

**As Reported by the House Commerce and Labor Committee**

**125th General Assembly**

**Regular Session**

**2003-2004**

**Am. Sub. S. B. No. 106**

**Senators Carey, Mumper, Stivers, Harris, Prentiss, Spada, Hottinger, Padgett,**

**Schuler**

**Representatives Miller, Distel**

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**A B I L L**

To amend sections 4735.03, 4735.04, 4735.05, 1  
4735.051, 4735.06, 4735.09, 4735.13, 4735.14, 2  
4735.141, 4735.15, 4735.53, 4735.58, 4735.70, 3  
4735.71, and 4735.72, to enact new sections 4  
4735.56 and 4735.57 and sections 4735.181 and 5  
4735.182, and to repeal sections 4735.56, 4735.57, 6  
and 4735.73 of the Revised Code to modify agency 7  
relationships between real estate licensees and 8  
customers, including disclosures made to 9  
customers, to establish a penalty for 10  
noncompliance with disclosure requirements, and to 11  
make other changes to the Real Estate Broker Law. 12

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

**Section 1.** That sections 4735.03, 4735.04, 4735.05, 4735.051, 13  
4735.06, 4735.09, 4735.13, 4735.14, 4735.141, 4735.15, 4735.53, 14  
4735.58, 4735.70, 4735.71, and 4735.72 be amended and new sections 15  
4735.56 and 4735.57 and sections 4735.181 and 4735.182 of the 16  
Revised Code be enacted to read as follows: 17

**Sec. 4735.03.** There is hereby created the Ohio real estate 18

commission, consisting of five members who shall be appointed by 19  
the governor, with the advice and consent of the senate. Four 20  
members shall have been engaged in the real estate business as 21  
licensed real estate brokers in the state for a period of ten 22  
years immediately preceding the appointment. One member shall 23  
represent the public. Terms of office shall be for five years, 24  
commencing on the first day of July and ending on the thirtieth 25  
day of June. Each member shall hold office from the date of 26  
appointment until the end of the term for which appointed. No more 27  
than three members shall be members of any one political party and 28  
no member of the commission concurrently may be a member of the 29  
commission and the real estate appraiser board created pursuant to 30  
section 4763.02 of the Revised Code. Each member, before entering 31  
upon the duties of office, shall subscribe to and file with the 32  
secretary of state the constitutional oath of office. All 33  
vacancies which occur shall be filled in the manner prescribed for 34  
the regular appointments to the commission. Any member appointed 35  
to fill a vacancy occurring prior to the expiration of the term 36  
for which the member's predecessor was appointed shall hold office 37  
for the remainder of such term. Any member shall continue in 38  
office subsequent to the expiration date of the member's term 39  
until the member's successor takes office, or until a period of 40  
sixty days has elapsed, whichever occurs first. Annually, upon the 41  
qualification of the member appointed in such year, the commission 42  
shall organize by selecting from its members a president and 43  
vice-president, and shall do all things necessary and proper to 44  
carry out and enforce this chapter. A majority of the members of 45  
the commission shall constitute a quorum, but a lesser number may 46  
adjourn from time to time. Each member of the commission shall 47  
receive an amount fixed pursuant to section 124.14 of the Revised 48  
Code for each day employed in the discharge of official duties, 49  
and the member's actual and necessary expenses incurred in the 50

discharge of those duties. 51

The commission or the superintendent of real estate may 52  
investigate complaints concerning the violation of section 4735.02 53  
or 4735.25 of the Revised Code and may subpoena witnesses in 54  
connection with such investigations as provided in section 4735.04 55  
of the Revised Code. The commission or the superintendent may make 56  
application to the appropriate court for an order enjoining the 57  
violation of section 4735.02 or 4735.25 of the Revised Code, and 58  
upon a showing by the commission or the superintendent that any 59  
person, firm, partnership, association, limited liability company, 60  
limited liability partnership, or corporation has violated or is 61  
about to violate section 4735.02 or 4735.25 of the Revised Code, 62  
an injunction, restraining order, or such other order as may be 63  
appropriate shall be granted by such court. 64

The commission shall: 65

(A) Adopt canons of ethics for the real estate industry; 66

(B) Upon appeal by any party affected, or may upon its own 67  
motion, review any order or application determination of the 68  
superintendent, and may reverse, vacate, or modify any order of 69  
the superintendent; 70

(C) Administer the real estate education and research fund 71  
and hear appeals from orders of the superintendent regarding 72  
claims against that fund or against the real estate recovery fund; 73

(D) Direct the superintendent on the content, scheduling, 74  
instruction, and offerings of real estate courses for salesperson 75  
and broker educational requirements; 76

(E) Disseminate to licensees and the public, information 77  
relative to commission activities and decisions; 78

(F) Notify licensees of changes in state and federal civil 79  
rights laws pertaining to discrimination in the purchase or sale 80

of real estate and relevant case law, and inform licensees that 81  
they are subject to disciplinary action if they do not comply with 82  
the changes; 83

(G) Publish and furnish to public libraries and to brokers 84  
booklets on housing and remedies available to dissatisfied clients 85  
under this chapter and Chapter 4112. of the Revised Code; 86

(H) Provide training to commission members and employees of 87  
the division of real estate and professional licensing on issues 88  
relative to the real estate industry, which may include but not be 89  
limited to investigative techniques, real estate law, and real 90  
estate practices and procedures. 91

**Sec. 4735.04.** The Ohio real estate commission or the 92  
superintendent of real estate may compel, by order or subpoena, 93  
the attendance of witnesses to testify in relation to any matter 94  
over which the commission or superintendent has jurisdiction and 95  
which is the subject of inquiry and investigation by the 96  
commission or superintendent, and require the production of any 97  
book, paper, or document pertaining to such matter. For such 98  
purpose, the commission or superintendent shall have the same 99  
power as judges of county courts to administer oaths, compel the 100  
attendance of witnesses, and punish them for refusal to testify. 101  
~~Sheriffs and constables are required to serve and return such 102  
process and shall receive the same fees for doing so as are 103  
allowed for like services~~ Service of the subpoena may be made by 104  
sheriffs or constables, or by certified mail, return receipt 105  
requested, and the subpoena shall be deemed served on the date 106  
delivery is made or the date the person refused to accept 107  
delivery. Witnesses shall receive, after their appearance before 108  
the commission or superintendent, the fees and mileage allowed in 109  
civil actions in courts of common pleas. If two or more witnesses 110  
travel together in the same vehicle, the mileage fee shall be paid 111

to only one of those witnesses, but the witnesses may agree to 112  
divide the fee among themselves in any manner. 113

In addition to the powers granted to the commission and 114  
superintendent under this section, in case any person fails to 115  
file any statement or report, obey any subpoena, give testimony, 116  
answer questions, or produce any books, records, or papers as 117  
required by the commission or superintendent under this chapter, 118  
the court of common pleas of any county in the state, upon 119  
application made to it by the commission or superintendent setting 120  
forth such failure, may make an order awarding process of subpoena 121  
or subpoena duces tecum for the person to appear and testify 122  
before the commission or superintendent, and may order any person 123  
to give testimony and answer questions, and to produce books, 124  
records, or papers, as required by the commission or 125  
superintendent. Upon the filing of such order in the office of the 126  
clerk of the court of common pleas, the clerk, under the seal of 127  
the court, shall issue process of subpoena for the person to 128  
appear before the commission or superintendent at a time and place 129  
named in the subpoena, and each day thereafter until the 130  
examination of such person is completed. The subpoena may contain 131  
a direction that the witness bring with ~~him~~ the witness to the 132  
examination any books, records, or papers mentioned in the 133  
subpoena. The clerk shall also issue, under the seal of the court, 134  
such other orders, in reference to the examination, appearance, 135  
and production of books, records, or papers, as the court directs. 136  
If any person so summoned by subpoena fails to obey the subpoena, 137  
to give testimony, to answer questions as required, or to obey an 138  
order of the court, the court, on motion supported by proof, may 139  
order an attachment for contempt to be issued against the person 140  
charged with disobedience of any order or injunction issued by the 141  
court under this chapter. If the person is brought before the 142  
court by virtue of the attachment, and if upon a hearing the 143

disobedience appears, the court may order the offender to be 144  
committed and kept in close custody. 145

