

AN ACT

To amend sections 4735.01, 4735.16, 4735.18, 4735.51, 4735.63, 4735.65, 4737.10, 4737.99, and 4738.16 and to enact sections 4735.621 and 4735.75 of the Revised Code to impose new requirements on licensed junk yard owners, to require scrap metal processors to maintain specified records regarding canceled motor vehicle titles, to add definitions to real estate broker law and to expand duties of licensees.

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

SECTION 1. That sections 4735.01, 4735.16, 4735.18, 4735.51, 4735.63, 4735.65, 4737.10, 4737.99, and 4738.16 be amended and sections 4735.621 and 4735.75 of the Revised Code be enacted to read as follows:

Sec. 4735.01. As used in this chapter:

(A) "Real estate broker" includes any person, partnership, association, limited liability company, limited liability partnership, or corporation, foreign or domestic, who for another, whether pursuant to a power of attorney or otherwise, and who for a fee, commission, or other valuable consideration, or with the intention, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration does any of the following:

(1) Sells, exchanges, purchases, rents, or leases, or negotiates the sale, exchange, purchase, rental, or leasing of any real estate;

(2) Offers, attempts, or agrees to negotiate the sale, exchange, purchase, rental, or leasing of any real estate;

(3) Lists, or offers, attempts, or agrees to list, or auctions, or offers, attempts, or agrees to auction, any real estate;

(4) Buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate;

(5) Operates, manages, or rents, or offers or attempts to operate, manage, or rent, other than as custodian, caretaker, or janitor, any building or portions of buildings to the public as tenants;

(6) Advertises or holds self out as engaged in the business of selling, exchanging, purchasing, renting, or leasing real estate;

(7) Directs or assists in the procuring of prospects or the negotiation of any transaction, other than mortgage financing, which does or is calculated to result in the sale, exchange, leasing, or renting of any real estate;

(8) Is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby the broker undertakes primarily to promote the sale, exchange, purchase, rental, or leasing of real estate through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both, except that this division does not apply to a publisher of listings or compilations of sales of real estate by their owners;

(9) Collects rental information for purposes of referring prospective tenants to rental units or locations of such units and charges the prospective tenants a fee.

(B) "Real estate" includes leaseholds as well as any and every interest or estate in land situated in this state, whether corporeal or incorporeal, whether freehold or nonfreehold, and the improvements on the land, but does not include cemetery interment rights.

(C) "Real estate salesperson" means any person associated with a licensed real estate broker to do or to deal in any acts or transactions set out or comprehended by the definition of a real estate broker, for compensation or otherwise.

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

(1) A nonprofit institution as defined in section 1713.01 of the Revised Code that actually awards, rather than intends to award, degrees for fulfilling requirements of academic work beyond high school;

(2) An institution operated for profit that otherwise qualifies under the definition of an institution in section 1713.01 of the Revised Code and that actually awards, rather than intends to award, degrees for fulfilling requirements of academic work beyond high school.

(E) "Foreign real estate" means real estate not situated in this state and any interest in real estate not situated in this state.

(F) "Foreign real estate dealer" includes any person, partnership, association, limited liability company, limited liability partnership, or corporation, foreign or domestic, who for another, whether pursuant to a power of attorney or otherwise, and who for a fee, commission, or other valuable consideration, or with the intention, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, does or deals in any act or transaction specified or

comprehended in division (A) of this section with respect to foreign real estate.

(G) "Foreign real estate salesperson" means any person associated with a licensed foreign real estate dealer to do or deal in any act or transaction specified or comprehended in division (A) of this section with respect to foreign real estate, for compensation or otherwise.

(H) Any person, partnership, association, limited liability company, limited liability partnership, or corporation, who, for another, in consideration of compensation, by fee, commission, salary, or otherwise, or with the intention, in the expectation, or upon the promise of receiving or collecting a fee, does, or offers, attempts, or agrees to engage in, any single act or transaction contained in the definition of a real estate broker, whether an act is an incidental part of a transaction, or the entire transaction, shall be constituted a real estate broker or real estate salesperson under this chapter.

