

(125th General Assembly)
(Amended Substitute Senate Bill Number 106)

AN ACT

To amend sections 4735.03, 4735.04, 4735.05, 4735.051, 4735.06, 4735.09, 4735.13, 4735.14, 4735.141, 4735.15, 4735.53, 4735.58, 4735.70, 4735.71, and 4735.72, to enact new sections 4735.56 and 4735.57 and sections 4735.181 and 4735.182, and to repeal sections 4735.56, 4735.57, and 4735.73 of the Revised Code to modify agency relationships between real estate licensees and customers, including disclosures made to customers, to establish a penalty for noncompliance with disclosure requirements, and to make other changes to the Real Estate Broker Law.

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

SECTION 1. That sections 4735.03, 4735.04, 4735.05, 4735.051, 4735.06, 4735.09, 4735.13, 4735.14, 4735.141, 4735.15, 4735.53, 4735.58, 4735.70, 4735.71, and 4735.72 be amended and new sections 4735.56 and 4735.57 and sections 4735.181 and 4735.182 of the Revised Code be enacted to read as follows:

Sec. 4735.03. There is hereby created the Ohio real estate commission, consisting of five members who shall be appointed by the governor, with the advice and consent of the senate. Four members shall have been engaged in the real estate business as licensed real estate brokers in the state for a period of ten years immediately preceding the appointment. One member shall represent the public. Terms of office shall be for five years, commencing on the first day of July and ending on the thirtieth day of June. Each member shall hold office from the date of appointment until the end of the term for which appointed. No more than three members shall be members of any one political party and no member of the commission concurrently may be a member of the commission and the real estate appraiser board created pursuant to section 4763.02 of the Revised Code. Each member, before entering upon the duties of office, shall subscribe to

and file with the secretary of state the constitutional oath of office. All vacancies which occur shall be filled in the manner prescribed for the regular appointments to the commission. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first. Annually, upon the qualification of the member appointed in such year, the commission shall organize by selecting from its members a president and vice-president, and shall do all things necessary and proper to carry out and enforce this chapter. A majority of the members of the commission shall constitute a quorum, but a lesser number may adjourn from time to time. Each member of the commission shall receive an amount fixed pursuant to section 124.14 of the Revised Code for each day employed in the discharge of official duties, and the member's actual and necessary expenses incurred in the discharge of those duties.

The commission or the superintendent of real estate may investigate complaints concerning the violation of section 4735.02 or 4735.25 of the Revised Code and may subpoena witnesses in connection with such investigations as provided in section 4735.04 of the Revised Code. The commission or the superintendent may make application to the appropriate court for an order enjoining the violation of section 4735.02 or 4735.25 of the Revised Code, and upon a showing by the commission or the superintendent that any person, firm, partnership, association, limited liability company, limited liability partnership, or corporation has violated or is about to violate section 4735.02 or 4735.25 of the Revised Code, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court.

The commission shall:

- (A) Adopt canons of ethics for the real estate industry;
- (B) Upon appeal by any party affected, or may upon its own motion, review any order or application determination of the superintendent, and may reverse, vacate, or modify any order of the superintendent;
- (C) Administer the real estate education and research fund and hear appeals from orders of the superintendent regarding claims against that fund or against the real estate recovery fund;
- (D) Direct the superintendent on the content, scheduling, instruction, and offerings of real estate courses for salesperson and broker educational requirements;

(E) Disseminate to licensees and the public, information relative to commission activities and decisions;

(F) Notify licensees of changes in state and federal civil rights laws pertaining to discrimination in the purchase or sale of real estate and relevant case law, and inform licensees that they are subject to disciplinary action if they do not comply with the changes;

(G) Publish and furnish to public libraries and to brokers booklets on housing and remedies available to dissatisfied clients under this chapter and Chapter 4112. of the Revised Code;

(H) Provide training to commission members and employees of the division of real estate and professional licensing on issues relative to the real estate industry, which may include but not be limited to investigative techniques, real estate law, and real estate practices and procedures.

Sec. 4735.04. The Ohio real estate commission or the superintendent of real estate may compel, by order or subpoena, the attendance of witnesses to testify in relation to any matter over which the commission or superintendent has jurisdiction and which is the subject of inquiry and investigation by the commission or superintendent, and require the production of any book, paper, or document pertaining to such matter. For such purpose, the commission or superintendent shall have the same power as judges of county courts to administer oaths, compel the attendance of witnesses, and punish them for refusal to testify. ~~Sheriffs and constables are required to serve and return such process and shall receive the same fees for doing so as are allowed for like services. Service of the subpoena may be made by sheriffs or constables, or by certified mail, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refused to accept delivery.~~ Witnesses shall receive, after their appearance before the commission or superintendent, the fees and mileage allowed in civil actions in courts of common pleas. If two or more witnesses travel together in the same vehicle, the mileage fee shall be paid to only one of those witnesses, but the witnesses may agree to divide the fee among themselves in any manner.