**Sec. 4735.05.** (A) The Ohio real estate commission is a part 146  
of the department of commerce for administrative purposes. The 147  
director of commerce is ex officio the executive officer of the 148  
commission, or the director may designate any employee of the 149  
department as superintendent of real estate and professional 150  
licensing to act as executive officer of the commission. 151

The commission and the real estate appraiser board created 152  
pursuant to section 4763.02 of the Revised Code shall each submit 153  
to the director a list of three persons whom the commission and 154  
the board consider qualified to be superintendent within sixty 155  
days after the office of superintendent becomes vacant. The 156  
director shall appoint a superintendent from the lists submitted 157  
by the commission and the board, and the superintendent shall 158  
serve at the pleasure of the director. 159

(B) The superintendent, except as otherwise provided, shall 160  
do all of the following in regard to this chapter: 161

(1) Administer this chapter; 162

(2) Issue all orders necessary to implement this chapter; 163

(3) Investigate complaints concerning the violation of this 164  
chapter or the conduct of any licensee; 165

(4) Establish and maintain an investigation and audit section 166  
to investigate complaints and conduct inspections, audits, and 167  
other inquiries as in the judgment of the superintendent are 168  
appropriate to enforce this chapter. The investigators or auditors 169  
have the right to review and audit the business records of 170  
licensees and continuing education course providers during normal 171  
business hours. 172

(5) Appoint a hearing examiner for any proceeding involving 173

disciplinary action under section 3123.47 or 4735.18 of the	174
Revised Code;	175
(6) Administer the real estate recovery fund.	176
(C) The superintendent may do all of the following:	177
(1) In connection with investigations and audits under	178
division (B) of this section, subpoena witnesses as provided in	179
section 4735.04 of the Revised Code;	180
(2) Apply to the appropriate court to enjoin any violation of	181
this chapter. Upon a showing by the superintendent that any person	182
has violated or is about to violate any provision of this chapter,	183
the court shall grant an injunction, restraining order, or other	184
appropriate order.	185
(3) Upon the death of a licensed broker or the revocation or	186
suspension of the broker's license, if there is no other licensed	187
broker within the business entity of the broker, appoint upon	188
application by any interested party, or, in the case of a deceased	189
broker, subject to the approval by the appropriate probate court,	190
recommend the appointment of, an ancillary trustee who is	191
qualified as determined by the superintendent to conclude the	192
business transactions of the deceased, revoked, or suspended	193
broker;	194
(4) <u>In conjunction with the enforcement of this chapter, when</u>	195
<u>the superintendent of real estate has reasonable cause to believe</u>	196
<u>that an applicant or licensee has committed a criminal offense,</u>	197
<u>the superintendent of real estate may request the superintendent</u>	198
<u>of the bureau of criminal identification and investigation to</u>	199
<u>conduct a criminal records check of the applicant or licensee. The</u>	200
<u>superintendent of the bureau of criminal identification and</u>	201
<u>investigation shall obtain information from the federal bureau of</u>	202
<u>investigation as part of the criminal records check of the</u>	203
<u>applicant or licensee. The superintendent of real estate may</u>	204

assess the applicant or licensee a fee equal to the fee assessed 205  
for the criminal records check. 206

(D) All information that is obtained by investigators and 207  
auditors performing investigations or conducting inspections, 208  
audits, and other inquiries pursuant to division (B)(4) of this 209  
section, from licensees, complainants, or other persons, and all 210  
reports, documents, and other work products that arise from that 211  
information and that are prepared by the investigators, auditors, 212  
or other personnel of the department, shall be held in confidence 213  
by the superintendent, the investigators and auditors, and other 214  
personnel of the department. Notwithstanding division (D) of 215  
section 2317.023 of the Revised Code, all information obtained by 216  
investigators or auditors from an informal mediation meeting held 217  
pursuant to section 4735.051 of the Revised Code, including but 218  
not limited to the agreement to mediate and the accommodation 219  
agreement, shall be held in confidence by the superintendent, 220  
investigators, auditors, and other personnel of the department. 221

**Sec. 4735.051.** (A) Within five business days after a person 222  
files a signed written complaint against a licensed real estate 223  
broker or licensed real estate salesperson with the division of 224  
real estate, the superintendent of real estate shall acknowledge 225  
receipt of the complaint and send a notice to the licensee 226  
describing the acts complained of. The acknowledgment to the 227  
complainant and the notice to the licensee shall state that an 228  
informal mediation meeting will be held with the complainant, the 229  
licensee, and an investigator from the investigation and audit 230  
section of the division if the complainant and licensee both file 231  
a request for such a meeting within ten business days thereafter 232  
on a form provided by the superintendent. 233

(B) If the complainant and licensee both file with the 234  
division requests for an informal mediation meeting, the 235



superintendent shall notify the complainant and licensee of the 236  
date of the meeting, which shall be within twenty business days 237  
thereafter, except that any party may request an extension of up 238  
to fifteen business days for good cause shown. If the complainant 239  
and licensee reach an accommodation at an informal mediation 240  
meeting, the investigator shall so report to the superintendent, 241  
the complainant, and licensee and the complaint file shall be 242  
~~closed, unless, based upon the investigator's report, the~~ 243  
~~superintendent finds evidence that the licensee has violated~~ 244  
~~section 4735.18 of the Revised Code.~~ 245

(C) If the complainant and licensee fail to agree to an 246  
informal mediation meeting or fail to reach an accommodation, ~~or~~ 247  
~~if the superintendent finds evidence of a violation of section~~ 248  
~~4735.18 of the Revised Code,~~ the superintendent shall, within five 249  
business days of such determination, so notify the complainant and 250  
licensee and shall investigate the conduct of the licensee against 251  
whom the complaint is filed. 252

(D) Within sixty business days after receipt of the 253  
complaint, or, if an informal meeting is held, within sixty days 254  
of such meeting, the investigator shall file a written report of 255  
the results of the investigator's investigation with the 256  
superintendent. Within fourteen business days thereafter, the 257  
superintendent shall review the report and determine whether there 258  
exists reasonable and substantial evidence of a violation of 259  
section 4735.18 of the Revised Code by the licensee. If the 260  
superintendent finds such evidence exists, within seven business 261  
days of the determination, the superintendent shall notify the 262  
complainant and licensee of the date of a hearing to be held by a 263  
hearing examiner pursuant to Chapter 119. of the Revised Code 264  
within fifteen days but not prior to seven days thereafter, except 265  
that either the superintendent or the licensee may request an 266  
extension of up to thirty business days for good cause shown. If 267

the superintendent finds that such evidence does not exist, within 268  
five business days thereafter, the superintendent shall so notify 269  
the complainant and licensee of the superintendent's determination 270  
and the basis for the determination. Within fifteen business days 271  
after the superintendent notifies the complainant and licensee 272  
that such evidence does not exist, the complainant may file with 273  
the division a request that the commissioners review the 274  
determination. If the complainant files such request, the 275  
commissioners shall review the determination at the next regularly 276  
scheduled meeting held at least fifteen business days after the 277  
request is filed. The commission shall hear the testimony of 278  
either the complainant or the licensee at the meeting upon the 279  
request of the complainant or licensee. If the commissioners 280  
affirm the determination of the superintendent, the superintendent 281  
shall so notify the complainant and the licensee within five 282  
business days thereafter. If the commissioners reverse the 283  
determination of the superintendent, a hearing shall be held and 284  
the complainant and licensee notified as provided in this 285  
division. 286

