

**NOTICE OF PUBLIC HEARING**

On January 3, 2019, the Ohio Department of Commerce, Division of Real Estate and Professional Licensing will hold a public hearing on proposed changes to 1301:5-1 to 1301:5-7 of the Ohio Administrative Code. The hearing will be held at 10:00 a.m. at 77 South High Street, 22nd Floor, Columbus, Ohio 43215.

**PROPOSED RULE CHANGES****1301:5-1-02 Amendment**

**Advertising – The Division staff recommends that this rule be amended.**

Permits licensees to advertise in a preferred name if the name is not misleading and registered with the Division; Reorganizes the rule moving the prominence provision to B; Provides the way licensees must advertise if the broker has received approval to conduct business under more than one trade name.

**1301:5-1-03 Amendment**

**Brokerage licenses – The Division staff recommends that this rule be amended.**

Provides the approval process and criteria for principal brokers seeking serve as a principal broker for more than one brokerage; replaces broker with principal broker consistent with the changes from HB 532 and clarifies that a principal broker must be a member of an LLC, officer or shareholder of a corporation or a general partner of a partnership to apply as a business entity for a broker's license; Clarifies meaning of sole proprietorship for purposes of licensing law.

**1301:5-1-04 Amendment**

**Applications – The Division staff recommends that this rule be amended.**

Clarifies that failure to correct an application with the proscribed timeframe will void the application; Removes language from the rule that is redundant as it is found in statute; Clarifies the procedure for a principal broker terminating sponsorship of an applicant and provides that if a principal broker fails to give notice of the termination, that conduct may be deemed misconduct.

**1301:5-1-05 Amendment**

**Examinations – The Division staff recommends that this rule be amended.**

Clarifies that an applicant must provide application changes in writing to the division; Reorganizes the rule for clarity; Establishes that examination fees will be set forth in the agreement with the testing vendor; clarifies what a broker must do upon passing the broker examination and the time frame for doing so.

**1301:5-1-06 Amendment**

**Termination of brokerage affiliation – The Division staff recommends that this rule be amended.**

Consistent with the changes in HB 532, replaces broker with principal broker where appropriate and clarifies what a principal broker must do to return the license of an affiliated licensee; changes the delivery method of the required written notice that a principal broker must provide to an affiliated licensee when the principal broker returns the license of the affiliated licensee; provides that failing to give proper notice may be deemed evidence of misconduct.

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.

**1301:5-1-07 Amendment**

**Placing a broker's license on deposit- The Division staff recommends that this rule be amended.**

Proposed changes are grammatical in nature only.

**1301:5-1-12 Amendment**

**Open public meetings - The Division staff recommends that this rule be amended.**

General grammatical changes made; clarified address for the division by including floor number.

**1301:5-1-13 Amendment**

**Failure to comply with a subpoena as evidence of misconduct - The Division staff recommends that this rule be amended.**

Includes that a licensee failing to comply with a subpoena issued pursuant to Chapter 119 of the Ohio Revised Code shall constitute misconduct.

**1301:5-1-14 Amendment**

**Use of name or license for benefit of others - The Division staff recommends that this rule be amended.**

Adds principal broker where necessary in accordance with HB 532; clarifies that a principal broker who has been approved to serve as a principal broker for more than one brokerage will not violate this rule as long as the principal broker directs and oversees the activities of the brokerages as required by law; Adds that if a licensee enters into an agreement to use a principal broker's name/license that licensee's conduct as well as the principal broker's conduct constitutes misconduct.

**1301:5-1-15 Amendment**

**Education requirements for brokers and salespersons - The Division staff recommends that this rule be amended.**

Makes changes to address that, pursuant to HB 532, post licensure education may be taken on line and corrects statutory references following the HB 532 changes.

**1301:5-1-17 Amendment**

**Stenographic Record- The Division staff recommends that this rule be amended.**

Proposed changes include modifying the name of the division to include "and professional licensing" following "division of real estate".

**1301:5-1-18 Amendment**

**Disciplinary sanctions – The Division staff recommends that this rule be amended.**

Grammatical changes were made; clarifies that the commission may impose post licensing courses as discipline; makes the rule with respect to (F) makes the rule consistent with Ohio Revised Code Section 4735.182

**1301:5-1-19 Amendment**

**License reactivation – The Division staff recommends that this rule be amended.**

Grammatical changes - adds that the Superintendent may deny a reactivation application if the applicant has been adjudicated incompetent consistent with Ohio Revised Code 47353.18; clarifies that revocation notices for failing to renew a license are to be sent to the licensee's home address.

**1301:5-1-20 Amendment**

**Annual brokerage assessment – The Division staff recommends that this rule be amended.**

Allows for the superintendent to reduce the amount of a brokerage assessment based on the date payment is received.

