

CSI - Ohio

The Common Sense Initiative

Business Regulation Impact Analysis

Agency Name: Ohio Dept. of Commerce, Division of Real Estate & Professional Licensing

Regulation/Package Title: OAC 1301:5 5 Year Rule Review

Rule Number(s): 1301:5-1-01 (No Change); 1301:5-1-02 (Amendment); 1301:5-1-03 (Amendment); 1301:5-1-04 (Amendment); 1301:5-1-05 (Amendment); 1301:5-1-06 (Amendment); 1301:5-1-07 (No change); 1301:5-1-09 (No Change); 1301:5-1-12 (Amendment); 1301:5-1-13 (No Change); 1301:5-1-14 (No Change); 1301:5-1-15 (No change); 1301:5-1-16 (No Change); 1301:5-1-17 (Rescind/New); 1301:5-1-18 (Amendment); 1301:5-1-19 (Amendment); 1301:5-1-20 (No Change); 1301:5-1-21 (Amendment); 1301:5-1-22 (Amendment); 1301:5-1-23 (No Change); 1301:5-3-01 (No Change); 1301:5-3-02 (Amendment); 1301:5-3-03 (No Change); 1301:5-3-04 (Amendment); 1301:5-3-06 (No Change); 1301:5-3-07 (Amendment); 1301:5-3-09 (Amendment); 1301:5-3-13 (Amendment); 1301:5-3-14 (Amendment); 1301:5-3-15 (Amendment); 1301:5-3-16 (Amendment); 1301:5-5-01 (Amendment); 1301:5-5-06 (Amendment); 1301:5-5-07 (Amendment); 1301:5-5-08 (No Change); 1301:5-5-09 (No Change); 1301:5-5-11 (Amendment); 1301:5-5-23 (No Change); 1301:5-5-24 (Amendment); 1301:5-5-25 (NEW); 1301:5-5-30 (No Change); 1301:5-6-01 (No Change); 1301:5-6-02 (No Change); 1301:5-6-03 (Amendment); 1301:5-6-04 (No Change); 1301:5-6-05 (Amendment); 1301:5-6-06 (No Change); 1301:5-6-07 (No Change); 1301:5-6-08 (Amendment); 1301:5-6-09 (No Change); 1301:5-6-10 (Rescind/New); 1301:5-7-02 (Amendment); 1301:5-7-03 (Amendment); 1301:5-7-04 (Amendment)

Date: _____

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Rule Type:

☒ New

☒ 5-Year Review

☒ Amended

☒ Rescinded

Is this rule required to meet a deadline? (Yes or No): Yes

If yes, what is the nature of the deadline and by what date does the rule need to be filed with JCARR to meet the deadline?

Five year rule review, June 24, 2012

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language. *Please include the key provisions of the regulation as well as any proposed amendments.*

SEE ATTACHMENT A

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.
ORC 4735.10, 4735.15, 4735.621, 5302.30.
3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program?
If yes, please briefly explain the source and substance of the federal requirement.
1301:5-1-6-04 uses the definition of blockbusting from 24 C.F.R. 100.85
4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for not incorporating the federal counterpart.

This does not apply.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules, which are promulgated pursuant to the requirements of Revised Code Chapter 4735 protect the public in the sale, purchase, exchange, rent, and lease of real estate. A real estate broker and salesperson is a licensed profession guiding the public through what is often the largest consumer transaction they will conduct. The consumer places trust in the real estate licensee. Also, in the course of their job duties, licensees routinely handle consumers' moneys such as earnest money deposits, rents, and security deposits. The rules provide for minimum guidelines of professional responsibility and increase Division efficiency in processing applications and investigating enforcement actions while keeping operating costs to a minimum.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The rules are successful when consumers are protected, licensees have professional guidelines for interacting with consumers and when consumer money is not lost or misused by real estate licensees. The rules are also successful when licensees have procedures for interacting with the division which in turn enables the division to conduct business in the most efficient manner possible while keeping costs to a minimum.

The division has the ability to investigate consumer complaints and conduct compliance audits to ensure that licensees are in compliance with the rules. In addition, the division has open lines of communication with the industry and encourages input from the industry on how well a regulation is working and whether or not improvements in the law can be made.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Division routinely receives comments from both the Ohio Real Estate Commission, the public, and licensees concerning the rules and whether they require modification. During the five year rule review process the Division reached out to the Ohio Association of Realtors in early April 2011. Multiple in-person meetings with the OAR, Superintendent, and Division Counsel were held concerning all of OAC Chapter 1301:5.

In November 2011, brokers with 100+ agents were emailed the changes concerning advertising rules and they were provided the opportunity to respond with comments. These comments were considered during the rule review process. In January 2012, education providers were emailed the changes concerning education rules and were provided the opportunity to respond with comments. These comments were also considered during the rule review process.

