



Sub. S.B. 106
125th General Assembly
(As Passed by the Senate)

Sens. Carey, Mumper, Stivers, Harris, Prentiss, Spada, Hottinger, Padgett, Schuler

BILL SUMMARY

- Modifies requirements concerning written disclosures that real estate agents and brokerages must give to their clients and refers to this written disclosure as a "brokerage policy on agency."
- Modifies client signature requirements for the brokerage policy on agency and the agency disclosure statement.
- Modifies requirements regarding the information that must be disclosed or explained in the agency disclosure statement.
- Requires that information currently required to be disclosed on a dual agency disclosure statement instead be included on the reverse side of an agency disclosure statement and modifies signature and timing requirements to correspond with the requirements as they apply to an agency disclosure statement.
- Specifies conditions under which a management level licensee is not considered a dual agent.
- Specifies duties of a management level licensee when that licensee represents a client in an in-company transaction and there is a dual agency relationship involving that licensee.
- Permits the Superintendent of Real Estate and Professional Licensing to initiate disciplinary action or impose sanctions upon a licensee who fails to comply with the disclosure requirements of the bill.
- Modifies procedures and requirements for the handling of complaints against licensees.

- Authorizes the Superintendent of Real Estate and Professional Licensing to request the Superintendent of the Bureau of Criminal Identification and Investigation to conduct a criminal records check of applicants or licensees the Superintendent has reasonable cause to believe have committed a criminal offense.
- Allows service of a subpoena by certified mail issued by the Superintendent of Real Estate or the Ohio Real Estate Commission and specifies service is complete upon delivery or refusal.
- Allows the Superintendent of Real Estate to suspend immediately, without a hearing, the license of a licensee who fails to pay the required fees associated with a returned check or if a check used to pay those fees is again returned for insufficient funds.
- Modifies provisions concerning licensure fees and eliminates a requirement that a renewal form indicate active or inactive status.
- Requires the Commission to use money in the Real Estate Education and Research Fund to provide training to Commission members and employees of the Division of Real Estate and Professional Licensing on issues relative to the real estate industry, and allows that Fund to be used for research or education projects conducted by trade organizations.
- Modifies the continuing education requirement of licensees age 70 and older.
- Modifies requirements applicable to a real estate salesperson who submits an application to the Superintendent of Real Estate to leave the association of one broker to associate with a different broker.

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CONTENT AND OPERATION

Brokerage policy on agency

Under existing law not changed by the bill, each brokerage is required to have a written company policy that sets forth the types of agency relationships that members of that brokerage may establish. It must be given to clients and prospective clients upon request (sec. 4735.54, not in the bill). Existing law also requires that prior to performing any duties in an agency relationship, a licensee must provide the licensee's client written disclosure of specified information, which is described below. The bill refers to this written disclosure as a "brokerage policy on agency" (hereafter "brokerage policy"), and modifies specifications concerning the information that must be disclosed in this newly named document.

Under the bill, each brokerage must give the brokerage policy to prospective sellers and purchasers, and the policy must include an explanation of the permissible agency relationships available under the Real Estate Brokers Law (R.C. Chapter 4735.) and the duties that the agents owe their clients. It also must include all of the following information, which is modified from what existing law currently requires be disclosed:

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

(2) Whether at some time during the agency relationship, another licensee affiliated with the same brokerage as the licensee may become the exclusive agent for the other party in the transaction (information that must be disclosed under existing law), and whether each licensee will represent only the interests of that licensee's client (information newly required by the bill to be disclosed);



(3) The brokerage's policy on cooperation with other *brokerages*, including whether the *brokerage* offers compensation to other *brokerages* or will seek compensation from other *brokerages* (whereas current law requires disclosure of the licensee's company policy regarding cooperation with a *licensee* acting as a *subagent*, a seller's *agent*, or purchaser's *agent*), including whether the brokerage offers compensation to such *subagents or agents* or will seek compensation from such *agents*;

(4) That a *brokerage*, as opposed to an *agent* under existing law, that has a purchaser as a client represents the purchaser's interests even though the seller's agent or the seller may compensate that purchaser's *brokerage*, instead of *agent*, as under existing law. (Sec. 4735.56(B)(3), (4), (5), and (6).)

