

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

Date: _____

Rule Type:

☒ New

☒ Amended

☒ 5-Year Review

☒ Rescinded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 25, 2017 (extension)

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.
1301:5-5-01 and 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.

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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 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.

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

The success of the rules can be measured in the efficient manner in which the Division conducts business. When the Division conducts business efficiently, it permits applicants and licensees to opportunity to conduct or continue to conduct business. Additionally, rules are successful when licensees have clear, professional guidelines for interacting with consumers and other licensees.

Compliance audits and investigations are ways that help ensure that licensees are in compliance with the rules and regulations. The Division regularly communicates with members of the real estate profession and encourages candid input from the industry to ascertain the effect of a regulation and whether or not improvements or amendments to the regulations are necessary to be considered.

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 the Ohio Real Estate Commission, the public, and licensees concerning the rules and whether they require modification. Most recently, real estate license law was amended and Division personnel worked with the Ohio REALTORS concerning changes in Ohio law and the amendments to the rules. Further, Division personnel traveled the state presenting on the new amendments to Chapter 4735 of the Ohio Revised Code and received comments and feedbacks on the new changes and discussed rule changes that would be necessary due to the law changes.

During the five year rule review process the Division reached out to the Ohio REALTORS and draft rules were sent to stakeholders in November of 2017. Multiple in-person meetings and telephone discussions between the Ohio REALTORS, Superintendent, and Division counsel were held concerning all of OAC Chapter 1301:5. Many phone calls have come to the Division concerning proposed changes to the rules and discussions have been held with licensees regarding their thoughts on the proposed rules. Copies of the draft proposals have been shared with any individual who has

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requested a copy and the Division is aware that the proposed rules have been discussed by the Ohio REALTORS with their members at recent meetings.

The Ohio Real Estate Commission reviewed proposed rules at a special public meeting that was held on May 9, 2018. 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 instances, stakeholders recommended changes and most were incorporated into the proposed changes. For example: 1301:5-5-1-02 had an original proposed change of requiring licensees to provide the licensee's credential number in all advertisements. Feedback and comments were received from licensees and the discussion centered on the cost of incorporating the credential number in the advertisement. The proposed changes were amended to require the number only if the licensee was advertising in a name other than he or she was licensed. After more discussions with stakeholders, the Superintendent, and the Commission, the proposed rule reflects that a licensee who wishes to advertise in a name other than he or she is licensed must register the name with the Division and the name must not be misleading.

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 consumers provide minimum guidelines of professional responsibility and increase Division efficiency while minimizing operating costs.

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.

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The Division through the implementation of HB 532 provided multiple trainings for licensees and practitioners. At least one of the training sessions was videotaped and placed on the Division's website. The Division published a newsletter explaining the new changes in its quarterly newsletter found on its website. The Division also intends to publish a newsletter article outlining the rule changes and will continue to conduct public outreach events to cover the rule changes made during the rule review process.

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

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 recent changes to Ohio real estate licensing law were widely supported and endorsed by industry stakeholders. The rules will assist in the further implementation of the recent changes.

The legislative change provides for a hierarchy within the licensing structure, allows for on-line instruction for both pre- and post-licensing courses, and allows brokers greater flexibility in establishing brokerages and brokerage affiliations. The rules bring clarity and definition to these modifications and help the public understand the role of the principal broker as the individual responsible to properly oversee the operations of the brokerage and supervise affiliated licensees. The rules help ensure that licensees are not assisting others with circumventing license law and that consumers are fully informed throughout a transaction.

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

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funds, helps prevent co-mingling and provides the record keeping requirements for the accounts where the funds shall be maintained.

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?

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

The Superintendent has been granted the authority to issue an advisory letter in lieu of 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. Additionally, the Superintendent and the Commission may initiate a compliance audit if necessary to help bring a brokerage into compliance with license law.

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 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.