In April 2012 the division presented and discussed the proposed changes to the residential property disclosure form with the Columbus Bar Association's real property law committee.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

The Ohio Real Estate Commission reviewed proposed rules at their November and December 2011 meetings and the January, February, and May 2012 meetings. The Commission voted to file these rules as provided in this packet.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The stakeholders were supportive of the majority of the proposed rules. In some cases, stakeholders recommended refinements, which were incorporated in the proposed changes. For Example: 1301:5-5-7-03(H) had an original proposed change of continuing education providers reporting a list of licensees who successfully completed a continuing education course to the division within 7 days of the offering. The providers' feedback mainly stated that a shortened reporting period was too burdensome on providers. After additional communications with providers notifying them the change was to enable licensees a more streamlined continuing education reporting process that could occur online, providers and the Division came to a consensus that a 10 day reporting period was acceptable.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

N/A

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Real estate brokers and salespeople in Ohio are licensed through Revised Code Chapter 4735. The Revised Code mandates that the agency adopt rules necessary for implementing the provisions of Chapter 4735 relating to but not limited to licensing activities, enforcement activities, and education guidelines.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The rules are regulatory in nature and are required by provisions in Revised Code Chapter 4735. The rules are a product of thorough industry and division review. They are intended to protect consumer transactions, to provide minimum guidelines of professional responsibility and to increase Division efficiency while keeping operating costs to a minimum

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing regulation?

The Division is the only agency that regulates real estate licensees.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

The Division plans to publish articles explaining the new changes in its quarterly newsletter and on its website. The Division also intends to conduct public outreach events in the form of continuing education to licensees to cover all rule changes made during the five year rule review.

The Division is easily accessible by email and telephone for questions from the community. When investigating cases, the current operating procedure for investigations is that Division legal counsel will review the recommendation of investigators to ensure consistent application of the laws. The Superintendent reviews all final recommendations on enforcement actions which also ensures that the laws are being consistently applied. By using this process the Division safeguards that licensees are aware of how the laws are being applied. In addition, the Division publishes a quarterly newsletter that includes disciplinary actions taken against licensees. The newsletter includes the violations and discipline received.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

SEE ATTACHMENT B

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The proposed changes were supported by a broad base of stakeholders.

These rules help protect the public by ensuring that brokers are properly overseeing the operations of the business and properly supervising salespeople. The rules ensure that licensees are not helping others circumvent license law and that consumers are fully informed during a transaction. These rules also provide guidelines and maintain professional standards within the real estate industry and enable the Division to conduct thorough investigations of a complaint.

Real estate licensees routinely handle consumers' moneys received in a fiduciary capacity such as escrow funds and security deposits. The rules contained in this packet provide guidelines for the handling and maintaining of consumer funds received by the licensee and prevents the comingling of consumer funds and brokerage operating funds. The rules also help ensure the safety of consumer funds and increases consumer confidence that their funds will be safe when held by real estate licensees.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

The regulations involving fees offset the cost of processing applications and license changes filed with the division. When an application is received, either customer service or the mail room receives and date stamps the application. The fiscal section processes the check. A licensing examiner then reviews and processes the application; inputting the updated information into the Division's licensing system and if required printing and mailing a new license to the licensee. A name reservation application also receives the review of the licensing manager and Superintendent before being processed.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

There are no exemptions or alternative means of compliance for small businesses. The division follows the same investigative procedure for all complainants and the application process is no different for small or big businesses.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Paperwork mistakes on applications and forms filed with the division are often caught by division employees prior to the licensee's filing deadline and the licensee is notified in order to obtain the correct paperwork without any detriment to the licensee or applicant.

If the Division received a complaint concerning an allegation that the licensee failed to comply with the rules contained in this packet, the Superintendent has the authority to issue advisory letters in lieu of initiating disciplinary action. The issuance of an advisory letter will notify the licensee of the violation and will help them come into compliance with license law. In addition, if the Division conducts a compliance audit on a company and finds they are violating license law the Division notifies the business of the violation and will help the business come into compliance.

18. What resources are available to assist small businesses with compliance of the regulation?

The Division is easily accessible by email and telephone for questions from the community. The division's website also has a wealth of information including samples of documents such as a trust account log and links to forms such as the agency disclosure form and the residential property disclosure form. In addition, if the Division conducts a compliance audit on a company and finds they are violating license law the Division notifies the business of the violation and will help the business come into compliance.

BIA
ATTACHMENT A

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment A

1301:5-1-01 – Prescribing the procedure of the Ohio real estate commission, department of commerce, state of Ohio, in giving public notice, as required by law, of intention to consider adopting, amending or rescinding a rule or regulation

INTENT: This rule provides the procedure in giving public notice, as required by law, of intention to consider adopting, amending or rescinding a rule or regulation.

NO CHANGES PROPOSED

1301:5-1-02 – Advertising

INTENT: This rule details the advertising requirements for licensees.

CHANGES PROPOSED: Clarifies proper name identification in advertisements; what constitutes advertising, including social networking sites and blogs; and how to comply with advertising requirements in medium with limited information or characters.

1301:5-1-03 – Regarding licenses

INTENT: The rule specifies requirements for licenses issued to entities.

CHANGES PROPOSED: Clarifies that at least one individual broker affiliated with a licensed corporation, LLC or association must be a member or officer of such. This creates consistency within the rule.

1301:5-1-04 – Applications

INTENT: Provides the requirements for filing applications with the Division and discusses what happens when an applicant's check is returned for insufficient funds.

CHANGES PROPOSED: Proposed language specifies how a broker sponsoring a sales applicant may withdraw sponsorship.