In addition to the powers granted to the commission and superintendent under this section, in case any person fails to file any statement or report, obey any subpoena, give testimony, answer questions, or produce any books, records, or papers as required by the commission or superintendent under this chapter, the court of common pleas of any county in the state, upon application made to it by the commission or superintendent setting forth such failure, may make an order awarding process of subpoena or subpoena duces tecum for the person to appear and testify before the

commission or superintendent, and may order any person to give testimony and answer questions, and to produce books, records, or papers, as required by the commission or superintendent. Upon the filing of such order in the office of the clerk of the court of common pleas, the clerk, under the seal of the court, shall issue process of subpoena for the person to appear before the commission or superintendent at a time and place named in the subpoena, and each day thereafter until the examination of such person is completed. The subpoena may contain a direction that the witness bring with him the witness to the examination any books, records, or papers mentioned in the subpoena. The clerk shall also issue, under the seal of the court, such other orders, in reference to the examination, appearance, and production of books, records, or papers, as the court directs. If any person so summoned by subpoena fails to obey the subpoena, to give testimony, to answer questions as required, or to obey an order of the court, the court, on motion supported by proof, may order an attachment for contempt to be issued against the person charged with disobedience of any order or injunction issued by the court under this chapter. If the person is brought before the court by virtue of the attachment, and if upon a hearing the disobedience appears, the court may order the offender to be committed and kept in close custody.

Sec. 4735.05. (A) The Ohio real estate commission is a part of the department of commerce for administrative purposes. The director of commerce is ex officio the executive officer of the commission, or the director may designate any employee of the department as superintendent of real estate and professional licensing to act as executive officer of the commission.

The commission and the real estate appraiser board created pursuant to section 4763.02 of the Revised Code shall each submit to the director a list of three persons whom the commission and the board consider qualified to be superintendent within sixty days after the office of superintendent becomes vacant. The director shall appoint a superintendent from the lists submitted by the commission and the board, and the superintendent shall serve at the pleasure of the director.

(B) The superintendent, except as otherwise provided, shall do all of the following in regard to this chapter:

- (1) Administer this chapter;
- (2) Issue all orders necessary to implement this chapter;
- (3) Investigate complaints concerning the violation of this chapter or the conduct of any licensee;
- (4) Establish and maintain an investigation and audit section to

investigate complaints and conduct inspections, audits, and other inquiries as in the judgment of the superintendent are appropriate to enforce this chapter. The investigators or auditors have the right to review and audit the business records of licensees and continuing education course providers during normal business hours.

(5) Appoint a hearing examiner for any proceeding involving disciplinary action under section 3123.47 or 4735.18 of the Revised Code;

(6) Administer the real estate recovery fund.

(C) The superintendent may do all of the following:

(1) In connection with investigations and audits under division (B) of this section, subpoena witnesses as provided in section 4735.04 of the Revised Code;

(2) Apply to the appropriate court to enjoin any violation of this chapter. Upon a showing by the superintendent that any person has violated or is about to violate any provision of this chapter, the court shall grant an injunction, restraining order, or other appropriate order.

(3) Upon the death of a licensed broker or the revocation or suspension of the broker's license, if there is no other licensed broker within the business entity of the broker, appoint upon application by any interested party, or, in the case of a deceased broker, subject to the approval by the appropriate probate court, recommend the appointment of, an ancillary trustee who is qualified as determined by the superintendent to conclude the business transactions of the deceased, revoked, or suspended broker;

(4) In conjunction with the enforcement of this chapter, when the superintendent of real estate has reasonable cause to believe that an applicant or licensee has committed a criminal offense, the superintendent of real estate may request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check of the applicant or licensee. The superintendent of the bureau of criminal identification and investigation shall obtain information from the federal bureau of investigation as part of the criminal records check of the applicant or licensee. The superintendent of real estate may assess the applicant or licensee a fee equal to the fee assessed for the criminal records check.

(D) All information that is obtained by investigators and auditors performing investigations or conducting inspections, audits, and other inquiries pursuant to division (B)(4) of this section, from licensees, complainants, or other persons, and all reports, documents, and other work products that arise from that information and that are prepared by the investigators, auditors, or other personnel of the department, shall be held in confidence by the superintendent, the investigators and auditors, and other

personnel of the department. Notwithstanding division (D) of section 2317.023 of the Revised Code, all information obtained by investigators or auditors from an informal mediation meeting held pursuant to section 4735.051 of the Revised Code, including but not limited to the agreement to mediate and the accommodation agreement, shall be held in confidence by the superintendent, investigators, auditors, and other personnel of the department.

Sec. 4735.051. (A) Within five business days after a person files a signed written complaint against a licensed real estate broker or licensed real estate salesperson with the division of real estate, the superintendent of real estate shall acknowledge receipt of the complaint and send a notice to the licensee describing the acts complained of. The acknowledgment to the complainant and the notice to the licensee shall state that an informal mediation meeting will be held with the complainant, the licensee, and an investigator from the investigation and audit section of the division if the complainant and licensee both file a request for such a meeting within ten business days thereafter on a form provided by the superintendent.

(B) If the complainant and licensee both file with the division requests for an informal mediation meeting, the superintendent shall notify the complainant and licensee of the date of the meeting, which shall be within twenty business days thereafter, except that any party may request an extension of up to fifteen business days for good cause shown. If the complainant and licensee reach an accommodation at an informal mediation meeting, the investigator shall so report to the superintendent, the complainant, and licensee and the complaint file shall be closed, ~~unless, based upon the investigator's report, the superintendent finds evidence that the licensee has violated section 4735.18 of the Revised Code.~~

(C) If the complainant and licensee fail to agree to an informal mediation meeting or fail to reach an accommodation, ~~or if the superintendent finds evidence of a violation of section 4735.18 of the Revised Code,~~ the superintendent shall, within five business days of such determination, so notify the complainant and licensee and shall investigate the conduct of the licensee against whom the complaint is filed.

