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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

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 15
partnership, or corporation, foreign or domestic, who for another, 16
whether pursuant to a power of attorney or otherwise, and who for 17
a fee, commission, or other valuable consideration, or with the 18

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

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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.

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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
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

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collecting a fee, commission, or other valuable consideration:	111
(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;	112 113 114 115 116 117
(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;	118 119 120 121 122 123 124
(3) As a public officer while performing the officer's official duties;	125 126
(4) As an attorney at law in the performance of the attorney's duties;	127 128
(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;	129 130 131
(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;	132 133 134 135 136 137
<u>(7) As a person who engages in the sale of commercial real estate as defined in division (R) of this section pursuant to the requirements of section 4735.022 of the Revised Code.</u>	138 139 140

(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, 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.

(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. 172

(Q) "Revoked" means the license status in which the license 173
is void and not eligible for reactivation. 174

(R) "Commercial real estate" means any parcel of real estate 175
in this state other than real estate containing one to four 176
residential units. "Commercial real estate" does not include 177
single-family residential units such as condominiums, townhouses, 178
manufactured homes, or homes in a subdivision when sold, leased, 179
or otherwise conveyed on a unit-by-unit basis, even when those 180
units are a part of a larger building or parcel of real estate 181
containing more than four residential units. 182

(S) "Out of state commercial broker" includes any person, 183
partnership, association, limited liability company, limited 184
liability partnership, or corporation that is licensed to do 185
business as a real estate broker in a jurisdiction other than 186
Ohio. 187

(T) "Out of state commercial salesperson" includes any person 188
affiliated with an out of state commercial broker who is not 189
licensed as a real estate salesperson in Ohio. 190

Sec. 4735.02. ~~No~~ Except as provided in section 4735.022 of 191
the Revised Code, no person, partnership, association, limited 192
liability company, limited liability partnership, or corporation 193
shall act as a real estate broker or real estate salesperson, or 194
advertise or assume to act as such, without first being licensed 195
as provided in this chapter. No person, partnership, association, 196
limited liability company, limited liability partnership, or 197
corporation shall provide services that require a license under 198
this chapter if the licensee's license is inactive, suspended, or 199
a broker's license on deposit, or if the license has been revoked. 200
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

<u>arises or where the plaintiff resides;</u>	234
<u>(5) Includes the name of the Ohio real estate broker on all</u>	235
<u>advertising in accordance with section 4735.16 of the Revised</u>	236
<u>Code;</u>	237
<u>(6) Deposits all escrow funds, security deposits, and other</u>	238
<u>money received by either the out of state commercial broker or</u>	239
<u>Ohio real estate broker in accordance with the account</u>	240
<u>specifications set forth in divisions (A)(26) and (27) of section</u>	241
<u>4735.18 of the Revised Code in accounts maintained by the Ohio</u>	242
<u>real estate broker;</u>	243
<u>(7) Deposits all documentation required by this section and</u>	244
<u>records and documents related to the transaction with the Ohio</u>	245
<u>real estate broker who maintains those documents and records in</u>	246
<u>accordance with the requirements set forth in division (A)(24) of</u>	247
<u>section 4735.18 of the Revised Code.</u>	248
<u>(B) An out of state commercial salesperson may perform those</u>	249
<u>acts that require a real estate salesperson license under this</u>	250
<u>chapter with respect to commercial real estate, provided that the</u>	251
<u>out of state commercial salesperson meets all of the following</u>	252
<u>requirements:</u>	253
<u>(1) Is licensed with and works under the direct supervision</u>	254
<u>of the out of state commercial broker;</u>	255
<u>(2) The out of state commercial broker with whom the</u>	256
<u>salesperson is associated meets all of the requirements of</u>	257
<u>division (A) of this section;</u>	258
<u>(3) Provides the Ohio real estate broker with a copy of the</u>	259
<u>commercial salesperson's current certificate of good standing from</u>	260
<u>the jurisdiction where the out of state commercial salesperson</u>	261
<u>maintains an active real estate license in connection with the out</u>	262
<u>of state commercial broker;</u>	263

(4) Only collects money, including commissions, deposits, payments, rentals, or otherwise, 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. 264
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(C) By filing a consent-to-jurisdiction document as described under division (A)(4) of section 4735.022 of the Revised Code, the person giving the consent makes and constitutes the secretary of state as an agent for service of process in this state including summonses and subpoenas. Service of process upon any such person may be initiated by leaving with the secretary of state or an assistant secretary of state four copies of the process, together with 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 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. 268
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(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 that requires a real estate broker license in this state. 283
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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: 290
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(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
(c) <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
(d) <u>(e)</u> Requirements for trust accounts and property management accounts. The rules shall specify that:	323 324