1301:5-1-05 – Examinations

INTENT: This rule sets the process for taking licensing examinations.

CHANGES PROPOSED: Proposed language requires the applicant to bring a second form of identification to the testing location to verify his or her identity to the testing vendor.

1301:5-1-06 – Broker return of licenses, notification of salesperson termination

INTENT: This rule sets forth when and how a broker must return individual licenses to the Division and what notice a salesperson must provide to the broker when leaving the association of that broker.

CHANGES PROPOSED: The old rule provided that a broker would only return a salesperson's license upon request of the superintendent. This has been removed to reduce redundancy.

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment A

1301:5-1-07 – Placing a brokers license on deposit

INTENT: This rule sets the procedure for a broker to place the license inactive or “on deposit.”

NO CHANGES PROPOSED

1301:5-1-09 – Fees by rules

INTENT: This rule provides for fees associated with the replacement of any license; the reactivation of an inactive salesperson's license or for a broker's license on deposit; a name change; licensure certification; and the reservation of a name.

NO CHANGES PROPOSED

1301:5-1-12 – Open public meetings

INTENT: This rule sets forth the procedure for providing notice of public meetings.

CHANGES PROPOSED: Clean-up of the rule including updating the Division’s email address.

1301:5-1-13 – Failure to comply with a subpoena as evidence of misconduct

INTENT: This rule provides that a failure to comply with a subpoena issued pursuant to ORC 4735.04 is evidence of misconduct.

NO CHANGES PROPOSED

1301:5-1-14 – Use of name or license for benefit of others

INTENT: This rule provides that the use of a licensee’s name or license for the benefit of others constitutes misconduct and that lending a broker’s license whereby the broker fails to oversee and direct the operations of the business constitutes misconduct.

NO CHANGES PROPOSED

1301:5-1-15 – Education requirements for brokers and salespersons

INTENT: This rule clarifies when an individual must take pre- and post- licensure education and how to establish satisfactory completion.

NO CHANGES PROPOSED

1301:5-1-16 – Effective date of licensure

INTENT: This rule specifies the effective date of licensure.

NO CHANGES PROPOSED

1301:5-1-17 – Stenographic record

INTENT: This rule provides that the Division shall provide audio recording of hearings.

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment A

CHANGES PROPOSED: The existing rule did not account for parties to an adjudication hearing requesting a stenographic service in addition to the Division's audio recording. The proposed rule clearly states the responsibilities of the parties when a stenographic service is requested.

1301:5-1-18 – Disciplinary sanctions

INTENT: This rule sets forth the procedures to be followed when a licensee is subject to disciplinary sanctions.

CHANGES PROPOSED: Proposed language allows the superintendent more discretion in granting extensions to pay fines. In addition, the rule clarifies the result of failing to reactivate the license 1 year after suspension and creates consistency with O.A.C.1301:5-1-19.

1301:5-1-19 – License reactivation

INTENT: This rule sets forth the process for reactivating a suspended or inactive license.

CHANGES PROPOSED: This rule has added a section for clarification on reactivating a license after returning from military duty and added another section on reactivating a license from a suspension under R.C. 4735.13(C). This is a result of statute changes in R.C. 4735.13(C).

1301:5-1-20 – Annual brokerage assessment

INTENT: This rule sets forth the Division's procedure in calculating and mailing annual brokerage assessments. The fees are set by statute.

NO CHANGES PROPOSED

1301:5-1-21 – Team advertising

INTENT: This rule sets forth the requirements where a licensee advertises as being a part of a team.

CHANGES PROPOSED: Clean-up of the rule to reduce redundancy and new language defines the term "team."

1301:5-1-22 – Three year renewal

INTENT: This rule originally placed licensees on a staggered three year renewal cycle instead of an annual renewal.

CHANGES PROPOSED: The three year license renewal has been in place since 2006. All licensees are on the three year renewal cycle therefore outdated language has been stricken and new language added.

1301:5-1-23 – Criminal records check

INTENT: This rule sets forth the procedure for an applicant or licensee to submit to a criminal records check when so requested by the Superintendent.

NO CHANGES PROPOSED

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment A

1301:5-3-01 – Superintendent's report to the commission on division activities

INTENT: This rule provides for the superintendent's report to the commission on Division activities.

NO CHANGES PROPOSED

1301:5-3-02 – Recommendation and appointment of ancillary trustees

INTENT: Ancillary trustees are appointed to close down a real estate company of a deceased, revoked, or suspended broker.

CHANGES PROPOSED: Proposed language provides that ancillary trustees will provide a report to the superintendent at the conclusion of closing the business. This will improve tracking of trustees for the Division's records and confirm with the Division that the business has been properly shutdown according to license law.

1301:5-3-03 – Approval and rejection of brokerage business names

INTENT: This rule explains the requirements that the Superintendent looks at when approving or rejecting brokerage business names.

NO CHANGES PROPOSED

1301:5-3-04 – Equivalent experience for broker licensing

INTENT: An applicant to a broker's examination must meet minimum qualifications; one of which is to have completed twenty real estate transactions.

CHANGES PROPOSED: Language has been added clarifying when and how an applicant to the broker's examination can request to use equivalent experience when not meeting the 20 transactions requirement of R.C. 4735.07(B)(5)(a).