(D) Within sixty business days after receipt of the complaint, or, if an informal meeting is held, within sixty days of such meeting, the investigator shall file a written report of the results of the investigator's investigation with the superintendent. Within fourteen business days thereafter, the superintendent shall review the report and determine whether there exists reasonable and substantial evidence of a violation of section 4735.18 of the Revised Code by the licensee. If the superintendent finds such evidence

exists, within seven business days of the determination, the superintendent shall notify the complainant and licensee of the date of a hearing to be held by a hearing examiner pursuant to Chapter 119. of the Revised Code within fifteen days but not prior to seven days thereafter, except that either the superintendent or the licensee may request an extension of up to thirty business days for good cause shown. If the superintendent finds that such evidence does not exist, within five business days thereafter, the superintendent shall so notify the complainant and licensee of the superintendent's determination and the basis for the determination. Within fifteen business days after the superintendent notifies the complainant and licensee that such evidence does not exist, the complainant may file with the division a request that the commissioners review the determination. If the complainant files such request, the commissioners shall review the determination at the next regularly scheduled meeting held at least fifteen business days after the request is filed. The commission shall hear the testimony of either the complainant or the licensee at the meeting upon the request of the complainant or licensee. If the commissioners affirm the determination of the superintendent, the superintendent shall so notify the complainant and the licensee within five business days thereafter. If the commissioners reverse the determination of the superintendent, a hearing shall be held and the complainant and licensee notified as provided in this division.

After the date of a hearing to be held by a hearing examiner has been scheduled pursuant to division (D) of this section, but before the issuance of the report of findings of fact and conclusions of law pursuant to division (E) of this section, the superintendent upon receipt of additional evidence, may withdraw the notice of hearing. Withdrawal by the superintendent does not constitute evidence that the original notice of hearing was not substantially justified. Upon withdrawal of the notice of hearing, the superintendent shall notify the complainant and licensee of the superintendent's determination and basis for the determination. Within fifteen business days after the superintendent notifies the complainant and licensee, the complainant may file with the superintendent a request that the Ohio real estate commission review the determination. The commission shall review the request as provided in division (D) of this section.

(E) Within twenty-five business days after the conclusion of formal hearings, the hearing examiner shall file a report of findings of fact and conclusions of law with the superintendent, the commission, and the complainant and licensee.

(F) The commissioners shall review the hearing examiner's report at the

next regularly scheduled commission meeting held at least fifteen business days after receipt of the hearing examiner's report. The commission shall hear the testimony of the complainant or the licensee upon request. If the complainant is the Ohio civil rights commission, the complaint shall be reviewed by the commissioners directly upon request.

(G) The commission shall decide whether to impose disciplinary sanctions upon a licensee for a violation of section 4735.18 of the Revised Code. The commission shall decide within sixty days of the filing of the hearing examiner's report or within sixty days of the filing of an Ohio civil rights commission complaint. The commission shall maintain a transcript of the proceedings and issue a written opinion to the complainant and licensee, citing its findings and grounds for any action taken. The commission shall notify the complainant and any other person who may have suffered financial loss because of the licensee's violations, that the complainant or other person may sue for recovery under section 4735.12 of the Revised Code.

(H) An investigation under this section is subject to section 4735.32 of the Revised Code.

(I) The commission may impose the following sanctions upon a licensee for a violation of section 4735.18 of the Revised Code:

(1) Revoke a license issued under Chapter 4735. of the Revised Code;

(2) Suspend a license for a term set by the commission;

(3) Impose a fine, not exceeding two thousand five hundred dollars per violation;

(4) Issue a public reprimand;

(5) Require the completion of additional continuing education course work. Any continuing education course work imposed pursuant to this section shall not count toward the continuing education requirements set forth in section 4735.14 of the Revised Code.

All fines imposed pursuant to division (I)(3) of this section shall be credited to the real estate recovery fund, which is created in the state treasury under section 4735.12 of the Revised Code.

(J) All notices, written reports, and determinations issued pursuant to this section shall be mailed via certified mail, return receipt requested. If the certified notice is returned because of failure of delivery, or was refused or unclaimed, the notice, written reports, or determinations are deemed served if the superintendent sends the notice, written report, or determination via regular mail and obtains a certificate of mailing of the notice, written reports, or determination.

Sec. 4735.06. (A) Application for a license as a real estate broker shall

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

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

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

(C) Four dollars of each application fee for a real estate broker's license

shall be credited to the real estate education and research fund, which is hereby created in the state treasury. The Ohio real estate commission may use the fund in discharging the duties prescribed in divisions (E), (F), and (G), and (H) of section 4735.03 of the Revised Code and shall use it in the advancement of education and research in real estate at any institution of higher education in the state, or in contracting with any such institution or a trade organization for a particular research or educational project in the field of real estate, or in advancing loans, not exceeding eight hundred dollars, to applicants for salesperson licenses, to defray the costs of satisfying the educational requirements of division (F) of section 4735.09 of the Revised Code. Such loans shall be made according to rules established by the commission under the procedures of Chapter 119. of the Revised Code, and they shall be repaid to the fund within three years of the time they are made. No more than ten thousand dollars shall be lent from the fund in any one year.

