, the activities of the applicant in pursuit of remedies available under law for the collection of judgments, and the actual and direct losses, attorney's fees, and the court costs sustained or incurred by the applicant. The applicant shall attach to the application a copy of each pleading and order in the underlying court action.

(4) The court shall order the superintendent to make such payments out of the fund when the person seeking the order has shown all of the following:

(a) The person has obtained a judgment, as provided in this division;

(b) All appeals from the judgment have been exhausted and the person has given notice to the superintendent, as required by division (C) of this section;

(c) The person is not a spouse of the judgment debtor, or the personal representative of such spouse;

(d) The person has diligently pursued the person's remedies against all the judgment debtors and all other persons liable to the person in the transaction for which the person seeks recovery from the fund;

(e) The person is making the person's application not more than one year after termination of all proceedings, including appeals, in connection with the judgment.

(5) Divisions (B)(1) to (4) of this section do not apply to any of the following:

(a) Actions arising from property management accounts maintained in the name of the property owner;

(b) A bonding company when it is not a principal in a real estate transaction;

(c) A person in an action for the payment of a commission or fee for the performance of an act or transaction specified or comprehended in division (A) or (C) of section 4735.01 of the Revised Code;

(d) Losses incurred by investors in real estate if the applicant and the licensee are principals in the investment.

(C) A person who applies to a court of common pleas for an order directing payment out of the fund shall file notice of the application with the superintendent. The superintendent may defend any such action on behalf of the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses, verification of actual and direct losses, and challenges to the underlying judgment required in division (B)(4)(a) of this section to determine whether the underlying judgment is based on activity only a licensed broker or licensed salesperson is permitted to perform. The superintendent may move the court at any time to dismiss

he application when it appears there are no triable issues and the application is without merit. The motion may be supported by affidavit of any person having knowledge of the facts and may be made on the basis that the application, including the judgment referred to in it, does not form the basis for a meritorious recovery claim; provided, that the superintendent shall give written notice to the applicant at least ten days before such motion. The superintendent may, subject to court approval, compromise a claim based upon the application of an aggrieved party. The superintendent shall not be bound by any prior compromise or stipulation of the judgment debtor.

(D) Notwithstanding any other provision of this section, the liability of the fund shall not exceed forty thousand dollars for any one licensee. If a licensee's license is reactivated as provided in division (E) of this section, the liability of the fund for the licensee under this section shall again be forty thousand dollars, but only for transactions that occur subsequent to the time of reactivation.

If the forty-thousand-dollar liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons by whom claims have been filed against any one licensee, the forty thousand dollars shall be distributed among them in the ratio that their respective claims bear to the aggregate of valid claims or in such other manner as the court finds equitable. Distribution of moneys shall be among the persons entitled to share in it, without regard to the order of priority in which their respective judgments may have been obtained or their claims have been filed. Upon petition of the superintendent, the court may require all claimants and prospective claimants against one licensee to be joined in one action, to the end that the respective rights of all such claimants to the fund may be equitably adjudicated and settled.

(E) If the superintendent pays from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson, the license of the broker or salesperson shall be automatically suspended upon the date of payment from the fund. The superintendent shall not reactivate the suspended license of that broker or salesperson until the broker or salesperson has repaid in full, plus interest per annum at the rate specified in division (A) of section 1343.03 of the Revised Code, the amount paid from the fund on the broker's or salesperson's account. A discharge in bankruptcy does not relieve a person from the suspension and requirements for reactivation provided in this section unless the underlying judgment has been included in the discharge and has not been reaffirmed by the debtor.

(F) If, at any time, the money deposited in the fund is insufficient to

satisfy any duly authorized claim or portion of a claim, the superintendent shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims or portions, in the order that such claims or portions were originally filed, plus accumulated interest per annum at the rate specified in division (A) of section 1343.03 of the Revised Code.

(G) When, upon the order of the court, the superintendent has paid from the fund any sum to the judgment creditor, the superintendent shall be subrogated to all of the rights of the judgment creditor to the extent of the amount so paid, and the judgment creditor shall assign all the judgment creditor's right, title, and interest in the judgment to the superintendent to the extent of the amount so paid. Any amount and interest so recovered by the superintendent on the judgment shall be deposited in the fund.

