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D. Short

DELAWARE STATE SENATE

146th GENERAL ASSEMBLY

SENATE BILL NO. 154  
AS AMENDED BY  
SENATE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO REAL ESTATE BROKERS AND REAL ESTATE SALESPERSONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 29, Title 24 of the Delaware Code by striking said Chapter in its entirety and substituting in lieu thereof the following:

“CHAPTER 29. REAL ESTATE SERVICES, BROKERS, ASSOCIATE BROKERS AND SALESPERSONS

Subchapter I. General Provisions

§ 2900. Objectives.

(a) The primary objective of the Delaware Real Estate Commission, to which all other objectives and purposes are secondary, is to protect the general public, specifically those Persons who are the direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.

(b) The secondary objectives of the Commission are to maintain minimum standards of Licensee competency and to maintain certain standards in the delivery of services to the public.

(c) In meeting its objectives, the Commission shall develop standards assuring professional competence; shall monitor complaints brought against Licensees regulated by the Commission; shall adjudicate at formal hearings; shall promulgate Rules and Regulations; and shall impose sanctions where necessary against Licensees and non-Licensees engaged in the practice of providing Real Estate Services.

§ 2901. License Requirements; Exemptions.

(a) No Person shall engage in the practice of providing Real Estate Services or hold himself or herself out to the public in this State as being qualified to practice the same; or use in connection with that Person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the Person is qualified to practice Real Estate Services, unless such Person has been duly licensed under this chapter.

(b) Any Person engaging in the practice of providing Real Estate Services in this State without the proper licensure shall be in violation of this chapter and shall be subject to the provisions of 29 Del. Code Section § 10161.

(c) No Brokerage Organization, corporation, partnership or other business entity shall be licensed under this chapter. Nothing in this chapter, however, shall prevent such Brokerage Organization from providing Real Estate Services provided the individual or business entity has a Broker who is responsible for providing Real Estate Services and who may have affiliated Associate Brokers or Salespersons, properly licensed in this State, who provide such services under the supervision of the Broker.

(d) No Person shall directly or indirectly provide Real Estate Services through a Licensee of the State without having a License in this State.

(e) This chapter shall not apply to:

(1) Any Person or a subsidiary or division thereof with common ownership or control who, as owner or lessor or buyer or lessee, performs any of the acts enumerated in this section with reference to property owned, purchased or leased by such Person or a subsidiary or division thereof with common ownership or control or to the regular employee of such Person, with respect to the property so owned, purchased or leased, where such acts are performed in the regular course of or as an incident to the management of such property and the investment therein; or

(2) Persons acting as attorney in fact under a duly executed power of attorney from a Person engaged in a real estate transaction authorizing the final consummation by performance of any agreement of sale, leasing or exchange of real estate.

(3) This chapter shall not be construed to include in any way the services rendered by an attorney-at-law, nor shall it be held to include, while acting as such, the receiver, trustee in bankruptcy, administrator or executor, or any Person selling real estate under order of any court, or a trustee acting under a trust agreement, deed of trust or will, or the regular salaried employee thereof.

(4) An 'auctioneer' as defined in § 2301(a)(3) of Title 30.

(5) A provider of Property Management Services as defined in Section 2902 of this Chapter excepting that a provider of Property Management Services shall not directly or indirectly sell or offer to sell, buy or offer to buy, negotiate the purchase, sale, or exchange of real estate, lease or rent or offer for lease or rent any real estate, or negotiate leases or rental agreements thereof or of the improvements thereon for others.

§ 2902. Definitions.

(a) As used in this chapter:

(1) 'Associate Broker' means any individual who holds an Associate Broker license from the Commission and who is licensed under a Broker to sell or offer to sell, or to buy or to offer to buy, or to negotiate the purchase, sale, or exchange of real estate, or to lease or rent or offer for rent any real estate, or to negotiate leases or rental agreements thereof or of the improvements thereon for others.

(2) 'Broker' means any individual who holds a Broker license from the Commission and who for a compensation or valuable consideration, is self-employed or is employed directly or indirectly by a Brokerage Organization to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale, or exchange of real estate, or to lease or rent or offer for rent any real estate, or to negotiate leases or rental agreements thereof or of the improvements thereon for others. The Broker is responsible for providing Real Estate Services and is primarily responsible for the day to day management and supervision of a Brokerage Organization as it relates to this chapter.

(3) 'Brokerage Organization' means that individual or business entity which is not licensed but is acting as a Broker under § 2901(c) of this title and is the trade name under which the Broker operates. The individual or business entity shall have a Broker licensed under this chapter.

(4) 'Client' means a member of the public who is the principal in the Statutory or Common Law Agency relationship.

(5) 'Commission' means the Delaware Real Estate Commission.

(6) 'Competitive Market Analysis' or 'CMA' means a service provided by a Licensee for the purpose of providing either a potential listing price or use or a potential offering price or use in a Real Estate Services transaction. In this method, Licensees compare properties whose characteristics are similar in location, style, size and amenities to provide an estimated market price or a potential use for a target property or area. The CMA usually consists of an evaluation of similar properties that have recently sold, are

currently under agreement to sell and are currently listed or offered for sale. A CMA may also be referred to as a Comparative Market Analysis, a Comparable Market Analysis, a Broker Price Opinion or Broker's Market Analysis. A CMA is not an appraisal.

(7) 'Consumer Information Statement' or 'CIS' means the disclosure form required by § 2938 of this chapter.

(8) "Conviction" means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

(9) 'Customer' means a member of the general public working with a Licensee as a potential buyer, seller, exchangor, exchangee, tenant, or landlord of real property or is consulting with a Licensee in one of these capacities for the purpose of entering into a brokerage agreement or transaction, but who has not yet entered into a Statutory or Common Law Agency relationship with a Licensee. A Customer is sometimes referred to as a Prospect.

(10) 'Designated Agent' means a Licensee appointed by the Broker working with a Customer or Client as a Statutory Agent.

(11) 'Designated On-Site Supervisor' means a Licensee who has at least five (5) years of continuous Real Estate Services experience and who has been appointed as the full-time supervisor of a branch office by the Broker.

(12) 'Division' means the Delaware Division of Professional Regulation.

(13) 'Dual Agent' means a Salesperson, Associate Broker, Broker and/or Brokerage Organization which represents both buyer and seller or tenant and landlord as Clients in a Real Estate Services transaction.

(14) 'Escrow Account' means a separate account established by the Brokerage Organization used solely for moneys in which a Broker's Customers or Clients have an interest in accordance with the terms of a Real Estate Services Transaction.

(15) 'Licensee' means an individual licensed under this chapter as a Broker, Associate Broker or Salesperson without implying what legal relationship they have with a Customer or Client.

(16) 'Ministerial Task' means a task that does not involve discretion or the exercise of the Licensee's own judgment, for example:

a. Performing tasks for a Client or Customer according to the brokerage agreement or other form of consent before or after the signing of an agreement of sale or lease such as arranging an inspection; or

b. Assisting other Persons to perform their part of the transaction such as providing information to the mortgage lender.

(17) 'Person' means an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company and any other legal entity and includes a legal successor of those entities.

(18) 'Property Management Services' means those actions taken for others, pursuant to an agreement, in exchange for a fee, commission, compensation or other valuable consideration which include the supervision and the administration of the physical maintenance and/or the financial matters of real property. These supervision services may include assisting the owner in decisions in the selection of tenants, budgeting for the operation of property(s), collecting of rent(s), or maintaining security deposits.