CHANGES PROPOSED: Removes detailed advertising rules related to specific name identification. Allows licensees seeking to advertise in a name other than a licensee is licensed provided the name is not misleading and is registered with the Division. This will reduce the confusion for the licensee as well as the consumer. The rule also addresses advertising more than one trade name as license law now allows for a brokerage to have more than one trade name.

1301:5-1-03 – Regarding licenses

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

CHANGES PROPOSED: Provides procedure for a principal broker to apply to serve as a principal broker for more than one brokerage. Clarifies that at least one principal broker must be affiliated with a licensed corporation, LLC or association and must be a member or officer of such. The rule also defines sole proprietorship for license law purposes.

1301:5-1-04 – Applications

INTENT: Provides the requirements for filing applications with the Division.

CHANGES PROPOSED: Removes redundant language pertaining to returned checks as the provision is already in statute. The proposed language also adds principal broker consistent with statutory changes.

1301:5-1-05 – Examinations

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

CHANGES PROPOSED: Proposed language requires the applicant to notify the Division and the principal broker of a change in application status. Reorganizes the rule and clarifies what steps a broker applicant must take following successfully passing the broker examination.

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.

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

CHANGES PROPOSED: The proposed language adds principal broker consistent with the statutory changes and adds language for providing notice to a broker of the return of the license to the Division.

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.”

CHANGES PROPOSED: The proposed changes are grammatical in nature only.

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: The proposed language adds the exact location of the Division to the rule. The changes include general grammatical changes.

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.

CHANGES PROPOSED: The proposed language adds language to address complying with a subpoena issued pursuant to Chapter 119.

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.

CHANGES PROPOSED: Adds principal broker where necessary and contemplates the fact that if a principal broker is approved to serve as principal broker for more than one brokerage that would not constitute the lending of the broker's name. Also provides that evidence of a licensee entering into an arrangement to use a broker's name shall be considered misconduct.

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.

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

CHANGES PROPOSED: Removes the word “classroom” as licensees may take pre- and post-license courses on-line and removes the number of hours of post licensure from the rule to reflect the changes in the statute.

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.

CHANGES PROPOSED: Proposed changes include modifying the name of the division to include “and professional licensing” following “division of real estate”.

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 clarifies the sanctions the Ohio Real Estate commission may impose upon a licensee as discipline and clarifies the steps to reactivate a licensee’s license following discipline.

1301:5-1-19 – License reactivation

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

CHANGES PROPOSED: The proposed changes are mainly grammatical changes. The changes adds “home” to address to create consistency with respect to RC 4735.14.

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.

CHANGES PROPOSED: The proposed changes allows the superintendent the ability to reduce the amount of the yearly broker assessment fees.

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 the definition of the term “team.” Require the use of the word “team” or “group” in the advertisement and limit terms that can be used in team advertising. This will help eliminate confusion of a team with a brokerage.

1301:5-1-22 – Three year renewal

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

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.

NO CHANGES PROPOSED

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.

CHANGES PROPOSED: Proposed language adds principal broker consistent with the statutory changes.

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.

CHANGES PROPOSED: Rescind. The current language in the rule is redundant as the process is set out in statute.

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 modified to create consistency in the definition of real estate transaction.

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.

CHANGES PROPOSED: Rescind. The rule is redundant as it restates what is found in section 4735.08 of the Ohio Revised Code.

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

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: Adds “principal broker” and “institution of higher education” to the rule consistent with the statutory amendments.

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 corrects statutory references and adds that states that have licensing requirements that are no longer substantially similar may have their reciprocity agreements canceled.

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: Proposed language makes the rule consistent with the new statutory changes. Also provides the mechanism for allowing the superintendent to approve more than one trade name for a brokerage. Also provides appeal process if a name reservation is denied by the superintendent.

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.

CHANGES PROPOSED: The proposed changes include grammatical changes, addresses the fact that the superintendent enters into the settlement agreement with the respondent and permits flexibility should the commission reject a settlement agreement.

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.

CHANGES PROPOSED: Makes the rule consistent with the new statutory changes which increased sales post licensure courses to 20 hours instead of 10 and removes classroom as classes may now be taken on line.

