

AN ACT

To amend sections 4735.18 and 4735.24 and to enact section 5301.95 of the Revised Code to amend the law related to real estate wholesalers.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4735.18 and 4735.24 be amended and section 5301.95 of the Revised Code be enacted to read as follows:

Sec. 4735.18. (A) Subject to section 4735.32 of the Revised Code, the superintendent of real estate, upon the superintendent's own motion, may investigate the conduct of any licensee. Subject to division (E) of this section and section 4735.32 of the Revised Code, the Ohio real estate commission shall impose disciplinary sanctions upon any licensee who, whether or not acting in the licensee's capacity as a real estate broker or salesperson, or in handling the licensee's own property, is found to have been convicted of a felony or a crime of moral turpitude, and may impose disciplinary sanctions upon any licensee who, in the licensee's capacity as a real estate broker or salesperson, or in handling the licensee's own property, is found guilty of:

- (1) Knowingly making any misrepresentation;
- (2) Making any false promises with intent to influence, persuade, or induce;
- (3) A continued course of misrepresentation or the making of false promises through agents, salespersons, advertising, or otherwise;
- (4) Acting for more than one party in a transaction except as permitted by and in compliance with section 4735.71 of the Revised Code;
- (5) Failure within a reasonable time to account for or to remit any money coming into the licensee's possession which belongs to others;
- (6) Dishonest or illegal dealing, gross negligence, incompetency, or misconduct;
- (7)(a) By final adjudication by a court, a violation of any municipal or federal civil rights law relevant to the protection of purchasers or sellers of real estate or, by final adjudication by a court, any unlawful discriminatory practice pertaining to the purchase or sale of real estate prohibited by Chapter 4112. of the Revised Code, provided that such violation arose out of a situation wherein parties were engaged in bona fide efforts to purchase, sell, or lease real estate, in the licensee's practice as a licensed real estate broker or salesperson;
- (b) A second or subsequent violation of any unlawful discriminatory practice pertaining to the purchase or sale of real estate prohibited by Chapter 4112. of the Revised Code or any second or subsequent violation of municipal or federal civil rights laws relevant to purchasing or selling real estate whether or not there has been a final adjudication by a court, provided that such violation

arose out of a situation wherein parties were engaged in bona fide efforts to purchase, sell, or lease real estate. For any second offense under this division, the commission shall suspend for a minimum of two months or revoke the license of the broker or salesperson. For any subsequent offense, the commission shall revoke the license of the broker or salesperson.

(8) Procuring a license under this chapter, for the licensee or any salesperson by fraud, misrepresentation, or deceit;

(9) Having violated or failed to comply with any provision of sections 4735.51 to 4735.74 of the Revised Code or having willfully disregarded or violated any other provisions of this chapter;

(10) As a real estate broker, having demanded, without reasonable cause, other than from a broker licensed under this chapter, a commission to which the licensee is not entitled, or, as a real estate salesperson, having demanded, without reasonable cause, a commission to which the licensee is not entitled;

(11) Except as permitted under section 4735.20 of the Revised Code, having paid commissions or fees to, or divided commissions or fees with, anyone not licensed as a real estate broker or salesperson under this chapter or anyone not operating as an out-of-state commercial real estate broker or salesperson under section 4735.022 of the Revised Code;

(12) Having falsely represented membership in any real estate professional association of which the licensee is not a member;

(13) Having accepted, given, or charged any undisclosed commission, rebate, or direct profit on expenditures made for a principal;

(14) Having offered anything of value other than the consideration recited in the sales contract as an inducement to a person to enter into a contract for the purchase or sale of real estate or having offered real estate or the improvements on real estate as a prize in a lottery or scheme of chance;

(15) Having acted in the dual capacity of real estate broker and undisclosed principal, or real estate salesperson and undisclosed principal, in any transaction;

(16) Having guaranteed, authorized, or permitted any person to guarantee future profits which may result from the resale of real property;

(17) Having advertised or placed a sign on any property offering it for sale or for rent without the consent of the owner or the owner's authorized agent;

(18) Having induced any party to a contract of sale or lease to break such contract for the purpose of substituting in lieu of it a new contract with another principal;