(H) Nothing contained in this section shall limit the authority of the superintendent to take disciplinary action against any licensee under other provisions of this chapter; nor shall the repayment in full of all obligations to the fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter.

(I) The superintendent shall collect from the fund a service fee in an amount equivalent to the interest rate specified in division (A) of section 1343.03 of the Revised Code multiplied by the annual interest earned on the assets of the fund, to defray the expenses incurred in the administration of the fund.

Sec. 4735.13. (A) The license of a real estate broker shall be prominently displayed in the office or place of business of the broker, and no license shall authorize the licensee to do business except from the location specified in it. If the broker maintains more than one place of business within the state, the broker shall apply for and procure a duplicate license for each branch office maintained by the broker. Each branch office shall be in the charge of a licensed broker or salesperson. The branch office license shall be prominently displayed at the branch office location.

(B) The license of each real estate salesperson shall be mailed to and remain in the possession of the licensed broker with whom the salesperson is or is to be associated until the licensee places the license on inactive status or until the salesperson leaves the brokerage or is terminated. The broker shall keep each salesperson's license in a way that it can, and shall on request, be made immediately available for public inspection at the office or place of business of the broker. Except as provided in division (G) of this section, immediately upon the salesperson's leaving the association or termination of the association of a real estate salesperson with the broker, the broker shall return the salesperson's license to the superintendent of real

estate.

The failure of a broker to return the license of a real estate salesperson who leaves or who is terminated within three business days of the receipt of a written request from the salesperson for the return of the license, when a copy of the request also is forwarded to the superintendent, is ~~prima facie~~ prima-facie evidence of misconduct under division (A)(6) of section 4735.18 of the Revised Code.

(C) Any licensee who is convicted of a felony or a crime involving moral turpitude or of violating any federal, state, or municipal civil rights law pertaining to discrimination in housing, or any court that issues a finding of an unlawful discriminatory practice pertaining to housing accommodations described in division (H) of section 4112.02 of the Revised Code or that convicts a licensee of a violation of any municipal civil rights law pertaining to housing discrimination, shall notify the superintendent of the conviction or finding within fifteen days. If a licensee fails to notify the superintendent within the required time, the superintendent immediately may revoke the license of the licensee.

Any court that convicts a licensee of a violation of any municipal civil rights law pertaining to housing discrimination also shall notify the Ohio civil rights commission within fifteen days of the conviction.

(D) In case of any change of business location, a broker shall give notice in writing to the superintendent, whereupon the superintendent shall issue new licenses for the unexpired period without charge. If a broker changes a business location without giving the required notice and without receiving new licenses that action is prima-facie evidence of misconduct under division (A)(6) of section 4735.18 of the Revised Code.

(E) If a real estate broker desires to associate with another real estate broker in the capacity of a real estate salesperson, the broker shall apply to the superintendent to deposit the broker's real estate broker's license with the superintendent and for the issuance of a real estate salesperson's license. The application shall be made on a form prescribed by the superintendent and shall be accompanied by the recommendation of the real estate broker with whom the applicant intends to become associated and a fee of twenty-five dollars for the real estate salesperson's license. Four dollars of the fee shall be credited to the real estate education and research fund. If the superintendent is satisfied that the applicant is honest, truthful, and of good reputation, has not been convicted of a felony or a crime involving moral turpitude, and has not been finally adjudged by a court to have violated any municipal, state, or federal civil rights laws relevant to the protection of purchasers or sellers of real estate, and that the association of the real estate

broker and the applicant will be in the public interest, the superintendent shall grant the application and issue a real estate salesperson's license to the applicant. Any license so deposited with the superintendent shall be subject to this chapter. A broker who intends to deposit the broker's license with the superintendent, as provided in this section, shall give written notice of this fact in a format prescribed by the superintendent to all salespersons associated with the broker when applying to place the broker's license on deposit.