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

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

Sec. 4735.09. (A) Application for a license as a real estate salesperson shall be made to the superintendent of real estate on forms furnished by the superintendent and signed by the applicant. The application shall be in the form prescribed by the superintendent and shall contain such information as is required by this chapter and the rules of the Ohio real estate commission. The application shall be accompanied by the recommendation of the real estate broker with whom the applicant is associated or with whom the

applicant intends to be associated, certifying that the applicant is honest, truthful, and of good reputation, has not been convicted of a felony or a crime involving moral turpitude, and has not been finally adjudged by a court to have violated any municipal, state, or federal civil rights laws relevant to the protection of purchasers or sellers of real estate, which conviction or adjudication the applicant has not disclosed to the superintendent, and recommending that the applicant be admitted to the real estate salesperson examination.

(B) A fee of forty-nine dollars shall accompany the application, which fee includes the fee for the initial year of the licensing period, if a license is issued. The application fee shall be retained by the superintendent if the applicant is admitted to the examination for the license or the examination requirement is waived, but, if an applicant is not so admitted and a waiver is not involved, one-half of the fee shall be retained by the superintendent to cover the expenses of processing the application and the other one-half shall be returned to the applicant. A fee of forty-nine dollars shall be charged by the superintendent for each successive application made by the applicant. ~~In the case of issuance of a three year license, upon passing the examination, or upon waiver of the examination requirement, the applicant shall submit an additional fee of seventy-eight dollars, which fee includes the fee for the second and third year of the licensing period.~~ Four dollars of each application fee shall be credited to the real estate education and research fund.

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

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

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

(E) The superintendent shall issue a real estate salesperson's license when satisfied that the applicant has received a passing score on each

portion of the salesperson's examination as determined by rule by the real estate commission, except that the superintendent may waive one or more of the requirements of this section in the case of an applicant who is a licensed real estate salesperson in another state pursuant to a reciprocity agreement with the licensing authority of the state from which the applicant holds a valid real estate salesperson's license.

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

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

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

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

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

(4) Is at least eighteen years of age;

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

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

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

(ii) Thirty hours of classroom instruction that includes the subjects of Ohio real estate law, municipal, state, and federal civil rights law, new case law on housing discrimination, desegregation issues, and methods of eliminating the effects of prior discrimination. If feasible, the classroom

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

- (iii) Thirty hours of classroom instruction in real estate appraisal;
- (iv) Thirty hours of classroom instruction in real estate finance.

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

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

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

- (c) Twenty hours of classroom instruction in real estate appraisal;
- (d) Twenty hours of classroom instruction in real estate finance.

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

practice, ethics, and real estate law.

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

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

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

(B) The license of each real estate salesperson shall be mailed to and remain in the possession of the licensed broker with whom the salesperson is or is to be associated until the licensee places the license on inactive status or until the salesperson leaves the brokerage or is terminated. The broker shall keep each salesperson's license in a way that it can, and shall on request, be made immediately available for public inspection at the office or

place of business of the broker. Except as provided in ~~division~~ divisions (G) and (H) of this section, immediately upon the salesperson's leaving the association or termination of the association of a real estate salesperson with the broker, the broker shall return the salesperson's license to the superintendent of real estate.

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

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

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

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

(E) If a real estate broker desires to associate with another real estate broker in the capacity of a real estate salesperson, the broker shall apply to the superintendent to deposit the broker's real estate broker's license with the superintendent and for the issuance of a real estate salesperson's license. The application shall be made on a form prescribed by the superintendent and shall be accompanied by the recommendation of the real estate broker with whom the applicant intends to become associated and a fee of twenty-five dollars for the real estate salesperson's license. Four dollars of the fee shall be credited to the real estate education and research fund. If the

superintendent is satisfied that the applicant is honest, truthful, and of good reputation, has not been convicted of a felony or a crime involving moral turpitude, and has not been finally adjudged by a court to have violated any municipal, state, or federal civil rights laws relevant to the protection of purchasers or sellers of real estate, and that the association of the real estate broker and the applicant will be in the public interest, the superintendent shall grant the application and issue a real estate salesperson's license to the applicant. Any license so deposited with the superintendent shall be subject to this chapter. A broker who intends to deposit the broker's license with the superintendent, as provided in this section, shall give written notice of this fact in a format prescribed by the superintendent to all salespersons associated with the broker when applying to place the broker's license on deposit.

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

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

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

license.

(H) If a licensed real estate salesperson submits an application to the superintendent to leave the association of one broker to associate with a different broker, the broker possessing the licensee's license need not return the salesperson's license to the superintendent. The superintendent may process the application regardless of whether the licensee's license is returned to the superintendent.

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

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

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

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

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

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

Persons licensed as real estate salespersons who subsequently become licensed real estate brokers shall continue to submit proof of continuing education in accordance with the time period established in this section.

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

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

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

(B) The continuing education requirements of this section shall be completed in schools, seminars, and educational institutions approved by the commission. Such approval shall be given according to rules established by the commission under the procedures of Chapter 119. of the Revised Code,

and shall not be limited to institutions providing two-year or four-year degrees. Each school, seminar, or educational institution approved under this division shall be open to all licensees on an equal basis.

