



# Ohio Legislative Service Commission

## Bill Analysis

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### Am. H.B. 532\*

131st General Assembly  
(As Reported by H. Commerce and Labor)

Rep. R. Smith

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## BILL SUMMARY

- Permits the pre-licensure, post-licensure, and continuing education requirements for real estate brokers and salespersons to be completed by distance education.
- Requires the education courses to be credit-eligible.
- Provides that successful completion of the education requirements is to be determined by the law in effect on the date the course was completed.
- Requires that for noncredit course offerings, an institution of higher education must obtain approval from the appropriate state authorizing entity prior to offering a real estate course that is designed and marketed as satisfying the salesperson license education requirements.
- Increases from 10 to 20 the number of hours of post-licensure instruction a real estate salesperson must complete and mandates the instruction cover certain areas.
- Requires the continuing education requirements for a licensee include a three-hour course on the duties of a principal broker and issues involved in operating a brokerage and permits the course to be completed by classroom instruction or distance education.
- Permits, upon request of the Superintendent of Real Estate and Professional Licensing, the Department of Higher Education to review the programs offered by an institution of higher education as the pre-licensure education requirements for licensees.

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\* This analysis was prepared before the report of the House Commerce and Labor Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Permits a brokerage to apply for and use more than one trade name and permits the Superintendent to approve the use of more than one trade name by a brokerage.
- Requires the Superintendent to approve the use of a trade name by a brokerage if the name meets certain criteria.
- Establishes three subcategories of real estate brokers: principal broker, management level licensee, and associate broker.
- Requires each brokerage to designate at least one affiliated broker to act as the principal broker of the brokerage.
- Tasks the principal broker with complying with specified duties enumerated in the Ohio Real Estate Brokers and Salespersons Law and rules adopted by the Ohio Real Estate Commission and the Superintendent.
- Permits the principal broker to assign any of the enumerated duties to a management level licensee.
- Provides that a foreign or domestic real estate broker or salespersons can be either an employee or an independent contractor of a brokerage.
- Requires the Ohio Real Estate Commission to adopt rules that permit a broker to act as a principal broker for more than one brokerage.
- Specifies that a licensee can release a client's earnest money from a trust fund or other special account if the parties provide a broker with separate written instructions signed by both parties.
- Adds to the list of reasons for which the Superintendent can impose disciplinary sanctions on a licensee that the person acted without authority or impeded the ability of a principal broker or management level licensee in the performance of their duties.
- Establishes additional disclosure requirements for contemporaneous offers.

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## **CONTENT AND OPERATION**

### **Licensee education requirements**

The bill makes a number of changes to the education requirements for real estate brokers and salespersons, including permitting coursework to be completed by distance education, modifying the post-licensure education requirements for real estate salespersons, and establishing additional requirements for the continuing education

coursework for a licensee (any individual licensed as a real estate broker or salesperson by the Ohio Real Estate Commission).<sup>1</sup>

### **Definition of "institution of higher education"**

The bill amends the definition of "institution of higher education" to mean any of the following:

- A state institution of higher education;
- A nonprofit institution issued a certificate of authorization to issue degrees by the Chancellor of Higher Education;
- A private institution exempt from regulation as a proprietary school under continuing law;
- An institution with a certificate of registration as a private career school from the State Board of Career Colleges and Schools that is approved to offer associate degree, certificate, or diploma programs.

Under current law, an "institution of higher education" means a nonprofit institution or an institution operated for profit that otherwise qualifies as an institution under current Educational Corporation Law that actually awards, rather than intends to award, degrees for fulfilling requirements of academic work beyond high school.<sup>2</sup>

### **Pre-licensure education requirements**

Continuing law establishes pre- and post-licensure education requirements for real estate brokers and salespersons. The bill modifies these requirements by permitting this required education to be completed by either classroom instruction or distance education (where the teacher and student are separated by distance or time, or both) and requiring the education to consist of courses that are credit-eligible. A "credit-eligible course" is a credit or noncredit-bearing course that (1) is offered by an institution of higher education and (2) is eligible for academic credit that may be applied toward the requirements for a degree at the institution of higher education. Additionally, the bill specifies that successful completion of any required course is to be determined by the law in effect on the date the course was completed. Current law

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<sup>1</sup> R.C. 4735.01(EE).