(F) If a real estate broker desires to become a member or officer of a partnership, association, limited liability company, limited liability partnership, or corporation that is or intends to become a licensed real estate broker, the broker shall notify the superintendent of the broker's intentions. The notice of intention shall be on a form prescribed by the superintendent and shall be accompanied by a fee of twenty-five dollars. Four dollars of the fee shall be credited to the real estate education and research fund.

No real estate broker who is a member or officer of a partnership, association, limited liability company, limited liability partnership, or corporation that is a licensed real estate broker shall perform any acts as a real estate broker other than as the agent of the partnership, association, limited liability company, limited liability partnership, or corporation, and such broker shall not have any real estate salespersons associated with the broker.

(G) If a real estate broker or salesperson enters the armed forces, the broker or salesperson may place the broker's or salesperson's license on deposit with the Ohio real estate commission. The licensee shall not be required to renew the license ~~annually~~ until the renewal date that follows the date of discharge from the armed forces. Any license deposited with the commission shall be subject to this chapter. Any licensee whose license is on deposit under this division and who fails to meet the continuing education requirements of section 4735.141 of the Revised Code because the licensee is in the armed forces shall satisfy the commission that the licensee has complied with the continuing education requirements within twelve months of the licensee's discharge. The commission shall notify the licensee of the licensee's obligations under section 4735.141 of the Revised Code at the time the licensee applies for reactivation of the licensee's license.

Sec. 4735.14. (A) Each license issued under this chapter, shall be valid without further recommendation or examination until placed in an inactive status, revoked, suspended, or such license expires by operation of law.

(B) Each licensed broker, brokerage, or salesperson shall file, on or

before the date the Ohio real estate commission has adopted by rule for that licensee in accordance with division (A)(2)(~~e~~)(f) of section 4735.10 of the Revised Code, a notice of renewal on a form prescribed by the superintendent of real estate. The licensee shall indicate on the form whether the licensee wishes to maintain the licensee's license in an active or inactive status. The notice of renewal shall be mailed by the superintendent to the most current personal residence address of each broker or salesperson as filed with the superintendent by the licensee and the place of business address of the brokerage two months prior to the filing deadline.

(C) The license of any real estate broker, brokerage, or salesperson that fails to file a notice of renewal on or before the filing deadline of each ensuing year shall be suspended automatically without the taking of any action by the superintendent. A suspended license may be reactivated within twelve months of the date of suspension, provided that the renewal fee plus a penalty fee of fifty per cent of the renewal fee is paid to the superintendent. Failure to reactivate the license as provided in this division shall result in automatic revocation of the license without the taking of any action by the superintendent. No person, partnership, association, corporation, limited liability company, or limited partnership shall engage in any act or acts for which a real estate license is required while that entity's license is placed in an inactive status, suspended, or revoked. The commission shall adopt rules in accordance with Chapter 119. of the Revised Code to provide to licensees notice of suspension or revocation or both.

(D) Each licensee shall notify the commission of a change in personal residence address. A licensee's failure to notify the commission of a change in personal residence address does not negate the requirement to file the license renewal by the required deadline established by the commission by rule under division (A)(2)(~~e~~)(f) of section 4735.10 of the Revised Code.

(E) The superintendent shall not renew a license if the licensee is not in compliance with this chapter.

Sec. 4735.141. (A) Except as otherwise provided in this division, each person licensed under section 4735.07 or 4735.09 of the Revised Code shall submit proof satisfactory to the superintendent of real estate that the licensee has satisfactorily completed thirty hours of continuing education, as prescribed by the Ohio real estate commission pursuant to section 4735.10 of the Revised Code, on or before the licensee's birthday occurring three years after the licensee's date of initial licensure, and on or before the licensee's birthday every three years thereafter.

Persons licensed as real estate salespersons who subsequently become

licensed real estate brokers shall continue to submit proof of continuing education in accordance with the time period established in this section.

The requirements of this section shall not apply to any physically handicapped licensee as provided in division (E) of this section.