(19) Having negotiated the sale, exchange, or lease of any real property directly with a seller, purchaser, lessor, or tenant knowing that such seller, purchaser, lessor, or tenant is represented by another broker under a written exclusive agency agreement, exclusive right to sell or lease listing agreement, or exclusive purchaser agency agreement with respect to such property except as provided for in section 4735.75 of the Revised Code;

(20) Having offered real property for sale or for lease without the knowledge and consent of

the owner or the owner's authorized agent, or on any terms other than those authorized by the owner or the owner's authorized agent;

(21) Having published advertising, whether printed, radio, display, or of any other nature, which was misleading or inaccurate in any material particular, or in any way having misrepresented any properties, terms, values, policies, or services of the business conducted;

(22) Having knowingly withheld from or inserted in any statement of account or invoice any statement that made it inaccurate in any material particular;

(23) Having published or circulated unjustified or unwarranted threats of legal proceedings which tended to or had the effect of harassing competitors or intimidating their customers;

(24) Having failed to keep complete and accurate records of all transactions for a period of three years from the date of the transaction, such records to include copies of listing forms, earnest money receipts, offers to purchase and acceptances of them, records of receipts and disbursements of all funds received by the licensee as broker and incident to the licensee's transactions as such, and records required pursuant to divisions (C)(4) and (5) of section 4735.20 of the Revised Code, and any other instruments or papers related to the performance of any of the acts set forth in the definition of a real estate broker;

(25) Failure of a real estate broker or salesperson to furnish all parties involved in a real estate transaction true copies of all listings and other agreements to which they are a party, at the time each party signs them;

(26) Failure to maintain at all times a special or trust bank account in a depository of a state or federally chartered institution located in this state. The account shall be noninterest-bearing, separate and distinct from any personal or other account of the broker, and, except as provided in division (A)(27) of this section, shall be used for the deposit and maintenance of all escrow funds, security deposits, and other moneys received by the broker in a fiduciary capacity. The name, account number, if any, and location of the depository wherein such special or trust account is maintained shall be submitted in writing to the superintendent. Checks drawn on such special or trust bank accounts are deemed to meet the conditions imposed by section 1349.21 of the Revised Code. Funds deposited in the trust or special account in connection with a purchase agreement shall be maintained in accordance with section 4735.24 of the Revised Code.

(27) Failure to maintain at all times a special or trust bank account in a depository of a state or federally chartered institution in this state, to be used exclusively for the deposit and maintenance of all rents, security deposits, escrow funds, and other moneys received by the broker in a fiduciary capacity in the course of managing real property. This account shall be separate and distinct from any other account maintained by the broker. The name, account number, and location of the depository shall be submitted in writing to the superintendent. This account may earn interest, which shall be paid to the property owners on a pro rata basis.

Division (A)(27) of this section does not apply to brokers who are not engaged in the management of real property on behalf of real property owners.

(28) Having failed to put definite expiration dates in all written agency agreements to which the broker is a party;

(29) Having an unsatisfied final judgment or lien in any court of record against the licensee arising out of the licensee's conduct as a licensed broker or salesperson;

(30) Failing to render promptly upon demand a full and complete statement of the expenditures by the broker or salesperson of funds advanced by or on behalf of a party to a real estate transaction to the broker or salesperson for the purpose of performing duties as a licensee under this chapter in conjunction with the real estate transaction;

(31) Failure within a reasonable time, after the receipt of the commission by the broker, to render an accounting to and pay a real estate salesperson the salesperson's earned share of it;

(32) Performing any service for another constituting the practice of law, as determined by any court of law;

(33) Having been adjudicated incompetent by a court, as provided in section 5122.301 of the Revised Code. A license revoked or suspended under this division shall be reactivated upon proof to the commission of the removal of the disability.