<sup>2</sup> R.C. 4735.01(D).



requires the pre-licensure education to be completed by classroom instruction and does not mandate that the courses be credit-eligible.<sup>3</sup>

The bill requires that for noncredit course offerings, an institution of higher education must obtain approval from the appropriate state authorizing entity prior to offering a real estate course that is designed and marketed as satisfying the salesperson license education requirements. The entity may consult with the Superintendent in reviewing the course for compliance.<sup>4</sup>

The bill increases from 10 to 20 the number of hours of post-licensure instruction a real estate salesperson must complete within 12 months of the date of issue of the license. It also mandates that the instruction include current practices relating to commercial real estate, property management, short sales, and land contracts; contract law; federal and state programs; economic conditions; and fiduciary responsibility.<sup>5</sup>

### **Continuing education**

Continuing law generally requires a real estate salesperson or real estate broker to complete 30 hours of continuing education every three years. The bill adds to this mandate by requiring the continuing education for a broker, broker on deposit, or someone acting as a management level licensee to include a three-hour course on the duties of a principal broker and other issues involved in operating a real estate brokerage. This requirement can be completed by either classroom or distance education.<sup>6</sup>

### **Approval of course material**

Under the bill, at the request of the Superintendent of Real Estate and Professional Licensing, the Department of Higher Education may, in consultation with the Division of Real Estate, perform a review of the programs offered by an institution of higher education pursuant to the pre-licensure education requirements for real estate brokers and salespersons. The Superintendent or the Chancellor of Higher Education can request any information the Superintendent or Chancellor considers necessary to perform the review.<sup>7</sup>

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<sup>3</sup> R.C. 4735.01(CC) and (DD), 4735.07(B)(6), (7), and (G), and 4735.09(F)(6), (G), (I), and (J).

<sup>4</sup> R.C. 4735.09(H).

<sup>5</sup> R.C. 4735.09(J) with a conforming change in R.C. 4735.10(A)(2)(c).

<sup>6</sup> R.C. 4735.141(A).

<sup>7</sup> R.C. 4735.23.

## Brokerages

### Brokerage trade names

The bill permits a real estate brokerage to apply for and use more than one trade name (business name) and requires the Superintendent to approve a brokerage's proposed trade name under certain circumstances. Under the bill, a "brokerage" is a corporation, partnership, limited partnership, association, limited liability company, limited liability partnership, or sole proprietorship, foreign or domestic, that has been 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.<sup>8</sup>

Continuing law, unchanged by the bill, requires an applicant for a real estate broker's license to submit an application to the Superintendent. If the applicant is a business, the Superintendent has the right to reject the application if the proposed trade name is likely to mislead the public or if the name is not distinguishable from an existing brokerage.<sup>9</sup> The bill adds a new duty and requires the Superintendent to approve the use of a trade name by a brokerage if the name meets both of the following criteria:

- The proposed name is not the same as or is clearly distinguishable from a name registered with the Division of Real Estate and Professional Licensing by another existing brokerage. However, if the proposed name is not clearly distinguishable from another existing brokerage, the Superintendent can approve use of the name if the written consent of the existing brokerage with the same or similar name is filed with the Superintendent.
- The name is not misleading or likely to mislead the public.

The bill also permits the Superintendent to approve more than one trade name for a brokerage. In such a circumstance, the approved trade names are the only identifying names that can be used by the brokerage in advertising.<sup>10</sup>

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<sup>8</sup> R.C. 4735.01(BB), with a conforming change in R.C. 4735.51.

<sup>9</sup> R.C. 4735.06(B)(1).

<sup>10</sup> R.C. 4735.06.



## Broker hierarchy

The bill establishes three categories of brokers: principal brokers, management level licensees, and associate brokers. A "principal broker" means an individual licensed as a real estate broker who oversees and directs the operations of the brokerage. A "management level licensee" is 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. Finally, an "associate broker" means an individual licensed as a real estate broker who does not function as the principal broker or a management level licensee.<sup>11</sup>

## Principal broker duties

Each brokerage, under the bill, must designate at least one affiliated broker to act as the principal broker of the brokerage. The Superintendent can permit a broker to be licensed with and act as the principal broker for more than one brokerage. Any affiliated broker not designated as the principal broker is an associate broker or management level licensee for that brokerage. Each brokerage must report any change in principal broker to the Superintendent within 15 days after the change.<sup>12</sup>

The bill requires every principal broker of a brokerage to do all of the following:

- Oversee and direct the operations of the brokerage;
- Comply with the brokerage office requirements established under Ohio's Real Estate Brokers and Salespersons Law;
- Display the fair housing statement in the brokerage offices and on pamphlets as required by the Real Estate Brokers and Salespersons Law and rules adopted by the Ohio Real Estate Commission;
- Renew the licenses of the brokerage and any branch offices, and pay the fees required by the Real Estate Brokers and Salespersons Law and Commission rules;
- Maintain the licenses of the brokerage and affiliated salespersons and brokers;
- Return the license of terminated salespersons and brokers as required under the Real Estate Brokers and Salespersons Law;

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<sup>11</sup> R.C. 4735.01(AA), (FF), and (GG), with a conforming change in R.C. 4735.51.