Each licensee who is seventy years of age or older on June 14, 1999, shall submit, on or before the licensee's birthday occurring three years after June 30, 1999, and on or before the licensee's birthday every three years thereafter, proof satisfactory to the superintendent of real estate that the licensee has satisfactorily completed a total of nine classroom hours of continuing education, including instruction in Ohio real estate law; recently enacted state and federal laws affecting the real estate industry; municipal, state, and federal civil rights law; and canons of ethics for the real estate industry as adopted by the commission. A licensee who is seventy years of age or older whose license is in an inactive status is exempt from the continuing education requirements specified in this section. The commission shall adopt reasonable rules in accordance with Chapter 119. of the Revised Code to carry out the purposes of this paragraph.

A person providing any course of continuing education may administer examinations to licensees for the purpose of evaluating the effectiveness of the course, but passage of an examination by a licensee shall not be a condition for successful completion of the continuing education requirements of this section.

(B) The continuing education requirements of this section shall be completed in schools, seminars, and educational institutions approved by the commission. Such approval shall be given according to rules established by the commission under the procedures of Chapter 119. of the Revised Code, and shall not be limited to institutions providing two-year or four-year degrees. Each school, seminar, or educational institution approved under this division shall be open to all licensees on an equal basis.

(C) If the requirements of this section are not met by a licensee within the period specified, the licensee's license shall be suspended automatically without the taking of any action by the superintendent. The superintendent shall notify the licensee of the license suspension. Any license so suspended shall remain suspended until it is reactivated by the superintendent. No such license shall be reactivated until it is established, to the satisfaction of the superintendent, that the requirements of this section have been met. If the requirements of this section are not met within twelve months from the date the license was suspended, the license shall be revoked automatically without the taking of any action by the superintendent.

(D) If the license of a real estate broker is suspended pursuant to

division (C) of this section, the license of a real estate salesperson associated with that broker correspondingly is suspended pursuant to division ~~(B)~~(H) of section 4735.20 of the Revised Code. However, the suspended license of the associated real estate salesperson shall be reactivated and no fee shall be charged or collected for that reactivation if all of the following occur:

(1) That broker subsequently submits proof to the superintendent that the broker has complied with the requirements of this section and requests that the broker's license as a real estate broker be reactivated.

(2) The superintendent then reactivates the broker's license as a real estate broker.

(3) The associated real estate salesperson intends to continue to be associated with that broker, has complied with the requirements of this section, and otherwise is in compliance with this chapter.

Any person whose license is reactivated pursuant to this division shall submit proof satisfactory to the superintendent that the person has completed thirty hours of continuing education, as prescribed by the Ohio real estate commission, on or before the third year following the licensee's birthday occurring immediately after reactivation.

(E) Any licensee who is a physically handicapped licensee at any time during the last three months of the third year of the licensee's continuing education reporting period may receive an extension of time to submit proof to the superintendent that the licensee has satisfactorily completed the required thirty hours of continuing education. To receive an extension of time, the licensee shall submit a request to the division of real estate for the extension and proof satisfactory to the commission that the licensee was a physically handicapped licensee at some time during the last three months of the three-year reporting period. The proof shall include, but is not limited to, a signed statement by the licensee's attending physician describing the physical disability, certifying that the licensee's disability is of such a nature as to prevent the licensee from attending any instruction lasting at least three hours in duration, and stating the expected duration of the physical disability. The licensee shall request the extension and provide the physician's statement to the division no later than one month prior to the end of the licensee's three-year continuing education reporting period, unless the physical disability did not arise until the last month of the three-year reporting period, in which event the licensee shall request the extension and provide the physician's statement as soon as practical after the occurrence of the physical disability. A licensee granted an extension pursuant to this division who is no longer a physically handicapped licensee and who submits proof of completion of the continuing education during the

extension period, shall submit, for future continuing education reporting periods, proof of completion of the continuing education requirements according to the schedule established in division (A) of this section.

