

**As Introduced**

**126th General Assembly  
Regular Session  
2005-2006**

**H. B. No. 491**

**Representatives Widener, McGregor, J., Miller, Yuko, Combs, Setzer,  
Strahorn, Faber, DeWine, Collier, Harwood, Sayre, Cassell, Reidelbach,  
Carano, Buehrer, Driehaus, Patton, T., Brown**

—

**A B I L L**

To amend sections 4735.01, 4735.16, 4735.18, 4735.51, 1  
4735.63, and 4735.65 and to enact sections 2  
4735.621 and 4735.75 of the Revised Code to add 3  
definitions to real estate broker law and to 4  
expand duties of licensees. 5

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

**Section 1.** That sections 4735.01, 4735.16, 4735.18, 4735.51, 6  
4735.63, and 4735.65 be amended and sections 4735.621 and 4735.75 7  
of the Revised Code be enacted to read as follows: 8

**Sec. 4735.01.** As used in this chapter: 9

(A) "Real estate broker" includes any person, partnership, 10  
association, limited liability company, limited liability 11  
partnership, or corporation, foreign or domestic, who for another, 12  
whether pursuant to a power of attorney or otherwise, and who for 13  
a fee, commission, or other valuable consideration, or with the 14  
intention, or in the expectation, or upon the promise of receiving 15  
or collecting a fee, commission, or other valuable consideration 16  
does any of the following: 17

(1) Sells, exchanges, purchases, rents, or leases, or 18

negotiates the sale, exchange, purchase, rental, or leasing of any real estate;	19 20
(2) Offers, attempts, or agrees to negotiate the sale, exchange, purchase, rental, or leasing of any real estate;	21 22
(3) Lists, or offers, attempts, or agrees to list, or auctions, or offers, attempts, or agrees to auction, any real estate;	23 24 25
(4) Buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate;	26 27
(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;	28 29 30 31
(6) Advertises or holds self out as engaged in the business of selling, exchanging, purchasing, renting, or leasing real estate;	32 33 34
(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;	35 36 37 38
(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;	39 40 41 42 43 44 45 46 47
(9) Collects rental information for purposes of referring	48

prospective tenants to rental units or locations of such units and 49  
charges the prospective tenants a fee. 50

(B) "Real estate" includes leaseholds as well as any and 51  
every interest or estate in land situated in this state, whether 52  
corporeal or incorporeal, whether freehold or nonfreehold, and the 53  
improvements on the land, but does not include cemetery interment 54  
rights. 55

(C) "Real estate salesperson" means any person associated 56  
with a licensed real estate broker to do or to deal in any acts or 57  
transactions set out or comprehended by the definition of a real 58  
estate broker, for compensation or otherwise. 59

(D) "Institution of higher education" means either of the 60  
following: 61

(1) A nonprofit institution as defined in section 1713.01 of 62  
the Revised Code that actually awards, rather than intends to 63  
award, degrees for fulfilling requirements of academic work beyond 64  
high school; 65

(2) An institution operated for profit that otherwise 66  
qualifies under the definition of an institution in section 67  
1713.01 of the Revised Code and that actually awards, rather than 68  
intends to award, degrees for fulfilling requirements of academic 69  
work beyond high school. 70

(E) "Foreign real estate" means real estate not situated in 71  
this state and any interest in real estate not situated in this 72  
state. 73

(F) "Foreign real estate dealer" includes any person, 74  
partnership, association, limited liability company, limited 75  
liability partnership, or corporation, foreign or domestic, who 76  
for another, whether pursuant to a power of attorney or otherwise, 77  
and who for a fee, commission, or other valuable consideration, or 78

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 110  
corporation, or acquired on its own account in the regular course 111  
of, or as an incident to the management of the property and the 112  
investment in it; 113

(2) As receiver or trustee in bankruptcy, as guardian, 114  
executor, administrator, trustee, assignee, commissioner, or any 115  
person doing the things mentioned in this section, under authority 116  
or appointment of, or incident to a proceeding in, any court, or 117  
as a public officer, or as executor, trustee, or other bona fide 118  
fiduciary under any trust agreement, deed of trust, will, or other 119  
instrument creating a like bona fide fiduciary obligation; 120

(3) As a public officer while performing the officer's 121  
official duties; 122

(4) As an attorney at law in the performance of the 123  
attorney's duties; 124

(5) As a person who engages in the brokering of the sale of 125  
business assets, not including the negotiation of the sale, lease, 126  
exchange, or assignment of any interest in real estate; 127