(19) 'Psychologically Impacted' and "Psychological Impacts" mean that the property was, or was at any time suspected to have been the site of a homicide, suicide or other felony except arson or that an occupant of real property is or was at any time suspected to be infected or has been infected with Human Immunodeficiency Virus (HIV) or diagnosed with Acquired Immune Deficiency Syndrome (AIDS), or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place.

(20) 'Real Estate Services' means those activities performed by a Licensee as defined in this chapter. As promulgated under the Rules and Regulations, Real Estate Services shall also include the marketing and advertising of properties for sale or lease.

(21) 'Real Estate Service Provider' means a Licensee who is providing Real Estate Services.

(22) 'Rules and Regulations' mean those rules and regulations as promulgated by the Commission.

(23) 'Salesperson' means any individual who holds a Salesperson license from the Commission and who is licensed under a Broker to sell or offer to sell, or to buy or to offer to buy, or to negotiate the purchase, sale, auction or exchange of real estate, or to lease or rent or offer for rent any real estate, or to negotiate leases or rental agreements thereof or of the improvements thereon for others.

(24) 'State' means the State of Delaware.

(25) 'Statutory Agent' or "Agent" means a Licensee functioning as a party in an agency relationship created according to Subchapter II as an independent contractor and not as a fiduciary. The Agent offers Real Estate Services to the public to make a market in real estate by bringing buyer and seller, or landlord and tenant together for the transaction and assisting the parties with advice and negotiations, and performing Ministerial Tasks to complete the transaction. Every Licensee shall be presumed to be a Statutory Agent and may refer to themselves as Agent or Statutory Agent unless specifically identified as a Common Law Agent in their brokerage agreement.

(26) 'Substantially Related' means the nature of the criminal conduct, for which the individual was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the practice of providing Real Estate Services.

(b) In applying this chapter to leasing transactions, the word 'landlord' may be substituted for 'seller', the word 'tenant' may be substituted for 'buyer', and the word 'lease' may be substituted for 'agreement of sale' where applicable. The terms "rental agreement" and 'lease' may be used interchangeably.

§ 2903. Real Estate Commission; Appointments; Qualifications; Terms of Office; Vacancies; Suspension or Removal; Unexcused Absences; Compensation.

(a) There is created the Delaware Real Estate Commission, which shall administer and enforce this chapter.

(b) The Commission shall consist of 9 members appointed by the Governor: 5 professional members, 3 of whom shall be licensed Brokers, 1 Associate Broker, and 1 Salesperson; and 4 public members. All members shall have been residents of the State for at least 5 years immediately prior to such appointment.

(1) Three of the professional members shall be Brokers: 1 shall be a resident of New Castle County; 1 shall be a resident of Kent County; and 1 shall be a resident of Sussex County. Broker members of the Commission shall have been active Licensees for at least 5 years immediately prior to their appointment.

(2) One of the professional members shall be an Associate Broker. The Associate Broker member shall have been an active Licensee for at least 5 years immediately prior to that Associate Broker's appointment.

(3) One of the professional members shall be a Salesperson. The Salesperson member shall have been an active Licensee for at least 4 years immediately prior to that Salesperson's appointment.

(4) Of the 4 public members, 1 public member shall be from each county and 1 public member shall be from the City of Wilmington. To serve on the Commission, a public member shall not be, nor have been

within the last 8 years prior to the effective date of appointment, a Licensee, nor a member of the immediate family of a Licensee; shall not be, nor have been with the last 8 years prior to the effective date of appointment, employed by a Broker or Brokerage Organization; shall not have had a financial interest in the providing of goods and services to a Licensee; and shall not be, nor have been within the last 8 years prior to the effective date of appointment, engaged in an activity directly related to providing Real Estate Services.

(c) Each member shall serve for a term of 3 years, unless otherwise specified in this chapter; and may succeed himself or herself for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Commission shall hold office for the remainder of the unexpired term of the former member.

(d) No member, while serving on the Commission, shall be a president, president-elect, vice-president, secretary, treasurer, director or other elected official of a professional association for Real Estate Service Providers.

(e) Any act or vote by a member appointed in violation of subsection (b) of this section shall be invalid. An amendment or revision of this chapter is not sufficient cause for any appointment or attempted appointment in violation of subsection (b) of this section, unless such amendment or revision amends this section to permit such an appointment.

(f) A member of the Commission shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetence or neglect of duty or for unprofessional or dishonorable conduct. A member subject to disciplinary hearing shall be disqualified from Commission business until the charge is adjudicated or the matter is otherwise concluded. A Commission member may appeal any suspension or removal to the Superior Court.

(g) Any member who is absent without adequate reason for 3 consecutive meetings or fails to attend at least half of all regular business meetings during any calendar year shall be guilty of neglect of duty.

(h) The provisions set forth for 'employees' in Chapter 58 of Title 29 shall apply to all members of the Commission and to all agents appointed, or otherwise employed by the Commission.

(i) The members of the Commission shall each receive compensation at the rate of \$50 per meeting attended; provided, however, no member shall receive compensation for the year in excess of \$500 and the Commission shall not be paid for more than 10 meetings during a calendar year.

§ 2904. Organization; Meetings; Officers; Quorum.

(a) In the same month of each year, the members shall elect from among their number a Chairperson, Vice-Chairperson and Secretary. Each officer shall serve for 1 year, and shall not succeed himself or herself in the same office.

(b) The Commission shall hold regularly scheduled business meetings at least once in each quarter of a calendar year and at such other times as the Chairperson deems necessary, or at the request of a majority of Commission members. Special or emergency meetings may be held, provided a quorum is present.

(c) A majority of members shall constitute a quorum, and no Licensee shall be disciplined without the affirmative vote of at least 5 members.

(d) Minutes of all meetings shall be recorded and copies shall be maintained by the Division. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. The Person requesting it shall incur the expense of preparing any transcript.

§ 2905. Records.

The Division shall keep a register of all approved applications for licensure and complete records relating to meetings of the Commission, examinations, rosters, changes and additions to the Commission's Rules and Regulations, complaints, hearings and such other matters as the Commission shall determine. Such records shall be prima facie evidence of the proceedings of the Commission.

§ 2906. Powers and Duties.

(a) The Commission shall have the authority to:

(1) Formulate Rules and Regulations, with appropriate notice to those affected; all Rules and Regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code. Each rule or regulation shall implement or clarify a specific section of this chapter.

(2) Approve the forms to be used under this chapter or as directed by other statutory provisions.

(3) Establish the qualifications for licensure and evaluate the credentials of all applicants for a license to practice Real Estate Services, in order to determine whether such applicants meet the qualifications set forth in this chapter.

(4) Grant licenses to, and renew licenses of, all individuals who meet the qualifications for licensure and renewal.



(5) Establish and administer the criteria and standards by rule and regulation for instructors, schools of real estate and course providers.

(6) Establish by rule and regulation pre-licensing and continuing education standards required for licensure and license renewal.

(7) Perform random audits of continuing education credits submitted by Licensees for license renewal.

(8) Evaluate certified records to determine whether an applicant for licensure who previously has been licensed, certified or registered in another jurisdiction to practice Real Estate Services has engaged in any act or offense that would be grounds for disciplinary action under this chapter and whether there are disciplinary proceedings or unresolved complaints pending against such applicant for such acts or offenses.