After the date of a hearing to be held by a hearing examiner 287  
has been scheduled pursuant to division (D) of this section, but 288  
before the issuance of the report of findings of fact and 289  
conclusions of law pursuant to division (E) of this section, the 290  
superintendent upon receipt of additional evidence, may withdraw 291  
the notice of hearing. Withdrawal by the superintendent does not 292  
constitute evidence that the original notice of hearing was not 293  
substantially justified. Upon withdrawal of the notice of hearing, 294  
the superintendent shall notify the complainant and licensee of 295  
the superintendent's determination and basis for the 296  
determination. Within fifteen business days after the 297  
superintendent notifies the complainant and licensee, the 298  
complainant may file with the superintendent a request that the 299  
Ohio real estate commission review the determination. The 300

commission shall review the request as provided in division (D) of  
this section.

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(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.

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(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.

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(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.

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

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

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

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(2) Suspend a license for a term set by the commission;	332
(3) Impose a fine, not exceeding two thousand five hundred dollars per violation;	333 334
(4) Issue a public reprimand;	335
(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.	336 337 338 339
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.	340 341 342 343
<u>(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.</u>	344 345 346 347 348 349 350 351
<b>Sec. 4735.06.</b> (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.	352 353 354 355 356 357 358 359 360
If the applicant is a partnership, limited liability company,	361

limited liability partnership, or association, the names of all 362  
the members also shall be stated, and, if the applicant is a 363  
corporation, the names of its president and of each of its 364  
officers also shall be stated. The superintendent has the right to 365  
reject the application of any partnership, association, limited 366  
liability company, limited liability partnership, or corporation 367  
if the name proposed to be used by such partnership, association, 368  
limited liability company, limited liability partnership, or 369  
corporation is likely to mislead the public or if the name is not 370  
such as to distinguish it from the name of any existing 371  
partnership, association, limited liability company, limited 372  
liability partnership, or corporation licensed under this chapter, 373  
unless there is filed with the application the written consent of 374  
such existing partnership, association, limited liability company, 375  
limited liability partnership, or corporation, executed by a duly 376  
authorized representative of it, permitting the use of the name of 377  
such existing partnership, association, limited liability company, 378  
limited liability partnership, or corporation. 379

(B) A fee of sixty-nine dollars shall accompany the 380  
application for a real estate broker's license, which fee includes 381  
the fee for the initial year of the licensing period, if a license 382  
is issued. The application fee shall be retained by the 383  
superintendent if the applicant is admitted to the examination for 384  
the license or the examination requirement is waived, but, if an 385  
applicant is not so admitted and a waiver is not involved, 386  
one-half of the fee shall be retained by the superintendent to 387  
cover the expenses of processing the application and the other 388  
one-half shall be returned to the applicant. A fee of sixty-nine 389  
dollars shall be charged by the superintendent for each successive 390  
application made by an applicant. In the case of issuance of a 391  
three-year license, upon passing the examination, or upon waiver 392  
of the examination requirement, if the superintendent determines 393  
it is necessary, the applicant shall submit an additional fee of 394

~~ninety eight dollars, which fee includes the fee for the second 395  
and third year of the licensing period, except that the 396  
superintendent shall prorate that additional fee determined by the 397  
superintendent based upon the number of years remaining in a real 398  
estate salesperson's licensing period. 399~~

(C) Four dollars of each application fee for a real estate 400  
broker's license shall be credited to the real estate education 401  
and research fund, which is hereby created in the state treasury. 402  
The Ohio real estate commission may use the fund in discharging 403  
the duties prescribed in divisions (E), (F), ~~and~~ (G), and (H) of 404  
section 4735.03 of the Revised Code and shall use it in the 405  
advancement of education and research in real estate at any 406  
institution of higher education in the state, or in contracting 407  
with any such institution or a trade organization for a particular 408  
research or educational project in the field of real estate, or in 409  
advancing loans, not exceeding eight hundred dollars, to 410  
applicants for salesperson licenses, to defray the costs of 411  
satisfying the educational requirements of division (F) of section 412  
4735.09 of the Revised Code. Such loans shall be made according to 413  
rules established by the commission under the procedures of 414  
Chapter 119. of the Revised Code, and they shall be repaid to the 415  
fund within three years of the time they are made. No more than 416  
ten thousand dollars shall be lent from the fund in any one year. 417

The governor may appoint a representative from the executive 418  
branch to be a member ex officio of the commission for the purpose 419  
of advising on research requests or educational projects. The 420  
commission shall report to the general assembly on the third 421  
Tuesday after the third Monday in January of each year setting 422  
forth the total amount contained in the fund and the amount of 423  
each research grant that it has authorized and the amount of each 424  
research grant requested. A copy of all research reports shall be 425  
submitted to the state library of Ohio and the library of the 426

legislative service commission. 427

(D) If the superintendent, with the consent of the 428  
commission, enters into an agreement with a national testing 429  
service to administer the real estate broker's examination, 430  
pursuant to division (A) of section 4735.07 of the Revised Code, 431  
the superintendent may require an applicant to pay the testing 432  
service's examination fee directly to the testing service. If the 433  
superintendent requires the payment of the examination fee 434  
directly to the testing service, each applicant shall submit to 435  
the superintendent a processing fee in an amount determined by the 436  
Ohio real estate commission pursuant to division (A)(2) of section 437  
4735.10 of the Revised Code. 438

**Sec. 4735.09.** (A) Application for a license as a real estate 439  
salesperson shall be made to the superintendent of real estate on 440  
forms furnished by the superintendent and signed by the applicant. 441  
The application shall be in the form prescribed by the 442  
superintendent and shall contain such information as is required 443  
by this chapter and the rules of the Ohio real estate commission. 444  
The application shall be accompanied by the recommendation of the 445  
real estate broker with whom the applicant is associated or with 446  
whom the applicant intends to be associated, certifying that the 447  
applicant is honest, truthful, and of good reputation, has not 448  
been convicted of a felony or a crime involving moral turpitude, 449  
and has not been finally adjudged by a court to have violated any 450  
municipal, state, or federal civil rights laws relevant to the 451  
protection of purchasers or sellers of real estate, which 452  
conviction or adjudication the applicant has not disclosed to the 453  
superintendent, and recommending that the applicant be admitted to 454  
the real estate salesperson examination. 455

(B) A fee of forty-nine dollars shall accompany the 456  
application, which fee includes the fee for the initial year of 457

the licensing period, if a license is issued. The application fee 458  
shall be retained by the superintendent if the applicant is 459  
admitted to the examination for the license or the examination 460  
requirement is waived, but, if an applicant is not so admitted and 461  
a waiver is not involved, one-half of the fee shall be retained by 462  
the superintendent to cover the expenses of processing the 463  
application and the other one-half shall be returned to the 464  
applicant. A fee of forty-nine dollars shall be charged by the 465  
superintendent for each successive application made by the 466  
applicant. ~~In the case of issuance of a three year license, upon 467~~  
~~passing the examination, or upon waiver of the examination 468~~  
~~requirement, the applicant shall submit an additional fee of 469~~  
~~seventy eight dollars, which fee includes the fee for the second 470~~  
~~and third year of the licensing period.~~ Four dollars of each 471  
application fee shall be credited to the real estate education and 472  
research fund. 473