Sec. 4735.15. ~~(A)~~ The fees for ~~branch office licenses, transfers, annual renewals, late filings, and foreign real estate dealer and salesperson licenses reactivation or transfer of a license~~ shall be as follows:

~~(A) Branch office license, eight dollars;~~

~~(B)~~(1) Reactivation or transfer of a broker's license into or out of a partnership, association, limited liability company, limited liability partnership, or corporation or from one partnership, association, limited liability company, limited liability partnership, or corporation to another partnership, association, limited liability company, limited liability partnership, or corporation, twenty-five dollars. An application for such transfer shall be made to the superintendent of real estate on forms provided by the superintendent.

~~(C)~~(2) Reactivation or transfer of a license by a real estate salesperson, twenty dollars;

~~(D) Annual renewal.~~

~~(B)~~ The fees for a branch office license, license renewal, late filing, and foreign real estate dealer and salesperson license are as follows per year for each year of a licensing period:

~~(1) Branch office license, eight dollars;~~

~~(2) Renewal~~ of a real estate broker's license, forty-nine dollars. If the licensee is a partnership, association, limited liability company, limited liability partnership, or corporation, the full broker's renewal fee shall be required for each member of such partnership, association, limited liability company, limited liability partnership, or corporation that is a real estate broker. If the real estate broker has not less than eleven nor more than twenty real estate salespersons associated with the broker, an additional fee of sixty-four dollars shall be assessed to the brokerage. For every additional ten real estate salespersons or fraction of that number, the brokerage assessment fee shall be increased in the amount of thirty-seven dollars.

~~(E) Annual renewal~~ ~~(3) Renewal~~ of a real estate salesperson's license, thirty-nine dollars;

~~(F) Annual renewal~~ ~~(4) Renewal~~ of a real estate broker's or salesperson's license filed within twelve months after the licensee's renewal date, an additional late filing penalty of fifty per cent of the required fee;

~~(G)~~(5) Foreign real estate dealer's license and each ~~annual~~ renewal of the license, thirty dollars per salesperson employed by the dealer, but not less than one hundred fifty dollars;

~~(H)(6)~~ Foreign real estate salesperson's license and each ~~annual~~ renewal of the license, fifty dollars.

All fees collected under this section shall be paid to the treasurer of state. Four dollars of each such fee shall be credited to the real estate education and research fund, except that for fees that are assessed only once every three years, twelve dollars of each triennial fee shall be credited to the real estate education and research fund.

In all cases, the fee and any penalty shall accompany the application for the license, license transfer, or license reactivation or shall accompany the filing of the ~~annual~~ renewal.

The commission may establish by rule reasonable fees for services not otherwise established by this chapter.

Sec. 4735.18. (A) Subject to section 4735.32 of the Revised Code, the superintendent of real estate, upon the superintendent's own motion, may investigate the conduct of any licensee. Subject to section 4735.32 of the Revised Code, the Ohio real estate commission shall, pursuant to section 4735.051 of the Revised Code, impose disciplinary sanctions upon any licensee who, whether or not acting in the licensee's capacity as a real estate broker or salesperson, or in handling the licensee's own property, is found to have been convicted of a felony or a crime of moral turpitude, and shall, pursuant to section 4735.051 of the Revised Code, impose disciplinary sanctions upon any licensee who, in the licensee's capacity as a real estate broker or salesperson, or in handling the licensee's own property, is found guilty of:

- (1) Knowingly making any misrepresentation;
- (2) Making any false promises with intent to influence, persuade, or induce;
- (3) A continued course of misrepresentation or the making of false promises through agents, salespersons, advertising, or otherwise;
- (4) Acting for more than one party in a transaction except as permitted by and in compliance with section 4735.71 of the Revised Code;
- (5) Failure within a reasonable time to account for or to remit any money coming into the licensee's possession which belongs to others;
- (6) Dishonest or illegal dealing, gross negligence, incompetency, or misconduct;
- (7)(a) By final adjudication by a court, a violation of any municipal or federal civil rights law relevant to the protection of purchasers or sellers of real estate or, by final adjudication by a court, any unlawful discriminatory practice pertaining to the purchase or sale of real estate prohibited by Chapter 4112. of the Revised Code, provided that such violation arose out of

a situation wherein parties were engaged in bona fide efforts to purchase, sell, or lease real estate, in the licensee's practice as a licensed real estate broker or salesperson;

(b) A second or subsequent violation of any unlawful discriminatory practice pertaining to the purchase or sale of real estate prohibited by Chapter 4112. of the Revised Code or any second or subsequent violation of municipal or federal civil rights laws relevant to purchasing or selling real estate whether or not there has been a final adjudication by a court, provided that such violation arose out of a situation wherein parties were engaged in bona fide efforts to purchase, sell, or lease real estate. For any second offense under this division, the commission shall suspend for a minimum of two months or revoke the license of the broker or salesperson. For any subsequent offense, the commission shall revoke the license of the broker or salesperson.