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

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

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

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

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

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

(E) Any licensee who is a physically handicapped licensee at any time during the last three months of the third year of the licensee's continuing education reporting period may receive an extension of time to submit proof to the superintendent that the licensee has satisfactorily completed the required thirty hours of continuing education. To receive an extension of time, the licensee shall submit a request to the division of real estate for the extension and proof satisfactory to the commission that the licensee was a physically handicapped licensee at some time during the last three months of

the three-year reporting period. The proof shall include, but is not limited to, a signed statement by the licensee's attending physician describing the physical disability, certifying that the licensee's disability is of such a nature as to prevent the licensee from attending any instruction lasting at least three hours in duration, and stating the expected duration of the physical disability. The licensee shall request the extension and provide the physician's statement to the division no later than one month prior to the end of the licensee's three-year continuing education reporting period, unless the physical disability did not arise until the last month of the three-year reporting period, in which event the licensee shall request the extension and provide the physician's statement as soon as practical after the occurrence of the physical disability. A licensee granted an extension pursuant to this division who is no longer a physically handicapped licensee and who submits proof of completion of the continuing education during the extension period, shall submit, for future continuing education reporting periods, proof of completion of the continuing education requirements according to the schedule established in division (A) of this section.

Sec. 4735.15. (A) The fees for reactivation or transfer of a license shall be as follows:

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

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

(B) The Except as may otherwise be specified pursuant to division (F) of this section, the fees for a branch office license, license renewal, late filing, and foreign real estate dealer and salesperson license are as follows per year for each year of a licensing period:

(1) Branch office license, eight dollars;

(2) Renewal of a real estate broker's license, forty-nine dollars. If the licensee is a partnership, association, limited liability company, limited liability partnership, or corporation, the full broker's renewal fee shall be required for each member of such partnership, association, limited liability company, limited liability partnership, or corporation that is a real estate broker. If the real estate broker has not less than eleven nor more than

twenty real estate salespersons associated with the broker, an additional fee of sixty-four dollars shall be assessed to the brokerage. For every additional ten real estate salespersons or fraction of that number, the brokerage assessment fee shall be increased in the amount of thirty-seven dollars.

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

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

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

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

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

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

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

(F) The commission may adopt rules that provide for a reduction in the fees established in divisions (B)(2) and (3) of this section.

Sec. 4735.181. (A) No real estate broker or salesperson licensed pursuant to this chapter shall fail to comply with sections 4735.55, 4735.56, and 4735.58 of the Revised Code or any rules adopted under those sections.

(B) When the superintendent determines that a licensee has violated division (A) of this section, the superintendent may do either of the following:

(1) Initiate disciplinary action under section 4735.051 of the Revised Code, in accordance with Chapter 119. of the Revised Code;

(2) Personally, or by certified mail, serve a citation and impose sanctions in accordance with this section upon the licensee.

(C) Every citation served under this section shall give notice to the licensee of the alleged violation or violations charged and inform the licensee of the opportunity to request a hearing in accordance with Chapter 119. of the Revised Code. The citation also shall contain a statement of a fine of up to two hundred dollars per violation. All fines collected pursuant

to this section shall be credited to the real estate recovery fund, created in the state treasury under section 4735.12 of the Revised Code.

(D) If any licensee is cited three times under this section within twelve consecutive months, the superintendent shall initiate disciplinary action pursuant to section 4735.051 of the Revised Code for any subsequent violation that occurs within the same twelve-month period.

If a licensee fails to request a hearing within thirty days after the date of service of the citation, or the licensee and the superintendent fail to reach an alternative agreement, the citation shall become final.

(E) Unless otherwise indicated, the licensee named in a final citation under this section must meet all requirements contained in the final citation within thirty days after the effective date of that citation.

(F) The superintendent shall suspend automatically a licensee's license if the licensee fails to comply with division (E) of this section.

Sec. 4735.182. If a check or other draft instrument used to pay any fee required under this chapter is returned to the superintendent for insufficient funds, the superintendent shall notify the licensee that the check or other draft instrument was returned for insufficient funds and that the licensee's license will be suspended unless the licensee, within fifteen days after the mailing of the notice, submits the fee and a one-hundred-dollar fee to the superintendent. If the licensee does not submit both fees within that time period, or if any check or other draft instrument used to pay either of those fees is returned to the superintendent for insufficient funds, the license shall be suspended immediately without a hearing and the licensee shall cease activity as a licensee under this chapter.

Sec. 4735.53. (A) The types of agency relationships a licensee may establish in a real estate transaction are limited to the following:

(1) An agency relationship between the licensee and the seller;

(2) An agency relationship between the licensee and the purchaser;

(3) A dual agency relationship between the licensee and both the seller and the purchaser;

(4) A subagency relationship between the licensee and the client of another licensee.

(B) When an agency relationship is formed between a licensee and a client, both all of the following apply also are considered the agent of that client:

(1) The brokerage with whom the licensee is affiliated and, except as provided in division (C) of section 4735.70 of the Revised Code, the management level licensees in that brokerage who have direct supervisory duties over licensees are also agents of that client;

(2) Any licensee employed by, or affiliated with, the brokerage who receives confidential information from the agent of the client ~~is also an agent of that client;~~

(3) Any other licensee in the brokerage who assisted in establishing the agency relationship;

(4) Any licensee in the brokerage who specifically is appointed with the client's consent to represent that client.

(C) Except as otherwise provided in divisions (B)(1) ~~and (2) to (4)~~ of this section, another licensee who is affiliated with the same brokerage as the licensee is not an agent of that client ~~unless that licensee assisted in establishing the agency relationship or is specifically appointed, with the client's consent, to represent the client.~~

(C)(D) A payment or the promise of a payment to a licensee does not determine whether an agency relationship has been created between a licensee and a client or between other licensees in the brokerage with which the licensee is affiliated and that client.