(9) Refer all complaints from Licensees and the general public concerning individuals licensed in this chapter or concerning practices of the Commission or of the profession, to the Division for investigation pursuant to § 8735 of Title 29 and assign a member of the Commission to assist the Division in an advisory capacity with the investigation of the technical aspects of the complaint.

(10) Conduct hearings and issue orders in accordance with procedures established pursuant to Chapter 101 of Title 29.

(11) Designate and impose the appropriate sanction or penalty where it has been determined after a hearing that penalties or sanctions should be imposed.

(12) Order compensation from the Real Estate Guaranty Fund, when, after a hearing, the Commission finds in favor of an aggrieved party, pursuant to § 2922 of this chapter.

(13) Issue cease and desist orders and impose fines for unlicensed practice, as specified in the Rules and Regulations and in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) The Division shall contract with a nationally recognized testing service for the preparation and grading of a written examination for the licensing of Real Estate Service Providers. The Commission may appoint a committee to review the written examination to establish its relevancy and accuracy for licensure in this State.

(c) The Commission shall promulgate regulations specifically identifying those crimes which are Substantially Related to the practice of providing Real Estate Services.

§ 2907. Qualifications of Applicant; Application; Examination; Report to Attorney General; Judicial Review.

(a) All applicants shall meet the following conditions:

(1) Shall be competent to transact Real Estate Services by meeting the requirements of this section and the Rules and Regulations;

(2) Shall not have been the recipient of any administrative penalties regarding Real Estate Services, in this or any other jurisdiction, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any 'consent agreements' which contain conditions placed by a licensing commission or board on that applicant's professional conduct and practice, including any voluntary surrender of a license. Notwithstanding the foregoing, the Commission, after a hearing, may determine whether such administrative penalty is grounds to deny licensure.

(3) Shall not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake that applicant's practice in a manner consistent with the safety of the public.

(4) Shall not have a criminal Conviction record, nor pending criminal charge relating to an offense the circumstances of which are Substantially Related to the practice of providing Real Estate Services. In addition, shall not have been convicted of fraud. Applicants who have criminal Conviction records or pending criminal charges shall request appropriate authorities to provide information about the Conviction or charge directly to the Commission in sufficient specificity to enable the Commission to make a determination whether the Conviction or charge is Substantially Related to the applicant's area of practice. However, after a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Commission, by an affirmative vote of a majority of the quorum, may waive this paragraph (a)(4) of this section, if it finds all of the following:

a. For waiver of a felony conviction, more than 5 years have elapsed since the date of the conviction. At the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

c. The applicant is capable of providing Real Estate Services in a competent and professional manner.

d. The granting of the waiver will not endanger the public health, safety or welfare.

(b) Salesperson. An applicant who is applying for licensure as a Salesperson under this chapter shall submit evidence, verified by oath and satisfactory to the Commission, that such applicant:

(1) Meets the requirements of § 2907(a).

(2) Is at least eighteen (18) years of age.

(3) Has successfully completed a prescribed pre-licensing course of instruction including real estate principles and practices and Delaware real estate law.

(4) Has passed a uniform national and State examination for Salespersons, as is contractually arranged for, with a nationally recognized independent testing service, by the Division; and

(5) Has provided such information as may be required on an application form designed and furnished by the Commission with the approval of the Division. No application form shall require information relating to citizenship, place of birth or length of State residency; nor require personal references.

(c) Associate Broker. An applicant who is applying for licensure as an Associate Broker under this chapter shall submit evidence, verified by oath and satisfactory to the Commission, that such applicant:

(1) Meets the requirements of § 2907(a).

(2) Is at least 23 years of age.

(3) Has the experience requirements as specified under the Rules and Regulations.

(4) Has the financial prerequisites set forth in the Rules and Regulations.

(5) Has successfully completed a prescribed pre-licensing course of instruction for Brokers including real estate principles and practices and Delaware real estate law.

(6) Has passed a uniform national and State examination for Brokers, as is contractually arranged for, with a nationally recognized independent testing service, by the Division; and

(7) Has provided such information as may be required on an application form designed and furnished by the Commission with the approval of the Division. No application form shall require a picture of the applicant; require information relating to citizenship, place of birth or length of State residency; nor require personal references.

(d) Broker. In addition to the requirements of § 2907(c), an applicant who is applying for licensure as a Broker under this chapter shall submit verification of the applicant's responsibility for the day to day management and

supervision of a Brokerage Organization and meet the experience and education requirements as defined in the Rules and Regulations.

(e) Where the Commission has found to its satisfaction that an applicant has been intentionally fraudulent or that false information has been intentionally supplied, it shall report its findings to the Attorney General for further action.

(f) Where the applicant has been refused or rejected and such applicant feels that the Commission has acted without justification; has imposed higher or different standards than for other applicants or Licensees; or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(g) Every application for a license under this chapter shall be accompanied by the fee prescribed by § 2908 of this title and payment of a Guaranty Fund fee.

§ 2908. Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Commission, as well as the proportional expenses incurred by the Division in its services on behalf of the Commission. There shall be a separate fee charged for each service or activity, but no fee shall be charged for an activity not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each biennium year the Division, or any other State agency acting in its behalf, shall compute for each separate service or activity, the appropriate fee for the coming year.

§ 2909. Reciprocal Licensure.

(a) Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Commission, and subject to the further requirements set forth in this section, the Commission shall grant a license to an applicant who shall present proof of current licensure in "good standing" in another state, the District of Columbia, or territory of the United States and the license shall be in "good standing" as defined in §§ 2907(a)(2), (3) and (4) of this chapter.

(b) A Salesperson applicant shall also meet one of the following criteria:

(1) Presents proof of at least three years of continuous licensure, preceding the date of application, in another state, District of Columbia or territory of the United States and completion of Real Estate Services transactions during those three years as specified in the Rules and Regulations; and has passed the State portion of the Delaware licensing examination; or

(2) Has successfully completed the Delaware law portion of the pre-licensing course and passed the State portion of the Delaware licensing examination; or

(3) Has successfully completed the equivalent of the prescribed pre-licensing education for the State in the other state, the District of Columbia, or territory of the United States and has passed the State portion of the Delaware licensing examination.

(c) An Associate Broker applicant shall, in addition to the requirements set forth in § 2909 (a), meet the following requirements:

(1) Shall be at least 23 years of age.

(2) Has the experience requirements as specified under the Rules and Regulations; and

(3) Has the financial prerequisites set forth in the Rules and Regulations; and

(4) Has passed the State portion of the examination for Brokers.

(d) An applicant for a Broker's license shall meet the requirements set forth in § 2909(c), shall submit verification of his or her responsibility for the day to day management and supervision of a Brokerage Organization, and shall meet the experience and education requirements as defined in the Rules and Regulations.

(e) In the event there is a disciplinary proceeding or unresolved complaint pending, the applicant shall not be licensed until the proceeding or complaint has been resolved. Applicants for licensure in this State shall be deemed to have given consent to the release of information pertaining to the disciplinary proceeding or unresolved complaint and to waive all objections to the admissibility of such information as evidence at any hearing or other proceeding to which the applicant may be subject.

(f) Every applicant who is applying for licensure in an office located outside of this State, prior to being licensed, shall give irrevocable consent that legal action may be commenced against the applicant in the proper court of any county of this State in which a cause of action may arise or in which the plaintiff may reside, by service of any process or pleading authorized by the laws of this State upon any member of the Commission. In case any processes or pleadings are served upon any member of the Commission, a copy thereof shall be immediately forwarded by certified or registered mail to the main office of the Licensee against which process or pleadings are directed.