1301:5-3-06 – Implied authority of officers

INTENT: This rule provides that if an officer or member of a company or entity is authorized, on behalf of the company or entity, to engage in activities that would require a real estate license, then the officer or member must be properly licensed.

NO CHANGES PROPOSED

1301:5-3-07 – Educational loans to individuals

INTENT: Pursuant to ORC 4735.06, the Ohio real estate commission may advance loans to applicants for a salesperson license to defray the costs of satisfying the educational requirements. This rule sets forth the procedure for obtaining and repaying that loan.

CHANGES PROPOSED: The proposed changes provide for a more streamlined procedure for repayment of the educational loan and permits outstanding loans to be referred to the Ohio Attorney General for collection proceedings. In addition language, has been changed in (H)(5) due to a statute change.

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment A

1301:5-3-09 – Reciprocity agreements

INTENT: This rule sets forth the way the Commission may enter into reciprocity agreements with other states.

CHANGES PROPOSED: Proposed language specifies that sales applicants applying for reciprocity must be non-residents. This adds consistency within the rule.

1301:5-3-13 – Reservation of name

INTENT: The rule addresses the procedure for reserving the exclusive right to use a specific business name.

CHANGES PROPOSED: The old rule only allowed one 60 day extension for the reservation of a business name. Proposed language removes that restriction and allows the superintendent to grant an extension of time as deemed appropriate.

1301:5-3-14 – Settlement agreements

INTENT: This rule sets forth certain requirements for settlement agreements entered into by the superintendent and a licensee that has been charged with violating license law.

CHANGES PROPOSED: Proposed language clarifies the purpose of the formal hearing of a settlement agreement by the commission and clarifies that if a settlement agreement is rejected by the commission that an ORC 119 hearing will be rescheduled.

1301:5-3-15 – Educational instruction

INTENT: A licensee is required by R.C. 4735.07 and R.C. 4735.09 to complete 10 hours of education within a year of initial licensure. This rule provides the allowable number of hours of instruction that may be completed in one day.

CHANGES PROPOSED: The old rule allowed only six hours of education in a calendar day. The new rule allows up to eight hours.

1301:5-3-16 – Education and research fund advisory committee

INTENT: The Ohio real estate commission administers the real estate research and education fund. The commission may appoint an advisory committee. This rule provides the process for appointing the committee and its procedure if established.

CHANGES PROPOSED: Provides for some clean-up of the rule. Proposed language also changes the minimum quarterly meetings to a minimum of an annual meeting. This is based upon previous committee needs.

1301:5-5-01 – Statement to be displayed in broker's office and included in information pamphlets

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment A

INTENT: This rule contains required language that must be displayed in every real estate broker's office.

CHANGES PROPOSED: There are minor proposed changes for clarification.

1301:5-5-06 – Referral fees paid to persons licensed in other states

INTENT: This rule specifies when and how an Ohio licensed broker may pay and/or receive referral fees from non-Ohio licensees.

CHANGES PROPOSED: Minor clean-up to mirror the recent update to R.C. Chapter 4735.

1301:5-5-07 – Licensure exemption; residential rental property

INTENT: This rule provides a specific licensure exemption for individuals working with residential rental properties under the supervision of a broker.

CHANGES PROPOSED: Provides clarification of how these individuals must be paid by the broker.

1301:5-5-08 – Handling of trust account funds

INTENT: This rule provides that the brokerage trust account must be identified as a trust or special account on deposit tickets and checks. The rule also provides that a broker may maintain a broker's own funds in the trust account in order to cover minimum balance requirements or service charges as long as the broker's funds are clearly identified. This prevents comingling of consumer funds with brokerage operating funds and ensures the safety of consumer's money.

NO CHANGES PROPOSED

1301:5-5-09 – Trust account records to be maintained

INTENT: This rule provides that trust account deposits/withdrawals must be tracked and specifies the minimum information a broker must maintain. This provides for the tracking of consumers' money and ensures the safety of that money.

NO CHANGES PROPOSED

1301:5-5-11 – Separate property management trust accounts

INTENT: Brokerages engaged in property management are required to maintain property management trust accounts. This rule sets forth the guidelines for maintaining those accounts.

CHANGES PROPOSED: Proposed language provides exceptions to the requirement of maintaining property management trust accounts. Exceptions are where a broker does not collect any money in a fiduciary capacity while managing real property or where a broker only maintains property management accounts in the name of the property owner.

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment A

1301:5-5-23 – Property management account(s) in the name of the owner

INTENT: This rule provides that a broker may enter into an agreement with a property owner which states the property management trust account will be in the name of the owner but that the broker has signatory authority for withdrawals. This provides a property owner/landlord more control over their money while still having the ability to hire a property manager.

NO CHANGES PROPOSED

1301:5-5-24 – Informal mediation meeting accommodations

INTENT: This rule sets out informal mediation procedures.

CHANGES PROPOSED: Proposed language adds the definition of mediation and provides clarification on when a complaint file shall be closed after successful mediation.

1301:5-5-25 – Reconsiderations

INTENT: This is a new rule drafted to clarify the process and procedure by which a person may request reconsideration under R.C. 4735.19.