(I) The terms "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson" do not include a person, partnership, association, limited liability company, limited liability partnership, or corporation, or the regular employees thereof, who perform any of the acts or transactions specified or comprehended in division (A) of this section, whether or not for, or with the intention, in expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

(1) With reference to real estate situated in this state or any interest in it owned by such person, partnership, association, limited liability company, limited liability partnership, or corporation, or acquired on its own account in the regular course of, or as an incident to the management of the property and the investment in it;

(2) As receiver or trustee in bankruptcy, as guardian, executor, administrator, trustee, assignee, commissioner, or any person doing the things mentioned in this section, under authority or appointment of, or incident to a proceeding in, any court, or as a public officer, or as executor, trustee, or other bona fide fiduciary under any trust agreement, deed of trust, will, or other instrument creating a like bona fide fiduciary obligation;

(3) As a public officer while performing the officer's official duties;

(4) As an attorney at law in the performance of the attorney's duties;

(5) As a person who engages in the brokering of the sale of business assets, not including the negotiation of the sale, lease, exchange, or assignment of any interest in real estate;

(6) As a person who engages in the sale of manufactured homes as defined in division (C)(4) of section 3781.06 of the Revised Code, or of

mobile homes as defined in division (O) of section 4501.01 of the Revised Code, provided the sale does not include the negotiation, sale, lease, exchange, or assignment of any interest in real estate;

(7) As a person who engages in the sale of commercial real estate pursuant to the requirements of section 4735.022 of the Revised Code.

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

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

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

(M) "Inactive license" means the license status in which a salesperson's license is in the possession of the division, renewed as required under this chapter or rules adopted under this chapter, and not associated with a real estate broker.

(N) "Broker's license on deposit" means the license status in which a broker's license is in the possession of the division of real estate and professional licensing and renewed as required under this chapter or rules adopted under this chapter.

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

(P) "Reactivate" means the process prescribed by the superintendent of real estate and professional licensing to remove a license from an inactive, suspended, or broker's license on deposit status to allow a licensee to provide services that require a license under this chapter.

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

(R) "Commercial real estate" means any parcel of real estate in this state other than real estate containing one to four residential units. "Commercial real estate" does not include single-family residential units such as condominiums, townhouses, manufactured homes, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit

basis, even when those units are a part of a larger building or parcel of real estate containing more than four residential units.

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

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

(U) "Exclusive right to sell or lease listing agreement" means an agency agreement between a seller and broker that meets the requirements of section 4735.55 of the Revised Code and does both of the following:

(1) Grants the broker the exclusive right to represent the seller in the sale or lease of the seller's property:

(2) Provides the broker will be compensated if the broker, the seller, or any other person or entity produces a purchaser or tenant in accordance with the terms specified in the listing agreement or if the property is sold or leased during the term of the listing agreement to anyone other than to specifically exempted persons or entities.

(V) "Exclusive agency agreement" means an agency agreement between a seller and broker that meets the requirements of section 4735.55 of the Revised Code and does both of the following:

(1) Grants the broker the exclusive right to represent the seller in the sale or lease of the seller's property:

(2) Provides the broker will be compensated if the broker or any other person or entity produces a purchaser or tenant in accordance with the terms specified in the listing agreement or if the property is sold or leased during the term of the listing agreement, unless the property is sold or leased solely through the efforts of the seller or to the specifically exempted persons or entities.

(W) "Exclusive purchaser agency agreement" means an agency agreement between a purchaser and broker that meets the requirements of section 4735.55 of the Revised Code and does both of the following:

(1) Grants the broker the exclusive right to represent the purchaser in the purchase or lease of property:

(2) Provides the broker will be compensated in accordance with the terms specified in the exclusive agency agreement or if a property is purchased or leased by the purchaser during the term of the agency agreement unless the property is specifically exempted in the agency agreement.

The agreement may authorize the broker to receive compensation from the seller or the seller's agent and may provide that the purchaser is not obligated to compensate the broker if the property is purchased or leased solely through the efforts of the purchaser.

(X) "Seller" means a party in a real estate transaction who is the potential transferor of property. "Seller" includes an owner of property who is seeking to sell the property and a landlord who is seeking to rent or lease property to another person.