(8) Procuring a license under this chapter, for the licensee or any salesperson by fraud, misrepresentation, or deceit;

(9) Having violated or failed to comply with any provision of sections 4735.51 to 4735.74 of the Revised Code or having willfully disregarded or violated any other provisions of this chapter;

(10) As a real estate broker, having demanded, without reasonable cause, other than from a broker licensed under this chapter, a commission to which the licensee is not entitled, or, as a real estate salesperson, having demanded, without reasonable cause, a commission to which the licensee is not entitled;

(11) ~~Having~~ Except as permitted under section 4735.20 of the Revised Code, having paid commissions or fees to, or divided commissions or fees with, anyone not licensed as a real estate broker or salesperson under this chapter or anyone not operating as an out-of-state commercial real estate broker or salesperson under section 4735.022 of the Revised Code;

(12) Having falsely represented membership in any real estate professional association of which the licensee is not a member;

(13) Having accepted, given, or charged any undisclosed commission, rebate, or direct profit on expenditures made for a principal;

(14) Having offered anything of value other than the consideration recited in the sales contract as an inducement to a person to enter into a contract for the purchase or sale of real estate or having offered real estate or the improvements on real estate as a prize in a lottery or scheme of chance;

(15) Having acted in the dual capacity of real estate broker and undisclosed principal, or real estate salesperson and undisclosed principal, in any transaction;

(16) Having guaranteed, authorized, or permitted any person to guarantee future profits which may result from the resale of real property;

(17) Having placed a sign on any property offering it for sale or for rent without the consent of the owner or the owner's authorized agent;

(18) Having induced any party to a contract of sale or lease to break such contract for the purpose of substituting in lieu of it a new contract with another principal;

(19) Having negotiated the sale, exchange, or lease of any real property directly with an owner, purchaser, lessor, or tenant knowing that such owner, purchaser, lessor, or tenant had a written outstanding contract granting exclusive agency in connection with such property to another real estate broker;

(20) Having offered real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized agent, or on any terms other than those authorized by the owner or the owner's authorized agent;

(21) Having published advertising, whether printed, radio, display, or of any other nature, which was misleading or inaccurate in any material particular, or in any way having misrepresented any properties, terms, values, policies, or services of the business conducted;

(22) Having knowingly withheld from or inserted in any statement of account or invoice any statement that made it inaccurate in any material particular;

(23) Having published or circulated unjustified or unwarranted threats of legal proceedings which tended to or had the effect of harassing competitors or intimidating their customers;

(24) Having failed to keep complete and accurate records of all transactions for a period of three years from the date of the transaction, such records to include copies of listing forms, earnest money receipts, offers to purchase and acceptances of them, ~~and~~ records of receipts and disbursements of all funds received by the licensee as broker and incident to the licensee's transactions as such, and records required pursuant to divisions (C)(4) and (5) of section 4735.20 of the Revised Code, and any other instruments or papers related to the performance of any of the acts set forth in the definition of a real estate broker;

(25) Failure of a real estate broker or salesperson to furnish all parties involved in a real estate transaction true copies of all listings and other agreements to which they are a party, at the time each party signs them;

(26) Failure to maintain at all times a special or trust bank account in a depository located in this state. The account shall be noninterest-bearing,

separate and distinct from any personal or other account of the broker, and, except as provided in division (A)(27) of this section, shall be used for the deposit and maintenance of all escrow funds, security deposits, and other moneys received by the broker in a fiduciary capacity. The name, account number, if any, and location of the depository wherein such special or trust account is maintained shall be submitted in writing to the superintendent. Checks drawn on such special or trust bank accounts are deemed to meet the conditions imposed by section 1349.21 of the Revised Code.