CHANGES PROPOSED: This is a new rule drafted to clarify the process and procedure by which a person may request reconsideration of a commission order.

1301:5-5-30 – Waiver of duties statement

INTENT: This rule contains the waiver of duties statement in the appendix. The waiver of duties statement clearly explains to consumers what fiduciary duties are owed to them by the licensee and permits the consumer to knowingly waive certain fiduciary duties and sets forth which fiduciary duties may not be waived.

NO CHANGES PROPOSED

1301:5-6-01 – Management level licensee

INTENT: The rule identifies when a licensee would be found to be a management level licensee.

NO CHANGES PROPOSED

1301:5-6-02 – Open houses and referrals

INTENT: This rule provides the circumstances for when a licensee acting as an open house host on behalf of the listing agent may be considered to be an agent of the seller and explains when a referral fee must be disclosed to the parties in a real estate transaction.

NO CHANGES PROPOSED

1301:5-6-03 – Mandatory company policy

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment A

INTENT: R.C. 4735.54 requires each brokerage to develop and maintain written company policies on agency relationships and to ensure the protections of confidential information. The rule lays out the minimum requirements for written company policies.

CHANGES PROPOSED: Proposed language adds an additional requirement that all brokerages create procedures to protect consumers' confidential information on websites.

1301:5-6-04 – Agency agreements

INTENT: R.C. 4735.55 requires all agency agreements to contain fair housing language and notice to consumers that blockbusting is illegal. This rule clarifies that this language is only required where the transaction involves a property used as a home, residence, or sleeping place of one or more people. The rule also provides the explanation of blockbusting that must be contained in agency agreements.

NO CHANGES PROPOSED

1301:5-6-05 – Consumer guide to agency relationships

INTENT: This rule sets forth what disclosures need to be contained in the consumer guide to agency relationships as required by R.C. 4735.56.

NO CHANGES PROPOSED

1301:5-6-06 – Agency disclosure

INTENT: Pursuant to R.C. 4735.55, each brokerage must maintain a written brokerage policy on agency that must be provided to prospective sellers and purchasers. The guide is a written explanation of the brokerage's policy on representing purchasers and sellers. This rule provides the procedure a licensee must take when a purchaser or seller refuses to acknowledge receipt of the consumer guide.

NO CHANGES PROPOSED

1301:5-6-07 – Agency disclosure statement

INTENT: This rule contains the agency disclosure form in the appendix. The agency disclosure statement is a disclosure that must be provided to purchasers and sellers at the time of an offer indicating the licensee(s) involved in the real estate transaction and whom the licensee(s) represent in the transaction.

NO CHANGES PROPOSED

1301:5-6-08 – Appointment of licensees

INTENT: This rule provides that a client in an agency relationship with a licensee may delegate that licensee the authority to appoint other licensees in the brokerage to represent the client's interests.

CHANGES PROPOSED: Proposed language adds that if an appointment of a licensee creates a dual agency relationship that the seller and buyer must have knowledge and give written consent. This is consistent with requirements in R.C. 4735.57.

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment A

1301:5-6-09 – Negotiations with a purchaser or tenant

INTENT: This rule provides guidelines for a licensee on how to respect the exclusive agency of another licensee representing a purchaser or tenant.

NO CHANGES PROPOSED

1301:5-6-10 – Residential property disclosure form

INTENT: This rule contains the residential property disclosure form in the appendix. The residential property disclosure form is a statement of certain conditions and information concerning the property actually known by the owner. The form is provided to potential purchasers in transactions involving residential properties.

CHANGES PROPOSED: Proposed changes in the form include disclaimers about abandoned mines, and mineral rights. The form has also been revised to permit ease of use and understanding.

1301:5-7-02 – Continuing education requirements

INTENT: This rule lists the continuing education requirements for licensees.

CHANGES PROPOSED: Proposed language provides that the superintendent may conduct an audit to determine if licensees are in compliance with the rule and clarifies the procedure for completing continuing education when a licensee reactivates out of inactive status due to military service. The restriction on receiving no more than 15 hours of continuing education for subject matters concerning computer hardware or software as applied to the practice of real estate has been removed.

1301:5-7-03 – Criteria for course approvals

INTENT: This rule sets forth the criteria for continuing education course approvals.

CHANGES PROPOSED: Proposed language allows for the granting of instruction credit where refreshments are served but instruction continues. Proposed language also clarifies that instructors, seminar or conference leaders or lecturers are ineligible to serve as such if they have been convicted of a felony or crime of moral turpitude or have not established that they are honest, truthful and of good reputation. It also provides that a denial to be an instructor may be appealed to the commission. Allows class rosters of additional class offerings to be submitted within 10 days of the class offering instead of 20 days and adds a category to the acceptable topics of continuing education.

1301:5-7-04 – Distance education

INTENT: This rule defines distance education, the procedure for applying for course approval, and what topics are approved topics for distance education offerings.

CHANGES PROPOSED: Proposed language removes the restriction that distance education consists of no more than six hours of uninterrupted instruction. This adds consistency with rules for other education. Proposed language names additions to the list of acceptable topics for distance education.