(34) Having authorized or permitted a person to act as an agent in the capacity of a real estate broker, or a real estate salesperson, who was not then licensed as a real estate broker or real estate salesperson under this chapter or who was not then operating as an out-of-state commercial real estate broker or salesperson under section 4735.022 of the Revised Code;

(35) Having knowingly inserted or participated in inserting any materially inaccurate term in a document, including naming a false consideration;

(36) Having failed to inform the licensee's client of the existence of an offer or counteroffer or having failed to present an offer or counteroffer in a timely manner, unless otherwise instructed by the client, provided the instruction of the client does not conflict with any state or federal law;

(37) Having failed to comply with section 4735.24 of the Revised Code;

(38) Having acted as a broker without authority, impeded the ability of a principal broker to perform any of the duties described in section 4735.081 of the Revised Code, or impeded the ability a management level licensee to perform the licensee's duties;

(39) Entering into a right-to-list home sale agreement;

(40) Having failed to comply with section 5301.95 of the Revised Code while acting as a wholesaler of residential real property, as those terms are defined in that section.

(B) Whenever the commission, pursuant to section 4735.051 of the Revised Code, imposes disciplinary sanctions for any violation of this section, the commission also may impose such sanctions upon the broker with whom the salesperson is affiliated if the commission finds that the broker had knowledge of the salesperson's actions that violated this section.

(C) The commission shall, pursuant to section 4735.051 of the Revised Code, impose disciplinary sanctions upon any foreign real estate dealer or salesperson who, in that capacity or in handling the dealer's or salesperson's own property, is found guilty of any of the acts or omissions

specified or comprehended in division (A) of this section insofar as the acts or omissions pertain to foreign real estate. If the commission imposes such sanctions upon a foreign real estate salesperson for a violation of this section, the commission also may suspend or revoke the license of the foreign real estate dealer with whom the salesperson is affiliated if the commission finds that the dealer had knowledge of the salesperson's actions that violated this section.

(D) The commission may suspend, in whole or in part, the imposition of the penalty of suspension of a license under this section.

(E) A person licensed under this chapter who represents a party to a transaction or a proposed transaction involving the sale, purchase, exchange, lease, or management of real property that is or will be used in the cultivation, processing, dispensing, or testing of medical marijuana under Chapter 3796. of the Revised Code, or who receives, holds, or disburses funds from a real estate brokerage trust account in connection with such a transaction, shall not be subject to disciplinary sanctions under this chapter solely because the licensed person engaged in activities permitted under this chapter and related to activities under Chapter 3796. of the Revised Code.

Sec. 4735.24. (A) Except as otherwise provided in this section, when earnest money connected to a real estate purchase agreement is deposited in a real estate broker's trust or special account, the broker shall maintain that money in the account in accordance with the terms of the purchase agreement until one of the following occurs:

(1) The transaction closes and the broker disburses the earnest money to the closing or escrow agent or otherwise disburses the money pursuant to the terms of the purchase agreement.

(2) The parties provide the broker with separate written instructions that both parties have signed that specify how the broker is to disburse the earnest money and the broker acts pursuant to those instructions.

(3) The broker receives a copy of a final court order that specifies to whom the earnest money is to be awarded and the broker acts pursuant to the court order.

(4) The transaction is canceled by the record owner of residential property under division (C)(1) of section 5301.95 of the Revised Code, and the broker disburses the earnest money to the record owner pursuant to that division.

(5) The earnest money becomes unclaimed funds as defined in division (M)(2) of section 169.02 of the Revised Code and, after providing the notice that division (E) of section 169.03 of the Revised Code requires, the broker has reported the unclaimed funds to the director of commerce pursuant to section 169.03 of the Revised Code and has remitted all of the earnest money to the director.

(B) A purchase agreement may provide that in the event of a dispute regarding the disbursement of the earnest money, the broker will return the money to the purchaser without notice to the parties unless, within two years from the date the earnest money was deposited in the broker's trust or special account, the broker has received one of the following:

(1) Written instructions signed by both parties specifying how the money is to be disbursed;

(2) Written notice that a court action to resolve the dispute has been filed.

(C)(1) If the parties dispute the disbursement of the earnest money and the purchase agreement contains the provision described in division (B) of this section, not later than the first day of September following the two year anniversary date of the deposit of the earnest money in the broker's account, the broker shall return the earnest money to the purchaser unless the parties provided the broker with written instructions or a notice of a court action as described in division (B) of this section.

