

As Introduced

**125th General Assembly
Regular Session
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S. B. No. 106

Senators Carey, Mumper, Stivers, Harris, Prentiss

A BILL

To amend sections 4735.53, 4735.58, 4735.70, 4735.71, 1
and 4735.72, to enact new sections 4735.56 and 2
4735.57 and section 4735.181, and to repeal 3
sections 4735.56, 4735.57, and 4735.73 of the 4
Revised Code to modify agency relationships 5
between real estate licensees and customers, 6
including disclosures made to customers, and to 7
establish a penalty for noncompliance with 8
disclosure requirements. 9

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

Section 1. That sections 4735.53, 4735.58, 4735.70, 4735.71, 10
and 4735.72 be amended and new sections 4735.56 and 4735.57 and 11
section 4735.181 of the Revised Code be enacted to read as 12
follows: 13

Sec. 4735.181. (A)(1) It shall be a violation of division 14
(A)(9) of section 4735.18 of the Revised Code if any individual 15
licensed as a real estate broker or salesperson pursuant to this 16
chapter fails to comply with section 4735.55, 4735.56, or 4735.58 17
of the Revised Code or any rules adopted under those sections. 18

(2) When the superintendent determines that a violation of 19
division (A)(9) of section 4735.18 of the Revised Code has 20

occurred because a licensee has failed to comply with section 4735.55, 4735.56, or 4735.58 of the Revised Code or any rules adopted under those sections, the superintendent may do either of the following:

(a) Initiate disciplinary action under section 4735.051 of the Revised Code for a violation of division (A)(9) of section 4735.18 of the Revised Code, in accordance with Chapter 119. of the Revised Code;

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

(B) 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.

(C)(1) 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.

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

(D) Unless otherwise indicated, the licensee named in a final citation under this section must meet all requirements contained

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in the final citation within thirty days of the effective date of 52
that citation. 53

(E) The superintendent shall suspend automatically a 54
licensee's license if the licensee fails to comply with division 55
(D) of this section. 56

Sec. 4735.53. (A) The types of agency relationships a 57
licensee may establish in a real estate transaction are limited to 58
the following: 59

(1) An agency relationship between the licensee and the 60
seller; 61

(2) An agency relationship between the licensee and the 62
purchaser; 63

(3) A dual agency relationship between the licensee and both 64
the seller and the purchaser; 65

(4) A subagency relationship between the licensee and the 66
client of another licensee. 67

(B) When an agency relationship is formed between a licensee 68
and a client, ~~both~~ all of the following ~~apply~~ also are considered 69
the agent of that client: 70

(1) The brokerage with whom the licensee is affiliated and, 71
except as provided in division (C) of section 4735.70 of the 72
Revised Code, the management level licensees in that brokerage who 73
have direct supervisory duties over licensees ~~are also agents of~~ 74
~~that client;~~ 75

(2) Any licensee employed by, or affiliated with, the 76
brokerage who receives confidential information from the agent of 77
the client ~~is also an agent of that client;~~ 78

(3) Any other licensee in the brokerage who assisted in 79
establishing the agency relationship; 80

(4) Any licensee in the brokerage who specifically is 81
appointed with the client's consent to represent that client. 82

(C) Except as otherwise provided in divisions (B)(1) and (2) 83
to (4) of this section, another licensee who is affiliated with 84
the same brokerage as the licensee is not an agent of that client 85
unless that licensee assisted in establishing the agency 86
relationship or is specifically appointed, with the client's 87
consent, to represent the client. 88

(D) A payment or the promise of a payment to a licensee 89
does not determine whether an agency relationship has been created 90
between a licensee and a client or between other licensees in the 91
brokerage with which the licensee is affiliated and that client. 92

Sec. 4735.56. (A) Each brokerage shall develop a written 93
brokerage policy on agency to be given to prospective sellers and 94
purchasers in accordance with divisions (C) and (D) of this 95
section. 96

(B) The brokerage policy on agency described in division (A) 97
of this section shall include all of the following information: 98

(1) An explanation of the permissible agency relationships 99
available under section 4735.53 of the Revised Code and the duties 100
that the agent owes their client; 101

(2) The brokerage's policy on representation of purchasers or 102
sellers; 103

(3) Whether at some time during the agency relationship the 104
brokerage and its licensee may act as a dual agent, and the 105
options and consequences for the client if a dual agency situation 106
arises including the right of the client to terminate the agency 107
relationship and seek representation from another source; 108