§ 2910. Issuance and Renewal of Licenses; Additional Licenses; Reinstatement.

(a) The Commission shall issue a license to each applicant who meets the requirements of this chapter for licensure as a Real Estate Service Provider and who pays the fees prescribed by the Division.

(b) A Licensee may obtain an additional license and become affiliated with an additional Broker if the Licensee:

(1) Obtains, from an additional Broker, a written commitment providing that the Licensee shall become affiliated with the Broker on the granting of an additional license to the Licensee;

(2) Gives each Broker with whom the Licensee is currently affiliated written notice that the Licensee intends to affiliate with an additional Broker;

(3) Obtains from the Broker with whom the Licensee is currently affiliated, and from the additional Broker, written approval of the Licensee's intent to affiliate with an additional Broker; and

(4) Complies with the application procedures applicable to additional licenses set forth in the Rules and Regulations.

(c) On or before the biennial date established by the Division, each Licensee shall make application to the Commission for a renewal of license and make payment of the fees prescribed by the Division. The renewal application shall be made online, pursuant to the Commission's Rules and Regulations.

(d) In addition to the other provisions of this section, each Licensee applying for renewal shall be required to successfully complete in the 2-year period prior to the established renewal date continuing education hours in an amount and subject matter as prescribed by the Rules and Regulations of the Commission. Each Licensee at the time of license renewal shall be required to certify to the Commission that he or she has completed the required number of hours in approved courses, seminars and lectures. The Commission shall publish guidelines as to acceptable courses of instruction, seminars and lectures, and shall keep the guidelines current.

(e) At the time of renewal, each Licensee shall disclose whether he or she has had any criminal convictions since the last license renewal.

(f) The Commission shall, in its Rules and Regulations, determine the period of time a Licensee may still renew a license if the Licensee has failed to renew on or before the established renewal date.

(g) An individual whose license has lapsed may apply to the Commission for reinstatement pursuant to the Rules and Regulations.

#### § 2911. Complaints.

All complaints shall be received and investigated by the Division in accordance with § 8735, Title 29, and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

#### § 2912. Grounds for Discipline.

(a) A Licensee shall be subject to disciplinary sanctions set forth in § 2914 of this chapter if after a hearing, the Commission finds that the Licensee:

- (1) Has made any substantial misrepresentation; or
- (2) Has made any false promise of a character likely to influence, persuade or induce; or
- (3) Has pursued a continued and flagrant course of misrepresentation or the making of false promises through Licensees or advertising or otherwise; or
- (4) Has failed, within a reasonable time, to account for or to remit any money coming into the Licensee's possession which belongs to others; or
- (5) Has illegally practiced Real Estate Services; or
- (6) Has incompetently or negligently practiced Real Estate Services in such manner as to not safeguard the interest of the public; or
- (7) Has paid a commission or valuable consideration to any Person for acts or services performed in violation of this chapter; or
- (8) Has assisted a Person in providing Real Estate Services who does not hold a license to provide Real Estate Services in this State.
- (9) Has violated a provision of this chapter, any of the Rules and Regulations established thereunder, or any order of the Commission; or
- (10) Has received or made an arrangement or agreement to receive, directly or indirectly, any form of valuable consideration for products or services relating to a Real Estate Services transaction without prior written disclosure by the Licensee to the Customer or Client of the Licensee and the payor for the product or service; or
- (11) Has misrepresented the availability of or the content of any statutorily required form such as the Seller's Disclosure of Real Property Condition Report Form and/or the Radon Disclosure as provided in Chapter 25 of Title 6; or
- (12) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license or renew a license as a Real Estate Service Provider; has impersonated another individual holding a license, or has allowed another individual to use that Licensee's license, or has aided or abetted an individual not licensed as a Real Estate Service Provider to represent himself or herself as a Real Estate Service Provider; or

(13) Has been convicted of a crime that is Substantially Related to the practice of Real Estate Services. A copy of the record of Conviction certified by the clerk of the court entering the Conviction shall be conclusive evidence therefore; or

(14) Has had a license as a Real Estate Service Provider suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Commission by certified record and the Commission has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every individual licensed as a Real Estate Service Provider in this State shall be deemed to have given consent to the release of this information by the Commission or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses; or

(15) Has failed to notify the Commission that the Licensee's license as a Real Estate Service Provider in another jurisdiction has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof.

(b) Any unlawful act or violation of this chapter by any Real Estate Service Provider, employee, partner, or associate of a licensed Broker shall not be cause for the revocation of a license of any Broker, unless it appears to the satisfaction of the Commission that such Broker had knowledge thereof.

(c) The Commission may suspend or revoke any license issued under this chapter at any time where the Licensee has been Convicted in a court of competent jurisdiction of the crime of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud or any similar offense or has had entered a plea of guilty or nolo contendere to any similar offense.

(d) Subject to the provisions of this chapter and subchapter IV of Chapter 101 of Title 29, no license shall be restricted, suspended or revoked by the Commission, and no Licensee's right to practice Real Estate Services shall be limited by the Commission until such Licensee has been given notice, and an opportunity to be heard, in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(e) A Licensee acting or providing service under an exemption as defined in Section 2901 of this Chapter and through the course of delivery of the exempted service is, after a hearing, found to be guilty of Section 2912 (a) (1) through (11) shall be subject to discipline pursuant to Section 2914.



§ 2913. Hearing Procedures.

(a) If a complaint is filed with the Commission pursuant to § 8735 of Title 29 alleging violation of § 2912 of this chapter, the Commission shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) Where the Licensee is in disagreement with the action of the Commission, the Licensee may appeal the Commission's decision to the Superior Court within 30 days of the day that notice of the decision is mailed. Upon such appeal the Court shall hear the evidence on the record. Stays shall be granted in accordance with § 10144 of Title 29.

§ 2914. Disciplinary Sanctions.

(a) The Commission may impose any of the following sanctions, singly or in combination, when it finds that 1 or more of the conditions or violations set forth in § 2912 of this chapter applies to a Licensee:

(1) Issue a letter of reprimand;

(2) Place the Licensee on probationary status and require the Licensee to:

a. Report regularly to the Commission upon the matters which are the basis for the probation; and/or

b. Limit Real Estate Services activities to those areas prescribed by the Commission.

(3) Impose a monetary penalty not to exceed \$5,000 for each violation;

(4) Suspend any Licensee's license.

(5) Revoke or permanently revoke any Licensee's license.

(b) In addition to sanctions imposed under Subsections (a) (1) - (4), the Commission may require a Licensee to complete continuing education courses in subjects specified by the Commission in addition to those required for licensure renewal.

(c) The Commission may withdraw or reduce conditions of probation when it finds that deficiencies requiring such action have been remedied.

(d) Where the Commission has placed a Licensee on probationary status under certain restrictions or conditions and the Commission has determined that such restrictions or conditions are being or have been violated by the Licensee, it may, after a hearing on the matter, suspend or revoke the Licensee's license.

§ 2915. Temporary suspension pending hearing

(a) In the event of a formal or informal complaint concerning the activity of a Licensee that presents a clear and immediate danger to the public health, welfare or safety, the Commission may temporarily suspend the Licensee's license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Commission Chairperson or the Commission Chairperson's designee. An order temporarily suspending a license may not be issued unless the Licensee or the Licensee's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the Licensee or the Licensee's attorney can file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended Licensee requests a continuance of the hearing date. If the temporarily suspended Licensee requests a continuance, the order of temporary suspension remains in effect until the Commission convenes and a decision is rendered.