(6) As a person who engages in the sale of manufactured homes 128  
as defined in division (C)(4) of section 3781.06 of the Revised 129  
Code, or of mobile homes as defined in division (O) of section 130  
4501.01 of the Revised Code, provided the sale does not include 131  
the negotiation, sale, lease, exchange, or assignment of any 132  
interest in real estate; 133

(7) As a person who engages in the sale of commercial real 134  
estate pursuant to the requirements of section 4735.022 of the 135  
Revised Code. 136

(J) "Physically handicapped licensee" means a person licensed 137  
pursuant to this chapter who is under a severe physical disability 138  
which is of such a nature as to prevent the person from being able 139

to attend any instruction lasting at least three hours in 140  
duration. 141

(K) "Division of real estate" may be used interchangeably 142  
with, and for all purposes has the same meaning as, "division of 143  
real estate and professional licensing." 144

(L) "Superintendent" or "superintendent of real estate" means 145  
the superintendent of the division of real estate and professional 146  
licensing of this state. Whenever the division or superintendent 147  
of real estate is referred to or designated in any statute, rule, 148  
contract, or other document, the reference or designation shall be 149  
deemed to refer to the division or superintendent of real estate 150  
and professional licensing, as the case may be. 151

(M) "Inactive license" means the license status in which a 152  
salesperson's license is in the possession of the division, 153  
renewed as required under this chapter or rules adopted under this 154  
chapter, and not associated with a real estate broker. 155

(N) "Broker's license on deposit" means the license status in 156  
which a broker's license is in the possession of the division of 157  
real estate and professional licensing and renewed as required 158  
under this chapter or rules adopted under this chapter. 159

(O) "Suspended license" means the license status that 160  
prohibits a licensee from providing services that require a 161  
license under this chapter for a specified interval of time. 162

(P) "Reactivate" means the process prescribed by the 163  
superintendent of real estate and professional licensing to remove 164  
a license from an inactive, suspended, or broker's license on 165  
deposit status to allow a licensee to provide services that 166  
require a license under this chapter. 167

(Q) "Revoked" means the license status in which the license 168  
is void and not eligible for reactivation. 169

(R) "Commercial real estate" means any parcel of real estate 170  
in this state other than real estate containing one to four 171  
residential units. "Commercial real estate" does not include 172  
single-family residential units such as condominiums, townhouses, 173  
manufactured homes, or homes in a subdivision when sold, leased, 174  
or otherwise conveyed on a unit-by-unit basis, even when those 175  
units are a part of a larger building or parcel of real estate 176  
containing more than four residential units. 177

(S) "Out-of-state commercial broker" includes any person, 178  
partnership, association, limited liability company, limited 179  
liability partnership, or corporation that is licensed to do 180  
business as a real estate broker in a jurisdiction other than 181  
Ohio. 182

(T) "Out-of-state commercial salesperson" includes any person 183  
affiliated with an out\_of\_state commercial broker who is not 184  
licensed as a real estate salesperson in Ohio. 185

(U) "Exclusive right to sell or lease listing agreement" 186  
means an agency agreement between a seller and broker that meets 187  
the requirements of section 4735.55 of the Revised Code and does 188  
both of the following: 189

(1) Grants the broker the exclusive right to represent the 190  
seller in the sale or lease of the seller's property; 191

(2) Provides the broker will be compensated if the broker, 192  
the seller, or any other person or entity produces a purchaser or 193  
tenant in accordance with the terms specified in the listing 194  
agreement or if the property is sold or leased during the term of 195  
the listing agreement to anyone other than to specifically 196  
exempted persons or entities. 197

(V) "Exclusive agency agreement" means an agency agreement 198  
between a seller and broker that meets the requirements of section 199  
4735.55 of the Revised Code and does both of the following: 200

(1) Grants the broker the exclusive right to represent the seller in the sale or lease of the seller's property; 201  
202

(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. 203  
204  
205  
206  
207  
208  
209

(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: 210  
211  
212  
213

(1) Grants the broker the exclusive right to represent the purchaser in the purchase or lease of property; 214  
215

(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. 216  
217  
218  
219  
220

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. 221  
222  
223  
224  
225

(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. 226  
227  
228  
229  
230



Sec. 4735.16. (A) Every real estate broker licensed under 231  
this chapter shall have and maintain a definite place of business 232  
in this state and shall erect or maintain a sign on the premises 233  
plainly stating that the licensee is a real estate broker. If the 234  
real estate broker maintains one or more branch offices, the real 235  
estate broker shall erect or maintain a sign at each branch office 236  
plainly stating that the licensee is a real estate broker. 237