(4) Whether at some time during the agency relationship, 109
another licensee affiliated with the same brokerage as the 110

licensee may become the exclusive agent for the other party in the 111
transaction and whether each licensee will represent only the 112
interests of that licensee's client; 113

(5) The brokerage's policy on cooperation with other 114
brokerages, including whether the brokerage offers compensation to 115
other brokerages or will seek compensation from other brokerages; 116

(6) That a brokerage that has a purchaser as a client 117
represents the purchaser's interests even though the seller's 118
agent or the seller may compensate that purchaser's brokerage; 119

(7) That the signature of the purchaser or the seller 120
indicates acknowledgement of receipt of the brokerage policy on 121
agency. 122

(C) A licensee acting as a seller's agent shall provide the 123
seller with the brokerage policy on agency described in this 124
section prior to marketing or showing the seller's property and 125
shall obtain a signature from the seller acknowledging receipt. If 126
the seller refuses to provide a signature acknowledging receipt of 127
the brokerage policy on agency, the licensee shall note this on 128
the policy. 129

(D) A licensee working directly with a purchaser in a real 130
estate transaction, whether as the purchaser's agent, the seller's 131
agent, or the seller's subagent, shall provide the purchaser with 132
the brokerage policy on agency described in this section and 133
obtain a signature from the purchaser acknowledging receipt of the 134
policy. If the purchaser refuses to provide a signature 135
acknowledging receipt of the brokerage policy on agency, the 136
licensee shall note this on the policy. The brokerage policy on 137
agency shall be provided to a purchaser prior to the earliest of 138
the following events: 139

(1) Initiating a prequalification evaluation to determine 140
whether the purchaser has the financial ability to purchase or 141

<u>lease the particular property;</u>	142
<u>(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;</u>	143 144 145
<u>(3) Showing the property to the purchaser other than at an open house;</u>	146 147
<u>(4) Discussing, with the purchaser, the making of an offer to purchase or lease real property;</u>	148 149
<u>(5) Submitting an offer to purchase or lease real property on behalf of the purchaser.</u>	150 151
<u>(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.</u>	152 153 154 155 156 157 158
<u>(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.</u>	159 160 161 162
<u>(G) The disclosure requirements of this section do not apply in any of the following situations:</u>	163 164
<u>(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;</u>	165 166 167
<u>(2) The referral of a prospective purchaser or seller to another licensee;</u>	168 169
<u>(3) Transactions involving the sale, lease, or exchange of foreign real estate as defined in division (E) of section 4735.01</u>	170 171

<u>of the Revised Code;</u>	172
<u>(4) Transactions involving the sale of a cemetery lot or a</u>	173
<u>cemetery interment right.</u>	174
<u>Sec. 4735.57. (A) The superintendent of real estate, with the</u>	176
<u>approval of the Ohio real estate commission, shall establish by</u>	177
<u>rule the agency disclosure statement. The agency disclosure</u>	178
<u>statement shall contain a place for the licensee and the parties</u>	179
<u>to the transaction to sign and date the statement and shall</u>	180
<u>contain sections for the disclosure or explanation of all of the</u>	181
<u>following:</u>	182
<u>(1) Unless confidential, the names of all the parties in the</u>	183
<u>transaction;</u>	184
<u>(2) The address of the property being sold or leased;</u>	185
<u>(3) The name of the licensee or licensees and the brokerage</u>	186
<u>with which each licensee is affiliated;</u>	187
<u>(4) The party that each licensee in the named brokerage</u>	188
<u>represents in the transaction;</u>	189
<u>(5) If two licensees affiliated with the same brokerage</u>	190
<u>represent the purchaser and the seller, whether each licensee</u>	191
<u>represents their separate client or are acting as dual agents;</u>	192
<u>(6) If only one licensee is involved in the transaction,</u>	193
<u>whether that licensee is a dual agent or represents only one party</u>	194
<u>to the transaction;</u>	195
<u>(7) If both the purchaser and the seller are represented by</u>	196
<u>licensees affiliated with the same brokerage, that the brokerage</u>	197
<u>is a dual agent;</u>	198
<u>(8) That the signature of the client indicates the client's</u>	199
<u>informed consent to the agency relationship and that if the client</u>	200
<u>does not understand the agency disclosure statement, the client</u>	201

should consult an attorney. 202

(B) On the reverse side of the agency disclosure statement, 203
the duties of a licensee acting as a dual agent shall be specified 204
and contain sections disclosing all of the following: 205