(b) A Licensee whose license has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the Licensee or sent by certified mail, return receipt requested, to the Licensee's last known address.

(c) A Licensee whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Commission shall schedule the hearing on an expedited basis, provided that the Commission receives the request within 5 calendar days from the date on which the Licensee received notification of the decision to temporarily suspend the license.

(d) The case may be heard by the Commission, a hearing officer or a hearing panel, nominated pursuant to the Administrative Procedure Act, 29 Del. C. §§ 10161(g) – (i).

(e) After notice to the Licensee pursuant to subsection (b) of this section, the Commission, or the hearing officer or the hearing panel, shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the Licensee requests in a timely manner an expedited hearing, the Commission, or the hearing officer or hearing panel, shall convene within 15 days of the receipt of the request by the Commission. The Commission, or hearing officer or hearing panel, shall proceed to a hearing in accordance with the Administrative Procedure Act, Chapter 101 of Title 29, and shall render a decision within 30 days of the hearing.

(f) An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the Commission unless the suspended Licensee requests an extension of the order pending a final decision of the Commission. Upon the final decision of the Commission, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Commission.

§ 2916. Reinstatement of a Suspended License or Issuance of a New License After Revocation; Removal From Probationary Status; Replacement of License.

(a) Where a license has been suspended due to the disability of the Licensee, the Commission may reinstate such license if, after a hearing, the Commission is satisfied that the Licensee is able to practice Real Estate Services with reasonable skill and safety.

(b) As a condition to reinstatement of a suspended license, or removal from probationary status, the Commission may reinstate such license if, after a hearing, the Commission is satisfied that the Licensee has taken the prescribed corrective actions and otherwise satisfied all of the conditions of the suspension and/or the probation.

(c) Individuals seeking reinstatement must pay the appropriate fees and submit documentation required by the Commission as evidence that all the conditions of a suspension and/or probation have been met. Proof that the Licensee has met the continuing education requirements of this chapter may also be required, as appropriate.

(d) A new license to replace any license lost, destroyed or mutilated will be issued subject to the Rules and Regulations of the Commission. A charge set by the Division shall be made for such issuance.

(e) An individual whose license has been revoked must apply as a new applicant pursuant to the Rules and Regulations.

§ 2917. Effect of Revocation of Broker's License.

The revocation of a Broker's license shall automatically suspend every Real Estate Service Provider's license granted to any individual by virtue of employment either directly or indirectly by the Broker whose license has been revoked, pending a change of employing Broker or Brokerage Organization and the issuance of a new license. Such new license shall be issued without charge, if granted during the same licensure period in which the Licensee's original license was granted.

§ 2918. Form and Display of License.

(a) All licenses shall be issued by the Commission in such form and size as shall be prescribed by the Division.

(b) The licenses shall show the name of the Licensee, the Brokerage Organization and the address for the approved office of the Licensee.

(c) The Broker shall have all licenses readily available for review upon request by the general public or the Division within the approved place of business.

§ 2919. Maintenance of Place of Business; Office Permits.

(a) The Broker shall maintain an office approved by the Commission or by the state of licensure. Each office shall be under the direction and supervision of the Broker. A Broker applying for an office in the State of Delaware shall submit an application to the Commission for an office permit with the application fee established by the Division. A permit shall be issued only upon approval by the Commission.

(b) On or before the biennial date established by the Division, the Broker shall submit an application to the Division for renewal of the office permit with the renewal fee established by the Division.

(c) The Broker's license shall include the address of the approved office.

(d) If the Broker maintains more than one office, the Broker shall apply for and obtain an additional Broker's License and office permit in the Broker's name for each branch office. A branch office permit shall be subject to the requirements set forth in Sections 2919(a) and (b). The application for a branch office shall state the address of the branch office and the Designated On-Site Supervisor. The Designated On-Site Supervisor shall be a Licensee with a minimum of five (5) years of continuous Real Estate Services experience, which shall be documented on the branch office application. The branch office, any Licensees associated with the office and the Designated On-Site Supervisor shall be under the direction and supervision of the Broker.

(e) All Brokers' offices shall display a conspicuous sign on the outside of the office building as set forth in the Commission's Rules and Regulations.

(f) Additional requirements for issuance of office permits may be set forth in the Commission's Rules and Regulations.

§ 2920. Notice of Change in Location of Business; New License.

Notice in writing shall be given to the Commission by the Broker and include the names of each Licensee included in any change of approved office location, whereupon the Commission shall issue a new license to each Licensee for the unexpired period upon payment of the fee established by the Division.

§ 2921. Notice and Procedure on Termination of Licensee's Employment; New License as Prerequisite to Resumption; Inactive Status.

(a) When any Licensee is terminated by the Broker or Broker Organization or voluntarily terminates, the Broker shall immediately notify the Commission of such termination.

(1) Upon the Broker terminating the Licensee, the Broker, at the time of the notification to the Commission, shall address a communication to the last known address of such Licensee. The communication shall advise the Licensee of the termination. A copy of the communication to the Licensee shall accompany the notification to the Commission.

(2) No terminated Licensee shall perform any Real Estate Services or engage directly or indirectly in providing Real Estate Services until the Commission, in its discretion, shall issue a new license showing a new Broker and a new approved business location.

(b) Upon completion of a form as provided in the Rules and Regulations and payment of the prescribed fee, the Commission shall place any active Licensee on an inactive status for an unlimited amount of time. A Licensee may reactivate an inactive status license, subject to payment of the biennial registration fees, for such time as the license has been inactive, and upon submission of proof of fulfillment of continuing education requirements for each renewal period.

(c) A Licensee may transfer his or her license from one Broker to another upon completion of a form as provided in the Rules and Regulations and upon payment of the prescribed fee. The releasing Broker must file a completed form with the Commission within 5 business days of obtaining a sponsoring Broker and the transferring Licensees signatures on the form.

§ 2922. Real Estate Guaranty Fund.

(a) The Commission shall establish and maintain a Real Estate Guaranty Fund (hereinafter referred to as the "Fund") from which, subject to this section, any Person who obtains a final judgment against a Licensee for loss or damage sustained by reason of theft or forgery (as defined in Title 11) or by reason of any fraud, misrepresentation or deceit by or on the part of any such Licensee or any employee thereof who does not hold a license, may recover, after a hearing and on order of the Commission, compensation in an amount not exceeding in the aggregate the sum of \$25,000 in connection with any 1 transaction or claim, regardless of the number of Persons aggrieved or parcels of real estate involved in such transaction or claim.

(b) If the aggrieved Person obtains a final judgment against a Licensee for loss or damage sustained by reason of theft or forgery (as defined in Title 11) or by reason of fraud, misrepresentation or deceit by or on the part of such Licensee or employee thereof who does not hold a license, such aggrieved Person may file a verified claim with

the Commission seeking an order directing payment from the Fund of any amount unpaid upon the judgment, subject to the limitations stated in subsection (a) of this section and this subsection. The verified claim shall be filed within 60 days after the final judgment has been obtained. The verified claim shall include a copy of the complaint, counterclaim or cross-claim, if any, a certified copy of the judgment and copies of any documentation relating to steps taken to collect on the judgment. The Commission shall proceed upon such claim in a summary manner and, upon the hearing thereof, the aggrieved Person shall be required to show:

(1) That the aggrieved Person is not a spouse of the judgment debtor or the personal representative of said spouse;

(2) That the aggrieved Person has complied with all the requirements of this section;

(3) That the aggrieved Person has obtained a final judgment as set out in this subsection, stating the amount thereof and the amount owing thereon at the date of the filing of the aggrieved Person's verified claim; and

(4) That the aggrieved Person has fully pursued and exhausted all available remedies and taken all reasonable steps to collect the amount of the judgment, stating the total amount collected.