(

(

(

BIA
ATTACHMENT B

(

(

(

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment B

LICENSING

<i>Rule</i>	<i>Scope of the impacted business community</i>	<i>Nature of adverse impact</i>	<i>Quantify the expected adverse impact</i>
1301:5-1-03 –Regarding licenses	Companies holding a real estate license.	This rule provides guidelines for a company holding a real estate license and contains the requirement that at least one individually licensed broker be affiliated with that company. If the licensed company is found to be in violation of the rule the Ohio Real Estate Commission may impose disciplinary sanctions.	
1301:5-1-04 – Applications	All applicants to licensure	This will impact the small group of applicants that file an incomplete or incorrect application. This will impact the applicant by the time required to correct the application and forfeiture of the application fee if corrections are not timely submitted. There is also a \$100 fee for the very small group of applicants that write a check to the division that is returned unpaid.	
1301:5-1-05 – Examinations	All applicants to licensure	The application fee of \$100 for a broker license and \$60 for a sales license are set by RC 4735.06 and RC 4735.09. The licensee will also expend time to fill out the license application.	
1301:5-1-06 – Broker return of licenses, notification of salesperson termination	All licensees	There is minimal time and expense if a broker chooses to terminate a salesperson. If a broker fails to return the license of a salesperson or broker at the superintendent's request, that broker could be subject to disciplinary action. Pursuant to ORC 4735.051(I), the Ohio Real Estate Commission has the authority to impose a range of sanctions: a public reprimand, additional education, a fine not to exceed \$2,500.00 per violation, a license suspension for a term set by the commission, and/or a revocation of the license. The sanctions are assessed based upon the violation found, individual facts of the case and mitigating circumstances in each case.	
1301:5-1-07 – Placing a brokers license on deposit	A broker that decides to place their license on deposit (i.e. inactive).	The licensee will spend time to fill out and file the form with the division. If the action causes the closing of the brokerage the broker must also provide written notice to any salespeople associated with that brokerage.	
1301:5-1-09 – Fees by rules	This will impact the group of licensees that want additional services from the Division.	A twenty-five dollar fee for replacement of any license; a twenty-five dollar fee for reactivation of an inactive salesperson's license or for a broker's license on deposit.; a twenty-five dollar fee for a name change; a twenty-five dollar fee for licensure certification; a ten-dollar fee to reserve a name; and the aggregate fee charged for a name change shall not exceed six thousand dollars.	
1301:5-1-16 –Effective date of licensure	New licensees or licensees requesting changes to their license.	New licensees may not engage in activities that require a license until the Division issues their new license. For licensees that request a change to their license, such as a transfer to a new brokerage, the licensee may not actively work for that brokerage	The Division is typically able to issue a new license within three to five business days of a new applicant passing the examination or within three to five business days of receiving all the information necessary to process license changes

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment B

		until the Division has all the information necessary to process and issue a new license.	for a current licensee.
1301:5-1-19 –License reactivation	Any licensee that has failed to timely renew, wants to reactivate an inactive license, or was suspended pursuant to an enforcement action under RC 4735.13(C)	The licensee must fill out and file an application with the division and provide proof that the licensee is in compliance with all continuing education requirements and in the case of an enforcement suspension has fulfilled all conditions of the discipline.	
1301:5-1-20 –Annual brokerage assessment	All licensed corporations, partnerships, LLCs, LLPs, sole-proprietors, or associations	Time to comply with the annual brokerage assessment. Fees are set by RC 4735.15.	The brokerage assessment fee is set by R.C. 4735.15. The rule sets out the Division’s procedure for issuing the assessment. Brokerages must return the form along with the requisite fee.
1301:5-1-22 -- Three year renewal	This does not apply as 1301:5-1-22 merely provides that licenses are renewed on a three year cycle.		
1301:5-1-23 –Criminal records check	The small group of licensees or applicants requested to submit to a criminal records check by the superintendent.	A licensee or applicant requested to submit to a criminal background check is responsible for the fee related to obtaining a criminal background check and will forfeit an application fee for failing to timely comply with the superintendent’s request.	
1301:5-3-02 – Recommendation and appointment of ancillary trustees	Anyone requesting an appointment of an ancillary trustee	A person requesting an appointment must file a one page application with the division. At the conclusion of business the trustee must prepare a report stating that all transactions are concluded and the trustee is now withdrawing.	
1301:5-3-03 –Approval and rejection of brokerage business names	Any applicant for a business name	The rule merely sets out the Superintendent’s procedure in approving and rejecting brokerage business names.	
1301:5-3-04 – Equivalent experience for broker licensing	Any applicant for a broker license that is requesting equivalent experience for the 20 transaction requirement of RC 4735.07.	A licensee requesting equivalent experience will receive a hearing in front of the commission and will have to travel to the meeting in Columbus, OH.	
1301:5-3-06 – Implied authority of officers	This impacts the small number of officers or members of a company that are authorized to perform the functions of a real estate broker or salesperson on behalf of the organization that do not hold an active real estate license.	Those officers or members, with apparent or implied authority to act as a licensee on behalf of the entity, not currently holding a real estate license will be required to obtain a license.	
1301:5-3-09 – Reciprocity agreements	This does not apply as 1301:5-3-09 provides the guidelines for the division entering into reciprocity agreements with other states.		
1301:5-3-13 – Reservation of name	Any person applying to reserve a business name.	There is a minimum adverse impact in the time it takes to fill out and file the half page application.	