(1) An explanation of the nature of a dual agency 206
relationship, including a statement that in serving as a dual 207
agent, licensees in the brokerage represent two clients whose 208
interests are, or at times could be, different or adverse; 209

(2) That as a result of the dual agency relationship, the 210
dual agent may not be able to advocate on behalf of the client to 211
the same extent the agent may have if the agent represented only 212
one client. 213

(3) A description of the duties the brokerage and its 214
affiliated licensees and employees owe to each client, including 215
the duty of confidentiality; 216

(4) That neither the brokerage nor its affiliated licensees 217
have any material relationship with either client other than 218
incidental to the transaction, or if the brokerage or its 219
affiliated licensees have such a relationship, a disclosure of the 220
nature of the relationship. For purposes of this division, 221
"material relationship" means any actually known personal, 222
familial, or business relationship between the brokerage or an 223
affiliated licensee and a client that could impair the ability of 224
the brokerage or affiliated licensee to exercise lawful and 225
independent judgment relative to another client. 226

(5) That as a dual agent, the brokerage cannot engage in 227
conduct that is contrary to the interests or instructions of one 228
party or act in a biased manner on behalf of one party; 229

(6) A section specifying the source of compensation to the 230
real estate broker; 231

(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; 232
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(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. 237
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(C) The disclosure requirements of this section do not apply in any of the following situations: 242
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(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; 244
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(2) The referral of a prospective purchaser or seller to another licensee; 247
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(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; 249
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(4) Transactions involving the sale of a cemetery lot or a cemetery interment right. 252
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(D) 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. 254
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~~**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.~~ 258
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~~(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:~~ 262-266

~~(a) Initiating a prequalification evaluation to determine whether the purchaser has the financial ability to purchase or lease the particular property;~~ 267-269

~~(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;~~ 270-272

~~(c) Showing the property to the purchaser other than at an open house;~~ 273-274

~~(d) Discussing, with the purchaser, the making of an offer to purchase real property;~~ 275-276

~~(e) Submitting an offer to purchase or lease real property on behalf of the purchaser.~~ 277-278

~~(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.~~ 279-285

~~(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.~~ 286-288

~~(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~~ 289-291

Code to the purchaser and request the purchaser to sign and date 292
the statement ~~pursuant to division (B) of this section~~ no later 293
than the preparation of an offer to purchase or lease, or a 294
written request for a proposal to lease. The licensee shall 295
deliver the statement signed by the purchaser to the seller's 296
agent, or to the seller if the seller is not represented by an 297
agent, prior to presenting the seller with either a written offer 298
to purchase or lease, or a written request for a proposal to 299
lease. 300

~~(D)~~(B) A licensee selling property at auction shall, prior to 301
the auction, verbally disclose to the audience that the licensee 302
represents the seller in the real estate transaction. The licensee 303
shall provide the agency disclosure statement described in section 304
4735.57 of the Revised Code to the successful bidder prior to the 305
bidder's signing a purchase contract. 306

~~(E)~~(C) Evidence that a licensee has failed to comply with 307
this section constitutes prima-facie evidence of misconduct in 308
violation of division (A)(6) of section 4735.18 of the Revised 309
Code. 310

Sec. 4735.70. The following are dual agents under this 311
chapter: 312

(A) A licensee who represents both the purchaser and the 313
seller as clients in the same real estate transaction; 314

(B) A brokerage that represents both the purchaser and the 315
seller as clients in the same real estate transaction; 316

(C) A management level licensee who represents a client in an 317
in-company transaction. If there is more than one management level 318
licensee affiliated with the brokerage and either of the following 319
applies, the management level licensee is not a dual agent: 320

(1) The management level licensee personally represents 321

either the seller or the purchaser in a transaction, in which case 322
the management level licensee will represent only the interests of 323
that licensee's client. 324

(2) The management level licensee is the purchaser or seller 325
in a transaction and will represent only that licensee's interest. 326