Sec. 4735.16. (A) Every real estate broker licensed under this chapter shall have and maintain a definite place of business in this state and shall erect or maintain a sign on the premises plainly stating that the licensee is a real estate broker. If the real estate broker maintains one or more branch offices, the real estate broker shall erect or maintain a sign at each branch office plainly stating that the licensee is a real estate broker.

(B)(1) Any licensed real estate broker or salesperson who advertises to buy, sell, exchange, or lease real estate, or to engage in any act regulated by this chapter, including, but not limited to, any licensed real estate broker or salesperson who advertises to sell, exchange, or lease real estate that the licensee owns, shall be identified in the advertisement by name and by indicating that the licensee is a real estate broker or real estate salesperson. Except a real estate salesperson who advertises the sale, exchange, or lease of real estate that the salesperson owns and that is not listed for sale, exchange, or lease with a real estate broker, any real estate salesperson who advertises, as provided in this section, also shall indicate in the advertisement the name of the broker under whom the salesperson is licensed and the fact that the salesperson's broker is a real estate broker. The name of the broker shall be displayed in equal prominence with the name of the salesperson in the advertisement.

(2) A real estate broker who is representing a seller under an exclusive right to sell or lease listing agreement shall not advertise such property to the public as "for sale by owner" or otherwise mislead the public to believe that the seller is not represented by a real estate broker.

(3) If any real estate broker or real estate salesperson advertises in a manner other than as provided in this section or the rules adopted under this section, that advertisement is prima-facie evidence of a violation under division (A)(21) of section 4735.18 of the Revised Code.

When the superintendent determines that prima-facie evidence of a violation of division (A)(21) of section 4735.18 of the Revised Code or any of the rules adopted thereunder exists, 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)(21) 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 upon the licensee.

(C)(1) 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 two hundred dollars per violation, not to exceed two thousand five hundred dollars per citation. 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.

(2) If any licensee is cited three times 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.

(3) 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.

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

(5) The superintendent shall suspend automatically a licensee's license if the licensee fails to comply with division (C)(4) of this section.

(D) A real estate broker or salesperson obtaining the signature of a party to a listing or other agreement involved in a real estate transaction shall furnish a copy of the listing or other agreement to the party immediately after obtaining the party's signature. Every broker's office shall prominently display in the same immediate area as licenses are displayed a statement that it is illegal to discriminate against any person because of race, color, religion, sex, familial status as defined in section 4112.01 of the Revised Code, national origin, disability as defined in that section, or ancestry in the sale or rental of housing or residential lots, in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services and that blockbusting also is illegal. The statement shall bear the United States department of housing and urban development equal housing logo, shall contain the information that the broker and the broker's salespersons are licensed by the division of real estate and that the division can assist with any consumer complaints or inquiries, and shall explain the provisions of section 4735.12 of the Revised Code. The statement shall

provide the division's address and telephone number. The Ohio real estate commission shall provide by rule for the wording and size of the statement. The pamphlet required under section 4735.03 of the Revised Code shall contain the same statement that is required on the statement displayed as provided in this section and shall be made available by real estate brokers and salespersons to their clients. The commission shall provide the wording and size of the pamphlet.

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

- (1) Knowingly making any misrepresentation;
- (2) Making any false promises with intent to influence, persuade, or induce;
- (3) A continued course of misrepresentation or the making of false promises through agents, salespersons, advertising, or otherwise;
- (4) Acting for more than one party in a transaction except as permitted by and in compliance with section 4735.71 of the Revised Code;
- (5) Failure within a reasonable time to account for or to remit any money coming into the licensee's possession which belongs to others;
- (6) Dishonest or illegal dealing, gross negligence, incompetency, or misconduct;
- (7)(a) By final adjudication by a court, a violation of any municipal or federal civil rights law relevant to the protection of purchasers or sellers of real estate or, by final adjudication by a court, any unlawful discriminatory practice pertaining to the purchase or sale of real estate prohibited by Chapter 4112. of the Revised Code, provided that such violation arose out of a situation wherein parties were engaged in bona fide efforts to purchase, sell, or lease real estate, in the licensee's practice as a licensed real estate broker or salesperson;
- (b) A second or subsequent violation of any unlawful discriminatory practice pertaining to the purchase or sale of real estate prohibited by

Chapter 4112. of the Revised Code or any second or subsequent violation of municipal or federal civil rights laws relevant to purchasing or selling real estate whether or not there has been a final adjudication by a court, provided that such violation arose out of a situation wherein parties were engaged in bona fide efforts to purchase, sell, or lease real estate. For any second offense under this division, the commission shall suspend for a minimum of two months or revoke the license of the broker or salesperson. For any subsequent offense, the commission shall revoke the license of the broker or salesperson.