(C) There shall be no limit placed on the number of times an 474  
applicant may retake the examination. 475

(D) The superintendent, with the consent of the commission, 476  
may enter into an agreement with a recognized national testing 477  
service to administer the real estate salesperson's examination 478  
under the superintendent's supervision and control, consistent 479  
with the requirements of this chapter as to the contents of the 480  
examination. 481

If the superintendent, with the consent of the commission, 482  
enters into an agreement with a national testing service to 483  
administer the real estate salesperson's examination, the 484  
superintendent may require an applicant to pay the testing 485  
service's examination fee directly to the testing service. If the 486  
superintendent requires the payment of the examination fee 487  
directly to the testing service, each applicant shall submit to 488  
the superintendent a processing fee in an amount determined by the 489



Ohio real estate commission pursuant to division (A)(1) of section 490  
4735.10 of the Revised Code. 491

(E) The superintendent shall issue a real estate 492  
salesperson's license when satisfied that the applicant has 493  
received a passing score on each portion of the salesperson's 494  
examination as determined by rule by the real estate commission, 495  
except that the superintendent may waive one or more of the 496  
requirements of this section in the case of an applicant who is a 497  
licensed real estate salesperson in another state pursuant to a 498  
reciprocity agreement with the licensing authority of the state 499  
from which the applicant holds a valid real estate salesperson's 500  
license. 501

(F) No applicant for a salesperson's license shall take the 502  
salesperson's examination who has not established to the 503  
satisfaction of the superintendent that the applicant: 504

(1) Is honest, truthful, and of good reputation; 505

(2)(a) Has not been convicted of a felony or crime of moral 506  
turpitude or, if the applicant has been so convicted, the 507  
superintendent has disregarded the conviction because the 508  
applicant has proven to the superintendent, by a preponderance of 509  
the evidence, that the applicant's activities and employment 510  
record since the conviction show that the applicant is honest, 511  
truthful, and of good reputation, and there is no basis in fact 512  
for believing that the applicant again will violate the laws 513  
involved; 514

(b) Has not been finally adjudged by a court to have violated 515  
any municipal, state, or federal civil rights laws relevant to the 516  
protection of purchasers or sellers of real estate or, if the 517  
applicant has been so adjudged, at least two years have passed 518  
since the court decision and the superintendent has disregarded 519  
the adjudication because the applicant has proven, by a 520

preponderance of the evidence, that the applicant is honest, 521  
truthful, and of good reputation, and there is no basis in fact 522  
for believing that the applicant again will violate the laws 523  
involved. 524

(3) Has not, during any period in which the applicant was 525  
licensed under this chapter, violated any provision of, or any 526  
rule adopted pursuant to this chapter, or, if the applicant has 527  
violated such provision or rule, has established to the 528  
satisfaction of the superintendent that the applicant will not 529  
again violate such provision or rule; 530

(4) Is at least eighteen years of age; 531

(5) If born after the year 1950, has a high school diploma or 532  
its equivalent as recognized by the state department of education; 533

(6)(a) If beginning instruction prior to August 1, 2001, has 534  
successfully completed at an institution of higher education all 535  
of the following: 536

(i) Thirty hours of classroom instruction in real estate 537  
practice; 538

(ii) Thirty hours of classroom instruction that includes the 539  
subjects of Ohio real estate law, municipal, state, and federal 540  
civil rights law, new case law on housing discrimination, 541  
desegregation issues, and methods of eliminating the effects of 542  
prior discrimination. If feasible, the classroom instruction in 543  
Ohio real estate law shall be taught by a member of the faculty of 544  
an accredited law school. If feasible, the classroom instruction 545  
in municipal, state, and federal civil rights law, new case law on 546  
housing discrimination, desegregation issues, and methods of 547  
eliminating the effects of prior discrimination shall be taught by 548  
a staff member of the Ohio civil rights commission who is 549  
knowledgeable with respect to those subjects. The requirements of 550  
this division do not apply to an applicant who is admitted to 551

practice before the supreme court.	552
(iii) Thirty hours of classroom instruction in real estate appraisal;	553 554
(iv) Thirty hours of classroom instruction in real estate finance.	555 556
(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.	557 558 559 560 561 562 563
(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:	564 565 566 567
(a) Forty hours of classroom instruction in real estate practice;	568 569
(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	570 571 572 573 574 575 576 577 578 579 580 581 582

practice before the supreme court. 583

(c) Twenty hours of classroom instruction in real estate 584  
appraisal; 585

(d) Twenty hours of classroom instruction in real estate 586  
finance. 587

(G) No later than twelve months after the date of issue of a 588  
real estate salesperson license to a licensee, the licensee shall 589  
submit proof satisfactory to the superintendent, on forms made 590  
available by the superintendent, of completion, at an institution 591  
of higher education or any other institution approved by the 592  
commission, of ten hours of classroom instruction in real estate 593  
courses that cover current issues regarding consumers, real estate 594  
practice, ethics, and real estate law. 595

If proof of completion of the required instruction is not 596  
submitted within twelve months of the date a license is issued 597  
under this section, the licensee's license is suspended 598  
automatically without the taking of any action by the 599  
superintendent. The superintendent immediately shall notify the 600  
broker with whom such salesperson is associated of the suspension 601  
of the salesperson's license. A salesperson whose license has been 602  
suspended under this division shall have twelve months after the 603  
date of the suspension of the salesperson's license to submit 604  
proof of successful completion of the instruction required under 605  
this division. No such license shall be reactivated by the 606  
superintendent until it is established, to the satisfaction of the 607  
superintendent, that the requirements of this division have been 608  
met and that the licensee is in compliance with this chapter. A 609  
licensee's license is revoked automatically without the taking of 610  
any action by the superintendent when the licensee fails to submit 611  
the required proof of completion of the education requirements 612  
under division (G) of this section within twelve months of the 613  
date the license is suspended. 614

(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 646  
superintendent of real estate. 647

The failure of a broker to return the license of a real 648  
estate salesperson or broker who leaves or who is terminated, via 649  
certified mail return receipt requested, within three business 650  
days of the receipt of a written request from the ~~salesperson~~ 651  
superintendent for the return of the license, ~~when a copy of the~~ 652  
~~request also is forwarded to the superintendent~~, is prima-facie 653  
evidence of misconduct under division (A)(6) of section 4735.18 of 654  
the Revised Code. 655

(C) Any licensee who is convicted of a felony or a crime 656  
involving moral turpitude or of violating any federal, state, or 657  
municipal civil rights law pertaining to discrimination in 658  
housing, or any court that issues a finding of an unlawful 659  
discriminatory practice pertaining to housing accommodations 660  
described in division (H) of section 4112.02 of the Revised Code 661  
or that convicts a licensee of a violation of any municipal civil 662  
rights law pertaining to housing discrimination, shall notify the 663  
superintendent of the conviction or finding within fifteen days. 664  
If a licensee fails to notify the superintendent within the 665  
required time, the superintendent immediately may revoke the 666  
license of the licensee. 667

Any court that convicts a licensee of a violation of any 668  
municipal civil rights law pertaining to housing discrimination 669  
also shall notify the Ohio civil rights commission within fifteen 670  
days of the conviction. 671

