



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

Agency, Board, or Commission Name: Division of Real Estate & Professional Licensing

Rule Contact Name and Contact Information: Kimberley S. Wells 614-466-5032
kimberley.wells@com.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Division of Real Estate OAC 1301:5 – Five Year Rule Review

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

Date of Submission for CSI Review: 11/14/2024

Public Comment Period End Date: 12/6/2024

Rule Type/Number of Rules:

New/ rules

No Change/ 47 rules (FYR? Yes)

Amended/ 9 rules (FYR? Yes)

Rescinded/ 1 rules (FYR? Yes)

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

CSIPublicComments@governor.ohio.gov

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. 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

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

ORC 4735.10, 4735.15, 4735.621, 5302.30.

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

CSIPublicComments@governor.ohio.gov

4. **Does the regulation implement a federal requirement? Yes. Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? No.**

If yes, please briefly explain the source and substance of the federal requirement.

1301:5-5-01 and 1301:5-1-6-04 uses the definition of blockbusting from 24 C.F.R. 100.85.

5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.** Not Applicable.

6. **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 requirements of Revised Code 4735 and the rules promulgated pursuant to that chapter, provide for the protection of the public by permitting the licensing and regulation of real estate professionals. Real estate brokers and salespersons assist members of the public with transactions that involve one the biggest financial investments most people experience in their lifetime. The consumer places trust in the real estate licensee and during the course of the transaction, licensees routinely handle consumers' moneys such as earnest money deposits, rents, and security deposits. The rules provide for minimum guidelines of professional responsibility for the licensees. Further, the rules permit increased efficiency in Division processing applications and investigating enforcement actions while keeping operating costs to a minimum.

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

Rules are successful when licensees have clear, professional guidelines for interacting with consumers and other licensees. Division staff receives comments from the public at outreach functions and through public inquiries filed with the Division and staff interacts with every applicant and Division staff reviews every application for compliance.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? No.**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation. Not Applicable.

Development of the Regulation

- 9. 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 receives comments from the public, industry participants and professional organizations concerning these rules. The Ohio Real Estate Commission reviewed proposed rules at a special public meeting that was held on October 19, 2023 and a regularly scheduled meeting on February 7, 2024. The Commission voted to file these rules as provided in this packet.

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

Comments provided by interested parties ranged from very specific suggestions affecting the proposed amendments to very general comments about the regulation of the real estate profession. The Division presented the proposed rule changes to the Commission on two separate occasions. The Commission and the Division considered all comments provided and implemented stakeholder suggestions that were in furtherance of Ohio Revised Code Chapter 4735. For example, stakeholder comment was received about the fair housing statement to be included in the informational pamphlets. The size of the statement needs updated to meet the federal requirement. Additionally, the Division and Commission have had many requests to allow for continuing education credit for working the voting polls. These requests are captured in these proposed amendments.

- 11. What scientific data was used to develop the rule or the measurable outcomes of the rule?**
Not Applicable **How does this data support the regulation being proposed?** Not Applicable.

- 12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate?** None.

If none, why didn't the Agency consider regulatory alternatives? Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply. 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.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation? The Division is the only agency that regulates real estate licensees.

14. 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. The Division publishes program updates on its website and regularly performs outreach programs for stakeholders. The Division will include all rule changes on our website to inform and explain to stakeholders the proposed amendments to the rules.

Licensees and community members may easily access the Division by email and telephone for questions. Division counsel and staff attorneys review investigatory actions to help ensure consistency in the application of the rules and regulations. The Superintendent reviews all final recommendations on enforcement actions which also helps to ensure that the laws are being consistently applied. In addition, the Division publishes summaries of the disciplinary actions on the Division website and routinely provides copies of adjudication orders and commission meeting minutes.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

SEE ATTACHMENT B

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Yes. Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

The proposed amendments are intended to clarify existing requirements. Real estate licensees routinely handle consumers' moneys that are received in a fiduciary capacity such as earnest money deposits and security deposits. The rules provide guidelines for the handling of such funds, helps prevent co-mingling and provides the record keeping requirements for the accounts where the funds shall be maintained. Specifically, language in rule 1301:5-1-06 has been modified with more concise language. Language from rule 1301:5-1-19 has been modified to be consistent with statutory changes made that eliminated "of good reputation" from the statutory requirements.

Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community? The existing rules are offered to satisfy the requirements established in Ohio law.

Regulatory Flexibility

17. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain. The Division recognizes that Ohio real estate licensees can be small businesses. The existing rules are the result of Ohio law. The rules and the amendments are designed with the small business owner in mind.

18. 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? Division staff regularly works with applicants to ensure they have all the necessary paperwork for their application. If an applicant omits any required documentation, Division staff notifies the applicant of the deficiency; discusses with the applicant his or her options for compliance; and the Division allows the application to remain in a pending status for a reasonable time to avoid forfeiture of any application fee.

19. 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 public. The division's website contains links to educational videos, disciplinary summaries, newsletters, links to sample forms, links to sample letters and to the laws and rules involving the licensing of salespersons and brokers. All the division's forms are accessible on the website and division staff are available to assist with questions related to the completion of the forms or general inquiries.

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.

NO CHANGES PROPOSED

1301:5-1-03 – Regarding licenses

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

NO CHANGES PROPOSED

1301:5-1-04 – Applications

INTENT: This rule provides guidelines for the completion of applications filed with the Division.

CHANGES PROPOSED: The proposed amendments account for all applications rather only for initial applications.

1301:5-1-05 – Examinations

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

CHANGES PROPOSED: Proposed changes will update the fee for a new broker and sales application to reflect what is currently in statute.

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 how a salesperson should notify the broker that the licensee is leaving the broker's affiliation.

CHANGES PROPOSED: The amendment provides that written notice provided to a broker upon leaving a brokerage will be available for review by the Division and that certification is needed for transfer of a license

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

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

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.

CHANGES PROPOSED: The amendments updates the fees for a reactivation of a broker or sales license to match the statutory changes previously made.

1301:5-1-12 – Open public meetings

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

CHANGES PROPOSED: The amendment updates the Division address to the Tussing Road location.

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.

NO CHANGES PROPOSED

1301:5-1-18 – Disciplinary sanctions

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

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

NO CHANGES PROPOSED

1301:5-1-19 – License reactivation

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

CHANGES PROPOSED: The amendments clarify the Superintendent's standard of review for a license applicant.

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.

NO CHANGES PROPOSED

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.

NO CHANGES PROPOSED

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.

CHANGES PROPOSED: The Amendment updates the rule to reflect that a criminal records check is necessary at the time of an initial application

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 or revoked broker.

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

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.

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.

NO CHANGES PROPOSED

1301:5-3-09 – Reciprocity agreements

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

RESCIND

1301:5-3-13 – Reservation of name

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

NO CHANGES PROPOSED

1301:5-3-14 – Settlement agreements

INTENT: The rule addresses the procedure for a respondent to enter into a settlement agreement with the superintendent regarding an enforcement action. The rule includes the provisions that must be included in the settlement agreement.

NO CHANGES PROPOSED

1301:5-3-15 – Educational instruction

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

NO CHANGES PROPOSED

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

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

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.

NO CHANGES PROPOSED

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

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

CHANGES PROPOSED: The amendments ensure the rule is in consistent with federal requirements.

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.

NO CHANGES PROPOSED

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.

NO CHANGES PROPOSED

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.

NO CHANGES PROPOSED

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.

NO CHANGES PROPOSED

1301:5-5-25 – Reconsiderations

INTENT: The rule provides the process and procedure by which a person may request reconsideration under R.C. 4735.19.

NO CHANGES PROPOSED

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

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.

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

NO CHANGES PROPOSED

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 – Refusal to acknowledge or sign agency disclosure forms.

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.

NO CHANGES PROPOSED

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

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

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.

NO CHANGES PROPOSED

1301:5-7-02 – Continuing education requirements

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

NO CHANGES PROPOSED

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

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

CHANGES PROPOSED: The amendment allows for credit to be given for core law attending a Real Estate Commission meeting or working the polls on election day

1301:5-7-04 – Continuing Education Course Completion and Certificates

INTENT: The rule is new and clarifies what providers are to do at the completion of a continuing education course.

NO CHANGES PROPOSED

1301:5-7-05 Continuing Education Course Denials

INTENT: A new rule which establishes the procedure for reviewing and denying a continuing education course application.