(2) If the broker cannot locate the purchaser at the time the disbursement is due, after providing the notice that division (E) of section 169.03 of the Revised Code requires, the broker shall report the earnest money as unclaimed funds to the director of commerce pursuant to section 169.03 of the Revised Code and remit all of the earnest money to the director.

Sec. 5301.95. (A) For the purposes of this section:

(1) "Residential real property" means real property that is improved by a building or other structure that has one to four dwelling units.

(2)(a) "Wholesaler" means a person or entity that for a fee, commission, or other valuable consideration, or with the intention, in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, enters into a purchase contract for residential real property either:

(i) As the grantee, and assigns or novates that contract to another person or entity;

(ii) As the grantor, and, without holding legal title to that real property, assigns or novates that contract to another person or entity.

(b) "Wholesaler" does not include either of the following:

(i) An individual who assigns or novates a contract described in division (A)(2)(a) of this section to another individual who is related by blood.

(ii) A person or entity that assigns or novates such a contract to a parent, affiliate, subsidiary, or affiliated group under common control with the person or entity.

(B)(1) Before entering into a binding contract that transfers an interest in residential real property, a wholesaler acting as the grantee or the wholesaler's representative, if applicable, shall provide to the record owner a conspicuous written disclosure statement, separate from the purchase contract or agreement, printed in boldface type in a font size not less than twelve points, and in substantially the following form:

"Ohio law requires a wholesaler acting as a grantee, before entering into a contract or agreement that conveys an interest in residential real property, to provide certain information to the record owner in a conspicuous manner printed in boldface type in a font size not less than twelve points. Failure by a wholesaler to present or complete this form is an unfair or deceptive act or practice. Any person who enters into an agreement that conveys an interest in residential real property to a wholesaler acting as a grantee without receiving this disclosure has a cause of action against the wholesaler. A wholesaler acting as a grantee is prohibited from entering into a binding

contract to acquire an interest in residential real property unless this statement is signed and dated by the record owner of the property.

The owner acknowledges that the person presenting this document is a wholesaler, as defined by section 5301.95 of the Revised Code, and that all buyers and sellers of real estate are entitled to seek legal or professional advice before entering into any agreement or contract regarding the purchase or sale of property, including an agreement with a wholesaler. A wholesaler is acting on the wholesaler's own behalf and does not represent the owner in this transaction. A wholesaler enters assignable contracts with owners and seeks to sell or assign the wholesaler's interest for a profit. The wholesaler may assign the wholesaler's interest in the purchase contract to a third party without the owner's consent before closing. The wholesaler may charge a fee to the third-party buyer separately for profit. The agreed purchase price between the owner and wholesaler may be below market value and is conveyed voluntarily.

The owner acknowledges disclosure of the information provided in this form by signing and dating below:

_____ (Property owner signature) _____ (date)

_____ (Wholesaler signature) _____ (date)"

(2) A wholesaler acting as the grantee shall not enter into a binding contract that transfers an interest in residential real property until both the wholesaler and the record owner of the property sign and date the disclosure statement required by this section.

(C)(1) If a wholesaler acting as the grantee fails to make the disclosures required by this section before entering into a binding contract that transfers an interest in residential real property, the record owner of the residential real property may cancel the contract at any time prior to the close of escrow without penalty and the escrow or closing agent, as defined in section 1349.20 of the Revised Code, shall disburse any earnest money paid by the wholesaler to the record owner within thirty days after such cancellation.

(2) No provision of this section shall be modified or waived by any oral or written agreement. Any portion of an agreement that is executed, modified, or extended after the effective date of this section that modifies or waives a duty under division (B) of this section or a remedy under division (C) of this section is void ab initio and unenforceable.

(3) Any violation of this section is an unfair or deceptive act or practice in violation of section 1345.02 of the Revised Code. A party that enters into an agreement without receiving the disclosures required in this section has a cause of action against a wholesaler and is entitled to the same relief available to a consumer under section 1345.09 of the Revised Code. All powers and remedies available to the attorney general to enforce sections 1345.01 to 1345.13 of the Revised Code are available to the attorney general to enforce this section.

SECTION 2. That existing sections 4735.18 and 4735.24 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. S. B. No. 155

136th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____