(8) Procuring a license under this chapter, for the licensee or any salesperson by fraud, misrepresentation, or deceit;

(9) Having violated or failed to comply with any provision of sections 4735.51 to 4735.74 of the Revised Code or having willfully disregarded or violated any other provisions of this chapter;

(10) As a real estate broker, having demanded, without reasonable cause, other than from a broker licensed under this chapter, a commission to which the licensee is not entitled, or, as a real estate salesperson, having demanded, without reasonable cause, a commission to which the licensee is not entitled;

(11) Except as permitted under section 4735.20 of the Revised Code, having paid commissions or fees to, or divided commissions or fees with, anyone not licensed as a real estate broker or salesperson under this chapter or anyone not operating as an out-of-state commercial real estate broker or salesperson under section 4735.022 of the Revised Code;

(12) Having falsely represented membership in any real estate professional association of which the licensee is not a member;

(13) Having accepted, given, or charged any undisclosed commission, rebate, or direct profit on expenditures made for a principal;

(14) Having offered anything of value other than the consideration recited in the sales contract as an inducement to a person to enter into a contract for the purchase or sale of real estate or having offered real estate or the improvements on real estate as a prize in a lottery or scheme of chance;

(15) Having acted in the dual capacity of real estate broker and undisclosed principal, or real estate salesperson and undisclosed principal, in any transaction;

(16) Having guaranteed, authorized, or permitted any person to guarantee future profits which may result from the resale of real property;

(17) Having placed a sign on any property offering it for sale or for rent without the consent of the owner or the owner's authorized agent;

(18) Having induced any party to a contract of sale or lease to break

such contract for the purpose of substituting in lieu of it a new contract with another principal;

(19) Having negotiated the sale, exchange, or lease of any real property directly with ~~an owner~~ a seller, purchaser, lessor, or tenant knowing that such ~~owner~~ seller, purchaser, lessor, or tenant ~~had a written outstanding contract granting exclusive agency in connection with such property to another real estate broker~~ is represented by another broker under a written exclusive agency agreement, exclusive right to sell or lease listing agreement, or exclusive purchaser agency agreement with respect to such property except as provided for in section 4735.75 of the Revised Code;

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

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

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

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

(24) Having failed to keep complete and accurate records of all transactions for a period of three years from the date of the transaction, such records to include copies of listing forms, earnest money receipts, offers to purchase and acceptances of them, records of receipts and disbursements of all funds received by the licensee as broker and incident to the licensee's transactions as such, and records required pursuant to divisions (C)(4) and (5) of section 4735.20 of the Revised Code, and any other instruments or papers related to the performance of any of the acts set forth in the definition of a real estate broker;

(25) Failure of a real estate broker or salesperson to furnish all parties involved in a real estate transaction true copies of all listings and other agreements to which they are a party, at the time each party signs them;

(26) Failure to maintain at all times a special or trust bank account in a depository located in this state. The account shall be noninterest-bearing, separate and distinct from any personal or other account of the broker, and, except as provided in division (A)(27) of this section, shall be used for the

deposit and maintenance of all escrow funds, security deposits, and other moneys received by the broker in a fiduciary capacity. The name, account number, if any, and location of the depository wherein such special or trust account is maintained shall be submitted in writing to the superintendent. Checks drawn on such special or trust bank accounts are deemed to meet the conditions imposed by section 1349.21 of the Revised Code.

(27) Failure to maintain at all times a special or trust bank account in a depository in this state, to be used exclusively for the deposit and maintenance of all rents, security deposits, escrow funds, and other moneys received by the broker in a fiduciary capacity in the course of managing real property. This account shall be separate and distinct from any other account maintained by the broker. The name, account number, and location of the depository shall be submitted in writing to the superintendent. This account may earn interest, which shall be paid to the property owners on a pro rata basis.

Division (A)(27) of this section does not apply to brokers who are not engaged in the management of real property on behalf of real property owners.