(D) In case of any change of business location, a broker 672  
shall give notice in writing to the superintendent, whereupon the 673  
superintendent shall issue new licenses for the unexpired period 674  
without charge. If a broker changes a business location without 675  
giving the required notice and without receiving new licenses that 676  
action is prima-facie evidence of misconduct under division (A)(6) 677

of section 4735.18 of the Revised Code. 678

(E) If a real estate broker desires to associate with another 679  
real estate broker in the capacity of a real estate salesperson, 680  
the broker shall apply to the superintendent to deposit the 681  
broker's real estate broker's license with the superintendent and 682  
for the issuance of a real estate salesperson's license. The 683  
application shall be made on a form prescribed by the 684  
superintendent and shall be accompanied by the recommendation of 685  
the real estate broker with whom the applicant intends to become 686  
associated and a fee of twenty-five dollars for the real estate 687  
salesperson's license. Four dollars of the fee shall be credited 688  
to the real estate education and research fund. If the 689  
superintendent is satisfied that the applicant is honest, 690  
truthful, and of good reputation, has not been convicted of a 691  
felony or a crime involving moral turpitude, and has not been 692  
finally adjudged by a court to have violated any municipal, state, 693  
or federal civil rights laws relevant to the protection of 694  
purchasers or sellers of real estate, and that the association of 695  
the real estate broker and the applicant will be in the public 696  
interest, the superintendent shall grant the application and issue 697  
a real estate salesperson's license to the applicant. Any license 698  
so deposited with the superintendent shall be subject to this 699  
chapter. A broker who intends to deposit the broker's license with 700  
the superintendent, as provided in this section, shall give 701  
written notice of this fact in a format prescribed by the 702  
superintendent to all salespersons associated with the broker when 703  
applying to place the broker's license on deposit. 704

(F) If a real estate broker desires to become a member or 705  
officer of a partnership, association, limited liability company, 706  
limited liability partnership, or corporation that is or intends 707  
to become a licensed real estate broker, the broker shall notify 708  
the superintendent of the broker's intentions. The notice of 709

intention shall be on a form prescribed by the superintendent and 710  
shall be accompanied by a fee of twenty-five dollars. Four dollars 711  
of the fee shall be credited to the real estate education and 712  
research fund. 713

No real estate broker who is a member or officer of a 714  
partnership, association, limited liability company, limited 715  
liability partnership, or corporation that is a licensed real 716  
estate broker shall perform any acts as a real estate broker other 717  
than as the agent of the partnership, association, limited 718  
liability company, limited liability partnership, or corporation, 719  
and such broker shall not have any real estate salespersons 720  
associated with the broker. 721

(G) If a real estate broker or salesperson enters the armed 722  
forces, the broker or salesperson may place the broker's or 723  
salesperson's license on deposit with the Ohio real estate 724  
commission. The licensee shall not be required to renew the 725  
license until the renewal date that follows the date of discharge 726  
from the armed forces. Any license deposited with the commission 727  
shall be subject to this chapter. Any licensee whose license is on 728  
deposit under this division and who fails to meet the continuing 729  
education requirements of section 4735.141 of the Revised Code 730  
because the licensee is in the armed forces shall satisfy the 731  
commission that the licensee has complied with the continuing 732  
education requirements within twelve months of the licensee's 733  
discharge. The commission shall notify the licensee of the 734  
licensee's obligations under section 4735.141 of the Revised Code 735  
at the time the licensee applies for reactivation of the 736  
licensee's license. 737

(H) If a licensed real estate salesperson submits an 738  
application to the superintendent to leave the association of one 739  
broker to associate with a different broker, the broker possessing 740  
the licensee's license need not return the salesperson's license 741



to the superintendent. The superintendent may process the 742  
application regardless of whether the licensee's license is 743  
returned to the superintendent. 744

**Sec. 4735.14.** (A) Each license issued under this chapter, 745  
shall be valid without further recommendation or examination until 746  
placed in an inactive status, revoked, suspended, or such license 747  
expires by operation of law. 748

(B) Each licensed broker, brokerage, or salesperson shall 749  
file, on or before the date the Ohio real estate commission has 750  
adopted by rule for that licensee in accordance with division 751  
(A)(2)(f) of section 4735.10 of the Revised Code, a notice of 752  
renewal on a form prescribed by the superintendent of real estate. 753  
~~The licensee shall indicate on the form whether the licensee~~ 754  
~~wishes to maintain the licensee's license in an active or inactive~~ 755  
~~status.~~ The notice of renewal shall be mailed by the 756  
superintendent to the most current personal residence address of 757  
each broker or salesperson as filed with the superintendent by the 758  
licensee and the place of business address of the brokerage two 759  
months prior to the filing deadline. 760

(C) The license of any real estate broker, brokerage, or 761  
salesperson that fails to file a notice of renewal on or before 762  
the filing deadline of each ensuing year shall be suspended 763  
automatically without the taking of any action by the 764  
superintendent. A suspended license may be reactivated within 765  
twelve months of the date of suspension, provided that the renewal 766  
fee plus a penalty fee of fifty per cent of the renewal fee is 767  
paid to the superintendent. Failure to reactivate the license as 768  
provided in this division shall result in automatic revocation of 769  
the license without the taking of any action by the 770  
superintendent. No person, partnership, association, corporation, 771  
limited liability company, or limited partnership shall engage in 772

any act or acts for which a real estate license is required while 773  
that entity's license is placed in an inactive status, suspended, 774  
or revoked. The commission shall adopt rules in accordance with 775  
Chapter 119. of the Revised Code to provide to licensees notice of 776  
suspension or revocation or both. 777

(D) Each licensee shall notify the commission of a change in 778  
personal residence address. A licensee's failure to notify the 779  
commission of a change in personal residence address does not 780  
negate the requirement to file the license renewal by the required 781  
deadline established by the commission by rule under division 782  
(A)(2)(f) of section 4735.10 of the Revised Code. 783

(E) The superintendent shall not renew a license if the 784  
licensee is not in compliance with this chapter. 785

**Sec. 4735.141.** (A) Except as otherwise provided in this 786  
division, each person licensed under section 4735.07 or 4735.09 of 787  
the Revised Code shall submit proof satisfactory to the 788  
superintendent of real estate that the licensee has satisfactorily 789  
completed thirty hours of continuing education, as prescribed by 790  
the Ohio real estate commission pursuant to section 4735.10 of the 791  
Revised Code, on or before the licensee's birthday occurring three 792  
years after the licensee's date of initial licensure, and on or 793  
before the licensee's birthday every three years thereafter. 794

Persons licensed as real estate salespersons who subsequently 795  
become licensed real estate brokers shall continue to submit proof 796  
of continuing education in accordance with the time period 797  
established in this section. 798

The requirements of this section shall not apply to any 799  
physically handicapped licensee as provided in division (E) of 800  
this section. 801

Each licensee who is seventy years of age or older ~~on June~~ 802

~~14, 1999, within a continuing education reporting period, shall~~ 803  
~~submit, on or before the licensee's birthday occurring three years~~ 804  
~~after June 30, 1999, and on or before the licensee's birthday~~ 805  
~~every three years thereafter, proof satisfactory to the~~ 806  
superintendent of real estate that the licensee has satisfactorily 807  
completed a total of nine classroom hours of continuing education, 808  
including instruction in Ohio real estate law; recently enacted 809  
state and federal laws affecting the real estate industry; 810  
municipal, state, and federal civil rights law; and canons of 811  
ethics for the real estate industry as adopted by the commission. 812  
The required proof of completion shall be submitted on or before 813  
the licensee's birthday that falls in the third year of that 814  
continuing education reporting period. A licensee who is seventy 815  
years of age or older whose license is in an inactive status is 816  
exempt from the continuing education requirements specified in 817  
this section. The commission shall adopt reasonable rules in 818  
accordance with Chapter 119. of the Revised Code to carry out the 819  
purposes of this paragraph. 820

A person providing any course of continuing education may 821  
administer examinations to licensees for the purpose of evaluating 822  
the effectiveness of the course, but passage of an examination by 823  
a licensee shall not be a condition for successful completion of 824  
the continuing education requirements of this section. 825