(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)~~(f) Annual 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;	355
(5) Appointment of hearing examiners under section 119.09 of the Revised Code;	356
(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;	358
(7) Qualification of foreign real estate under section 4735.25 of the Revised Code.	362
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.	364
(C) The commission or superintendent may hear testimony in matters relating to the duties imposed upon them, and the president of the commission 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.	368
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.	376
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 416

activities of the applicant in pursuit of remedies available under 417
law for the collection of judgments, and the actual and direct 418
losses, attorney's fees, and the court costs sustained or incurred 419
by the applicant. The applicant shall attach to the application a 420
copy of each pleading and order in the underlying court action. 421

(4) The court shall order the superintendent to make such 422
payments out of the fund when the person seeking the order has 423
shown all of the following: 424

(a) The person has obtained a judgment, as provided in this 425
division; 426

(b) All appeals from the judgment have been exhausted and the 427
person has given notice to the superintendent, as required by 428
division (C) of this section; 429

(c) The person is not a spouse of the judgment debtor, or the 430
personal representative of such spouse; 431

(d) The person has diligently pursued the person's remedies 432
against all the judgment debtors and all other persons liable to 433
the person in the transaction for which the person seeks recovery 434
from the fund; 435

(e) The person is making the person's application not more 436
than one year after termination of all proceedings, including 437
appeals, in connection with the judgment. 438

(5) Divisions (B)(1) to (4) of this section do not apply to 439
any of the following: 440

(a) Actions arising from property management accounts 441
maintained in the name of the property owner; 442

(b) A bonding company when it is not a principal in a real 443
estate transaction; 444

(c) A person in an action for the payment of a commission or 445
fee for the performance of an act or transaction specified or 446

comprehended in division (A) or (C) of section 4735.01 of the Revised Code; 447
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(d) Losses incurred by investors in real estate if the applicant and the licensee are principals in the investment. 449
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(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 the 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. 451
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(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 472
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to the time of reactivation.

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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.

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(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.

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(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

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deposited in the fund, satisfy such unpaid claims or portions, in 511
the order that such claims or portions were originally filed, plus 512
accumulated interest per annum at the rate specified in division 513
(A) of section 1343.03 of the Revised Code. 514

(G) When, upon the order of the court, the superintendent has 515
paid from the fund any sum to the judgment creditor, the 516
superintendent shall be subrogated to all of the rights of the 517
judgment creditor to the extent of the amount so paid, and the 518
judgment creditor shall assign all the judgment creditor's right, 519
title, and interest in the judgment to the superintendent to the 520
extent of the amount so paid. Any amount and interest so recovered 521
by the superintendent on the judgment shall be deposited in the 522
fund. 523

(H) Nothing contained in this section shall limit the 524
authority of the superintendent to take disciplinary action 525
against any licensee under other provisions of this chapter; nor 526
shall the repayment in full of all obligations to the fund by any 527
licensee nullify or modify the effect of any other disciplinary 528
proceeding brought pursuant to this chapter. 529

(I) The superintendent shall collect from the fund a service 530
fee in an amount equivalent to the interest rate specified in 531
division (A) of section 1343.03 of the Revised Code multiplied by 532
the annual interest earned on the assets of the fund, to defray 533
the expenses incurred in the administration of the fund. 534

Sec. 4735.14. (A) Each license issued under this chapter, 535
shall be valid without further recommendation or examination until 536
placed in an inactive status, revoked, suspended, or such license 537
expires by operation of law. 538

(B) Each licensed broker, brokerage, or salesperson shall 539
file, on or before the date the Ohio real estate commission has 540
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 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.

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(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.

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(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.

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(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 603

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 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
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 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;

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(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.

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(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.

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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.

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

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(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;

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As Reported by the House Commerce and Labor Committee

- (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 759
of this section, the commission also may impose such sanctions 760
upon the broker with whom the salesperson is affiliated if the 761
commission finds that the broker had knowledge of the 762
salesperson's actions that violated this section. 763

(C) The commission shall, pursuant to section 4735.051 of the 764
Revised Code, impose disciplinary sanctions upon any foreign real 765
estate dealer or salesperson who, in that capacity or in handling 766
the dealer's or salesperson's own property, is found guilty of any 767
of the acts or omissions specified or comprehended in division (A) 768
of this section insofar as the acts or omissions pertain to 769
foreign real estate. If the commission imposes such sanctions upon 770
a foreign real estate salesperson for a violation of this section, 771
the commission also may suspend or revoke the license of the 772
foreign real estate dealer with whom the salesperson is affiliated 773
if the commission finds that the dealer had knowledge of the 774
salesperson's actions that violated this section. 775

(D) The commission may suspend, in whole or in part, the 777
imposition of the penalty of suspension of a license under this 778
section. 779

(E) The commission immediately shall notify the real estate 780
appraiser board of any disciplinary action taken under this 781
section against a licensee who also is a state-certified real 782
estate appraiser under Chapter 4763. of the Revised Code. 783

Section 2. That existing sections 4735.01, 4735.02, 4735.10, 784
4735.12, 4735.14, and 4735.18 of the Revised Code are hereby 785
repealed. 786