



# Ohio Legislative Service Commission

## Bill Analysis

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

131st General Assembly

(As Reported by S. Transportation, Commerce & Labor)

**Reps.** R. Smith, Antani, Baker, Bishoff, Clyde, Derickson, DeVitis, Dovilla, Leland, Lepore-Hagan, McClain, Reineke, Rogers, Ruhl, K. Smith, Sprague, Sweeney, Young

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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 pre-licensure 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 for real estate salespersons, an institution of higher education must obtain approval from the appropriate state authorizing entity prior to offering a course to satisfy 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 real estate broker or salesperson acting as a management level licensee include a three-hour course on the duties of a principal broker and issues involved in operating a brokerage.
- Permits 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 Senate Transportation, Commerce and Labor Committee appeared in the Senate 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 of Real Estate and Professional Licensing 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 brokerage's principal broker.
- Tasks the principal broker with complying with specified duties enumerated in the Ohio Real Estate Brokers and Salespersons Law and associated rules.
- Permits the principal broker to assign any of the principal broker's duties to a management level licensee.
- Provides that a foreign or domestic real estate broker or salesperson can be either an employee or an independent contractor of a brokerage.
- Specifies that a real estate broker 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.
- Permits the Superintendent to impose disciplinary sanctions on a broker or salesperson who acted as a broker 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 real estate brokers or salespersons.<sup>1</sup>

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



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

To be licensed as a real estate broker or salesperson under continuing law, an applicant must have successfully completed certain educational requirements at an institution of higher education.<sup>2</sup> 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;
- 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 degree, certificate, or diploma programs.

Under current law, an "institution of higher education" means a nonprofit institution, or a for-profit institution 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>3</sup>

## **Pre- and post-licensure education requirements**

Continuing law establishes pre- and post-licensure education requirements for real estate brokers and salespersons. The bill modifies these requirements by:

(1) Permitting the required pre- and post-licensure education to be completed by distance education (which uses interactive electronic media where the teacher and student are separated by distance or time, or both); and

(2) Requiring the pre-licensure education to consist of courses that are credit-eligible. A "credit-eligible course" is a credit or noncredit-bearing course that (a) is offered by an institution of higher education and (b) is eligible for academic credit that may be applied toward the requirements for a degree at the institution of higher education.

The bill requires an institution of higher education to obtain approval from the appropriate state authorizing entity prior to offering a noncredit real estate course to

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<sup>2</sup> R.C. 4735.07(B)(6) and 4735.09(F)(6).

<sup>3</sup> R.C. 4735.01(D).



satisfy the real estate salesperson license education requirements. The authorizing entity can consult with the Superintendent in reviewing the course for compliance.<sup>4</sup>

Successful completion of any required course is to be determined by the law in effect on the date the course was completed. If the educational requirements change in the time between when the applicant completes the coursework and the time of the application, the applicant is not required to return to an institution of higher education.<sup>5</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 after the license is issued. 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>6</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 additionally requires 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 course can be completed by either classroom or distance education.<sup>7</sup>

### **Approval of course material**

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

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

<sup>5</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>6</sup> R.C. 4735.09(J) with a conforming change in R.C. 4735.10(A)(2)(c).

<sup>7</sup> R.C. 4735.141(A).



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 needed to perform the review.<sup>8</sup>

## 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 foreign or domestic sole proprietorship 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>9</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 (1) the proposed trade name is likely to mislead the public or (2) if the name is not distinguishable from an existing brokerage.<sup>10</sup> The bill additionally requires the Superintendent to approve a brokerage's use of a trade name if the name meets both of the following criteria:

- The proposed name is not the same as or is clearly distinguishable from a name already registered by another brokerage. (However, if the proposed name is not clearly distinguishable from another existing brokerage, the Superintendent can approve use of the name with the written consent of the other brokerage.)
- The name is not misleading or likely to mislead the public.

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<sup>8</sup> R.C. 4735.23.

<sup>9</sup> R.C. 4735.01(BB), with a conforming change in R.C. 4735.51. These definitions previously applied only to the agency relationship portions of the Real Estate Brokers and Salesperson Law. The bill applies these definitions to the whole law.

<sup>10</sup> R.C. 4735.06(B)(1).



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>11</sup>

### **Broker hierarchy**

The bill establishes three categories of brokers: principal brokers, management level licensees, and associate brokers. A "principal broker" is a licensed a real estate broker who oversees and directs the operations of the brokerage. A "management level licensee" is a licensed real estate broker or salesperson who is employed by or affiliated with a real estate broker and who has supervisory responsibility over other licensed brokers or salespersons employed by or affiliated with that broker. Finally, an "associate broker" is a licensed real estate broker who does not function as the principal broker or a management level licensee.<sup>12</sup>

### **Principal broker duties**

Each brokerage, under the bill, must designate at least one affiliated broker to act as the brokerage's principal broker. The Superintendent can permit a broker to act as the principal broker for more than one brokerage. Any other affiliated broker is an associate broker or management level licensee for that brokerage. A brokerage must report any change in principal broker to the Superintendent within 15 days after the change.<sup>13</sup>

The bill requires every principal broker of a brokerage to comply with the following duties established under the Real Estate Brokers and Salespersons Law and rules adopted by the Ohio Real Estate Commission or the Superintendent of Real Estate:

- Oversee and direct the operations of the brokerage;
- Comply with the brokerage office requirements regarding having a definite place of business, displaying the license, and signage;
- Display the fair housing statement in the brokerage offices and on pamphlets;
- Renew the licenses of the brokerage and any branch offices, and pay any required fees;

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<sup>11</sup> R.C. 4735.06.

<sup>12</sup> R.C. 4735.01(AA), (FF), and (GG), with a conforming change in R.C. 4735.51.

<sup>13</sup> R.C. 4735.081(A), (B), and (E).



- Maintain the licenses of the brokerage and affiliated salespersons and brokers;
- Return the license of terminated salespersons and brokers;
- Comply with trust or special bank account requirements;
- Maintain complete and accurate trust account records and transaction records;
- Develop and maintain a written company policy on agency relationships;
- Develop a written brokerage policy on agency;
- Pay affiliate licensees;
- 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 advertising requirements;
- 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>14</sup>

The bill specifies that none of these duties are prima facie evidence of whether an affiliated licensee is an independent contractor or an employee of the brokerage.<sup>15</sup>

### **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>16</sup>

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<sup>14</sup> R.C. 4735.081(C) and (D).

<sup>15</sup> R.C. 4735.081(F).

<sup>16</sup> R.C. 4735.091.



## Rules

The bill permits the Ohio Real Estate Commission to adopt 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>17</sup>

### Disbursement of earnest money

Under current law, a real estate broker generally must maintain earnest money connected to a real estate purchase agreement in a trust or special account. But, the broker may disburse the earnest money pursuant to written instructions signed by both parties. Under the bill, the parties must submit separate written instructions.<sup>18</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 licensed broker or salesperson who is found guilty of:

- Acting as a broker without authority;
- 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>19</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;

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<sup>17</sup> R.C. 4735.10(A)(1)(g) and (B)(2).

<sup>18</sup> R.C. 4735.24(A).

<sup>19</sup> R.C. 4735.18(A).





- That the licensee knows or has reason to know will be taken under consideration during the same period of time.<sup>20</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 the clients 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>21</sup>

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## HISTORY

ACTION	DATE
Introduced	04-25-16
Reported, H. Commerce & Labor	05-25-16
Passed House (91-6)	05-25-16
Reported, S. Transportation, Commerce & Labor	---

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<sup>20</sup> R.C. 4735.51.

<sup>21</sup> R.C. 4735.65(B).