(B) The continuing education requirements of this section 826  
shall be completed in schools, seminars, and educational 827  
institutions approved by the commission. Such approval shall be 828  
given according to rules established by the commission under the 829  
procedures of Chapter 119. of the Revised Code, and shall not be 830  
limited to institutions providing two-year or four-year degrees. 831  
Each school, seminar, or educational institution approved under 832  
this division shall be open to all licensees on an equal basis. 833

(C) If the requirements of this section are not met by a 834

licensee within the period specified, the licensee's license shall 835  
be suspended automatically without the taking of any action by the 836  
superintendent. The superintendent shall notify the licensee of 837  
the license suspension. Any license so suspended shall remain 838  
suspended until it is reactivated by the superintendent. No such 839  
license shall be reactivated until it is established, to the 840  
satisfaction of the superintendent, that the requirements of this 841  
section have been met. If the requirements of this section are not 842  
met within twelve months from the date the license was suspended, 843  
the license shall be revoked automatically without the taking of 844  
any action by the superintendent. 845

(D) If the license of a real estate broker is suspended 846  
pursuant to division (C) of this section, the license of a real 847  
estate salesperson associated with that broker correspondingly is 848  
suspended pursuant to division (H) of section 4735.20 of the 849  
Revised Code. However, the suspended license of the associated 850  
real estate salesperson shall be reactivated and no fee shall be 851  
charged or collected for that reactivation if all of the following 852  
occur: 853

(1) That broker subsequently submits proof to the 854  
superintendent that the broker has complied with the requirements 855  
of this section and requests that the broker's license as a real 856  
estate broker be reactivated. 857

(2) The superintendent then reactivates the broker's license 858  
as a real estate broker. 859

(3) The associated real estate salesperson intends to 860  
continue to be associated with that broker, has complied with the 861  
requirements of this section, and otherwise is in compliance with 862  
this chapter. 863

Any person whose license is reactivated pursuant to this 864  
division shall submit proof satisfactory to the superintendent 865

that the person has completed thirty hours of continuing 866  
education, as prescribed by the Ohio real estate commission, on or 867  
before the third year following the licensee's birthday occurring 868  
immediately after reactivation. 869

(E) Any licensee who is a physically handicapped licensee at 870  
any time during the last three months of the third year of the 871  
licensee's continuing education reporting period may receive an 872  
extension of time to submit proof to the superintendent that the 873  
licensee has satisfactorily completed the required thirty hours of 874  
continuing education. To receive an extension of time, the 875  
licensee shall submit a request to the division of real estate for 876  
the extension and proof satisfactory to the commission that the 877  
licensee was a physically handicapped licensee at some time during 878  
the last three months of the three-year reporting period. The 879  
proof shall include, but is not limited to, a signed statement by 880  
the licensee's attending physician describing the physical 881  
disability, certifying that the licensee's disability is of such a 882  
nature as to prevent the licensee from attending any instruction 883  
lasting at least three hours in duration, and stating the expected 884  
duration of the physical disability. The licensee shall request 885  
the extension and provide the physician's statement to the 886  
division no later than one month prior to the end of the 887  
licensee's three-year continuing education reporting period, 888  
unless the physical disability did not arise until the last month 889  
of the three-year reporting period, in which event the licensee 890  
shall request the extension and provide the physician's statement 891  
as soon as practical after the occurrence of the physical 892  
disability. A licensee granted an extension pursuant to this 893  
division who is no longer a physically handicapped licensee and 894  
who submits proof of completion of the continuing education during 895  
the extension period, shall submit, for future continuing 896  
education reporting periods, proof of completion of the continuing 897  
education requirements according to the schedule established in 898

division (A) of this section. 899

**Sec. 4735.15.** (A) The fees for reactivation or transfer of a 900  
license shall be as follows: 901

(1) Reactivation or transfer of a broker's license into or 902  
out of a partnership, association, limited liability company, 903  
limited liability partnership, or corporation or from one 904  
partnership, association, limited liability company, limited 905  
liability partnership, or corporation to another partnership, 906  
association, limited liability company, limited liability 907  
partnership, or corporation, twenty-five dollars. An application 908  
for such transfer shall be made to the superintendent of real 909  
estate on forms provided by the superintendent. 910

(2) Reactivation or transfer of a license by a real estate 911  
salesperson, twenty dollars. 912

(B) ~~The~~ Except as may otherwise be specified pursuant to 913  
division (F) of this section, the fees for a branch office 914  
license, license renewal, late filing, and foreign real estate 915  
dealer and salesperson license are as follows per year for each 916  
year of a licensing period: 917

(1) Branch office license, eight dollars; 918

(2) Renewal of a real estate broker's license, forty-nine 919  
dollars. If the licensee is a partnership, association, limited 920  
liability company, limited liability partnership, or corporation, 921  
the full broker's renewal fee shall be required for each member of 922  
such partnership, association, limited liability company, limited 923  
liability partnership, or corporation that is a real estate 924  
broker. If the real estate broker has not less than eleven nor 925  
more than twenty real estate salespersons associated with the 926  
broker, an additional fee of sixty-four dollars shall be assessed 927  
to the brokerage. For every additional ten real estate 928

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. 959

(B) When the superintendent determines that a licensee has 960  
violated division (A) of this section, the superintendent may do 961  
either of the following: 962

(1) Initiate disciplinary action under section 4735.051 of 963  
the Revised Code, in accordance with Chapter 119. of the Revised 964  
Code; 965

(2) Personally, or by certified mail, serve a citation and 966  
impose sanctions in accordance with this section upon the 967  
licensee. 968

(C) Every citation served under this section shall give 969  
notice to the licensee of the alleged violation or violations 970  
charged and inform the licensee of the opportunity to request a 971  
hearing in accordance with Chapter 119. of the Revised Code. The 972  
citation also shall contain a statement of a fine of up to two 973  
hundred dollars per violation. All fines collected pursuant to 974  
this section shall be credited to the real estate recovery fund, 975  
created in the state treasury under section 4735.12 of the Revised 976  
Code. 977

(D) If any licensee is cited three times under this section 978  
within twelve consecutive months, the superintendent shall 979  
initiate disciplinary action pursuant to section 4735.051 of the 980  
Revised Code for any subsequent violation that occurs within the 981  
same twelve-month period. 982

If a licensee fails to request a hearing within thirty days 983  
after the date of service of the citation, or the licensee and the 984  
superintendent fail to reach an alternative agreement, the 985  
citation shall become final. 986

(E) Unless otherwise indicated, the licensee named in a final 987  
citation under this section must meet all requirements contained 988



in the final citation within thirty days after the effective date 989  
of that citation. 990

(F) The superintendent shall suspend automatically a 991  
licensee's license if the licensee fails to comply with division 992  
(E) of this section. 993

**Sec. 4735.182.** If a check or other draft instrument used to 994  
pay any fee required under this chapter is returned to the 995  
superintendent for insufficient funds, the superintendent shall 996  
notify the licensee that the check or other draft instrument was 997  
returned for insufficient funds and that the licensee's license 998  
will be suspended unless the licensee, within fifteen days after 999  
the mailing of the notice, submits the fee and a 1000  
one-hundred-dollar fee to the superintendent. If the licensee does 1001  
not submit both fees within that time period, or if any check or 1002  
other draft instrument used to pay either of those fees is 1003  
returned to the superintendent for insufficient funds, the license 1004  
shall be suspended immediately without a hearing and the licensee 1005  
shall cease activity as a licensee under this chapter. 1006

**Sec. 4735.53.** (A) The types of agency relationships a 1007  
licensee may establish in a real estate transaction are limited to 1008  
the following: 1009