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

(29) Having an unsatisfied final judgment in any court of record against the licensee arising out of the licensee's conduct as a licensed broker or salesperson;

(30) Failing to render promptly upon demand a full and complete statement of the expenditures by the broker or salesperson of funds advanced by or on behalf of a party to a real estate transaction to the broker or salesperson for the purpose of performing duties as a licensee under this chapter in conjunction with the real estate transaction;

(31) Failure within a reasonable time, after the receipt of the commission by the broker, to render an accounting to and pay a real estate salesperson the salesperson's earned share of it;

(32) Performing any service for another constituting the practice of law, as determined by any court of law;

(33) Having been adjudicated incompetent for the purpose of holding the license by a court, as provided in section 5122.301 of the Revised Code. A license revoked or suspended under this division shall be reactivated upon proof to the commission of the removal of the disability.

(34) Having authorized or permitted a person to act as an agent in the capacity of a real estate broker, or a real estate salesperson, who was not then licensed as a real estate broker or real estate salesperson under this

chapter or who was not then operating as an out-of-state commercial real estate broker or salesperson under section 4735.022 of the Revised Code;

(35) Having knowingly inserted or participated in inserting any materially inaccurate term in a document, including naming a false consideration;

(36) Having failed to inform the licensee's client of the existence of an offer or ~~counter-offer~~ counteroffer or having failed to present an offer or ~~counter-offer~~ counteroffer in a timely manner, unless otherwise instructed by the client, provided the instruction of the client does not conflict with any state or federal law.

(B) Whenever the commission, pursuant to section 4735.051 of the Revised Code, imposes disciplinary sanctions for any violation of this section, the commission also may impose such sanctions upon the broker with whom the salesperson is affiliated if the commission finds that the broker had knowledge of the salesperson's actions that violated this section.

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

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

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

Sec. 4735.51. As used in sections 4735.51 to 4735.74 of the Revised Code:

(A) "Agency" and "Agency relationship" mean a relationship in which a licensee represents another person in a real estate transaction.

(B) "Agency agreement" means a contract between a licensee and a client in which the client promises to pay the broker a valuable consideration, or agrees that the licensee may receive a valuable consideration from another, for performing an act that requires a real estate

license under this chapter.

(C) "Agent" and "real estate agent" mean a person licensed by this chapter to represent another in a real estate transaction.

(D) "Affiliated licensee" means a real estate broker or a real estate salesperson licensed by this chapter who is affiliated with a brokerage.

(E) "Brokerage" means a corporation, partnership, limited partnership, association, limited liability company, limited liability partnership, or sole proprietorship issued a broker's license. "Brokerage" includes the affiliated licensees who have been assigned management duties that include supervision of licensees whose duties may conflict with those of other affiliated licensees.

(F) "Client" means a person who has entered into an agency relationship with a licensee.

(G) "Confidential information" means all information that a client directs to be kept confidential or that if disclosed would have an adverse effect on the client's position in the real estate transaction, except to the extent the agent is required by law to disclose such information, and all information that is required by law to be kept confidential.

(H) "Dual agency relationship" means any of the dual agency relationships set forth in section 4735.70 of the Revised Code.

(I) "In-company transaction" means a real estate transaction in which the purchaser and seller are both represented by the same brokerage.

(J) "Licensee" means any individual licensed as a real estate broker or salesperson by the Ohio real estate commission pursuant to this chapter.

(K) "Management level licensee" means a licensee who is employed by or affiliated with a real estate broker and who has supervisory responsibility over other licensees employed by or affiliated with that real estate broker.

(L) "Purchaser" means a party in a real estate transaction who is the potential transferee of property. "Purchaser" includes a person seeking to buy property and a person seeking to rent property as a tenant or lessee.

(M) "Real estate transaction" means any act that is described in division (A) of section 4735.01 of the Revised Code or that is related to the execution of an act described in that section.

~~(N) "Seller" means a party in a real estate transaction who is the potential transferor of property. "Seller" includes an owner of property who is seeking to sell the property and a landlord who is seeking to rent or lease property to another person.~~

(O) "Subagency" and "subagency relationship" mean an agency relationship in which a licensee acts for another licensee in performing duties for the client of that licensee.