**1301:5-1-21 Amendment**

**Team advertising – The Division staff recommends that this rule be amended.**

Clarifies the definition of team; requires the teams to include group or team in the name and prohibits the use of realty or associates in a team name.

**1301:5-3-02 Amendment**

**Recommendation and appointment of ancillary trustees – The Division staff recommends that this rule be amended.**

The proposed changes take into consideration that Ohio Revised Code Section 4735.05 allows for the appointment of an ancillary trustee for a deceased, revoked or suspended principal broker but that a trustee would not be limited to concluding the activities of a brokerage in the event the principal broker is suspended. Rather, the trustee could continue the business during the suspension period. Other change was to insert principal broker for broker consistent with HB 532.

**1301:5-3-03 Rescind**

**Approval and rejection of brokerage business names – The Division staff recommends that this rule be rescinded.**

This procedure is entirely set out in statute Ohio Revised Code Section 4735.06 (B)(2) and therefore this rule is redundant and the division proposes rescission.

**1301:5-3-04 Amendment**

**Equivalent experience for broker licensing – The Division staff recommends that this rule be amended.**

Proposed change is for rule consistency; (one lease =one-half of a transaction).

**1301:5-3-06 Rescind**

**Implied authority of officers – The Division staff recommends that this rule be rescinded.**

Not necessary as it is clear in statute RC 4735.08 (B)

**1301:5-3-07 Amendment**

**Educational loans to individuals – The Division staff recommends that this rule be amended.**

Proposed rule changes are to incorporate changes from HB 532; Clarifies the procedure for a student loan applicant to change sponsoring brokers or transfer brokerages when there is a an outstanding student loan balance.

**1301:5-3-09 Amendment**

**Reciprocity agreements – The Division staff recommends that this rule be amended.**

Adds substantially to the language of the rule concerning the cancellation of reciprocity agreements by the commission.

**1301:5-3-13 Amendment**

**Company name reservation process – The Division staff recommends that this rule be amended.**

Clarifies the name reservation process by including statutory requirements; Consistent with HB 532 provides the process for approval to operate a brokerage with more than one trade name and limits the number of allowed trade names to five; provides clarity on the appeal process if a name reservation would be denied.

### **1301:5-3-14 Amendment**

**Settlement agreements – The Division staff recommends that this rule be amended.**

Proposes grammatical changes and clarifies that if the commission rejects a settlement agreement that the matter is returned to the division for additional processing consistent with RC 4735 -i.e. other settlement terms may be considered.

### **1301:5-3-15 Amendment**

**Educational instruction – The Division staff recommends that this rule be amended.**

HB 532 increased post licensure hours to 20 hours for sales persons and allows the post licensure courses to be taken on line. The proposed changes to this rule reflect these amendments.

### **1301:5-3-16 Amendment**

**Education and research fund advisory committee – The Division staff recommends that this rule be amended.**

Corrects number of members of the committee and recognizes the change in the name of the state Realtor trade organization and corrects the grammatical error to include the Ohio Realist Association; requires the division to prepare and maintain the documents required of the commission for funding applications, criteria and standards.

### **1301:5-5-01 Amendment**

**Statement to be displayed in broker’s office and included in information pamphlets – The Division staff recommends that this rule be amended.**

Replaces broker’s with brokerage

### **1301:5-5-07 Amendment**

**Licensure exemption; residential rental property – The Division staff recommends that this rule be amended.**

Replaces broker with principal broker or management level licensee consistent with HB 532; Clarifies that principal broker and/or management level licensee are responsible for oversight and compliance with this rule consistent with RC 4735.081.

### **1301:5-5-09 Amendment**

**Trust account records to be maintained – The Division staff recommends that this rule be amended.**

Removes “columnar form” to clarify that the commission is seeking content not form for trust account information; reorganizes the rule for clarity so that licensees have clear and concise notice of the necessary content of the trust account records required to be maintained.

### **1301:5-5-11 Amendment**

**Separate property management trust accounts – The Division staff recommends that this rule be amended.**

Removes “columnar form” to clarify that the commission is seeking content not form for trust account information; reorganizes the rule for clarity so that licensees have clear and concise notice of the necessary content of the trust account records required to be maintained.

### **1301:5-5-24 Amendment**

**Informal mediation meeting accommodations – The Division staff recommends that this rule be amended.**

The proposed changes to this rule reflect that investigators are not conducting mediations and for that reason if a mediation fails, the original investigator may continue with the investigation.

**1301:5-5-25 Amendment**

**Reconsiderations – The Division staff recommends that this rule be amended.**

Grammatical changes only recommended to this rule

**1301:5-5-30 Amendment**

**Waiver of duties statement- The Division staff recommends that this rule be amended.**

The proposed changes to the appendix involve grammatical changes and update of the logo to the current agency logo.