The brokerage policy also must include the following information, which currently is not required to be included in the written disclosure mandated under existing law:

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

(2) That the signature of the purchaser or the seller indicates acknowledgement of receipt of the brokerage policy. (Sec. 4735.56(B)(2) and (7).)

Existing law specifically requires written disclosure indicating whether a licensee affiliated with the same brokerage as the licensee may represent another party in the transaction as a subagent, dual agent, purchaser's agent, or seller's agent, whereas the bill does not require this information specifically. However, the equivalent of this information likely would be conveyed in the brokerage's policy on representation of purchasers or sellers, indicated in (1) directly above.

The bill states specific actions that trigger the requirement to provide a brokerage policy to a client. Under existing law, these same actions trigger the requirement to provide an "agency disclosure statement," which is a document currently established by the Superintendent of the Division of Real Estate and Professional Licensing, with the Ohio Real Estate Commission's approval. Rather than requiring written disclosure of the information described above "prior to performing *any* duties," as under current law, the bill specifically requires that a licensee acting as a seller's agent provide the seller with the *brokerage policy*, as opposed to the *agency disclosure statement* per current law, prior to *marketing or showing the seller's property* (sec. 4735.56(C) [and 4735.58(A) (*current law citation*)]). It also requires that a licensee working directly with a purchaser in a real estate transaction, whether as the purchaser's agent, the seller's agent, or the seller's subagent, provide the purchaser with the *brokerage policy*, as opposed to

the *agency disclosure statement* per current law, prior to the earliest of the following events:

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

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

(3) Showing a property to the purchaser other than at an open house;

(4) Discussing with the purchaser, the making of an offer to purchase or lease real property (under existing law, this applies only with respect to *purchasing* real property and not also to *leasing* real property);

(5) Submitting an offer to purchase or lease real property on behalf of the purchaser. (Sec. 4735.56(D) [and 4735.58(B)(1) (*current law citation*)].)

If the earliest event described in (1) to (5) directly above is by telephone, and the bill adds "or by electronic mail," the licensee must disclose by that same medium the nature of the agency relationship that the licensee has with both the seller and the purchaser. The licensee must provide the purchaser with the *brokerage policy*, as opposed to the *agency disclosure statement* per current law, at the first meeting with the purchaser following this disclosure of the agency relationship. (Sec. 4735.56(E) [and 4735.58(B)(2) (*current law citation*)].)

Current law states that a licensee acting as a seller's agent is not required to provide a purchaser with an agency disclosure statement except in the case of an event described in (1) to (5) directly above. The bill substitutes brokerage policy for agency disclosure statement in this provision, just as it does in corresponding provisions. (Sec. 4735.56(F) [and 4735.58(B)(3) (*current law citation*)].)

Under the bill, the disclosure requirements relative to the brokerage policy do not apply in any of the following situations:

(1) The rental or leasing of residential premises if the rental or lease agreement can be performed in 18 months or less;

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

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



(4) Transactions involving the sale of a cemetery lot or a cemetery interment right. (Sec. 4735.56(G).)

The disclosure requirements also do not apply in any of the aforementioned situations with respect to the agency disclosure statement under existing law. (Sec. 4735.58(D).)

The bill requires a licensee acting as a seller's agent or working directly with a purchaser in a real estate transaction to obtain a signature from the seller or purchaser, as appropriate, acknowledging receipt of the brokerage policy, unless the seller or purchaser refuses to sign the policy. If the seller or purchaser refuses to provide a signature, the licensee must note this on the policy. (Sec. 4735.56(C) and (D).)