Sec. 4735.71. (A) ~~Except as provided in division (C) of this~~ 327
~~section, no~~ No licensee or brokerage shall participate in a dual 328
agency relationship described in section 4735.70 of the Revised 329
Code unless both the seller and the purchaser in the transaction 330
have full knowledge of the dual representation and consent in 331
writing to the dual representation on the ~~dual~~ agency disclosure 332
statement described in section ~~4735.73~~ 4735.57 of the Revised 333
Code. Before a licensee obtains the consent of any party to a dual 334
agency relationship, the licensee shall disclose to both the 335
purchaser and the seller all relevant information necessary to 336
enable each party to make an informed decision as to whether to 337
consent to the dual agency relationship. If, after consent is 338
obtained, there is a material change in the information disclosed 339
to the purchaser and the seller, the licensee shall disclose ~~such~~ 340
the change of information to the purchaser and the seller and give 341
them an opportunity to revoke their consent. 342

(B) ~~The brokerage shall make the dual agency disclosure to~~ 343
~~both the seller and purchaser as soon as practicable after it is~~ 344
~~determined that such dual agency may exist. The parties to the~~ 345
~~real estate transaction shall sign and date the dual agency~~ 346
~~disclosure statement in a timely manner after it is determined~~ 347
~~that a dual agency relationship exists. The form must be signed~~ 348
~~and dated prior to the signing of any offer to purchase or lease~~ 349
~~the real estate that is the subject of the transaction.~~ 350

(C) ~~A brokerage that is a dual agent is not required to~~ 351
~~obtain the consent of the seller and the purchaser on the dual~~ 352

~~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 licensee who is an agent for each client in the dual agency relationship fulfills the licensee's duties exclusively to that 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 383
clients; 384

(2) Refrain from advocating or negotiating on behalf of 385
either the seller or the purchaser; 386

(3) Refrain from disclosing to any other employee of the 387
brokerage or any party or client, any confidential information of 388
a client of which the brokerage or management level licensee 389
becomes aware and from utilizing or allowing to be utilized for 390
the benefit of another client, any confidential information 391
obtained from a client. 392

(B) When two ~~nonmanagement level~~ licensees affiliated with 393
the same brokerage represent separate clients in the same 394
transaction, each affiliated licensee shall do both of the 395
following: 396

(1) Serve as the agent of only the party in the transaction 397
the licensee agreed to represent; 398

(2) Fulfill the duties owed to the respective client as set 399
forth in this chapter and as agreed in the agency agreement. 400

(C)(1) In all cases, a management level licensee shall keep 401
confidential information of the client or brokerage. 402

(2) Nothing in this section prohibits the brokerage or 403
management level licensees in the brokerage from providing 404
factual, nonconfidential information that presents or suggests 405
objective options or solutions, or assisting the parties in an 406
unbiased manner to negotiate or fulfill the terms of the purchase 407
contract or lease, provided that confidential information of a 408
client is not utilized in any manner in formulating such 409
suggestions or providing ~~such~~ this assistance. 410

(D) No cause of action shall arise on behalf of any person 411
against a licensee in a dual agency relationship for making 412

disclosures to the parties that are permitted or required by this 413
chapter, or that have been made on the ~~dual~~ agency disclosure 414
statement. Making permitted disclosures does not terminate any 415
agency relationship between a licensee and a client. 416

(E)(1) If a brokerage determines that confidential 417
information of one client in a dual agency relationship has become 418
known to any licensee employed by or affiliated with the brokerage 419
who is representing the other client in the dual agency 420
relationship, as a result of the failure of the brokerage, its 421
licensees, or its employees to maintain such confidentiality, the 422
brokerage shall do both of the following: 423

(a) Notify both clients of ~~such~~ the fact immediately in 424
writing; 425

(b) Offer to resign representation of both clients. 426

(2) If either client elects to accept ~~such~~ the resignation, 427
the brokerage shall not be entitled to any compensation from that 428
client. If either client does not accept ~~such~~ the resignation, the 429
brokerage may continue to represent that client. 430

(3) A licensee who obtains confidential information 431
concerning another client of the brokerage in a dual agency 432
relationship shall not, under any circumstances, disclose that 433
information to or use that information for the benefit of the 434
licensee's client. 435

(F) A client of a brokerage who is involved in a dual agency 436
relationship may bring an individual action against a brokerage 437
and any licensee who has failed to comply with the procedure 438
described in division ~~(D)(1)~~ (B)(1) of section 4735.71 of the 439
Revised Code to recover actual damages and to rescind an agency 440
agreement with the brokerage. 441

Section 2. That existing sections 4735.53, 4735.58, 4735.70, 442
4735.71, and 4735.72 and sections 4735.56, 4735.57, and 4735.73 of 443

the Revised Code are hereby repealed.

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