(1) An agency relationship between the licensee and the 1010  
seller; 1011

(2) An agency relationship between the licensee and the 1012  
purchaser; 1013

(3) A dual agency relationship between the licensee and both 1014  
the seller and the purchaser; 1015

(4) A subagency relationship between the licensee and the 1016  
client of another licensee. 1017

(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)

<u>of this section shall include all of the following information:</u>	1048
<u>(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;</u>	1049 1050 1051
<u>(2) The brokerage's policy on representation of purchasers or sellers;</u>	1052 1053
<u>(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;</u>	1054 1055 1056 1057 1058
<u>(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;</u>	1059 1060 1061 1062 1063
<u>(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;</u>	1064 1065 1066
<u>(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;</u>	1067 1068 1069
<u>(7) That the signature of the purchaser or the seller indicates acknowledgement of receipt of the brokerage policy on agency.</u>	1070 1071 1072
<u>(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</u>	1073 1074 1075 1076 1077

refuses to provide a signature, the licensee shall note this on 1078  
the policy. 1079

(D) A licensee working directly with a purchaser in a real 1080  
estate transaction, whether as the purchaser's agent, the seller's 1081  
agent, or the seller's subagent, shall provide the purchaser with 1082  
the brokerage policy on agency described in this section and 1083  
obtain a signature from the purchaser acknowledging receipt of the 1084  
policy unless the purchaser refuses to provide a signature. If the 1085  
purchaser refuses to provide a signature, the licensee shall note 1086  
this on the policy. Except as provided in division (E) of this 1087  
section, the licensee shall provide the brokerage policy on agency 1088  
to a purchaser prior to the earliest of the following actions of 1089  
the licensee: 1090

(1) Initiating a prequalification evaluation to determine 1091  
whether the purchaser has the financial ability to purchase or 1092  
lease a particular real estate property; 1093

(2) Requesting specific financial information from the 1094  
purchaser to determine the purchaser's ability to purchase or 1095  
finance real estate in a particular price range; 1096

(3) Showing the real estate to the purchaser other than at an 1097  
open house; 1098

(4) Discussing, with the purchaser, the making of an offer to 1099  
purchase or lease real estate; 1100

(5) Submitting an offer to purchase or lease real estate on 1101  
behalf of the purchaser. 1102

(E) If the earliest event described in division (D) of this 1103  
section is by telephone or electronic mail, the licensee shall 1104  
disclose by that same medium the nature of the agency relationship 1105  
that the licensee has with both the seller and the purchaser. The 1106  
licensee shall provide the purchaser with the brokerage policy on 1107  
agency described in this section at the first meeting with the 1108

<u>purchaser following this disclosure of the agency relationship.</u>	1109
<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>	1110 1111 1112 1113
<u>(G) The requirements of this section regarding provision of a brokerage policy on agency do not apply in any of the following situations:</u>	1114 1115 1116
<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>	1117 1118 1119
<u>(2) The referral of a prospective purchaser or seller to another licensee;</u>	1120 1121
<u>(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;</u>	1122 1123 1124
<u>(4) Transactions involving the sale of a cemetery lot or a cemetery interment right.</u>	1125 1126
<b>Sec. 4735.57.</b> <u>(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:</u>	1128 1129 1130 1131 1132 1133 1134
<u>(1) Unless confidential, the names of all the parties in the transaction;</u>	1135 1136
<u>(2) The address of the real estate being sold or leased;</u>	1137
<u>(3) The name of the licensee or licensees and the brokerage</u>	1138

<u>with which each licensee is affiliated;</u>	1139
<u>(4) The party that each licensee in the named brokerage represents in the transaction;</u>	1140
<u>(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;</u>	1142
<u>(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;</u>	1143
<u>(7) If both the purchaser and the seller are represented by licensees affiliated with the same brokerage, that the brokerage is a dual agent;</u>	1144
<u>(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.</u>	1145
<u>(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:</u>	1146
<u>(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;</u>	1147
<u>(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;</u>	1148
<u>(3) A description of the duties the brokerage and its</u>	1149

affiliated licensees and employees owe to each client, including 1169  
the duty of confidentiality; 1170

(4) That neither the brokerage nor its affiliated licensees 1171  
have any material relationship with either client other than 1172  
incidental to the transaction, or if the brokerage or its 1173  
affiliated licensees have a material relationship, a disclosure of 1174  
the nature of the relationship. For purposes of this division, 1175  
"material relationship" means any actually known personal, 1176  
familial, or business relationship between the brokerage or an 1177  
affiliated licensee and a client that could impair the ability of 1178  
the brokerage or affiliated licensee to exercise lawful and 1179  
independent judgment relative to another client. 1180

(5) That as a dual agent, the brokerage cannot engage in 1181  
conduct that is contrary to the interests or instructions of one 1182  
party or act in a biased manner on behalf of one party; 1183

(6) A section specifying the source of compensation to the 1184  
real estate broker; 1185

(7) That the client does not have to consent to the dual 1186  
agency relationship, and the options available to the client for 1187  
representation in the transaction if the client does not consent, 1188  
including the right of the client to terminate the agency 1189  
relationship and seek representation from another source; 1190

(8) That the consent to the dual agency relationship by the 1191  
client has been given voluntarily, that the signature indicates 1192  
informed consent, and that the duties of a licensee acting as a 1193  
dual agent disclosed to the client pursuant to division (B) of 1194  
this section have been read and understood. 1195

~~Sec. 4735.58. (A) A licensee acting as a seller's agent shall~~ 1196  
~~provide the seller an agency disclosure statement described in~~ 1197  
~~section 4735.57 of the Revised Code prior to marketing or showing~~ 1198

~~the seller's property.~~ 1199

~~(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:~~ 1200

~~(a) Initiating a prequalification evaluation to determine whether the purchaser has the financial ability to purchase or lease the particular property;~~ 1201  
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~~(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;~~ 1205  
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~~(c) Showing the property to the purchaser other than at an open house;~~ 1208  
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~~(d) Discussing, with the purchaser, the making of an offer to purchase real property;~~ 1211  
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~~(e) Submitting an offer to purchase or lease real property on behalf of the purchaser.~~ 1213  
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~~(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.~~ 1217  
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~~(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.~~ 1224  
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~~(C) A licensee who is a purchaser's agent or a seller's subagent working with a purchaser shall present the agency~~ 1227  
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disclosure statement described in section 4735.57 of the Revised 1229  
Code to the purchaser and request the purchaser to sign and date 1230  
the statement ~~pursuant to division (B) of this section~~ no later 1231  
than the preparation of an offer to purchase or lease, or a 1232  
written request for a proposal to lease. The licensee shall 1233  
deliver the statement signed by the purchaser to the seller's 1234  
agent, or to the seller if the seller is not represented by an 1235  
agent, ~~prior.~~ Prior to presenting the seller with either a written 1236  
offer to purchase or lease, or a written request for a proposal to 1237  
lease, the seller's agent, or the purchaser's agent if the seller 1238  
is not represented by an agent, shall present the agency 1239  
disclosure statement to the seller and request the seller to sign 1240  
and date the statement. 1241

~~(D)~~(B) A licensee selling property at auction shall, prior to 1242  
the auction, verbally disclose to the audience that the licensee 1243  
represents the seller in the real estate transaction. The licensee 1244  
shall provide the agency disclosure statement described in section 1245  
4735.57 of the Revised Code to the successful bidder prior to the 1246  
bidder's signing a purchase contract. 1247

~~(E)~~(C) Evidence that a licensee has failed to comply with 1248  
this section constitutes prima-facie evidence of misconduct in 1249  
violation of division (A)(6) of section 4735.18 of the Revised 1250  
Code. 1251