Agency disclosure statement changes

Under existing law, the Superintendent, with the approval of the Ohio Real Estate Commission, must establish by rule an agency disclosure statement. The bill modifies requirements regarding the information that must be disclosed or explained in the agency disclosure statement. The following explanations, which must be included in the agency disclosure statement under existing law, are not required to be included in the agency disclosure statement under the bill; however, similar information generally must be contained in the brokerage policy:

(1) The permissible agency relationships a licensee may establish under the Real Estate Brokers Law and an explanation of the duties the licensee owes the client in each type of relationship;

(2) Whether the brokerage may act as a dual agent and if so, the possibility that different licensees affiliated with the brokerage might represent the separate interests of a purchaser or a seller in the same transaction;

(3) That when different licensees affiliated with the same brokerage represent both the purchaser and seller in a transaction, each licensee represents only the interests of that licensee's client;

(4) That when different licensees affiliated with the same brokerage represent different clients in a transaction, the brokerage and the management level licensees in the brokerage are dual agents of both the seller and purchaser and have supervisory duties and limitations as dual agents;

(5) That the broker must take steps to preserve the confidential information of the client. (Sec. 4735.57(A)(1) and (2) (*current law citations*).)



The bill requires that the following information be added to agency disclosure statements:

- (1) The address of the property being sold or leased;
- (2) The name of the licensee or licensees and the brokerage with which each licensee is affiliated;
- (3) The party that each licensee in the named brokerage represents in the transaction;
- (4) If a licensee representing a purchaser of real estate and a licensee representing the seller of that real estate are affiliated with the same brokerage, whether the two licensees are acting as dual agents or are individually representing the purchaser and seller separately;
- (5) If only one licensee is involved in the transaction, whether that licensee is a dual agent or represents only one party to the transaction;
- (6) If both the purchaser and the seller are represented by licensees affiliated with the same brokerage, that the brokerage is a dual agent. (Sec. 4735.57(A)(2) through (7).)

The bill slightly modifies the requirement regarding two other pieces of information contained in the agency disclosure statement. First, whereas current law specifies that the names of all the parties the licensee represents in the transaction must be included in the agency disclosure statement, unless confidential, the bill simply calls for the names of all the parties, unless confidential. Second, the agency disclosure statement under current law must contain an explanation that the signature of the client indicates the client's consent to the agency relationship and that if the client does not understand the agency disclosure statement, the client should consult an attorney. The bill specifies that the client's signature indicates the client's *informed* consent. (Sec. 4735.57(A)(1) and (8).)

Under the bill, a licensee who is a purchaser's agent or a seller's subagent working with a purchaser must present the agency disclosure statement to the purchaser and request the purchaser to sign and date it no later than the preparation of an offer to purchase or lease, or a written request for a proposal to lease. The licensee must deliver the statement signed by the purchaser to the seller's agent, or to the seller if not represented by an agent. Before presenting the seller with a written offer or request, the seller's agent, or the purchaser's agent if the seller is not represented by an agent, must present the agency disclosure statement to the seller and request the seller to sign and date it.



The bill removes a statement in existing law that specifies that the information included in the agency disclosure statement does not limit the duties of a real estate agent to only those listed in the statement. (Sec. 4735.57(B) (*current law citation*)).

Dual agency disclosure

The bill requires that the following information, currently required to be disclosed on a dual agency disclosure statement, be included instead on the agency disclosure statement:

- (1) The duties of a licensee acting as a dual agent;
- (2) An explanation of the nature of a dual agency relationship, including a statement that in serving as a dual agent, licensees in the brokerage represent two clients whose interests are, or at times could be, different or adverse;
- (3) That as a result of the dual agency relationship, the dual agent may not be able to advocate on behalf of the client to the same extent (current law says "with the same skill and energy") the agent may have if the agent represented only one client;
- (4) A description of the duties the brokerage and its affiliated licensees and employees owe to each client, including the duty of confidentiality;
- (5) That neither the brokerage nor its affiliated licensees have any material relationship with either client other than incidental to the transaction, or if the brokerage or its affiliated licensees have such a relationship, a disclosure of the nature of the relationship. As used here, current law and the bill specifies that "material relationship" means any actually known personal, familial, or business relationship between the brokerage or an affiliated licensee and a client that could impair the ability of the brokerage or affiliated licensee to exercise lawful and independent judgment relative to another client.
- (6) That as a dual agent, the brokerage cannot engage in conduct that is contrary to the interests or instructions of one party or act in a biased manner on behalf of one party;
- (7) A section specifying the source of compensation to the real estate broker;
- (8) That the client does not have to consent to the dual agency relationship, and the options available to the client for representation in the transaction if the client does not consent, including the right of the client to terminate the agency relationship and seek representation from another source;