<sup>12</sup> R.C. 4735.081(A), (B), and (E).



- Comply with the trust or special bank account requirements set forth in the Real Estate Broker and Salespersons Law and Commission rules;
- Maintain complete and accurate trust account records and transaction records as required by the Real Estate Brokers and Salespersons Law and Commission rules;
- Develop and maintain a written company policy on agency relationships as required by the Real Estate Brokers and Salespersons Law and rules adopted by the Superintendent;
- Develop a written brokerage policy on agency as required by the Real Estate Brokers and Salespersons Law;
- Pay affiliate licensees as required by the Real Estate Brokers and Salespersons Law;
- Establish practices and procedures to assure that only affiliated licensees perform and are compensated for performing the licensed activity;
- Establish practices and procedures to assure compliance with the advertising requirements established in the Real Estate Brokers and Salespersons Law and Commission rules;
- Generally oversee the licensed activity of affiliated licensees and assure that affiliated licensees are providing real estate services within their area of competency or are working with another affiliated licensee who possesses such a competency.

The principal broker can assign any of these duties to a management level licensee.<sup>13</sup>

The bill specifies that none of these duties are to be construed prima facie evidence of whether an affiliated licensee is an independent contractor or an employee of the brokerage.<sup>14</sup>

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<sup>13</sup> R.C. 4735.081(C) and (D).

<sup>14</sup> R.C. 4735.081(F).



## **Status of licensees associated with a brokerage**

The bill provides that a real estate broker, real estate salesperson, foreign real estate dealer, and foreign real estate salesperson can be either an employee or an independent contractor of a brokerage.<sup>15</sup>

## **Rules**

The bill requires the Ohio Real Estate Commission to adopt reasonable rules that permit a broker to act as a principal broker for more than one brokerage and establish procedures for the application and approval of more than one trade name for a brokerage.<sup>16</sup>

## **Trust accounts**

The bill modifies the current law requirement that a real estate broker must maintain earnest money connected to a real state purchase agreement in a trust or special account until certain events occur. It specifies that one of the events is if the parties provide the broker with separate written instructions signed by both parties that specify how the broker is to disburse the earnest money. Current law does not require the written instructions to be separate.<sup>17</sup>

## **Disciplinary sanctions**

In addition to the conduct for which the Superintendent can impose disciplinary sanctions under continuing law, the bill also permits disciplinary sanctions on a licensee who is found guilty of acting as a broker without authority and impeding the ability of a principal broker to impose any of the principal broker's duties enumerated in the bill, or impeding the ability of a management level licensee to perform the licensee's duties.<sup>18</sup>

## **Contemporaneous offers**

The bill establishes additional disclosure requirements for contemporaneous offers. A "contemporaneous offer" is an offer to purchase or lease on behalf of two or more clients represented by the same licensee for the same property that the licensee

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<sup>15</sup> R.C. 4735.091.

<sup>16</sup> R.C. 4735.10(A)(1)(g) and (B)(2).

<sup>17</sup> R.C. 4735.24(A).

<sup>18</sup> R.C. 4735.18(A).





knows or has reason to know will be taken under consideration by the owner or the owner's authorized representative during the same period of time.<sup>19</sup>

Under the bill, it is not a breach of any duty or obligation to the purchaser for a broker or salesperson to prepare or present contemporaneous offers to purchase or lease the same property. Specifically, it is not a breach of the duty of confidentiality to any client for a broker or salesperson to disclose the fact of contemporaneous offers, but the licensee must keep confidential between the purchasers the identity of the purchasers and the terms of the offers.

Prior to preparing a contemporaneous offer, the bill requires the licensee to disclose that fact to all clients for whom the licensee is preparing or presenting the contemporaneous offers and must refer to another licensee any client who requests a referral. The required disclosure must be provided in writing unless it cannot be delivered in a timely manner, in which case the disclosure must be provided verbally.<sup>20</sup>

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## HISTORY

ACTION	DATE
Introduced	04-25-16
Reported, H. Commerce & Labor	---

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<sup>19</sup> R.C. 4735.51.

<sup>20</sup> R.C. 4735.65(B).