**1301:5-6-01 Amendment**

**Management level licensee – The Division staff recommends that this rule be amended.**

Consistent with the changes in HB 532, corrections were made to statutory references and deletions consistent with the requirements of amendments made by HB 532.

**1301:5-6-02 Amendment**

**Open houses and referrals – The Division staff recommends that this rule be amended.**

Consistent with the changes in HB 532, changes were made to reference varying license designations;

**1301:5-6-03 Amendment**

**Mandatory company policy – The Division staff recommends that this rule be amended.**

Consistent with the changes in HB 532, corrections were made to statutory references; Additional requirements for the company policy added consistent with HB 532 additions and recognizing that a principal broker is the necessary party to provide the company policy to the affiliated licensees.

**1301:5-6-06 Amendment**

**Refusal to acknowledge or sign agency disclosure forms- The Division staff recommends that this rule be amended.**

The proposed changes to the rule include grammatical changes and updating a paragraph reference within the rule.

**1301:5-6-07 Amendment**

**Agency disclosure statement – The Division staff recommends that this rule be amended.**

Proposed changes were made to the agency disclosure form consistent with the requirements of HB 532

**1301:5-6-08 Amendment**

**Appointment of licensees – The Division staff recommends that this rule be amended.**

Grammatical change made.

**1301:5-6-09 Amendment**

**Negotiations with a purchaser or tenant – The Division staff recommends that this rule be amended.**

Clarified that if licensee has actual knowledge of exclusive agency agreement that is still in effect, the licensee may not negotiate directly with the a purchaser or tenant; Clarifies that it is also a duty of the licensee to verify that a purchaser or tenant has not entered into an exclusive agreement with another licensee.

**1301:5-7-02 Amendment**

**Continuing education requirements – The Division staff recommends that this rule be amended.**

Includes the broker responsibility course as part of core credit for renewal; Clarifies that regardless of age if a licensee is a broker, broker on deposit or acts as a management level licensee, that licensee must take the now required broker responsibility course as part of the licensee's core continuing education

requirements for renewal of the license; Establishes that attendance at an entire monthly commission meeting may satisfy the core law renewal requirement.

**1301:5-7-03 Rescind/New**

**Criteria for course approvals – The Division staff recommends this rule be rescinded and a new rule is recommended.**

Reorganizes the entire rule for sake of clarity and ease of understanding; Divides the rule into new rules for clarity.

**1301:5-7-04 Rescind/New**

**Continuing Education Course Completion and Certificates – The Division staff recommends this rule be rescinded and a new rule is recommended.**

Reorganizes the entire rule for sake of clarity and ease of understanding; Divides the rule into new rules for clarity.

**1301:5-7-05 New**

**Continuing education course denials – The Division staff recommends that this rule be created new.**

Breaks out the review process for continuing education applications and the procedure for appealing the denial.

**1301:5-7-06 New**

**Continuing education course fees and penalties – The Division staff recommends that this rule be created new.**

Provides a new rule explaining process to apply to offer continuing education courses to licensees including application fees.

**1301:5-7-07 New**

**Continuing education instructors – The Division staff recommends that this rule be created new.**

the prior rules had the instructor application and course application in one rule. The new rule is to allow for clearer understanding of the process for application, review and appeal, if necessary. Separating the rules makes it easier for the applicant to understand and follow.

**1301:5-7-08 New**

**Distance education – The Division staff recommends that this rule be created new.**

This proposed rule provides the process for application, review and appeal, if necessary of proposed distance education courses. Separating the rules makes it easier for the applicant to understand and follow.

**1301:5-7-09 New**

**Post-licensing education – The Division staff recommends that this rule be created new.**

Clearly provides the process and procedure to apply for approval to provide post licensure courses.

The proposed rules are available by contacting the Ohio Department of Commerce, Division of Real Estate & Professional Licensing, 77 S. High Street, 20th Floor, Columbus, OH 43215 by calling (614) 466-5032. The proposed rules are also available at the following website: [www.registerofohio.state.oh.us](http://www.registerofohio.state.oh.us).

At the public hearing, any person affected by the proposed actions may appear and be heard in person, by the person's attorney, or both, may present the person's position, arguments, or contentions, orally or in writing, offer and examine witnesses, and present evidence tending to show that the proposed rule or amendments, if adopted or effectuated, will be unreasonable or unlawful.

Any person who wishes to present his or her position, arguments or contentions in writing may do so by mailing his or her written comments to the Ohio Department of Commerce, Division of Real Estate & Professional Licensing, 77 S. High Street, 20th Floor, Columbus, OH 43215. Written comments may also be submitted at the hearing. All written comments must be submitted to the Department no later than 5:00 pm. on January 2, 2019. Written comments submitted after this date may be considered as time and circumstances permit.

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