(9) That the consent to the dual agency relationship by the client has been given voluntarily, that the signature indicates informed consent, and that the duties of a licensee acting as a dual agent disclosed to the client in this statement have been read and understood. (Secs. 4735.57(B) and 4735.73, repealed by the bill.)

Existing law does not specify the conditions under which the dual agency disclosure statement need not be provided to clients. Because the information currently included in the dual agency disclosure statement is being included instead on the agency disclosure statement, under the bill, the same exceptions concerning disclosure also apply with respect to this dual agency information.

The bill eliminates: (1) a requirement that the brokerage make the dual agency disclosure to both the seller and purchaser as soon as practicable after it is determined that such dual agency may exist, (2) a requirement that the parties to the real estate transaction sign and date the dual agency disclosure statement in a timely manner after it is determined that a dual agency relationship exists, and (3) a requirement that the form be signed and dated prior to the signing of any offer to purchase or lease the real estate that is the subject of the transaction. (Sec. 4735.71(B).)

The bill also eliminates a provision specifying that a brokerage that is a dual agent is not required to obtain the consent of the seller and the purchaser on the dual agency disclosure statement if the seller and purchaser are each represented by a different, nonmanagement level licensee who is affiliated with the same brokerage and all of the following conditions are met:

(1) The licensees made disclosures as required under the Real Estate Brokers Law;

(2) The potential for the formation of the dual agency was disclosed to all parties in the agency disclosure statement;

(3) Each party consents by initialing, in a timely manner after it is determined that a dual agency relationship exists in the transaction, the section in the agency disclosure statement that discloses the potential for a dual agency relationship. (Sec. 4735.71(C).)

Management level licensees as dual agents

Currently, a management level licensee is a dual agent when representing a client in an in-company transaction. The bill adds a condition under which these management level licensees are not dual agents. Under the bill, if there is more than one management level licensee affiliated with the brokerage and either of the following applies, the management level licensee is not a dual agent:



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

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

Existing law requires the brokerage and management level licensees in a brokerage in which there is a dual agency relationship involving a licensee or a brokerage to:

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

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

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

The bill makes these duties also apply when there is a dual agency relationship involving a management level licensee who represents a client in an in-company transaction. (Sec. 4735.72(A).)

Existing law specifies that when two nonmanagement level licensees affiliated with the same brokerage represent separate clients in the same transaction, each affiliated licensee must do both of the following:

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

(2) Fulfill the duties owed to the respective client as set forth in the Real Estate Brokers Law and as agreed in the agency agreement.

By eliminating the term "nonmanagement level" licensee from this provision, the bill appears to specify that the duties described in (1) and (2) directly above also apply to management level licensees. The bill also adds that in all cases, a management level licensee must keep confidential information of the client or brokerage. (Sec. 4735.72(B) and (C).)



Sanctions for failure to comply with disclosure requirements

The bill permits the Superintendent to initiate disciplinary action in accordance with the Administrative Procedure Act or impose sanctions upon a licensee who fails to comply with the disclosure requirements under the bill. Under continuing law, the Ohio Real Estate Commission also may impose disciplinary sanctions for failure to comply with disclosure requirements under existing law (sec. 4735.051, not in the bill).

If a licensee has failed to comply with the disclosure requirements, the bill allows the Superintendent to personally, or by certified mail, serve a citation and impose sanctions upon the licensee. A citation must 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 the Administrative Procedure Act. The citation also must contain a statement of a fine of up to \$200 per violation. All fines collected must be credited to the Real Estate Recovery Fund.