(c) If the Commission is satisfied that the aggrieved Person has satisfied all the requirements of this section and is entitled to recover compensation from the Fund, it shall enter an order requiring payment from the Fund of whatever sum it shall find to be payable upon the claim, subject to the limitations of subsection (a) of this section. The Commission, in its discretion, may authorize payment of an amount from the Fund less than the claim made pursuant to this subsection.

(d) If the Commission pays from the Fund any amount in settlement of a claim or toward satisfaction of a judgment against a Licensee, the license of such Licensee may be suspended or revoked by the Commission and, in the discretion of the Commission, such Licensee shall be ineligible to receive a new license until the Licensee has repaid in full, plus interest at the legal rate, the amount paid from the Fund on the Licensee's account. A discharge in bankruptcy shall not relieve a Licensee from the penalties and disabilities provided in this subsection.

(e) If at any time the money on deposit in the Fund is insufficient to satisfy any duly authorized claim or portion thereof, the Commission shall, when sufficient money has been deposited in the Fund, satisfy such unpaid claims or portions thereof in the order that such claims or portions thereof were originally filed pursuant to subsection (b) of this section, plus accumulated interest at the legal rate.

(f) Any Person filing with the Commission any notice, statement or other document required under subsection (b) of this section which is false or untrue or contains any material misstatement of fact shall be fined not less than \$500 nor more than \$5,000.

(g) When, upon the order of the Commission or pursuant to a compromise, the Commission has caused to be paid from the Fund any sum to a judgment creditor, the Commission shall be subrogated to all of the rights of the judgment creditor up to the amount paid and the judgment creditor shall assign all of that judgment creditor's right, title and interest in the judgment up to such amount paid by the Commission, and any sums recovered by the Commission on the judgment shall be deposited to the Fund.

(h) Each Licensee shall pay a fee of \$25 which shall be credited to the Fund; provided, that in no case shall any Licensee be required to pay said fee of \$25 more than once, unless assessed as provided in subsection (i) of this section.

(i) The Commission shall, at all times, maintain the Fund at a level in excess of \$250,000, and to this intent all moneys received pursuant to subsection (g) of this section shall be credited to said Fund and held in a special account other than the General Fund prescribed by § 6102(a) of Title 29. Said account shall be an interest-bearing account and the interest accruing from the funds on deposit in the account shall be credited to the Commission to defray the costs of administering the Fund; for seminars within the State and for continuing education for Licensees within the State; and to reimburse Commissioners, their administrative staff and legal counsel for expenses paid to attend meetings of the Association of Real Estate License Law Officials.

(j) If the balance of the Fund should fall below the \$250,000 level, the Commission shall, at the next license renewal date, assess each Licensee a pro rata fee in such amount that the Fund will be returned to the \$250,000 level.

(k) Any Person aggrieved by any action, decision, order or regulation of the Commission may appeal to the Superior Court.

§ 2923. Deposits and Escrow Accounts; Accounting; Records Inspection and Audit.

(a) Every Broker shall establish and maintain an Escrow Account or Accounts in a federally insured banking institution which has offices within the State.

(1) Accounts shall be opened in the name of the Brokerage Organization and designated as an Escrow Account.

(2) The Broker shall be a signatory on each such account.

(3) Except for the minimum balance required by the bank and money to cover bank fees, each account shall be used only for escrow deposits, earnest money deposits, rental money or other moneys in which Broker's Customers or Clients have an interest where such money is to be held by Broker in accordance with the terms of a Real Estate Services transaction.

(b) All escrow deposits, earnest money deposits, rental money or other moneys accepted by a Licensee in accordance with the terms of a Real Estate Services transaction shall be accounted for in full upon the signing of a written agreement by all parties and maintained through the consummation or termination of the Real Estate Services transaction. All moneys held by Broker shall be disbursed in accordance with the terms of the transaction unless otherwise agreed upon in writing by the parties to the transaction or ordered by a court.

(c) All escrow deposits accepted by a Licensee in accordance with the terms of a Real Estate Services transaction shall be accepted in the name of the Brokerage Organization unless the parties have agreed to a different third party escrow agent.

(d) Every Licensee, upon the signing of a written agreement by all parties to a Real Estate Services transaction, shall promptly pay over the escrow deposit, earnest money deposit, rental money or other moneys as specified in the transaction. Broker shall deposit the moneys into the Brokers Escrow Account within 72 hours of the signing of the written agreement by all parties, or by the dates defined therein, excluding weekends and federal holidays.

(e) The Broker shall have accessible at the Broker's approved place of business, all books, records, written agreements and other necessary documents to determine the adequacy of the Escrow Account or Accounts. These accounts and records shall be opened to inspection or audit by the Commission and its duly authorized agents at the Broker's approved place of business during regular business hours.

#### § 2924. Penalties.

A Person not currently licensed under this chapter when guilty of engaging in the practice of providing Real Estate Services, or using in connection with that Person's name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the person is qualified to provide Real Estate Services, such offender shall be guilty of a misdemeanor. Upon the first offense, that person shall be fined not less than \$500 nor more than \$5,000 for each offense. For a second or subsequent conviction, the fine shall be not less than \$1,000 nor more than \$10,000 for each offense. The Justices of the Peace shall have jurisdiction over all violations of this section.



§ 2925. Enforcement.

The Commission may report an individual for violation of this chapter before any court of competent jurisdiction and it may take the necessary legal steps for the proper legal officers of this State to enforce this chapter and collect the penalties provided in this chapter.

Subchapter II. Business Relationships

§ 2926. Applicability.

This subchapter applies to Licensees in their business relationships with Customers and Clients for all types of Real Estate Services whether they are sales, leases, exchanges, management of real estate for others, or real estate counseling conducted by Licensees.

§ 2927. Certain Psychological Impacts Not Material Facts.

(a) The fact or suspicion that a property might be or is Psychologically Impacted is not a material fact that must be disclosed in a real property transaction.

(b) No cause of action shall arise against an owner or landlord of real property or a Licensee for failure to inquire about, make a disclosure about or release information about the fact or suspicion that such property is Psychologically Impacted.

(c) Except as stated in subsection (d) if a Customer or Client makes a specific written request to the owner, landlord or Licensee about the Psychological Impacts regarding a specific property, the owner, landlord or Licensee shall answer the questions truthfully, to the best of such owner's, landlord's or Licensee's knowledge. The Licensee shall have no duty to inquire about the Psychological Impacts regarding a specific property unless a Customer or Client, in writing, specifically requests the Licensee to ask the owner or landlord for such information.

(d) The owner, landlord or Licensee shall not make any disclosure concerning those Psychological Impacts of HIV, AIDS, or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place even if a Customer or Client specifically asks about such Psychological Impacts.

§ 2928. Internet and World Wide Web.

Entering a name and email address on an Internet or World Wide Web site is sufficient to establish a Broker-consumer relationship for the use of that system, but does not in of itself create a Broker-Customer or Client relationship for any other purpose. The Broker may deliver the CIS by the Internet or World Wide Web and the Customer may acknowledge receipt of it electronically. However, an exclusive business relationship or obligation for

the Customer or Client to pay any compensation may only be created by a written brokerage agreement signed by the Customer or Client as a separate document. If the brokerage agreement is signed electronically it may not be part of a general consent to the terms of use of an Internet or World Wide Web site or other electronic device, but must be a conspicuous separate document.

