



H.B. 491*

126th General Assembly

(As Reported by H. Financial Institutions, Real Estate and Securities)

Reps. Widener, J. McGregor, Miller, Yuko, Combs, Setzer, Strahorn, Faber, DeWine, Collier, Harwood, Sayre, Cassell, Reidelbach, Carano, Buehrer, Driehaus, T. Patton, Brown, Book, Gibbs, Hagan, Webster, Coley, Wagoner, T. Patton, Boccieri, White

BILL SUMMARY

- Establishes definitions in the Real Estate Broker and Salesperson Licensing Law for three distinct types of agency agreements: "Exclusive right to sell or lease listing agreement," "Exclusive agency agreement," and "Exclusive purchaser agency agreement."
- Prohibits a real estate broker, who is operating under an exclusive right to sell or lease listing agreement, from advertising property to the public as being for sale by the owner.
- Requires the Superintendent of Real Estate to establish, by rule, a waiver of duties statement, and stipulates which licensee obligations a client may waive.
- Modifies the duties of a real estate broker and salesperson who is representing either a seller or a purchaser.
- Permits a broker to authorize other licensees to negotiate directly with a client.

* *This analysis was prepared before the report of the House Financial Institutions, Real Estate and Securities Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

CONTENT AND OPERATION

Background

Ohio law (R.C. Chapter 4735.) regulates real estate brokers and sales persons. With certain exceptions for out of state entities, no person, partnership, association, limited liability or partnership, or corporation may act as a real estate broker or real estate salesperson, without a license (R.C. 4735.02). The chapter sets forth licensing qualification requirements, the terms of the license, the continuing education requirements of licensees, the authority of the Ohio Real Estate Commission or the Superintendent of Real Estate to investigate complaints concerning violations, and the fiduciary duties and disclosure requirements imposed upon licensees.

The types of agency relationships currently permitted in a real estate transaction are set out in the chapter (R.C. 4735.52) and are limited to the following: (1) an agency relationship between the licensee and the seller, (2) an agency relationship between the licensee and the purchaser, (3) a dual agency relationship between the licensee and both the seller and the purchaser, (4) a subagency relationship between the licensee and the client of another licensee (R.C. 4735.53). Furthermore, statute dictates certain provisions that must be included in an agency agreement, and that the licensee must furnish a copy of any written agency agreement to a client in a timely manner (R.C. 4735.55).

Definitions

(R.C. 4735.01)

The bill creates definitions for the following three distinct types of agency agreements:

"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 (signed and dated written agreement, expiration date, certain prohibitions related to civil rights law prohibitions against housing discrimination) 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.

"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.

"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.

In the case of an exclusive purchaser 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.

The bill relocates to the main definition section of R.C. Chapter 4735. the definition for "seller," currently now only applicable to the provision of the chapter governing specific agency relationships. While the definition now applies to the entire Real Estate Brokers and Salesperson Law, it appears to only have practical applicability to the existing agency relationship provisions and the new types of agency relationships being defined by the bill. That definition reads as follows:

"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.

Advertising

Under current law, any licensed real estate broker or salesperson who advertises to buy, sell, exchange, or lease real estate must be identified in the advertisement by name and indicate that the licensee is a real estate broker or real estate salesperson (R.C. 4735.16). The bill prohibits a real estate broker who is representing a seller under an exclusive right to sell or lease listing agreement from advertising 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.

Waiver of duties

Under current law, a "licensee" (i.e., any real estate broker or salesperson) must meet certain general fiduciary duties on behalf of a client (R.C. 4735.62). Also, a licensee is obligated to perform certain specific duties when representing a seller or a purchaser (R.C. 4735.63 and 4735.65).

The bill directs the Superintendent of Real Estate, with the approval of the Ohio Real Estate Commission, to establish, by rule, a "waiver of duties statement." The client may sign a waiver of duties statement to relieve the licensee from meeting certain specific duty requirements. However, the general fiduciary duties required of a licensee under section 4735.62 of the Revised Code may not be waived by a client (proposed R.C. section 4735.621). The bill requires that the waiver of duties statement contain the following:

- (1) A list of the general fiduciary duties required of all licensees;
- (2) A list of those duties a licensee owes to either a seller or buyer, which must 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 (R.C. 4735.621).

Duties of a licensee representing a seller

Under current law, in representing a seller in an agency relationship, a real estate broker or salesperson must: (1) seek a purchase offer at a price and with terms acceptable to the seller, (2) present any purchase offer to the seller in a

timely manner, and (3) provide the seller with a copy of any agency disclosure form signed by the purchaser. The bill retains the first two duties described above, drops the third requirement regarding any agency disclosure form, and adds the following new duties:

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

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

(3) 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 (R.C. 4735.63).

Duties of a licensee representing a purchaser

Under current law, in representing a purchaser in an agency relationship, a real estate broker or salesperson must: (1) seek a property at a price and with purchase or lease terms acceptable to the purchaser, and (2) present any offer to purchase or lease to the seller or the seller's agent in a timely manner. The bill retains these two duties and adds the following new duties:

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

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

(3) Accept delivery of and present any counteroffers to the purchaser in a timely manner;

(4) 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 (R.C. 4735.65).

Broker authorization to negotiate

The bill grants to 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--the express authority to authorize other licensees to negotiate directly with that client. The authorization

must be in writing and comply with the general fiduciary duty requirements of the law (R.C. 4735.75).

The term "negotiate" is defined to mean any of 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.

Practice of law disclaimer

In connection with the duties a real estate broker and salesperson owes to a seller, and the separate list of duties owed to a buyer, the bill stipulates that nothing in the list of duties can be construed to authorize a licensee to practice law (R.C. 4735.63(C) and 4735.65(C)).

HISTORY

ACTION	DATE
Introduced	01-31-06
Reported, H. Financial Institutions, Real Estate and Securities	---

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