If any licensee is cited three times under this section within 12 consecutive months, the bill requires the Superintendent to initiate disciplinary action for any subsequent violation that occurs within the same 12-month period.

If a licensee fails to request a hearing within 30 days of the date of service of the citation, or the licensee and the Superintendent fail to reach an alternative agreement, the citation becomes final under the bill. Unless otherwise indicated, the licensee named in a final citation must meet all requirements contained in the final citation within 30 days of the effective date of that citation. The Superintendent must suspend automatically a licensee's license if the licensee fails to do so. (Sec. 4735.181.)

Informal mediation meetings and formal hearings

Currently, when a person submits a written complaint against a licensee, the licensee and complainant may request an "informal meeting" with an investigator. The bill refers to this meeting as an "informal *mediation* meeting." (Sec. 4735.051.)

If a complainant and licensee reach an accommodation, under current law, the complaint file is closed unless, based on the investigator's report, the Superintendent finds evidence that the licensee has violated the Real Estate Brokers Law. If a complainant and licensee fail to agree to an informal mediation meeting or fail to reach an accommodation, or if the Superintendent finds evidence that the licensee has violated the Real Estate Brokers Law, the Superintendent must investigate the licensee's conduct. The bill removes reference to the Superintendent finding evidence of a violation from both of these provisions.



Thus a file is closed if a complainant and licensee reach an accommodation, and the Superintendent must investigate if a complainant and licensee fail to meet or reach an accommodation. (Sec. 4735.051(B) and (C).)

If the Superintendent finds there is reasonable and substantial evidence that a licensee has violated the Real Estate Brokers Law, a hearing is scheduled for the licensee and complainant. Under the bill, after the hearing date is scheduled, but before the hearing examiner files a report of findings of fact and conclusions of law, the Superintendent, upon receipt of additional evidence, may withdraw the notice of hearing. The bill specifies that withdrawal by the Superintendent does not constitute evidence that the original notice of hearing was not substantially justified. Upon withdrawal of the notice of hearing, the bill requires the Superintendent to notify the complainant and licensee of the Superintendent's determination and basis for the determination. The bill permits a complainant to file, within 15 business days after this notification, a request that the Commission review the determination, and requires the Commission to review the request. (Sec. 4735.051(D).)

The bill specifies that all information obtained by investigators or auditors from an informal mediation meeting, including but not limited to the agreement to mediate and the accommodation agreement, must be held in confidence by the Superintendent, investigators, auditors, and other personnel of the department. (Sec. 4735.05(D).)

The bill requires that all notices, written reports, and determinations issued regarding informal mediation meetings, investigations, and hearings arising from complaints against a licensee be mailed via certified mail, return receipt requested. If the certified notice is returned, refused, or unclaimed because of failure of delivery, the notice, written reports, or determinations are deemed served under the bill if the Superintendent sends the notice, written report, or determination via regular mail and obtains a certificate of mailing of the notice, written reports, or determination. (Sec. 4735.051(J).)

Criminal records check of applicants or licensees suspected of committing a criminal offense

The bill authorizes the Superintendent of Real Estate and Professional Licensing, upon having reasonable cause to believe that an applicant or licensee has committed a criminal offense, to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of the applicant or licensee. The Superintendent of BCII is required by the bill to obtain information from the Federal Bureau of Investigation as part of the criminal records check of the applicant or licensee. The Superintendent of Real



Estate and Professional Licensing may assess the applicant or licensee a fee equal to the fee assessed for the criminal records check. (Sec. 4735.05(C)(4).)

Service of subpoenas

Under current law, the Commission and Superintendent of Real Estate and Professional Licensing may require the production of books, paper, or documents and may compel, by order or subpoena, the attendance of witnesses to testify in relation to any matter over which the Commission or Superintendent has jurisdiction. Sheriffs and constables are required under current law to serve notice and return such process and be paid for doing so. The bill allows, rather than requires, service of a subpoena to be made by sheriffs or constables. It also allows service by certified mail, return receipt requested, and specifies that the subpoena is deemed served on the date delivery is made or the date the person refused to accept delivery. (Sec. 4735.04.)