(27) Failure to maintain at all times a special or trust bank account in a depository in this state, to be used exclusively for the deposit and maintenance of all rents, security deposits, escrow funds, and other moneys received by the broker in a fiduciary capacity in the course of managing real property. This account shall be separate and distinct from any other account maintained by the broker. The name, account number, and location of the depository shall be submitted in writing to the superintendent. This account may earn interest, which shall be paid to the property owners on a pro rata basis.

Division (A)(27) of this section does not apply to brokers who are not engaged in the management of real property on behalf of real property owners.

(28) Having failed to put definite expiration dates in all written agency agreements to which the broker is a party;

(29) Having an unsatisfied final judgment in any court of record against the licensee arising out of the licensee's conduct as a licensed broker or salesperson;

(30) Failing to render promptly upon demand a full and complete statement of the expenditures by the broker or salesperson of funds advanced by or on behalf of a party to a real estate transaction to the broker or salesperson for the purpose of performing duties as a licensee under this chapter in conjunction with the real estate transaction;

(31) Failure within a reasonable time, after the receipt of the commission by the broker, to render an accounting to and pay a real estate salesperson the salesperson's earned share of it;

(32) Performing any service for another constituting the practice of law, as determined by any court of law;

(33) Having been adjudicated incompetent for the purpose of holding the license by a court, as provided in section 5122.301 of the Revised Code. A license revoked or suspended under this division shall be reactivated upon proof to the commission of the removal of the disability.

(34) Having authorized or permitted a person to act as an agent in the

capacity of a real estate broker, or a real estate salesperson, who was not then licensed as a real estate broker or real estate salesperson under this chapter or who was not then operating as an out-of-state commercial real estate broker or salesperson under section 4735.022 of the Revised Code;

(35) Having knowingly inserted or participated in inserting any materially inaccurate term in a document, including naming a false consideration;

(36) Having failed to inform the licensee's client of the existence of an offer or counter offer or having failed to present an offer or counter offer in a timely manner, unless otherwise instructed by the client, provided the instruction of the client does not conflict with any state or federal law.

(B) Whenever the commission, pursuant to section 4735.051 of the Revised Code, imposes disciplinary sanctions for any violation of this section, the commission also may impose such sanctions upon the broker with whom the salesperson is affiliated if the commission finds that the broker had knowledge of the salesperson's actions that violated this section.

(C) The commission shall, pursuant to section 4735.051 of the Revised Code, impose disciplinary sanctions upon any foreign real estate dealer or salesperson who, in that capacity or in handling the dealer's or salesperson's own property, is found guilty of any of the acts or omissions specified or comprehended in division (A) of this section insofar as the acts or omissions pertain to foreign real estate. If the commission imposes such sanctions upon a foreign real estate salesperson for a violation of this section, the commission also may suspend or revoke the license of the foreign real estate dealer with whom the salesperson is affiliated if the commission finds that the dealer had knowledge of the salesperson's actions that violated this section.

(D) The commission may suspend, in whole or in part, the imposition of the penalty of suspension of a license under this section.

(E) The commission immediately shall notify the real estate appraiser board of any disciplinary action taken under this section against a licensee who also is a state-certified real estate appraiser under Chapter 4763. of the Revised Code.

Sec. 4735.20. (A) ~~Not~~ Except as provided in divisions (B), (C), and (G) of this section, no licensed real estate broker or licensed foreign real estate dealer shall pay a commission, fee, or other compensation for performing any of the acts specified in section 4735.01 of the Revised Code to any person who is not a licensed real estate broker or a licensed real estate salesperson or to any person who is not a licensed foreign real estate dealer or a licensed foreign real estate salesperson, ~~provided that a~~