~~(P)~~(O) "Timely" means as soon as possible under the particular circumstances.

Sec. 4735.621. (A) The duties required of a licensee under section 4735.62 of the Revised Code may not be waived by a client.

(B) A licensee shall perform the duties required under section 4735.63 or 4735.65 of the Revised Code unless the client agrees to waive these duties, and signs a waiver of duties statement pursuant to division (C) of this section.

(C) The superintendent of real estate, with the approval of the Ohio real estate commission, shall establish by rule a waiver of duties statement that shall contain the following:

(1) The fiduciary duties required of all licensees under section 4735.62 of the Revised Code;

(2) A list of those duties contained in section 4735.63 or 4735.65 of the Revised Code, which shall be set forth in a manner that allows for the parties to indicate which of those duties are being waived;

(3) A statement that no other licensee is required to perform the waived duty on behalf of the client;

(4) A statement that legal counsel or other professionals may be hired by the client;

(5) A place for the client and licensee to sign and date the statement.

Sec. 4735.63. (A) In representing a seller in an agency relationship, a licensee shall ~~promote the interest of the client by doing all of the following:~~

(1) ~~Seeking~~ Seek a purchase offer at a price and with terms acceptable to the ~~client~~ seller. Unless the ~~client~~ seller so directs, the licensee is not obligated to seek additional offers if the property is subject to a contract of sale, lease, or letter of intent to lease;

(2) ~~Presenting~~ Accept delivery of and present any purchase offer to the ~~client~~ seller in a timely manner, even if the property is subject to a contract of sale, lease, or letter of intent to lease;

(3) ~~Prior to presenting the seller an offer to purchase, providing the seller with a copy of any agency disclosure form signed by the purchaser~~ Within the scope of knowledge required for licensure, answer the seller's questions and provide information to the seller regarding any offers or counteroffers;

(4) Assist the seller in developing, communicating, and presenting offers or counteroffers;

(5) Within the scope of knowledge required for licensure, answer the seller's questions regarding the steps the seller must take to fulfill the terms of any contract.

(B) A licensee does not breach any duty or obligation to a seller with whom the licensee has an agency relationship by showing alternative properties to a prospective purchaser or by acting as an agent or subagent for other sellers.

(C) Nothing in this section shall be construed as permitting a licensee to perform any act or service that constitutes the practice of law.

Sec. 4735.65. (A) In representing a purchaser in an agency relationship, a licensee shall ~~represent the interests of the purchaser by doing each of the following:~~

(1) ~~Seeking~~ Seek a property at a price and with purchase or lease terms acceptable to the purchaser. Unless the client so directs, the licensee is not obligated to seek additional purchase or lease possibilities if the purchaser is a party to a contract to purchase property, or has entered into a lease or has extended a letter of intent to lease.

(2) ~~Presenting~~ Within the scope of knowledge required for licensure, answer the purchaser's questions and provide information to the purchaser regarding any offers or counteroffers;

(3) Assist the purchaser in developing, communicating, and presenting offers or counteroffers;

(4) Present any offer to purchase or lease to the seller or the seller's agent in a timely manner, even if the property is subject to a contract of sale, lease, or letter of intent to lease, and accept delivery of and present any counteroffers to the purchaser in a timely manner;

(5) Within the scope of knowledge required for licensure, answer the purchaser's questions regarding the steps the purchaser must take to fulfill the terms of any contract.

(B) A licensee does not breach any duty or obligation to the purchaser by showing the same properties to other purchasers or by acting as an agent or subagent for other purchasers, or as an agent or subagent for sellers, except that any dual agency relationship must be disclosed to a client pursuant to section 4735.71 of the Revised Code.

(C) Nothing in this section shall be construed as permitting a licensee to perform any act or service that constitutes the practice of law.

Sec. 4735.75. (A) A broker who has the exclusive authority to represent a client under a written exclusive agency agreement, exclusive right to sell agreement, or exclusive purchaser agency agreement may authorize other licensees to negotiate directly with that client. The authorization shall be in writing and the broker shall comply with the requirements of section 4735.621 of the Revised Code.