Sec. 4735.56. (A) Each brokerage shall develop a written brokerage policy on agency to be given to prospective sellers and purchasers in accordance with divisions (C) and (D) of this section.

(B) The brokerage policy on agency described in division (A) of this section shall include all of the following information:

(1) An explanation of the permissible agency relationships available under section 4735.53 of the Revised Code and the duties that the agent owes the agent's client;

(2) The brokerage's policy on representation of purchasers or sellers;

(3) Whether at some time during the agency relationship the brokerage and its licensee may act as a dual agent, and the options and consequences for the client if a dual agency situation arises including the right of the client to terminate the agency relationship and seek representation from another source;

(4) Whether at some time during the agency relationship, another licensee affiliated with the same brokerage as the licensee may become the exclusive agent for the other party in the transaction and whether each licensee will represent only the interests of that licensee's client;

(5) The brokerage's policy on cooperation with other brokerages, including whether the brokerage offers compensation to other brokerages or will seek compensation from other brokerages;

(6) That a brokerage that has a purchaser as a client represents the purchaser's interests even though the seller's agent or the seller may compensate that purchaser's brokerage;

(7) That the signature of the purchaser or the seller indicates acknowledgement of receipt of the brokerage policy on agency.

(C) A licensee acting as a seller's agent shall provide the seller with the brokerage policy on agency described in this section prior to marketing or showing the seller's real estate and shall obtain a signature from the seller acknowledging receipt unless the seller refuses to provide a signature. If the seller refuses to provide a signature, the licensee shall note this on the policy.

(D) A licensee working directly with a purchaser in a real estate transaction, whether as the purchaser's agent, the seller's agent, or the seller's subagent, shall provide the purchaser with the brokerage policy on agency described in this section and obtain a signature from the purchaser acknowledging receipt of the policy unless the purchaser refuses to provide a signature. If the purchaser refuses to provide a signature, the licensee shall note this on the policy. Except as provided in division (E) of this section, the licensee shall provide the brokerage policy on agency to a purchaser prior to the earliest of the following actions of the licensee:

(1) Initiating a prequalification evaluation to determine whether the purchaser has the financial ability to purchase or lease a particular real estate property;

(2) Requesting specific financial information from the purchaser to determine the purchaser's ability to purchase or finance real estate in a particular price range;

(3) Showing the real estate to the purchaser other than at an open house;

(4) Discussing, with the purchaser, the making of an offer to purchase or lease real estate;

(5) Submitting an offer to purchase or lease real estate on behalf of the purchaser.

(E) If the earliest event described in division (D) of this section is by telephone or electronic mail, the licensee shall disclose by that same medium the nature of the agency relationship that the licensee has with both the seller and the purchaser. The licensee shall provide the purchaser with the brokerage policy on agency described in this section at the first meeting with the purchaser following this disclosure of the agency relationship.

(F) A licensee acting as a seller's agent is not required to provide a purchaser with the brokerage policy on agency described in this section except in the case of an event described in division (D) of this section.

(G) The requirements of this section regarding provision of a brokerage policy on agency do not apply in any of the following situations:

(1) The rental or leasing of residential premises as defined in section

5321.01 of the Revised Code, if the rental or lease agreement can be performed in eighteen months or less;

(2) The referral of a prospective purchaser or seller to another licensee;

(3) Transactions involving the sale, lease, or exchange of foreign real estate as defined in division (E) of section 4735.01 of the Revised Code;

(4) Transactions involving the sale of a cemetery lot or a cemetery interment right.

Sec. 4735.57. (A) The superintendent of real estate, with the approval of the Ohio real estate commission, shall establish by rule an agency disclosure statement. The agency disclosure statement shall contain a place for the licensee and the parties to the transaction to sign and date the statement and shall contain sections for the disclosure or explanation of all of the following:

(1) Unless confidential, the names of all the parties in the transaction;

(2) The address of the real estate being sold or leased;

(3) The name of the licensee or licensees and the brokerage with which each licensee is affiliated;

(4) The party that each licensee in the named brokerage represents in the transaction;

(5) If a licensee representing a purchaser of real estate and a licensee representing the seller of that real estate are affiliated with the same brokerage, whether the two licensees are acting as dual agents or are individually representing the purchaser and seller separately;

(6) If only one licensee is involved in the transaction, whether that licensee is a dual agent or represents only one party to the transaction;

(7) If both the purchaser and the seller are represented by licensees affiliated with the same brokerage, that the brokerage is a dual agent;

(8) That the signature of the client indicates the client's informed consent to the agency relationship and that if the client does not understand the agency disclosure statement, the client should consult an attorney.

(B) The agency disclosure statement shall specify the duties of a licensee acting as a dual agent and shall contain sections disclosing all of the following:

(1) An explanation of the nature of a dual agency relationship, including a statement that in serving as a dual agent, licensees in the brokerage represent two clients whose interests are, or at times could be, different or adverse;

(2) That as a result of the dual agency relationship, the dual agent may not be able to advocate on behalf of the client to the same extent the agent may have if the agent represented only one client;

(3) A description of the duties the brokerage and its affiliated licensees and employees owe to each client, including the duty of confidentiality;

(4) That neither the brokerage nor its affiliated licensees have any material relationship with either client other than incidental to the transaction, or if the brokerage or its affiliated licensees have a material relationship, a disclosure of the nature of the relationship. For purposes of this division, "material relationship" means any actually known personal, familial, or business relationship between the brokerage or an affiliated licensee and a client that could impair the ability of the brokerage or affiliated licensee to exercise lawful and independent judgment relative to another client.

