

**As Passed by the House**

**124th General Assembly  
Regular Session  
2001-2002**

**H. B. No. 272**

**REPRESENTATIVES G. Smith, Williams, Cates, Clancy, Kilbane, Collier,  
Husted, Goodman, Evans, Flowers, Blasdel, Carmichael, Schaffer, Schmidt,  
Seitz, Lendrum, Brinkman, Olman, Carano, Rhine, D. Miller, Distel, Fedor,  
Hughes, Reidelbach, Wolpert, Salerno, Grendell, Damschroder, Jones,  
Niehaus, Sferra, Hartnett, Fessler, Strahorn, Sulzer, Allen, Wilson, Ogg,  
DeWine, Calvert, Redfern, Key, Woodard, Metelsky, Carey, Hagan, Roman,  
Otterman, Schneider, Latta, Faber**

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**A B I L L**

To amend sections 4735.01, 4735.02, 4735.10, 4735.12, 1  
4735.14, and 4735.18 and to enact section 4735.022 2  
of the Revised Code to allow a real estate broker 3  
licensed in another state to transact business on 4  
commercial property in Ohio in cooperation with an 5  
Ohio licensed real estate broker and to implement a 6  
three-year license and renewal system for real 7  
estate salespersons and brokers not later than 8  
January 1, 2005. 9

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 4735.01, 4735.02, 4735.10, 4735.12, 10  
4735.14, and 4735.18 be amended and section 4735.022 of the 11  
Revised Code be enacted to read as follows: 12

**Sec. 4735.01.** As used in this chapter: 13

(A) "Real estate broker" includes any person, partnership, 14

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

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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;

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(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.

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(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.

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(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.

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

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(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;

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(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.

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(E) "Foreign real estate" means real estate not situated in

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this state and any interest in real estate not situated in this  
state.

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(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.

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(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.

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(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.

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(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

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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 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 as defined in division (R) of this section pursuant to the 139  
requirements of section 4735.022 of the Revised Code. 140

(J) "Physically handicapped licensee" means a person licensed 141  
pursuant to this chapter who is under a severe physical disability 142  
which is of such a nature as to prevent the person from being able 143  
to attend any instruction lasting at least three hours in 144  
duration. 145

(K) "Division of real estate" may be used interchangeably 146  
with, and for all purposes has the same meaning as, "division of 147  
real estate and professional licensing." 148

(L) "Superintendent" or "superintendent of real estate" means 149  
the superintendent of the division of real estate and professional 150  
licensing of this state. Whenever the division or superintendent 151  
of real estate is referred to or designated in any statute, rule, 152  
contract, or other document, the reference or designation shall be 153  
deemed to refer to the division or superintendent of real estate 154  
and professional licensing, as the case may be. 155

(M) "Inactive license" means the license status in which a 156  
salesperson's license is in the possession of the division, 157  
annually renewed as required under this chapter, and not 158  
associated with a real estate broker. 159  
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(N) "Broker's license on deposit" means the license status in 161  
which a broker's license is in the possession of the division of 162  
real estate and professional licensing and annually renewed as 163  
required under this chapter. 164

(O) "Suspended license" means the license status that 165  
prohibits a licensee from providing services that require a 166  
license under this chapter for a specified interval of time. 167

(P) "Reactivate" means the process prescribed by the 168  
superintendent of real estate and professional licensing to remove 169

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 201  
authorizing a real estate broker or salesperson to perform any 202  
service constituting the practice of law. 203

No partnership, association, limited liability company, 204  
limited liability partnership, or corporation holding a real 205  
estate license shall employ as an officer, director, manager, or 206  
principal employee any person previously holding a license as a 207  
real estate broker, real estate salesperson, foreign real estate 208  
dealer, or foreign real estate salesperson, whose license has been 209  
placed in inactive status, suspended, or revoked and who has not 210  
thereafter reactivated the license or received a new license. 211

Sec. 4735.022. (A) An out of state commercial broker, for a 212  
fee, commission, or other valuable consideration, or in the 213  
expectation, or upon the promise of receiving or collecting a fee, 214  
commission, or other valuable consideration, may perform those 215  
acts that require a license under this chapter, with respect to 216  
commercial real estate, provided that the out of state commercial 217  
broker does all of the following: 218

(1) Works in cooperation with real estate broker who holds a 219  
valid, active license issued under this chapter; 220