(D) The disclosure requirements of this section do not apply 1252  
in any of the following situations: 1253

(1) The rental or leasing of residential premises as defined 1254  
in section 5321.01 of the Revised Code, if the rental or lease 1255  
agreement can be performed in eighteen months or less; 1256

(2) The referral of a prospective purchaser or seller to 1257  
another licensee; 1258

(3) Transactions involving the sale, lease, or exchange of 1259

<u>foreign real estate as defined in division (E) of section 4735.01</u>	1260
<u>of the Revised Code;</u>	1261
<u>(4) Transactions involving the sale of a cemetery lot or a</u>	1262
<u>cemetery interment right.</u>	1263
<u>(E) The licensee is obligated to perform all duties imposed</u>	1264
<u>on a real estate agent at common law except to the extent the</u>	1265
<u>duties are inconsistent with the duties prescribed in this chapter</u>	1266
<u>or are otherwise modified by agreement.</u>	1267
<b>Sec. 4735.70.</b> The following are dual agents under this	1268
chapter:	1269
(A) A licensee who represents both the purchaser and the	1270
seller as clients in the same real estate transaction;	1271
(B) A brokerage that represents both the purchaser and the	1272
seller as clients in the same real estate transaction;	1273
(C) A management level licensee who represents a client in an	1274
in-company transaction. <u>If there is more than one management level</u>	1275
<u>licensee affiliated with the brokerage and either of the following</u>	1276
<u>applies, the management level licensee is not a dual agent:</u>	1277
<u>(1) The management level licensee personally represents</u>	1278
<u>either the seller or the purchaser in a transaction, in which case</u>	1279
<u>the management level licensee will represent only the interests of</u>	1280
<u>that licensee's client.</u>	1281
<u>(2) The management level licensee is the purchaser or seller</u>	1282
<u>in a transaction and will represent only that licensee's interest.</u>	1283
<b>Sec. 4735.71.</b> (A) <del>Except as provided in division (C) of this</del>	1284
<del>section, no</del> No licensee or brokerage shall participate in a dual	1285
agency relationship described in section 4735.70 of the Revised	1286
Code unless both the seller and the purchaser in the transaction	1287
have full knowledge of the dual representation and consent in	1288

writing to the dual representation on the ~~dual~~ agency disclosure 1289  
statement described in section ~~4735.73~~ 4735.57 of the Revised 1290  
Code. Before a licensee obtains the consent of any party to a dual 1291  
agency relationship, the licensee shall disclose to both the 1292  
purchaser and the seller all relevant information necessary to 1293  
enable each party to make an informed decision as to whether to 1294  
consent to the dual agency relationship. If, after consent is 1295  
obtained, there is a material change in the information disclosed 1296  
to the purchaser and the seller, the licensee shall disclose ~~such~~ 1297  
the change of information to the purchaser and the seller and give 1298  
them an opportunity to revoke their consent. 1299

(B) ~~The brokerage shall make the dual agency disclosure to 1300  
both the seller and purchaser as soon as practicable after it is 1301  
determined that such dual agency may exist. The parties to the 1302  
real estate transaction shall sign and date the dual agency 1303  
disclosure statement in a timely manner after it is determined 1304  
that a dual agency relationship exists. The form must be signed 1305  
and dated prior to the signing of any offer to purchase or lease 1306  
the real estate that is the subject of the transaction.~~ 1307

~~(C) A brokerage that is a dual agent is not required to 1308  
obtain the consent of the seller and the purchaser on the dual 1309  
agency disclosure statement described in section 4735.73 of the 1310  
Revised Code if the seller and purchaser are each represented by a 1311  
different, nonmanagement level licensee who is affiliated with the 1312  
same brokerage and all of the following conditions are met:~~ 1313

~~(1) The licensees made disclosures as required under sections 1314  
4735.56 and 4735.58 of the Revised Code;~~ 1315

~~(2) The potential for the formation of the dual agency was 1316  
disclosed to all parties in the agency disclosure statement 1317  
pursuant to section 4735.57 of the Revised Code;~~ 1318

~~(3) Each party consents by initialing, in a timely manner 1319~~

~~after it is determined that a dual agency relationship exists in~~ 1320  
~~the transaction, the section in the agency disclosure statement~~ 1321  
~~that discloses the potential for a dual agency relationship.~~ 1322

~~(D)~~ No brokerage shall participate in a dual agency 1323  
relationship described in division (C) of section 4735.70 of the 1324  
Revised Code, unless each of the following conditions is met: 1325

(1) The brokerage has established a procedure under section 1326  
4735.54 of the Revised Code under which licensees, including 1327  
management level licensees, who represent one client will not have 1328  
access to and will not obtain confidential information concerning 1329  
another client of the brokerage involved in the dual agency 1330  
transaction. 1331

(2) ~~The Each licensee who is an agent for each client in the~~ 1332  
~~dual agency relationship~~ fulfills the licensee's duties 1333  
exclusively to ~~that~~ the licensee's client. 1334

**Sec. 4735.72.** (A) The brokerage and management level 1335  
licensees in a brokerage in which there is a dual agency 1336  
relationship described in ~~divisions (A) and (B)~~ of section 4735.70 1337  
of the Revised Code shall do each of the following: 1338

(1) Objectively supervise the affiliated licensees in the 1339  
fulfillment of their duties and obligations to their respective 1340  
clients; 1341

(2) Refrain from advocating or negotiating on behalf of 1342  
either the seller or the purchaser; 1343

(3) Refrain from disclosing to any other employee of the 1344  
brokerage or any party or client, any confidential information of 1345  
a client of which the brokerage or management level licensee 1346  
becomes aware and from utilizing or allowing to be utilized for 1347  
the benefit of another client, any confidential information 1348  
obtained from a client. 1349

(B) When two ~~nonmanagement~~ level licensees affiliated with 1350  
the same brokerage represent separate clients in the same 1351  
transaction, each affiliated licensee shall do both of the 1352  
following: 1353

(1) Serve as the agent of only the party in the transaction 1354  
the licensee agreed to represent; 1355

(2) Fulfill the duties owed to the respective client as set 1356  
forth in this chapter and as agreed in the agency agreement. 1357

(C)(1) In all cases, a management level licensee shall keep 1358  
information of the client or brokerage confidential. 1359

(2) Nothing in this section prohibits the brokerage or 1360  
management level licensees in the brokerage from providing 1361  
factual, nonconfidential information that presents or suggests 1362  
objective options or solutions, or assisting the parties in an 1363  
unbiased manner to negotiate or fulfill the terms of the purchase 1364  
contract or lease, provided that confidential information of a 1365  
client is not utilized in any manner in formulating such 1366  
suggestions or providing ~~such~~ this assistance. 1367

(D) No cause of action shall arise on behalf of any person 1368  
against a licensee in a dual agency relationship for making 1369  
disclosures to the parties that are permitted or required by this 1370  
chapter, or that have been made on the ~~dual~~ agency disclosure 1371  
statement. Making permitted disclosures does not terminate any 1372  
agency relationship between a licensee and a client. 1373

(E)(1) If a brokerage determines that confidential 1374  
information of one client in a dual agency relationship has become 1375  
known to any licensee employed by or affiliated with the brokerage 1376  
who is representing the other client in the dual agency 1377  
relationship, as a result of the failure of the brokerage, its 1378  
licensees, or its employees to maintain such confidentiality, the 1379  
brokerage shall do both of the following: 1380

(a) Notify both clients of ~~such~~ the fact immediately in writing; 1381  
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(b) Offer to resign representation of both clients. 1383

(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. 1384  
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(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. 1388  
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(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. 1393  
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**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. 1399  
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**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. 1404  
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