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.

CHANGES PROPOSED: Modifies the number of members of the committee and requires the division to maintain required documentation.

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: Adds brokerage to the rule consistent with the statutory changes.

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.

CHANGES PROPOSED: Adds principal and management level broker to the rule consistent with the new licensing hierarchy established in statute.

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.

CHANGES PROPOSED: The proposed changes make a grammatical change and clarify the necessary information to be maintained by brokers in the trust account records. Removes “columnar” from the rule as content of information not form is what is being sought.

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

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

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: The proposed changes make a grammatical change and clarify the necessary information to be maintained by brokers in the trust account records. Removes “columnar” from the rule as content of information not form is what is being sought.

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 replaces investigator with mediator. Informal mediations are conducted by non-investigatory division staff. This allows for respondents to have more confidence in the process and if a mediation is unsuccessful allows for one investigator to handle the case.

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.

CHANGES PROPOSED: The proposed changes are grammatical changes.

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.

CHANGES PROPOSED: The proposed changes to the appendix involved grammatical changes and update of the logo to the agency current logo.

1301:5-6-01 – Management level licensee

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

CHANGES PROPOSED: Clarifies the definition of management level licensee.

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

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

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.

CHANGES PROPOSED: Corrects the statutory reference to the definition of management level licensee consistent with statutory changes.

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.

CHANGES PROPOSED: Proposed language adds the requirement that brokerages identify all principal brokers, associate brokers and management level licensees in their company policy. Further requires that brokerages identify all trade names under which the brokerage operates and the names of all brokerages where the principal broker serves as principal broker.

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.

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

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.

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

CHANGES PROPOSED: Proposed changes to the appendix include replacing broker with “principal broker” in compliance with changes made pursuant to HB 532 and general grammatical changes.

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: General clean up of the rule.

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.

CHANGES PROPOSED: Adds language to reflect that the licensee have actual knowledge that the exclusive agency agreement must still be in effect in order to bar the licensee from dealing directly with a purchaser or tenant. Also adds “brokerage” and “licensee” to the rule.

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.

CHANGES PROPOSED: Reorganizes and restructures the entire rule for purposes of clarity.

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 – Continuing Education Course Completion and Certificates

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

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

CHANGES PROPOSED: This rule provides how long a student must attend a continuing education course to receive full credit. It also provides for what information must be contained on the certificate provided to the attendee and provides a mechanism and timing of receiving a replacement certificate if there was an error on the certificate. Additionally provides the timing and method of reporting attendees to the Division.

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.

CHANGES PROPOSED: Proposed language was moved from another rule in order to bring clarity to the process.

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.

CHANGES PROPOSED: Language was moved from other rule for clarity.

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.

CHANGES PROPOSED: Proposed language was moved from another rule in order to provide clarity and make the rule easier to understand.

1301:5-7-08 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: The rule replaces 1301:5-7-04.

1301:5-7-09 Post-licensing education

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

CHANGES PROPOSED: Proposed language allows the superintendent to review and approve sales post licensure courses and requires the commission to review and approve broker post licensure course. Allows the courses to be taught in classroom or in a distance setting.

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

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

OLICENSING

<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. The provision regarding the \$100 fee for the small group of applicants that write a check to the division that is returned unpaid has been stricken as that provision is found in statute.	
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 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	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	

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

	Division.	name change; a \$25.00 fee for licensure certification; a 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	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	This does not apply as the proposal for 1301:5-3-03 is to rescind the rule as the rule is duplicative of statute		
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 does not apply as the proposal for 1301:5-3-06 is to rescind the rule.		

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

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.

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 choses 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 1301:5-6-02 – Open houses and referrals	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.
1301:5-6-03 –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 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.	
1301:5-7-07- Continuing Education Instructors		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		This rule sets forth the criteria for post licensing	

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

education	All real estate licensees are impacted, applicants for licensure, and education providers.	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.
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