(5) That as a dual agent, the brokerage cannot engage in conduct that is contrary to the interests or instructions of one party or act in a biased manner on behalf of one party;

(6) A section specifying the source of compensation to the real estate broker;

(7) That the client does not have to consent to the dual agency relationship, and the options available to the client for representation in the transaction if the client does not consent, including the right of the client to terminate the agency relationship and seek representation from another source;

(8) That the consent to the dual agency relationship by the client has been given voluntarily, that the signature indicates informed consent, and that the duties of a licensee acting as a dual agent disclosed to the client pursuant to division (B) of this section have been read and understood.

Sec. 4735.58. (A) ~~A licensee acting as a seller's agent shall provide the seller an agency disclosure statement described in section 4735.57 of the Revised Code prior to marketing or showing the seller's property.~~

~~(B)(1) A licensee working directly with a purchaser in a real estate transaction, whether as the purchaser's agent, the seller's agent, or the seller's subagent, shall provide the purchaser with an agency disclosure statement described in section 4735.57 of the Revised Code prior to the earliest of the following events:~~

~~(a) Initiating a prequalification evaluation to determine whether the purchaser has the financial ability to purchase or lease the particular property;~~

~~(b) Requesting specific financial information from the purchaser to determine the purchaser's ability to purchase or finance real estate in a particular price range;~~

~~(c) Showing the property to the purchaser other than at an open house;~~

(d) ~~Discussing, with the purchaser, the making of an offer to purchase real property;~~

(e) ~~Submitting an offer to purchase or lease real property on behalf of the purchaser.~~

(2) ~~If the earliest event described in division (B)(1) of this section is by telephone, the licensee shall make a verbal disclosure of the nature of the agency relationship that the licensee has with both the seller and the purchaser. The licensee shall obtain the purchaser's signature and the date on an agency disclosure statement at the first meeting with the purchaser following verbal disclosure of the agency relationship.~~

(3) ~~A licensee acting as a seller's agent is not required to provide a purchaser with an agency disclosure statement except in the case of an event described in division (B)(1) of this section.~~

(C) A licensee who is a purchaser's agent or a seller's subagent working with a purchaser shall present the agency disclosure statement described in section 4735.57 of the Revised Code to the purchaser and request the purchaser to sign and date the statement pursuant to division (B) of this section no later than the preparation of an offer to purchase or lease, or a written request for a proposal to lease. The licensee shall deliver the statement signed by the purchaser to the seller's agent, or to the seller if the seller is not represented by an agent, prior. Prior to presenting the seller with either a written offer to purchase or lease, or a written request for a proposal to lease, the seller's agent, or the purchaser's agent if the seller is not represented by an agent, shall present the agency disclosure statement to the seller and request the seller to sign and date the statement.

(D)(B) A licensee selling property at auction shall, prior to the auction, verbally disclose to the audience that the licensee represents the seller in the real estate transaction. The licensee shall provide the agency disclosure statement described in section 4735.57 of the Revised Code to the successful bidder prior to the bidder's signing a purchase contract.

(E)(C) Evidence that a licensee has failed to comply with this section constitutes prima-facie evidence of misconduct in violation of division (A)(6) of section 4735.18 of the Revised Code.

(D) The disclosure requirements of this section do not apply in any of the following situations:

(1) The rental or leasing of residential premises as defined in section 5321.01 of the Revised Code, if the rental or lease agreement can be performed in eighteen months or less;

(2) The referral of a prospective purchaser or seller to another licensee;

(3) Transactions involving the sale, lease, or exchange of foreign real

estate as defined in division (E) of section 4735.01 of the Revised Code;

(4) Transactions involving the sale of a cemetery lot or a cemetery interment right.

(E) The licensee is obligated to perform all duties imposed on a real estate agent at common law except to the extent the duties are inconsistent with the duties prescribed in this chapter or are otherwise modified by agreement.

Sec. 4735.70. The following are dual agents under this chapter:

(A) A licensee who represents both the purchaser and the seller as clients in the same real estate transaction;

(B) A brokerage that represents both the purchaser and the seller as clients in the same real estate transaction;

(C) A management level licensee who represents a client in an in-company transaction. If there is more than one management level licensee affiliated with the brokerage and either of the following applies, the management level licensee is not a dual agent:

(1) The management level licensee personally represents either the seller or the purchaser in a transaction, in which case the management level licensee will represent only the interests of that licensee's client.

(2) The management level licensee is the purchaser or seller in a transaction and will represent only that licensee's interest.

Sec. 4735.71. (A) Except as provided in division (C) of this section, no No licensee or brokerage shall participate in a dual agency relationship described in section 4735.70 of the Revised Code unless both the seller and the purchaser in the transaction have full knowledge of the dual representation and consent in writing to the dual representation on the dual agency disclosure statement described in section 4735.73 4735.57 of the Revised Code. Before a licensee obtains the consent of any party to a dual agency relationship, the licensee shall disclose to both the purchaser and the seller all relevant information necessary to enable each party to make an informed decision as to whether to consent to the dual agency relationship. If, after consent is obtained, there is a material change in the information disclosed to the purchaser and the seller, the licensee shall disclose such the change of information to the purchaser and the seller and give them an opportunity to revoke their consent.