Fee for checks returned due to insufficient funds

Under the bill, if a check or other draft instrument used to pay any fee required by the Real Estate Broker Law is returned to the Superintendent for insufficient funds, the Superintendent must notify the licensee that the check or other draft instrument was returned for insufficient funds and that the licensee's license will be suspended unless the licensee, within 15 days after the mailing of the notice, submits the fee plus an additional \$100 to the Superintendent. If the licensee does not submit both fees within that time period, or if any check or other draft instrument used to pay either of those fees is returned to the Superintendent for insufficient funds, the license will be suspended immediately without a hearing and the licensee must cease activity as a licensee. (Sec. 4735.182.)

Prorating three-year licensing fees

Currently, when a three-year real estate broker's license is issued, upon passing the examination, or upon waiver of the examination requirement, an applicant must submit an additional fee of \$98, which covers the fee for the second and third year of the licensing period, except that the Superintendent must prorate that additional fee based upon the number of years remaining in the licensing period of a currently licensed real estate salesperson. The bill eliminates reference to the specific sum of \$98 and instead requires the Superintendent, when the Superintendent deems it necessary, to charge an additional fee, which the Superintendent determines. (Sec. 4735.06(B).)

Applicants for a three-year real estate salesperson's license must submit an additional fee of \$78 to cover the cost of the second and third licensure years. The bill eliminates reference to this fee. (Sec. 4735.09(B).)



License renewal fees may be reduced

The bill allows the Commission to adopt rules that provide for a reduction in the fees to renew a real estate salesperson's and real estate broker's license. (Sec. 4735.15(F).)

Use of the Real Estate Education and Research Fund

Under current law, \$4 of each application fee for a real estate broker's license is credited to the Real Estate Education and Research Fund. The Commission may use the fund for the following purposes:

- (1) Information-disseminating purposes specified in current law;
- (2) The advancement of education and research in real estate at any institution of higher education in Ohio or in contracting with any such institution for a particular research or educational project in the field of real estate;
- (3) Advancing limited loans to applicants for salesperson licenses to defray certain educational costs.

The bill requires the Commission to use the fund also to provide training to Commission members and employees of the Division of Real Estate and Professional Licensing on issues relative to the real estate industry, which training may include but not be limited to investigative techniques, real estate law, and real estate practices and procedures. Additionally the bill broadens purpose (2) above to allow it to apply to research or educational projects conducted by trade organizations rather than just by institutions of higher education. (Secs. 4735.03(H) and 4735.06(C).)

Continuing education for licensees age 70 and older

The bill specifies that the continuing education requirement for licensees who are age 70 and above is nine classroom hours every three years. Currently the nine-hour requirement applies to only those licensees who were age 70 and above on June 14, 1999. (Sec. 4735.141(A).)

Licenses held by brokers

Under current law, real estate brokers hold the licenses of the real estate salespersons with whom they are associated. A broker must return the license of a salesperson, other than salespersons who enter the armed forces, to the Superintendent immediately upon its disassociation with a salesperson. Under the bill, if a salesperson submits an application to the Superintendent to leave the association of one broker to associate with a different broker, the broker



possessing the licensee's license need not return the salesperson's license to the Superintendent. The bill also permits the Superintendent to process the application regardless of whether the licensee's license is returned to the Superintendent. (Sec. 4735.13(H).)

Inactive status indication

Under current law, each licensed broker, brokerage, or salesperson must file, on or before the date established for that licensee by the Commission, a notice of renewal on a form prescribed by the Superintendent. Current law further specifies that the licensee must indicate on the form whether the licensee wishes to maintain the licensee's license in an active or inactive status. The bill eliminates the requirement to indicate active or inactive status. (Sec. 4735.14(B).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
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