



## **Definitions**

The bill creates definitions for three distinct types of agency agreements: exclusive right to sell or lease listing agreements, exclusive agency agreements, and exclusive purchaser agency agreements. These agreements grant the broker the exclusive right to represent the seller or purchaser (depending on the agreement) in the purchase or lease of property and provide that the broker will be compensated in accordance with the terms in the listing agreement or under other certain circumstances.

## **Advertising**

Under current law, any licensed real estate broker or salesperson who advertises to buy, sell, exchange, or lease real estate must be identified in the advertisement by name and indicate that the licensee is a real estate broker or real estate salesperson. The bill prohibits a real estate broker who is representing a seller under an exclusive right to sell or lease listing agreement from advertising property to the public as "for sale by owner" or otherwise mislead the public to believe that the seller is not represented by a real estate broker. The Department of Commerce is uncertain how prevalent this practice is across the state. Thus, the exact number of additional disciplinary actions that may be initiated is difficult to predict.

As noted above, current law provides for the Division of Real Estate to initiate disciplinary action or serve a citation upon the licensee for false advertisement violations. The citation also must contain a fine of \$200 per violation, not to be more than \$2,500 for the whole citation. All fines collected from these citations are deposited into the Real Estate Recovery Fund (Fund 548). Therefore, the bill creates more opportunities for violations. While the bill may result in a gain in revenue to the Real Estate Recovery Fund (Fund 548), if the Division chooses to initiate disciplinary action, there may be an additional burden on the Real Estate Fund (Fund 549), the main operating fund for the Division of Real Estate and Professional Licensing, to conduct investigations and administrative hearings to adjudicate alleged violations of the law by licensees. The Department stated that the Division of Real Estate does not require a deposit when complaints are filed to cover investigation costs. Also, since the bill does not include an increase to the Division's fee structure, the Division would need to absorb the associated additional enforcement costs within existing resources.

Upon administrative hearings, the Real Estate Commission may sanction violators through license revocation, a fine of not more than \$2,500 per violation (credited to the Real Estate Recovery Fund), a public reprimand, or completion of additional continuing education coursework.

## **Waiver of Duties**

Under current law, a real estate broker or salesperson must meet certain general fiduciary duties on behalf of a client. A broker or salesperson is also obligated to perform certain specific duties when representing a seller or a purchaser. The bill directs the Superintendent of Real Estate, with the approval of the Ohio Real Estate Commission, to establish, by rule, a "waiver of duties statement." The client may sign a waiver of duties statement to relieve the licensed broker or salesperson from meeting certain specific duty requirements. However, a client may not waive the general fiduciary duties required of a licensee.

The bill requires the waiver of duties statement to contain a list of the general fiduciary duties required of all licensees, a list of those duties a licensee owes to either a seller or buyer, which must be set forth in a manner that allows for the parties to indicate which of those duties are being waived, a statement that no other licensee is required to perform the waived duty on behalf of the client, a statement that legal counsel or other professionals may be hired by the client, and a place for the client and licensee to sign and date the statement. There would likely only be negligible costs for the Division of Real Estate to develop the waiver of duties statement.

## **Duties of Licensee Representing a Seller or Purchaser**

Under current law, in representing a seller in an agency relationship, a real estate broker or salesperson must seek a purchase offer at a price and with terms acceptable to the seller, present any purchase offer to the seller in a timely manner, and provide the seller with a copy of any agency disclosure form signed by the purchaser. The bill retains the first two duties described above, drops the requirement regarding any agency disclosure form, and adds various duties.

Under the bill, the broker or salesperson must, within the scope of knowledge required for licensure, answer the seller's questions and provide information to the seller regarding any offers or counteroffers, assist the seller in developing, communicating, and presenting offers or counteroffers, and, within the scope of knowledge required for licensure, answer the seller's questions regarding the steps the seller must take to fulfill the terms of any contract. The duties of real estate brokers and salespersons representing purchasers are similar to those above for sellers. Likewise, the bill generally adds the same duties that would be required of brokers or salespersons representing sellers to brokers or salespersons representing purchasers.

As this bill would clarify exactly what duties a broker or salesperson is to perform and provides a "waiver of duties statement" to ensure the consumer is aware of the services he or she will be receiving, it may be that the Division of Real Estate and Professional Licensing receives fewer complaints and thus, performs fewer investigations and administrative hearings. The magnitude of any such savings is uncertain.