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment B

ENFORCEMENT

<i>Rule</i>	<i>Scope of the impacted business community</i>	<i>Nature of adverse impact</i>	<i>Quantify the expected adverse impact</i>
1301:5-1-02 –Advertising	All licensees are impacted	If the Division received a complaint concerning an allegation that the licensee failed to comply with the rules contained in this section, that licensee may be subject to an investigation into his or her actions. If the licensee is found to be in violation of the rules the Ohio Real Estate Commission may impose disciplinary sanctions. The sanctions are assessed based upon the violation found, individual facts of the case and mitigating circumstances in each case.	Pursuant to ORC 4735.051(I), the Ohio Real Estate Commission has the authority to impose a range of sanctions: a public reprimand, additional education, a fine not to exceed \$2,500.00 per violation, a license suspension for a term set by the commission, and/or a revocation of the license. The sanctions are assessed based upon the violation found, individual facts of the case and mitigating circumstances in each case.
1301:5-1-13 – Failure to comply with a subpoena as evidence of misconduct			
1301:5-1-14 – Use of name or license for benefit of others			
1301:5-1-18 –Disciplinary sanctions			
1301:5-1-21 – Team advertising			
1301:5-3-14 –Settlement agreements	This does not apply as 1301:5-3-14 provides the procedure for the division when entering into a settlement agreement with any licensee that has received a notice of a disciplinary violation.		

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment B

1301:5-5-01 –Statement to be displayed in broker's office and included in information pamphlets	All brokerages	<p>If the Division received a complaint concerning an allegation that the licensee failed to comply with the rules contained in this section, that licensee may be subject to an investigation into his or her actions. If the licensee is found to be in violation of the rules the Ohio Real Estate Commission may impose disciplinary sanctions. The sanctions are assessed based upon the violation found, individual facts of the case and mitigating circumstances in each case.</p>	There will be a cost to reprint the statement to be displayed in the brokerage office and any information pamphlets. The rule provides that it is permissible for a broker to use old pamphlets until their supply is depleted and when reprinting new pamphlets use the new changes. A new brokerage will need to print the materials as well. The Division has a sample poster and pamphlet available on-line.
1301:5-5-06 –Referral fees paid to persons licensed in other states			A broker paying and/or receiving a referral fee will expend a minimal amount of time ensuring that the other broker holds a valid license.
1301:5-5-07 –Licensure exemption; residential rental property			A broker will expend time supervising any individual hired to conduct activities permitted by this rule.
1301:5-5-08 –Handling of trust account funds			If a brokerage chooses to open trust accounts at a bank where a minimum balance is required or there are service charges issued where a consumer bounces a check.
1301:5-5-09 – Trust account records to be maintained			In addition to the above, there is time used to maintain the records of

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment B

			funds coming in/out of the trust account.
1301:5-5-11 –Separate property management trust accounts			In addition to the above, there is time used to maintain the records of funds coming in out of the property management trust account.
1301:5-5-23 –Property management account(s) in the name of the owner	All real estate licensees are impacted.		In addition to the above, there is time used to maintain the records of funds coming in/out of the owner's account.
1301:5-5-24 –Informal mediation meeting accommodations	This does not apply as 1301:5-5-24 provides the procedure for mediation and the procedure the division will follow with respect to the pending investigation. If both a complainant and a licensee agree to mediation the parties will expend time attending that mediation in-person or by phone. If a resolution is reached then the complaint is closed and no investigation is conducted.		
1301:5-6-01 – Management level licensee	All real estate licensees are impacted.	If the Division received a complaint concerning an allegation that the licensee failed to comply with the rules contained in this section, that licensee may be subject to an investigation into his or her actions. If the licensee is found to be in violation of the rules the Ohio Real Estate Commission may impose disciplinary sanctions. The sanctions are assessed based upon the violation found, individual facts of the case and mitigating circumstances in each case.	Pursuant to ORC 4735.051(I), the Ohio Real Estate Commission has the authority to impose a range of sanctions: a public reprimand, additional education, a fine not to exceed \$2,500.00 per violation, a license suspension for a term set by the commission, and/or a revocation of the license. The sanctions are assessed based upon the violation found, individual facts of the case and mitigating circumstances in each case.
1301:5-6-02 – Open houses and referrals			
1301:5-6-03 –Mandatory company policy			There will be a minimal cost of business for a brokerage to maintain a policy and replenish any exhausted supplies. In addition, new brokerages must develop a company policy and provide copies to clients upon request.
1301:5-6-05 – Consumer guide to agency relationships			A brokerage will need to create and maintain a consumer guide and print off copies to provide to consumers. The Division maintains sample consumer guides on its website for licensees to use.