§ 2929. Financial Information.

Licensees do not have a duty to conduct an independent investigation of the Customer's or Client's financial condition and do not have a duty to independently verify the accuracy or completeness of financial statements made by the Customer or Client or any independent inspector, auditor, or lender, but if the Licensee has actual knowledge of false financial information, the Licensee shall advise the party to correct it and shall not pass on the information known to be false.

§ 2930. Compensation.

(a) Written brokerage agreements. Nothing in this chapter obligates a buyer, tenant, seller or landlord to pay compensation to a Broker or Brokerage Organization unless that party has entered into a written brokerage agreement with the Broker or Brokerage Organization specifying the compensation terms. The compensation agreement may specify that the Licensee may cooperate with other Licensees. Brokers or Brokerage Organizations may compensate other Brokers or Brokerage Organizations participating in the transaction without further permission of the party. The source of compensation does not by itself determine brokerage relationships. If a brokerage agreement contemplated one type of transaction such as a sale, but then through the course of continuous negotiations the initial transaction changes to another type of transaction such as a lease, the Broker is still entitled to compensation; however, if the initial transaction was a lease which later became a sale, the Broker is not entitled to compensation unless the listing agreement, other compensation agreement, or lease provided for compensation for a later sale.

(b) Additional terms. Nothing in this chapter shall prohibit Consumers from entering into written brokerage agreements with a Broker or Brokerage Organization which contain duties, obligations, or responsibilities which are in addition to those specified in this chapter.

(c) Different relationships permitted for different transactions or jurisdictions. A Licensee or Brokerage Organization may work with a single party in separate transactions pursuant to different brokerage relationships including but not limited to selling one property as a seller's Agent and working with that seller in buying another property as buyer's Agent, or seller's sub-Agent where permitted; provided, however, that the Licensee or Brokerage Organization complies with this chapter in establishing the relationships for each transaction. A Licensee who is

licensed in another jurisdiction may function as a Licensee for properties in that jurisdiction even if the brokerage relationship is different in that jurisdiction such as a "transaction broker", without being considered that status in Delaware.

(d) Compensation to Licensee or entity of Licensee. All compensation relating to a Real Estate Services transaction to be paid to a Licensee shall be paid through the Broker or Brokerage Organization. The Broker or Brokerage Organization may pay the Licensee's individual compensation to an entity created by the Licensee to receive compensation providing the entity is either already approved by the Commission as a Brokerage Organization or the entity does not need to be approved because it does not engage in the brokerage business but is only established for business purposes to receive the Licensee's compensation. The Licensee paid by the Broker or Brokerage Organization may employ licensed or unlicensed staff or team members who shall be paid an hourly wage, salary, or commission according to their agreement with the employing Licensee. Nothing in this chapter shall authorize unlicensed personal assistants, independent contractors, or employees to engage in Real Estate Services activities which by statute or regulation of the Commission must be performed by a Licensee.

§ 2931. Competitive Market Analysis ("CMA").

A Competitive Market Analysis is not an appraisal. A Licensee may perform a Competitive Market Analysis as part of providing Real Estate Services. However, a Licensee shall not perform a Competitive Market Analysis for the Mortgagee on a property that is the subject of a signed Agreement of Sale. A Competitive Market Analysis as permitted under this Chapter shall meet the following criteria:

(a) A Competitive Market Analysis shall only be prepared for the following purposes:

- (1) An existing or potential seller or owner for the purpose of listing a property for sale or lease; or
- (2) An existing or potential buyer or tenant for the purpose of purchasing or leasing a property for sale or lease;

(b) The following disclosure shall appear in at least a 12 point bold face type font and located immediately following the estimated market price: 'Notwithstanding any language to the contrary contained herein, this Competitive Market Analysis is NOT an appraisal of the market value for property and is not intended to be used for any legal purpose including approval of a mortgage loan, modification of a mortgage loan, divorce/property separation, estate settlement, bankruptcy proceedings or any other purpose where real estate value is needed. If an appraisal is desired, the services of a licensed or certified appraiser must be obtained.'

(c) The Competitive Market Analysis shall comply with the content requirements as provided in the Rules and Regulations.

§ 2932. Common Law of Agency.

(a) For transactions where the Consumer hires a Broker as a Common Law Agent, and the Broker agrees to become the Consumer's Common Law Agent, the common law of agency applies to the extent it is not inconsistent with applicable provisions of this chapter.

(b) The duties of a Licensee as a Common Law Agent and corresponding liabilities of the Client begin and terminate based upon the common law of agency.

(c) Common Law Agency Disclosure.

(1) All Licensees in a Common Law Agency relationship must disclose, in writing, whom they represent. This disclosure shall be made to all parties to a transaction who the Licensee does not represent but with whom the Licensee has substantive contact, such as prospective sellers, lessors, buyers and lessees.

(2) This disclosure referenced in subsection (a) of this section shall be made at the first substantive contact between the Licensee and the Person the Licensee does not represent. A listing Broker who is not also the selling Broker and who has no substantive contact with the prospective buyer or lessee, need not make any agency disclosure to the prospective buyer or lessee.

(3) The Commission may adopt Rules and Regulations to prescribe the form of disclosure to be used by Licensees or minimum criteria for the form of disclosure.

(4) Licensees shall not function in the capacity of a Common Law Agent for transactions concerning a one to four family residential property unless they have established that relationship in writing and the policy of the Broker is to represent only the seller or buyer as a single Agent for each transaction and never as a Dual Agent.

§ 2933. Statutory Agency.

(a) The Common Law of Agency relative to brokerage relationships in Real Estate Services transactions established pursuant to this chapter is expressly abrogated for any Licensee functioning as a Broker, Associate Broker, or Salesperson, Licensee owner, or Brokerage Organization as defined in this chapter as a Statutory Agent. The remainder of this subchapter is intended to occupy completely the field of law relative to brokerage relationships for those Real Estate Services transactions with the Licensee or Licensees functioning as Statutory Agents. For those areas where the public, Licensees, regulators, or courts need further guidance as to the conduct of Statutory Agents,

Customers and Clients, the law governing independent contractor relationships shall apply to the extent it is not inconsistent with the provisions of this chapter.

(b) Statutory interpretation. Performing the functions of a Statutory Agent as described in this chapter and the Rules and Regulations of the Commission shall not be construed to automatically or by implication create a Common Law Agency relationship. Section 2933 through 2938 shall be construed as rules of conduct describing how a Licensee works for Clients, works with Customers, or interacts with the general public as a Statutory Agent in the capacity of an independent contractor and not as a Common Law Agent.

(c) Presumed Statutory Agency.

(1) For properties marketed for sale of one to four family residences or single lot sales of land intended for a one to four family residence, (i) the Licensee working for the buyer is presumed to be a Statutory Agent representing the buyer, (ii) a Licensee working for the seller is presumed to be a Statutory Agent representing the seller, and (iii) a Licensee working for both buyer and seller is presumed to be a Statutory Agent representing both parties as a Dual Agent.

(2) For new construction onsite sales offices for one to four family residences or single lot sales of land intended for a one to four family residence, the onsite Licensee shall be presumed to be a Statutory Agent representing the builder or seller.