(B) The brokerage shall make the dual agency disclosure to both the seller and purchaser as soon as practicable after it is determined that such dual agency may exist. The parties to the real estate transaction shall sign and date the dual agency disclosure statement in a timely manner after it is determined that a dual agency relationship exists. The form must be signed

~~and dated prior to the signing of any offer to purchase or lease the real estate that is the subject of the transaction.~~

~~(C) A brokerage that is a dual agent is not required to obtain the consent of the seller and the purchaser on the dual agency disclosure statement described in section 4735.73 of the Revised Code if the seller and purchaser are each represented by a different, nonmanagement level licensee who is affiliated with the same brokerage and all of the following conditions are met:~~

~~(1) The licensees made disclosures as required under sections 4735.56 and 4735.58 of the Revised Code;~~

~~(2) The potential for the formation of the dual agency was disclosed to all parties in the agency disclosure statement pursuant to section 4735.57 of the Revised Code;~~

~~(3) Each party consents by initialing, in a timely manner after it is determined that a dual agency relationship exists in the transaction, the section in the agency disclosure statement that discloses the potential for a dual agency relationship.~~

~~(D) No brokerage shall participate in a dual agency relationship described in division (C) of section 4735.70 of the Revised Code, unless each of the following conditions is met:~~

~~(1) The brokerage has established a procedure under section 4735.54 of the Revised Code under which licensees, including management level licensees, who represent one client will not have access to and will not obtain confidential information concerning another client of the brokerage involved in the dual agency transaction.~~

~~(2) The Each licensee who is an agent for each client in the dual agency relationship fulfills the licensee's duties exclusively to that the licensee's client.~~

Sec. 4735.72. (A) The brokerage and management level licensees in a brokerage in which there is a dual agency relationship described in ~~divisions (A) and (B) of~~ section 4735.70 of the Revised Code shall do each of the following:

(1) Objectively supervise the affiliated licensees in the fulfillment of their duties and obligations to their respective clients;

(2) Refrain from advocating or negotiating on behalf of either the seller or the purchaser;

(3) Refrain from disclosing to any other employee of the brokerage or any party or client, any confidential information of a client of which the brokerage or management level licensee becomes aware and from utilizing or allowing to be utilized for the benefit of another client, any confidential

information obtained from a client.

(B) When two ~~nonmanagement~~ level licensees affiliated with the same brokerage represent separate clients in the same transaction, each affiliated licensee shall do both of the following:

(1) Serve as the agent of only the party in the transaction the licensee agreed to represent;

(2) Fulfill the duties owed to the respective client as set forth in this chapter and as agreed in the agency agreement.

(C)(1) In all cases, a management level licensee shall keep information of the client or brokerage confidential.

(2) Nothing in this section prohibits the brokerage or management level licensees in the brokerage from providing factual, nonconfidential information that presents or suggests objective options or solutions, or assisting the parties in an unbiased manner to negotiate or fulfill the terms of the purchase contract or lease, provided that confidential information of a client is not utilized in any manner in formulating such suggestions or providing ~~such~~ this assistance.

(D) No cause of action shall arise on behalf of any person against a licensee in a dual agency relationship for making disclosures to the parties that are permitted or required by this chapter; or that have been made on the ~~dual~~ agency disclosure statement. Making permitted disclosures does not terminate any agency relationship between a licensee and a client.

(E)(1) If a brokerage determines that confidential information of one client in a dual agency relationship has become known to any licensee employed by or affiliated with the brokerage who is representing the other client in the dual agency relationship, as a result of the failure of the brokerage, its licensees, or its employees to maintain such confidentiality, the brokerage shall do both of the following:

(a) Notify both clients of ~~such~~ the fact immediately in writing;

(b) Offer to resign representation of both clients.

(2) If either client elects to accept ~~such~~ the resignation, the brokerage shall not be entitled to any compensation from that client. If either client does not accept ~~such~~ the resignation, the brokerage may continue to represent that client.

(3) A licensee who obtains confidential information concerning another client of the brokerage in a dual agency relationship shall not, under any circumstances, disclose that information to or use that information for the benefit of the licensee's client.

(F) A client of a brokerage who is involved in a dual agency relationship may bring an individual action against a brokerage and any licensee who has

failed to comply with the procedure described in division ~~(D)(1)(B)(1)~~ of section 4735.71 of the Revised Code to recover actual damages and to rescind an agency agreement with the brokerage.

SECTION 2. That existing sections 4735.03, 4735.04, 4735.05, 4735.051, 4735.06, 4735.09, 4735.13, 4735.14, 4735.141, 4735.15, 4735.53, 4735.58, 4735.70, 4735.71, and 4735.72 and sections 4735.56, 4735.57, and 4735.73 of the Revised Code are hereby repealed.

SECTION 3. Sections 4735.53, 4735.58, 4735.70, 4735.71, and 4735.72 of the Revised Code, as amended by this act, section 4735.181 of the Revised Code, as enacted by this act, section 4735.73 of the Revised Code, as repealed by this act, and sections 4735.56 and 4735.57 of the Revised Code, as repealed and reenacted by this act, shall take effect on January 1, 2005.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

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

Director, Legislative Service Commission.

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

Secretary of State.

File No. _____ Effective Date _____