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment B

1301:5-6-06 – Agency disclosure	All real estate licensees are impacted.	If the Division received a complaint concerning an allegation that the licensee failed to comply with the rules contained in this section, that licensee may be subject to an investigation into his or her actions. If the licensee is found to be in violation of the rules the Ohio Real Estate Commission may impose disciplinary sanctions. The sanctions are assessed based upon the violation found, individual facts of the case and mitigating circumstances in each case.	When a purchaser or seller refuses to acknowledge receipt of the guide a licensee must note specific information on the form and maintain a copy in the licensee's records.
1301:5-6-08 – Appointment of licensees			If the appointment of another licensee creates a situation where that licensee is representing both parties to the transaction (i.e. dual agency) that licensee must obtain both parties' written consent to the representation.
1301:5-6-09 – Negotiations with a purchaser or tenant			If a licensee has reasonable cause to believe a purchaser or tenant is represented by another agent, that licensee must inquire about the purchaser's or tenant's representation.

COMMISSION

<i>Rule</i>	<i>Scope of the impacted business community</i>	<i>Nature of adverse impact</i>	<i>Quantify the expected adverse impact</i>
1301:5-1-01 –Prescribing the procedure of the Ohio real estate commission, department of commerce, state of Ohio, in giving public notice, as required by law, of intention to consider adopting, amending or rescinding a rule or regulation	This does not apply as 1301:5-1-01 and 1301:5-1-12 provide procedures for the Division.		
1301:5-1-12 – Open public meetings			
1301:5-1-17 – Stenographic record	Any licensee that is a respondent in a hearing that requests the additional service of a stenographic record.	The Division records all hearings. If the licensee requests the additional service of a stenographic record, that licensee will be responsible for the cost of the service. Cost of the service will be dependent upon the length of the hearing.	
1301:5-3-01 – Superintendent's report to the commission on division activities	This does not apply as 1301:5-3-01 provides procedures for the Division.		

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment B

1301:5-3-07 –Educational loans to individuals	Any applicant to a sales license may apply to the division for an educational loan to defray the cost of the pre-licensure education.	A licensee will need to complete an application to apply for the loan. This is a zero interest loan.	
1301:5-3-16 –Education and research fund advisory committee	This does not apply as 1301:5-3-16 provides procedures for the commission in creating the education and research fund advisory committee.		
1301:5-5-25 – Reconsiderations	A licensee that is subject to a disciplinary order of the Commission that requests a reconsideration of the order.	A licensee that requests reconsideration will need to take the time to fax, mail, or email the request for reconsideration. When the reconsideration is scheduled the licensee will have to travel to the Commission meeting in Columbus, OH.	
1301:5-5-30 – Waiver of duties statement	This does not apply as 1301:5-5-30 is an appendix containing the form required by ORC 4735.621. The form is available on the Division’s website for licensees to print off. If offering a consumer only minimum services this form needs to be completed.		
1301:5-6-04 – Agency agreements	All licensees	If a licensee is found to be in violation of the rule the Ohio Real Estate Commission may impose disciplinary sanctions. The sanctions are assessed based upon the violation found, individual facts of the case and mitigating circumstances in each case.	Pursuant to ORC 4735.051(I), the Ohio Real Estate Commission has the authority to impose a range of sanctions: a public reprimand, additional education, a fine not to exceed \$2,500.00 per violation, a license suspension for a term set by the commission, and/or a revocation of the license. The sanctions are assessed based upon the violation found, individual facts of the case and mitigating circumstances in each case.
1301:5-6-07 – Agency disclosure statement	This does not apply as 1301:5-6-07 is an appendix containing the form required by ORC 4735.57. A licensee must expend time to present the form to a purchaser or seller.		
1301:5-6-10 –Residential property disclosure form	This does not apply as 1301:5-6-10 is an appendix containing the form required by ORC 5302.30. A licensee representing the seller has the responsibility of advising the seller of the disclosure requirement and to assure the form is properly delivered to a buyer. A licensee representing the buyer has the responsibility of advising the buyer of their ability to receive the disclosure.		

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment B

EDUCATION

<i>Rule</i>	<i>Scope of the impacted business community</i>	<i>Nature of adverse impact</i>	<i>Quantify the expected adverse impact</i>
1301:5-1-15 –Education requirements for brokers and salespersons	All real estate licensees are impacted, applicants for licensure, and education providers.	This rule provides guidance for taking and submitting proof of the 10 hour post-licensure class as required in RC 4735.07 and 4735.09.	
1301:5-3-15 –Educational instruction		This rule limits the amount of classroom instruction that may be offered in any one calendar day.	
1301:5-7-02 –Continuing education requirements		This rule sets forth the continuing education requirements in RC 4735.141.	Pursuant to RC 4735.141 licensees are required to obtain 30 hours of continuing education every three years. Licensees 70 or older must obtain nine hours every three years. The rule permits a licensee to have 10 hours of additional education taken carry over to the next reporting period.
1301:5-7-03 – Criteria for course approvals		This rule sets forth the criteria for continuing education course approvals. The rule provides the procedure for filing a course approval and reporting requirements. Initial applications are \$50; each offering after initial approval \$10; renewal \$20; amended course \$10. A failure to file applications within the required time period will result in penalties of \$2 per credit hour per attendee. Applicants or instructors denied approval have the opportunity to request a RC 119 hearing to be held in Columbus, OH.	
1301:5-7-04 –Distance education		This rule sets forth the criteria for distance education course approvals. The rule provides the procedure for filing a course approval and reporting requirements. Initial applications are \$200; annual renewals thereafter \$60.	