(B) A licensee who negotiates directly with a seller, purchaser, lessor, or

tenant pursuant to a written authorization as described in division (A) of this section does not violate division (A)(19) of section 4735.18 of the Revised Code and negotiations conducted by a licensee pursuant to the authorization shall not create or imply an agency relationship between that licensee and the client of that exclusive broker.

(C) As used in this section and division (A)(19) of section 4735.18 of the Revised Code, "negotiate" means any the following:

(1) Delivering or communicating an offer, counteroffer, or proposal;

(2) Discussing or reviewing the terms of any offer, counteroffer, or proposal;

(3) Facilitating communication regarding an offer, counteroffer, or proposal and preparing any response as directed.

Sec. 4737.10. (A) Before a license is granted or renewed under sections 4737.05 to 4737.12 of the Revised Code, the sheriff of each county, or, if the sheriff so designates, a township ~~police~~ police officer or constable, and the chief of police of each municipal corporation shall inspect the junk yard within ~~his~~ the sheriff's, police officer's, constable's, or chief's respective jurisdiction to determine if it complies with sections 4737.05 to 4737.12 of the Revised Code. The sheriff, or a township ~~police~~ police officer or constable, or chief of police shall submit a written report of such examination to the county auditor of the county or the village solicitor or city director of law of the municipal corporation wherein such junk yard is located.

(B) In addition, twice annually the sheriff of each county, or, if the sheriff so designates, a township ~~police~~ police officer or constable, and the chief of police of each municipal corporation shall inspect every junk yard that is located within ~~his~~ the sheriff's, police officer's, constable's, or chief's jurisdiction and for which a license has been issued under sections 4737.05 to 4737.12 of the Revised Code, to obtain information with regard to whether the licensee's activity has been and is being conducted in accordance with sections 4737.01 to 4737.12 of the Revised Code. The sheriff, township ~~police~~ police officer or constable, or the chief of police shall submit a written report of each such examination to the county auditor of the county or the village solicitor or city director of law of the municipal corporation wherein such junk yard is located.

The sheriff, township ~~police~~ police officer or constable, or the chief of police shall, for the purpose of these examinations, have free access to the grounds and buildings used or proposed for use in the conduct of the junk yard activity by the applicant or the licensee.

Such inspections may be made at any time, at the option of the sheriff,

township ~~policeman~~ police officer or constable, or the chief of police during the regular work hours of the licensee or within the hours of eight a.m. and five p.m. Monday through Friday.

The director of transportation may also inspect junk yards adjacent to state highways to obtain information with regard to whether the licensee's activity is being conducted in accordance with sections 4737.01 to 4737.12 of the Revised Code. If such inspection indicates that there is a violation of any of the provisions of such sections the director shall advise the attorney general of such alleged violations and request ~~him~~ the attorney general to take proper legal action.

(C) Whenever it is determined upon any semiannual inspection made under this section that a junk yard is not being conducted in accordance with the requirements of sections 4737.01 to 4737.12 of the Revised Code, the sheriff of the county, township ~~policeman~~ police officer or constable, or the chief of police of the municipal corporation within whose jurisdiction the junk yard is located, shall immediately notify the owner of the junk yard of such fact. The notice shall be sent to the owner by registered mail, and shall detail the areas which are not in conformity with the requirements of sections 4737.01 to 4737.12 of the Revised Code. A copy of the notice shall also be sent to the auditor of the county, or the village solicitor or city director of law of the municipal corporation within which the junk yard is located.

(D) Any owner of a junk yard who receives a notice as provided in this section shall, within sixty days after the mailing of the notice, undertake and complete such changes or improvements as are necessary to conform the junk yard to the requirements of sections 4737.01 to 4737.12 of the Revised Code. At the expiration of the sixty-day period, the sheriff, township ~~policeman~~ police officer or constable, or the chief of police shall make a further inspection of the junk yard, and if the required changes or improvements have not been made, the sheriff, township police officer or constable, or the chief of the police shall send notice of that noncompliance along with an order to suspend the owner's license to the chief executive officer of the municipality or the county auditor of the county in which the licensee's junk yard is located. After receiving that notice and order, the chief executive officer or county auditor, as appropriate, shall suspend the owner's license for ninety days. While the owner's license is suspended, the owner shall undertake and complete such changes or improvements necessary to conform the junk yard to the requirements of sections 4737.01 to 4737.12 of the Revised Code.