(B)(1) Any licensed real estate broker or salesperson who 238  
advertises to buy, sell, exchange, or lease real estate, or to 239  
engage in any act regulated by this chapter, including, but not 240  
limited to, any licensed real estate broker or salesperson who 241  
advertises to sell, exchange, or lease real estate that the 242  
licensee owns, shall be identified in the advertisement by name 243  
and by indicating that the licensee is a real estate broker or 244  
real estate salesperson. Except a real estate salesperson who 245  
advertises the sale, exchange, or lease of real estate that the 246  
salesperson owns and that is not listed for sale, exchange, or 247  
lease with a real estate broker, any real estate salesperson who 248  
advertises, as provided in this section, also shall indicate in 249  
the advertisement the name of the broker under whom the 250  
salesperson is licensed and the fact that the salesperson's broker 251  
is a real estate broker. The name of the broker shall be displayed 252  
in equal prominence with the name of the salesperson in the 253  
advertisement. 254

(2) A real estate broker who is representing a seller under 255  
an exclusive right to sell or lease listing agreement shall not 256  
advertise such property to the public as "for sale by owner" or 257  
otherwise mislead the public to believe that the seller is not 258  
represented by a real estate broker. 259

(3) If any real estate broker or real estate salesperson 260  
advertises in a manner other than as provided in this section or 261

the rules adopted under this section, that advertisement is prima\_ 262  
facie evidence of a violation under division (A)(21) of section 263  
4735.18 of the Revised Code. 264

When the superintendent determines that prima\_facie evidence 265  
of a violation of division (A)(21) of section 4735.18 of the 266  
Revised Code or any of the rules adopted thereunder exists, the 267  
superintendent may do either of the following: 268

(a) Initiate disciplinary action under section 4735.051 of 269  
the Revised Code for a violation of division (A)(21) of section 270  
4735.18 of the Revised Code, in accordance with Chapter 119. of 271  
the Revised Code; 272

(b) Personally, or by certified mail, serve a citation upon 273  
the licensee. 274

(C)(1) Every citation served under this section shall give 275  
notice to the licensee of the alleged violation or violations 276  
charged and inform the licensee of the opportunity to request a 277  
hearing in accordance with Chapter 119. of the Revised Code. The 278  
citation also shall contain a statement of a fine of two hundred 279  
dollars per violation, not to exceed two thousand five hundred 280  
dollars per citation. All fines collected pursuant to this section 281  
shall be credited to the real estate recovery fund, created in the 282  
state treasury under section 4735.12 of the Revised Code. 283

(2) If any licensee is cited three times within twelve 284  
consecutive months, the superintendent shall initiate disciplinary 285  
action pursuant to section 4735.051 of the Revised Code for any 286  
subsequent violation that occurs within the same twelve-month 287  
period. 288

(3) If a licensee fails to request a hearing within thirty 289  
days of the date of service of the citation, or the licensee and 290  
the superintendent fail to reach an alternative agreement, the 291  
citation shall become final. 292

(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 325  
the wording and size of the pamphlet. 326

**Sec. 4735.18.** (A) Subject to section 4735.32 of the Revised 327  
Code, the superintendent of real estate, upon the superintendent's 328  
own motion, may investigate the conduct of any licensee. Subject 329  
to section 4735.32 of the Revised Code, the Ohio real estate 330  
commission shall, pursuant to section 4735.051 of the Revised 331  
Code, impose disciplinary sanctions upon any licensee who, whether 332  
or not acting in the licensee's capacity as a real estate broker 333  
or salesperson, or in handling the licensee's own property, is 334  
found to have been convicted of a felony or a crime of moral 335  
turpitude, and shall, pursuant to section 4735.051 of the Revised 336  
Code, impose disciplinary sanctions upon any licensee who, in the 337  
licensee's capacity as a real estate broker or salesperson, or in 338  
handling the licensee's own property, is found guilty of: 339

(1) Knowingly making any misrepresentation; 340

(2) Making any false promises with intent to influence, 341  
persuade, or induce; 342

(3) A continued course of misrepresentation or the making of 343  
false promises through agents, salespersons, advertising, or 344  
otherwise; 345

(4) Acting for more than one party in a transaction except as 346  
permitted by and in compliance with section 4735.71 of the Revised 347  
Code; 348

(5) Failure within a reasonable time to account for or to 349  
remit any money coming into the licensee's possession which 350  
belongs to others; 351

(6) Dishonest or illegal dealing, gross negligence, 352  
incompetency, or misconduct; 353