(2) Enters into a written agreement with the Ohio real estate 221  
broker that includes the terms of cooperation and compensation and 222  
a statement that the out of state commercial broker and its agents 223  
will agree to adhere to the laws of Ohio; 224

(3) Furnishes the Ohio real estate broker with a copy of the 225  
out of state commercial broker's current certificate of good 226  
standing from any jurisdiction where the out of state commercial 227  
broker maintains an active real estate license; 228

(4) Files an irrevocable written consent with the Ohio real 229  
estate broker that legal actions arising out of the conduct of the 230  
out of state commercial broker or its agents may be commenced 231



against the out of state commercial broker in the court of proper 232  
jurisdiction of any county in Ohio where the cause of action 233  
arises or where the plaintiff resides; 234

(5) Includes the name of the Ohio real estate broker on all 235  
advertising in accordance with section 4735.16 of the Revised 236  
Code; 237

(6) Deposits all escrow funds, security deposits, and other 238  
money received by either the out of state commercial broker or 239  
Ohio real estate broker in accordance with the account 240  
specifications set forth in divisions (A)(26) and (27) of section 241  
4735.18 of the Revised Code in accounts maintained by the Ohio 242  
real estate broker; 243

(7) Deposits all documentation required by this section and 244  
records and documents related to the transaction with the Ohio 245  
real estate broker who maintains those documents and records in 246  
accordance with the requirements set forth in division (A)(24) of 247  
section 4735.18 of the Revised Code. 248

(B) An out of state commercial salesperson may perform those 249  
acts that require a real estate salesperson license under this 250  
chapter with respect to commercial real estate, provided that the 251  
out of state commercial salesperson meets all of the following 252  
requirements: 253

(1) Is licensed with and works under the direct supervision 254  
of the out of state commercial broker; 255

(2) The out of state commercial broker with whom the 256  
salesperson is associated meets all of the requirements of 257  
division (A) of this section; 258

(3) Provides the Ohio real estate broker with a copy of the 259  
commercial salesperson's current certificate of good standing from 260  
the jurisdiction where the out of state commercial salesperson 261  
maintains an active real estate license in connection with the out 262

of state commercial broker; 263

(4) Only collects money, including commissions, deposits, 264  
payments, rentals, or otherwise, in the name of and with the 265  
consent of the out of state commercial broker under whom the out 266  
of state commercial salesperson is licensed. 267

(C) By filing a consent-to-jurisdiction document as described 268  
under division (A)(4) of section 4735.022 of the Revised Code, the 269  
person giving the consent makes and constitutes the secretary of 270  
state as an agent for service of process in this state including 271  
summonses and subpoenas. Service of process upon any such person 272  
may be initiated by leaving with the secretary of state or an 273  
assistant secretary of state four copies of the process, together 274  
with an affidavit stating the address of the person given on the 275  
consent-to-jurisdiction document and a fee of five dollars. Upon 276  
receipt of the process, affidavit, and fee, the secretary of state 277  
immediately shall give notice to the person at the address given 278  
in the affidavit and forward to that address by certified mail, 279  
return receipt requested, a copy of the process. Service is 280  
considered to be complete upon the mailing of the notice and copy 281  
of process in accordance with this division. 282

(D) A person, partnership, association, limited liability 283  
company, limited liability partnership, or corporation licensed in 284  
a jurisdiction where there is no legal distinction between a real 285  
estate broker license and a real estate salesperson license must 286  
meet the requirements of division (A) of this section before 287  
engaging in any activity that requires a real estate broker 288  
license in this state. 289

**Sec. 4735.10.** (A)(1) The Ohio real estate commission may 290  
adopt reasonable rules in accordance with Chapter 119. of the 291  
Revised Code, necessary for implementing the provisions of this 292  
chapter relating, but not limited to, the following: 293

(a) The form and manner of filing applications for license;	294
(b) Times and form of examination for license;	295
(c) Placing an existing broker's license on deposit or a salesperson's license on an inactive status for an indefinite period.	296 297 298
(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:	299 300 301
(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;	302 303 304 305
(b) <u>By not later than January 1, 2005, a three-year license and a three-year license renewal system;</u>	306 307
<u>(c)</u> 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.	308 309 310 311 312 313 314 315 316 317
<del>(e)</del> <u>(d)</u> 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.	318 319 320 321 322
<del>(d)</del> <u>(e)</u> Requirements for trust accounts and property	323

management accounts. The rules shall specify that: 324

(i) Brokerages engaged in the management of property for 325  
another may, pursuant to a written contract with the property 326  
owner, exercise signatory authority for withdrawals from property 327  
management accounts maintained in the name of the property owner. 328  
The exercise of authority for withdrawals does not constitute a 329  
violation of any provision of division (A) of section 4735.18 of 330  
the Revised Code. 331