(E) An owner whose license is suspended pursuant to division (D) of

this section may appeal the suspension in accordance with Chapter 2506. of the Revised Code.

At any time during the ninety days in which an owner's license is suspended, the owner may apply to the sheriff, township police officer or constable, or the chief of the police to have the junk yard inspected. If, after the inspection, the sheriff, township police officer or constable, or the chief of the police determines that the junk yard conforms to the requirements of sections 4737.01 to 4737.12 of the Revised Code, the sheriff, township police officer or constable, or the chief of the police, as appropriate, shall send notice of that compliance along with an order to remove the suspension and reinstate the owner's license to the chief executive officer of the municipality or the county auditor of the county in which the licensee's junk yard is located. After receiving that notice and order, the chief executive officer or the county auditor, as appropriate, shall remove the suspension and reinstate the owner's license.

(F)(1) An owner may sell junk while the owner's license is suspended.

(2) No licensee may accept junk for future resale during the time that the licensee's license is suspended under division (D) of this section.

(G) If an owner's license has not been reinstated under division (E) of this section prior to the end of a ninety-day suspension, the sheriff, township police officer or constable, or the chief of police shall make a further inspection of the junk yard. If the owner has not made the required changes or improvements, the sheriff, township police officer or constable, or chief of police shall send notice of that noncompliance along with an order to revoke the owner's license to the chief executive officer of the municipality or the county auditor of the county in which the licensee's junk yard is located. After receiving that notice and order, the chief executive officer or the county auditor shall revoke the owner's license in accordance with the procedures specified in section 4737.07 of the Revised Code. In addition to having the licensee's license revoked, the owner of the junk yard shall be subject to a tax of ~~twenty~~ one hundred dollars for each day after revocation that the violation continues.

The sheriff, township ~~police man~~ police officer or constable, or the chief of police shall certify a return of the imposition of said tax thereon to the county auditor, who shall enter the same as a tax upon the property and against the persons upon which or whom the lien was imposed as and when other taxes are entered. The provisions of the laws relating to the collection of taxes in this state, the delinquency thereof, and sale of property for taxes shall govern in the collection of the tax prescribed in this section insofar as the same are applicable.

Sec. 4737.99. (A) ~~Whoever~~ Except as specified in division (B) of this section, whoever violates sections 4737.01 to 4737.11, ~~inclusive,~~ of the Revised Code, shall be fined not less than twenty-five nor more than one thousand dollars and the costs of prosecution.

(B) Whoever violates division (F)(2) of section 4737.10 of the Revised Code is guilty of a misdemeanor of the fourth degree.

Sec. 4738.16. (A) Chapter 4738. of the Revised Code does not apply to a scrap metal processor engaged primarily in the acquisition, processing, and shipment of ferrous and nonferrous scrap, or who receives dismantled salvage motor vehicles, used motor vehicles, or motor vehicle parts as scrap metal for the purpose of recycling the motor vehicles or parts for their metallic content, the end product of which is the production of material for recycling and remelting purposes for mills, foundries, smelters, and refiners.

(B) A scrap metal processor who receives a motor vehicle from the owner described on the certificate of title shall within ten days mark the certificate "TO BE CANCELED," keep a record of the cancellation, and forward the certificate to the clerk of the court who issued it. The clerk shall notify the registrar of motor vehicles of such cancellation. The scrap metal processor shall keep the record of the cancellation for three years after creating the record. The record shall include a copy of the canceled title, and if the seller of the motor vehicle is not the titled owner, the record also shall include all of the following information about the seller:

(1) The seller's name and address;

(2) An identification number from the seller's driver's license, military identification, or other state issued license;

(3) A physical description of the seller;

(4) The seller's expenditures for the motor vehicle.

The scrap metal processor shall make a record of a cancellation available to any requesting law enforcement agency during the scrap metal processor's normal business hours.

SECTION 2. That existing sections 4735.01, 4735.16, 4735.18, 4735.51, 4735.63, 4735.65, 4737.10, 4737.99, and 4738.16 of the Revised Code are hereby repealed.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

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

Director, Legislative Service Commission.

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

Secretary of State.

File No. _____ Effective Date _____