(7)(a) By final adjudication by a court, a violation of any 354

municipal or federal civil rights law relevant to the protection 355  
of purchasers or sellers of real estate or, by final adjudication 356  
by a court, any unlawful discriminatory practice pertaining to the 357  
purchase or sale of real estate prohibited by Chapter 4112. of the 358  
Revised Code, provided that such violation arose out of a 359  
situation wherein parties were engaged in bona fide efforts to 360  
purchase, sell, or lease real estate, in the licensee's practice 361  
as a licensed real estate broker or salesperson; 362

(b) A second or subsequent violation of any unlawful 363  
discriminatory practice pertaining to the purchase or sale of real 364  
estate prohibited by Chapter 4112. of the Revised Code or any 365  
second or subsequent violation of municipal or federal civil 366  
rights laws relevant to purchasing or selling real estate whether 367  
or not there has been a final adjudication by a court, provided 368  
that such violation arose out of a situation wherein parties were 369  
engaged in bona fide efforts to purchase, sell, or lease real 370  
estate. For any second offense under this division, the commission 371  
shall suspend for a minimum of two months or revoke the license of 372  
the broker or salesperson. For any subsequent offense, the 373  
commission shall revoke the license of the broker or salesperson. 374

(8) Procuring a license under this chapter, for the licensee 375  
or any salesperson by fraud, misrepresentation, or deceit; 376

(9) Having violated or failed to comply with any provision of 377  
sections 4735.51 to 4735.74 of the Revised Code or having 378  
willfully disregarded or violated any other provisions of this 379  
chapter; 380

(10) As a real estate broker, having demanded, without 381  
reasonable cause, other than from a broker licensed under this 382  
chapter, a commission to which the licensee is not entitled, or, 383  
as a real estate salesperson, having demanded, without reasonable 384  
cause, a commission to which the licensee is not entitled; 385

(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;	386 387 388 389 390 391
(12) Having falsely represented membership in any real estate professional association of which the licensee is not a member;	392 393
(13) Having accepted, given, or charged any undisclosed commission, rebate, or direct profit on expenditures made for a principal;	394 395 396
(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;	397 398 399 400 401
(15) Having acted in the dual capacity of real estate broker and undisclosed principal, or real estate salesperson and undisclosed principal, in any transaction;	402 403 404
(16) Having guaranteed, authorized, or permitted any person to guarantee future profits which may result from the resale of real property;	405 406 407
(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;	408 409 410
(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;	411 412 413
(19) Having negotiated the sale, exchange, or lease of any real property directly with <del>an owner</del> <u>a seller</u> , purchaser, lessor,	414 415

or tenant knowing that such ~~owner~~ seller, purchaser, lessor, or 416  
tenant ~~had a written outstanding contract granting exclusive~~ 417  
~~agency in connection with such property to another real estate~~ 418  
~~broker~~ is represented by another broker under a written exclusive 419  
agency agreement, exclusive right to sell or lease listing 420  
agreement, or exclusive purchaser agency agreement with respect to 421  
such property except as provided for in section 4735.75 of the 422  
Revised Code; 423

(20) Having offered real property for sale or for lease 424  
without the knowledge and consent of the owner or the owner's 425  
authorized agent, or on any terms other than those authorized by 426  
the owner or the owner's authorized agent; 427

(21) Having published advertising, whether printed, radio, 428  
display, or of any other nature, which was misleading or 429  
inaccurate in any material particular, or in any way having 430  
misrepresented any properties, terms, values, policies, or 431  
services of the business conducted; 432

(22) Having knowingly withheld from or inserted in any 433  
statement of account or invoice any statement that made it 434  
inaccurate in any material particular; 435

(23) Having published or circulated unjustified or 436  
unwarranted threats of legal proceedings which tended to or had 437  
the effect of harassing competitors or intimidating their 438  
customers; 439

(24) Having failed to keep complete and accurate records of 440  
all transactions for a period of three years from the date of the 441  
transaction, such records to include copies of listing forms, 442  
earnest money receipts, offers to purchase and acceptances of 443  
them, records of receipts and disbursements of all funds received 444  
by the licensee as broker and incident to the licensee's 445  
transactions as such, and records required pursuant to divisions 446

(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.	478
(28) Having failed to put definite expiration dates in all written agency agreements to which the broker is a party;	479 480
(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;	481 482 483
(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;	484 485 486 487 488 489
(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;	490 491 492
(32) Performing any service for another constituting the practice of law, as determined by any court of law;	493 494
(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.	495 496 497 498 499
(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;	500 501 502 503 504 505
(35) Having knowingly inserted or participated in inserting any materially inaccurate term in a document, including naming a	506 507

false consideration;

508

(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.

509

510

511

512

513

514

(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.

515

516

517

518

519

520

(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.