(ii) The interest earned on property management trust 332  
accounts maintained in the name of the property owner or the 333  
broker shall be payable to the property owner unless otherwise 334  
specified in a written contract. 335

~~(e)~~(f) Annual notice of renewal forms and filing deadlines; 336

~~(f)~~(g) Special assessments under division (A) of section 337  
4735.12 of the Revised Code. 338

(B) The commission may adopt rules in accordance with Chapter 339  
119. of the Revised Code establishing standards and guidelines 340  
with which the superintendent of real estate shall comply in the 341  
exercise of the following powers: 342

(1) Appointment and recommendation of ancillary trustees 343  
under section 4735.05 of the Revised Code; 344

(2) Rejection of names proposed to be used by partnerships, 345  
associations, limited liability companies, limited liability 346  
partnerships, and corporations, under division (A) of section 347  
4735.06 of the Revised Code; 348

(3) Acceptance and rejection of applications to take the 349  
broker and salesperson examinations and licensure, with 350  
appropriate waivers pursuant to division (E) of section 4735.07 351  
and section 4735.09 of the Revised Code; 352

(4) Approval of applications of brokers to place their 353

licenses on deposit and to become salespersons under section	354
4735.13 of the Revised Code;	355
(5) Appointment of hearing examiners under section 119.09 of	356
the Revised Code;	357
(6) Acceptance and rejection of applications to take the	358
foreign real estate dealer and salesperson examinations and	359
licensure, with waiver of examination, under sections 4735.27 and	360
4735.28 of the Revised Code;	361
(7) Qualification of foreign real estate under section	362
4735.25 of the Revised Code.	363
If at any time there is no rule in effect establishing a	364
guideline or standard required by this division, the	365
superintendent may adopt a rule in accordance with Chapter 119. of	366
the Revised Code for such purpose.	367
(C) The commission or superintendent may hear testimony in	368
matters relating to the duties imposed upon them, and the	369
president of the commission and superintendent may administer	370
oaths. The commission or superintendent may require other proof of	371
the honesty, truthfulness, and good reputation of any person named	372
in an application for a real estate broker's or real estate	373
salesperson's license before admitting the applicant to the	374
examination or issuing a license.	375
<b>Sec. 4735.12.</b> (A) The real estate recovery fund is hereby	376
created in the state treasury, to be administered by the	377
superintendent of real estate. Amounts collected by the	378
superintendent as prescribed in this section and interest earned	379
on the assets of the fund shall be credited by the treasurer of	380
state to the fund. The amount of money in the fund shall be	381
ascertained by the superintendent as of the first day of July of	382
each year.	383

The commission, in accordance with rules adopted under 384  
division (A)(2)~~(f)~~(g) of section 4735.10 of the Revised Code, 385  
shall impose a special assessment not to exceed ten dollars 386  
annually on each licensee filing a notice of renewal under section 387  
4735.14 of the Revised Code if the amount available in the fund is 388  
less than one million dollars on the first day of July preceding 389  
that filing. The commission may impose a special assessment not to 390  
exceed five dollars annually if the amount available in the fund 391  
is greater than one million dollars, but less than two million 392  
dollars on the first day of July preceding that filing. The 393  
commission shall not impose a special assessment if the amount 394  
available in the fund exceeds two million dollars on the first day 395  
of July preceding that filing. 396

(B)(1) Any person who obtains a final judgment in any court 397  
of competent jurisdiction against any broker or salesperson 398  
licensed under this chapter, on the grounds of conduct that is in 399  
violation of this chapter or the rules adopted under it, and that 400  
is associated with an act or transaction that only a licensed real 401  
estate broker or licensed real estate salesperson is authorized to 402  
perform as specified in division (A) or (C) of section 4735.01 of 403  
the Revised Code, may file a verified application, as described in 404  
division (B)(3) of this section, in any court of common pleas for 405  
an order directing payment out of the real estate recovery fund of 406  
the portion of the judgment that remains unpaid and that 407  
represents the actual and direct loss sustained by the applicant. 408

(2) Punitive damages, attorney's fees, and interest on a 409  
judgment are not recoverable from the fund. In the discretion of 410  
the superintendent of real estate, court costs may be recovered 411  
from the fund, and, if the superintendent authorizes the recovery 412  
of court costs, the order of the court of common pleas then may 413  
direct their payment from the fund. 414

(3) The application shall specify the nature of the act or 415

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.