~~(B) A licensed real estate broker or licensed foreign real estate dealer may pay a commission to a licensed real estate broker or licensed foreign real estate dealer of another state and may receive a commission from a licensed real estate broker or licensed foreign real estate dealer of another state, but only when done in accordance with rules adopted by the Ohio real estate commission pursuant to section 4735.10 of the Revised Code. A violation of this division shall be a cause for imposing disciplinary sanctions in accordance with the proceedings specified in sections 4735.15 to 4735.18 of the Revised Code.~~

~~(B)~~(C) A licensed real estate broker may pay all or part of a fee, commission, or other compensation earned by an affiliated licensee to a partnership, association, limited liability company, limited liability partnership, or corporation that is not licensed as a real estate broker on the condition that all of the following conditions are satisfied:

(1) At least one of the partners, members, officers, or shareholders of the unlicensed partnership, association, limited liability company, limited liability partnership, or corporation holds a valid and active license issued under this chapter.

(2) At least one of the partners, members, officers, or shareholders of the unlicensed partnership, association, limited liability company, limited liability partnership, or corporation is the affiliated licensee who earned the fee, commission, or other compensation.

(3) The unlicensed partnership, association, limited liability company, limited liability partnership, or corporation does not engage in any of the acts specified in division (A) of section 4735.01 of the Revised Code.

(4) The broker verifies that the affiliated licensee complies with divisions (C)(1) and (2) of this section and keeps a record of this verification for a period of three years after the date of verification.

(5) The broker keeps a record of all of the following information for each transaction, for a period of three years after the date of the transaction:

(a) The name of the affiliated licensee who earned the fee, commission, or other compensation;

(b) The amount of the fee, commission, or other compensation that was earned;

(c) The name of the unlicensed partnership, association, limited liability company, limited liability partnership, or corporation to which the broker paid the affiliated licensee's fee, commission, or other compensation.

ursuant to this chapter.

(E) Compliance with division (C) of this section does not render a broker described in that division or an affiliated licensee exempt from sections 4735.051, 4735.18, or 4735.32 of the Revised Code, or immune from personal liability in a civil action against the broker or affiliated licensee for a violation of this chapter.

(F) No broker shall pay a fee, commission, or other compensation that is due to an affiliated licensee to a third-party creditor of the affiliated licensee.

(G) Any owner of any interest in foreign real estate may refer a prospective buyer to the person who sold the owner that foreign real estate with the expectation of receiving valuable consideration, if all of the following conditions are satisfied:

(1) The person who sold the owner that foreign real estate is selling qualified foreign real estate pursuant to section 4735.25 of the Revised Code.

(2) Any fee, commission, or other valuable consideration promised or collected during any period consisting of twelve consecutive months does not exceed one thousand dollars.

(3) The owner does not engage in referring prospective buyers of foreign real estate pursuant to this section in the ordinary course of business or as a regular business practice.

(4) The owner does not show the foreign real estate, discuss terms or conditions of purchasing the foreign real estate, or otherwise participate in negotiations with regard to the offering or sale of the foreign real estate.

(5) If a foreign real estate transaction is consummated with a buyer who was referred by the owner to the person who sold the owner that foreign real estate, the occurrence of the referral shall be disclosed by the person who sold the owner that foreign real estate.

(H) The suspension or revocation of a real estate broker's or foreign real estate dealer's license automatically shall suspend every real estate salesperson's or foreign real estate salesperson's license granted to any person by virtue of association with the broker or dealer whose license has been suspended or revoked, pending a change of broker or dealer and the issuance of a new license. Such new license shall be issued without charges, if granted during the same year in which the original license was granted.

(I) A violation of this section is cause for imposing disciplinary sanctions in accordance with the proceedings specified in sections 4735.051, 4735.18, and 4735.32 of the Revised Code.

(J) For purposes of this section, "affiliated licensee" means a person who holds a valid and active license issued under this chapter and who is

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associated with the broker that is paying a fee, commission, or other compensation at the time that that fee, commission, or other compensation is earned.

SECTION 2. That existing sections 4735.01, 4735.02, 4735.06, 4735.07, 4735.09, 4735.10, 4735.12, 4735.13, 4735.14, 4735.141, 4735.15, 4735.18, and 4735.20 of the Revised Code are hereby repealed.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____