NO CHANGES PROPOSED

1301:5-7-06 Continuing Education Course Fees and Penalties

INTENT: The rule is new and provides for the fees for applying for approval for a continuing education course and the penalty for failing to meet the deadlines for filing for approval.

NO CHANGES PROPOSED

1301:5-7-07 Continuing Education Instructors

INTENT: This new rule provides the qualifications of a continuing education instructor and the method to apply to be an instructor.

NO CHANGES PROPOSED

1301:5-7-08 Distance Education

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

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

NO CHANGES PROPOSED

1301:5-7-09 Post-licensing education

INTENT: This rule defines post-licensure education and provides the process for approving post-licensure courses.

NO CHANGES PROPOSED

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 principal 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. The rule further provides the procedure for a principal broker to serve as a principal broker for more than one brokerage. | |
| 1301:5-1-04 – Applications | All applicants to licensure | This will impact the small group of principal brokers who fail to notify applicants and the division of termination of sponsorship of the applicant. If the principal broker is found to be in violation of the rule the Ohio Real Estate Commission may impose disciplinary sanctions. This rule also affects the 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. | |
| 1301:5-1-05 – Examinations | All applicants to licensure | The application fee of \$135 for a broker license and \$81 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 and notify in writing of any changes to application status. | |
| 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 and this rule change lessens this impact as it allows for a principal broker to notify by hand delivery, email, fax or mail rather than by certified mail alone. If a broker fails to return the license of a salesperson or broker at the superintendent's request or fails to notify a licensee of the termination of affiliation, 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 \$25.00 fee for replacement of any license; a \$25.00 fee for reactivation of an inactive salesperson's license or for a broker's license on deposit; a \$25.00 fee for a name change; a \$25.00 fee for licensure certification; a | |

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

| | | | |
|--|---|--|---|
| | | ten-dollar fee to reserve a name; and the aggregate fee charged for a name change shall not exceed \$6,000.00 | |
| 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 until the Division has all the information necessary to process and issue a new license. | The Division is typically able to issue a new license within 3 to 5 business days of a new applicant passing the examination or within 3 to 5 business days of receiving all the information necessary to process license changes 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 3 year cycle. | | |
| 1301:5-1-23 – Criminal records check | All applicants are required to submit a criminal history check. | A licensee or applicant is required by statute to submit to a criminal background check is responsible for the fee related to obtaining a criminal background check | |
| 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. | |
| 1301:5-3-04 – 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. | |
| 1301:5-3-09 – 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 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 | 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. |
| 1301:5-3-14 –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 | | 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 | | 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. | 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 | 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

| | | | |
|---|---|---|---|
| the commission on division activities | | | |
| 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 for brokers as required in RC 4735.07 and the 20 hour post-licensure class for salespersons as required in 4735.09. | |
| 1301:5-3-15 – Educational instruction | | This rule limits the amount of instruction that may be offered in any 1 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 9 hours every 3 years. Regardless of age, if the licensee is a broker, broker on deposit or management level licensee, a 3-hour broker responsibility course must be taken. (this class counts in the total 30 hours of continuing education)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. | |
| 1301:5-7-04 –Continuing Education and Certificates | | This rule requires that licensees be present for 90% of a course to receive credit. It also provides the criteria necessary for a provider to issue a certificate of completion within a required time frame and requires the provider to maintain records for a set period of time. | |
| 1301:5-7-05-Continuing Education Course Denials | | Applicants who are denied approval have the opportunity to request a RC 119 hearing to be held in Columbus, OH. | |
| 1301:5-7-06- Continuing Education Course Fees and Penalties | | 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. | |

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

| | | |
|---|--|---|
| 1301:5-7-07- Continuing Education Instructors | All real estate licensees are impacted, applicants for licensure, and education providers. | This rule sets forth the criteria for continuing education course instructor. Applicants who are denied approval have the opportunity to request a RC 119 hearing to be held in Columbus, OH. |
| 1301:5-7-08- 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. |
| 1301:5-7-09 Post-licensing education | | This rule sets forth the criteria for post licensing education courses and provides the process providers must take to apply to provide the course(s). It also provides the criteria necessary for a provider to issue a certificate of completion within a required time frame and requires the provider to maintain records for a set period of time. Requires completion and submission of an application to the division. |