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(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:

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

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(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;

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

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(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;

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(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.

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

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

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

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(c) A person in an action for the payment of a commission or

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fee for the performance of an act or transaction specified or 446  
comprehended in division (A) or (C) of section 4735.01 of the 447  
Revised Code; 448

(d) Losses incurred by investors in real estate if the 449  
applicant and the licensee are principals in the investment. 450

(C) A person who applies to a court of common pleas for an 451  
order directing payment out of the fund shall file notice of the 452  
application with the superintendent. The superintendent may defend 453  
any such action on behalf of the fund and shall have recourse to 454  
all appropriate means of defense and review, including examination 455  
of witnesses, verification of actual and direct losses, and 456  
challenges to the underlying judgment required in division 457  
(B)(4)(a) of this section to determine whether the underlying 458  
judgment is based on activity only a licensed broker or licensed 459  
salesperson is permitted to perform. The superintendent may move 460  
the court at any time to dismiss the application when it appears 461  
there are no triable issues and the application is without merit. 462  
The motion may be supported by affidavit of any person having 463  
knowledge of the facts and may be made on the basis that the 464  
application, including the judgment referred to in it, does not 465  
form the basis for a meritorious recovery claim; provided, that 466  
the superintendent shall give written notice to the applicant at 467  
least ten days before such motion. The superintendent may, subject 468  
to court approval, compromise a claim based upon the application 469  
of an aggrieved party. The superintendent shall not be bound by 470  
any prior compromise or stipulation of the judgment debtor. 471

(D) Notwithstanding any other provision of this section, the 473  
liability of the fund shall not exceed forty thousand dollars for 474  
any one licensee. If a licensee's license is reactivated as 475  
provided in division (E) of this section, the liability of the 476  
fund for the licensee under this section shall again be forty 477



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

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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. 4735.14.** (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 541  
(A)(2)~~(e)~~(f) of section 4735.10 of the Revised Code, a notice of 542  
renewal on a form prescribed by the superintendent of real estate. 543  
The licensee shall indicate on the form whether the licensee 544  
wishes to maintain the licensee's license in an active or inactive 545  
status. The notice of renewal shall be mailed by the 546  
superintendent to the most current personal residence address of 547  
each broker or salesperson as filed with the superintendent by the 548  
licensee and the place of business address of the brokerage two 549  
months prior to the filing deadline. 550

(C) The license of any real estate broker, brokerage, or 551  
salesperson that fails to file a notice of renewal on or before 552  
the filing deadline of each ensuing year shall be suspended 553  
automatically without the taking of any action by the 554  
superintendent. A suspended license may be reactivated within 555  
twelve months of the date of suspension, provided that the renewal 556  
fee plus a penalty fee of fifty per cent of the renewal fee is 557  
paid to the superintendent. Failure to reactivate the license as 558  
provided in this division shall result in automatic revocation of 559  
the license without the taking of any action by the 560  
superintendent. No person, partnership, association, corporation, 561  
limited liability company, or limited partnership shall engage in 562  
any act or acts for which a real estate license is required while 563  
that entity's license is placed in an inactive status, suspended, 564  
or revoked. The commission shall adopt rules in accordance with 565  
Chapter 119. of the Revised Code to provide to licensees notice of 566  
suspension or revocation or both. 567

(D) Each licensee shall notify the commission of a change in 568  
personal residence address. A licensee's failure to notify the 569  
commission of a change in personal residence address does not 570  
negate the requirement to file the license renewal by the required 571  
deadline established by the commission by rule under division 572

(A)(2)(e)(f) of section 4735.10 of the Revised Code. 573

(E) The superintendent shall not renew a license if the 574  
licensee is not in compliance with this chapter. 575

**Sec. 4735.18.** (A) Subject to section 4735.32 of the Revised 576  
Code, the superintendent of real estate, upon the superintendent's 577  
own motion, may investigate the conduct of any licensee. Subject 578  
to section 4735.32 of the Revised Code, the Ohio real estate 579  
commission shall, pursuant to section 4735.051 of the Revised 580  
Code, impose disciplinary sanctions upon any licensee who, whether 581  
or not acting in the licensee's capacity as a real estate broker 582  
or salesperson, or in handling the licensee's own property, is 583  
found to have been convicted of a felony or a crime of moral 584  
turpitude, and shall, pursuant to section 4735.051 of the Revised 585  
Code, impose disciplinary sanctions upon any licensee who, in the 586  
licensee's capacity as a real estate broker or salesperson, or in 587  
handling the licensee's own property, is found guilty of: 588