521

522

523

524

525

526

527

528

529

530

531

532

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

533

534

535

(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

536

537

538

estate appraiser under Chapter 4763. of the Revised Code.	539
<b>Sec. 4735.51.</b> As used in sections 4735.51 to 4735.74 of the Revised Code:	540
(A) "Agency" and "Agency relationship" mean a relationship in which a licensee represents another person in a real estate transaction.	541
(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.	542
(C) "Agent" and "real estate agent" mean a person licensed by this chapter to represent another in a real estate transaction.	543
(D) "Affiliated licensee" means a real estate broker or a real estate salesperson licensed by this chapter who is affiliated with a brokerage.	544
(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.	545
(F) "Client" means a person who has entered into an agency relationship with a licensee.	546
(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	547
	548
	549
	550
	551
	552
	553
	554
	555
	556
	557
	558
	559
	560
	561
	562
	563
	564
	565
	566
	567
	568

law to be kept confidential.	569
(H) "Dual agency relationship" means any of the dual agency relationships set forth in section 4735.70 of the Revised Code.	570 571
(I) "In-company transaction" means a real estate transaction in which the purchaser and seller are both represented by the same brokerage.	572 573 574
(J) "Licensee" means any individual licensed as a real estate broker or salesperson by the Ohio real estate commission pursuant to this chapter.	575 576 577
(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.	578 579 580 581
(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.	582 583 584 585
(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.	586 587 588
<del>(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.</del>	589 590 591 592 593
<del>(O)</del> "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.	594 595 596
<del>(P)</del> <u>(O)</u> "Timely" means as soon as possible under the particular circumstances.	597 598

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. 599 600

(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. 601 602 603 604

(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: 605 606 607

(1) The fiduciary duties required of all licensees under section 4735.62 of the Revised Code; 608 609

(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; 610 611 612 613

(3) A statement that no other licensee is required to perform the waived duty on behalf of the client; 614 615

(4) A statement that legal counsel or other professionals may be hired by the client; 616 617

(5) A place for the client and licensee to sign and date the statement. 618 619

**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:~~ 620 621 622

(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; 623 624 625 626 627

(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 658  
licensure, answer the purchaser's questions and provide 659  
information to the purchaser regarding any offers or 660  
counteroffers; 661

(3) Assist the purchaser in developing, communicating, and 662  
presenting offers or counteroffers; 663

(4) Present any offer to purchase or lease to the seller or 664  
the seller's agent in a timely manner, even if the property is 665  
subject to a contract of sale, lease, or letter of intent to 666  
lease, and accept delivery of and present any counteroffers to the 667  
purchaser in a timely manner; 668

(5) Within the scope of knowledge required for licensure, 669  
answer the purchaser's questions regarding the steps the purchaser 670  
must take to fulfill the terms of any contract. 671

(B) A licensee does not breach any duty or obligation to the 672  
purchaser by showing the same properties to other purchasers or by 673  
acting as an agent or subagent for other purchasers, or as an 674  
agent or subagent for sellers, except that any dual agency 675  
relationship must be disclosed to a client pursuant to section 676  
4735.71 of the Revised Code. 677

(C) Nothing in this section shall be construed as permitting 678  
a licensee to perform any act or service that constitutes the 679  
practice of law. 680

**Sec. 4735.75.** (A) A broker who has the exclusive authority to 681  
represent a client under a written exclusive agency agreement, 682  
exclusive right to sell agreement, or exclusive purchaser agency 683  
agreement may authorize other licensees to negotiate directly with 684  
that client. The authorization shall be in writing and the broker 685  
shall comply with the requirements of section 4735.621 of the 686  
Revised Code. 687

(B) A licensee who negotiates directly with a seller, 688  
purchaser, lessor, or tenant pursuant to a written authorization 689  
as described in division (A) of this section does not violate 690  
division (A)(19) of section 4735.18 of the Revised Code and 691  
negotiations conducted by a licensee pursuant to the authorization 692  
shall not create or imply an agency relationship between that 693  
licensee and the client of that exclusive broker. 694

(C) As used in this section and division (A)(19) of section 695  
4735.18 of the Revised Code, "negotiate" means any the following: 696

(1) Delivering or communicating an offer, counteroffer, or 697  
proposal; 698

(2) Discussing or reviewing the terms of any offer, 699  
counteroffer, or proposal; 700

(3) Facilitating communication regarding an offer, 701  
counteroffer, or proposal and preparing any response as directed. 702

**Section 2.** That existing sections 4735.01, 4735.16, 4735.18, 703  
4735.51, 4735.63, and 4735.65 of the Revised Code are hereby 704  
repealed. 705