(1) Knowingly making any misrepresentation; 589

(2) Making any false promises with intent to influence, 590  
persuade, or induce; 591

(3) A continued course of misrepresentation or the making of 592  
false promises through agents, salespersons, advertising, or 593  
otherwise; 594

(4) Acting for more than one party in a transaction except as 595  
permitted by and in compliance with section 4735.71 of the Revised 596  
Code; 597

(5) Failure within a reasonable time to account for or to 598  
remit any money coming into the licensee's possession which 599  
belongs to others; 600

(6) Dishonest or illegal dealing, gross negligence, 601  
incompetency, or misconduct; 602

(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; 635
- (11) Having paid commissions or fees to, or divided 636  
commissions or fees with, anyone not licensed as a real estate 637  
broker or salesperson under this chapter or anyone not operating 638  
as an out of state commercial real estate broker or salesperson 639  
under section 4735.022 of the Revised Code; 640
- (12) Having falsely represented membership in any real estate 641  
professional association of which the licensee is not a member; 642  
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- (13) Having accepted, given, or charged any undisclosed 644  
commission, rebate, or direct profit on expenditures made for a 645  
principal; 646
- (14) Having offered anything of value other than the 647  
consideration recited in the sales contract as an inducement to a 648  
person to enter into a contract for the purchase or sale of real 649  
estate or having offered real estate or the improvements on real 650  
estate as a prize in a lottery or scheme of chance; 651
- (15) Having acted in the dual capacity of real estate broker 652  
and undisclosed principal, or real estate salesperson and 653  
undisclosed principal, in any transaction; 654
- (16) Having guaranteed, authorized, or permitted any person 655  
to guarantee future profits which may result from the resale of 656  
real property; 657
- (17) Having placed a sign on any property offering it for 658  
sale or for rent without the consent of the owner or the owner's 659  
authorized agent; 660
- (18) Having induced any party to a contract of sale or lease 661  
to break such contract for the purpose of substituting in lieu of 662  
it a new contract with another principal; 663
- (19) Having negotiated the sale, exchange, or lease of any 664

real property directly with an owner, purchaser, lessor, or tenant 665  
knowing that such owner, purchaser, lessor, or tenant had a 666  
written outstanding contract granting exclusive agency in 667  
connection with such property to another real estate broker; 668

(20) Having offered real property for sale or for lease 669  
without the knowledge and consent of the owner or the owner's 670  
authorized agent, or on any terms other than those authorized by 671  
the owner or the owner's authorized agent; 672

(21) Having published advertising, whether printed, radio, 673  
display, or of any other nature, which was misleading or 674  
inaccurate in any material particular, or in any way having 675  
misrepresented any properties, terms, values, policies, or 676  
services of the business conducted; 677

(22) Having knowingly withheld from or inserted in any 678  
statement of account or invoice any statement that made it 679  
inaccurate in any material particular; 680

(23) Having published or circulated unjustified or 681  
unwarranted threats of legal proceedings which tended to or had 682  
the effect of harassing competitors or intimidating their 683  
customers; 684

(24) Having failed to keep complete and accurate records of 685  
all transactions for a period of three years from the date of the 686  
transaction, such records to include copies of listing forms, 687  
earnest money receipts, offers to purchase and acceptances of 688  
them, and records of receipts and disbursements of all funds 689  
received by the licensee as broker and incident to the licensee's 690  
transactions as such, and any other instruments or papers related 691  
to the performance of any of the acts set forth in the definition 692  
of a real estate broker; 693

(25) Failure of a real estate broker or salesperson to 694  
furnish all parties involved in a real estate transaction true 695

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;	727
(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;	728 729 730 731 732 733
(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;	734 735 736
(32) Performing any service for another constituting the practice of law, as determined by any court of law;	737 738
(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.	739 740 741 742 743
(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 <u>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;</u>	744 745 746 747 748 749
(35) Having knowingly inserted or participated in inserting any materially inaccurate term in a document, including naming a false consideration;	750 751 752
(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.	753 754 755 756 757

(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.

**Section 2.** That existing sections 4735.01, 4735.02, 4735.10, 4735.12, 4735.14, and 4735.18 of the Revised Code are hereby repealed.