(3) The presumption of agency may be rebutted by the Consumer signing a Consumer Information Statement establishing a different agency relationship.

§ 2934. Commencement and Termination of Duties.

(a) Commencement of duties for a Statutory Agent. The duties of confidentiality as required by § 2936(c) of this sub-chapter begin upon first contact between a Licensee and the Customer. The other Statutory duties between a Licensee and Client as required by this sub-chapter begin upon the earlier of (i) the first scheduled appointment, (ii) the first showing of a property, (iii) making an offering, or (iv) otherwise working for the Client, unless a CIS is signed indicating there is no agency relationship. For transactions exempt from providing the CIS, the duties of the Agent commence when the parties form an agency relationship.

(b) Duties of a Statutory Agent after termination. A Licensee and Brokerage Organization owe no further duty or obligation to the Customer or Client after termination, expiration, completion or performance of the transaction or other termination of the brokerage relationship, except the duties of:

(1) Accounting in a timely manner for all money and property related to, and received during the relationship; and

(2) Treating as confidential the information provided by the Customer or Client during the course of the relationship that may reasonably be expected to have a negative impact on the Customer or Client's real estate activity unless:

- a. The Customer or Client to whom the information pertains grants written consent;
- b. Disclosure of the information, such as defects actually known by the Licensee or previously disclosed by the seller on the Seller's Disclosure of Real Property Condition Report or Radon Disclosure or any other statutorily required form, is required by law;
- c. The information is made public or becomes public by the words or conduct of the Customer or Client to whom the information pertains or from a source other than the Licensee or Brokerage Organization; or
- d. Disclosure is necessary to defend the Licensee or Brokerage Organization against an action of wrongful conduct in an administrative or judicial proceeding or before a committee of a professional association.

§ 2935. Duty to Cooperate.

(a) Licensees shall cooperate with all other Licensees involved in a transaction except when cooperation is not in the Customer's or Client's best interest. The obligation to cooperate does not include any obligation to share commissions or to otherwise compensate another Licensee.

(b) In order to cooperate, Licensees shall be reasonably available when requested by their Customer or Client to:

(1) Accept delivery of and present to the Customer or Client offers and counteroffers to buy, sell, or lease the Customer's or Client's property, or the property the Customer or Client seeks to purchase or lease;

(2) Assist the Customer or Client in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to offers and counteroffers until the agreement of sale or lease is signed and all contingencies are satisfied or waived; and

(3) Answer the Customer's or Client's questions relating to the offers, counteroffers, notices, negotiations, and contingencies; and

(4) Hold the Escrow Deposit.

(c) In order to cooperate, Licensees shall be reasonably available when requested by a cooperating Licensee to undertake the activities described in subsection (b) of this section, but only after disclosing the request to their Customer or Client and receiving written authorization to undertake the requested activity. If the Customer or Client fails to authorize the Licensee to undertake the requested activity, the Licensee shall not undertake such activity. If the Broker's or Brokerage Organization's business model includes offering all of the services explained in the CIS, rather than having separate charges for distinct Real Estate Services, the CIS is sufficient disclosure or written authorization to undertake the activities described in subsection (b).

§ 2936. Broker, Associate Broker and Salesperson as a Statutory Agent.

(a) Unless specifically hired as a Common Law Agent by a written brokerage agreement, a Licensee is a Statutory Agent and not a Common Law Agent for any party. The Broker may from time to time designate one or more Associate Brokers or Salespersons licensed under that Broker to be the designated Associate Broker or Associate Brokers or Salesperson or Salespersons of a Client or Clients to the exclusion of all others in the Brokerage Organization.

(b) Obligations and responsibilities. A Licensee shall to the extent applicable to their functions have the following obligations and responsibilities:

- (1) Performing the duties required by this chapter;
- (2) Performing the terms of the written brokerage agreement, if any;
- (3) Exercising reasonable skill and care as a Licensee;
- (4) Advising the parties to obtain expert advice on material matters about which the Licensee knows but the specifics of which are beyond the expertise of such Licensee;
- (5) Accounting in a timely manner for all money and property received;
- (6) Helping to keep the parties informed regarding the progress of the transaction;
- (7) Performing Ministerial Tasks to assist the parties in complying with the terms and conditions of any contract;
- (8) Disclosing to all prospective buyers or tenants any adverse material facts actually known by the Licensee;
- (9) Informing the parties that they shall not be vicariously liable for acts of other Licensees;
- (10) Informing the parties that notice given to the designated Licensee is considered notice to their Client;

(11) Informing the parties that oral or written statements made by a Licensee without the consent of the party do not bind the party and may not be relied upon by anyone as binding a party. As such, all statements and negotiations shall need to be authorized by or signed by the parties themselves to be binding on the parties unless otherwise stated in the brokerage agreement, agreement of sale, lease, or power of attorney;

(12) Complying with all requirements of this chapter and any Rules and Regulations promulgated pursuant to this chapter;

(13) Complying with any applicable federal, State, or local laws, rules, regulations, or ordinances; and

(14) Following fair housing and civil rights laws and regulations.

(c) Confidentiality. The following information shall not be disclosed by a Licensee without the informed consent of the affected party:

(1) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(2) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(3) What the personal motivating factors are for any party to a transaction;

(4) That a seller, buyer, landlord, or tenant will agree to terms other than those offered;

(5) Any material confidential information about the parties or property unless disclosure is required by statute or regulation or failure to disclose such information would constitute fraud or intentional misrepresentation;

(6) Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize any real property pursuant to § 2927 of this chapter unless required to be disclosed by § 2927 of this chapter; or

(7) Any facts or suspicions that any party or someone in the community is a registered sex offender under subchapter III of Chapter 41 of Title 11 as amended from time to time, but if asked shall refer the Person to the Delaware State Police to seek this information.

(d) Confidentiality Exception. For transactions of properties other than those marketed as (i) one to four family residences, or (ii) single family lots of land intended for one to four family residence, Designated Agents who



are not Dual Agents are exempt from this subsection (c); instead, a duty of confidentiality by the agent to the Client shall apply after a Client relationship is formed.

(e) Actions permitted by Agents. An Agent may do the following without breaching any obligation, duty, or responsibility to a Customer or Client:

(1) List and advertise competing properties for sale or lease;

(2) Show Customers or Clients alternative properties not owned by their Broker's other Clients;

(3) Show properties in which 1 Customer or Client is interested to their other Customers or Clients;

(4) Present offers on the same property for more than one Customer or Client:

(5) Disseminate information that is generally available to Licensees. For example, providing information on comparable sales and the Licensee's interpretation, advice, and opinion about this information with the Customer or Client retaining the authority to decide what to do with this information;

(6) Assist buyers and sellers in preparing offers and counteroffers, providing that the forms used advise the parties that they may seek legal advice prior to signing. Presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale, lease or letter of intent unless instructed otherwise by the Customer or Client;

(7) Develop negotiating strategies or options for how to proceed with a transaction;

(8) Perform Ministerial Tasks;

(9) Serve as a single Agent, sub-Agent, or Dual Agent for the same parties in different transactions or different parties concerning the same property. For example, the Licensee could be a Statutory Agent for the sellers in 1 transaction and a Common Law Agent for the same people as buyers in another transaction.

(10) Cooperate with other Licensees; however, for one to four family residences or single family lots of land intended for one to four family residences they shall not engage any common law subagents from other Brokers or Brokerage Organizations.

(11) Disclose information concerning a transaction among the Broker, Designated Associate Broker(s) or Designated Salesperson(s), and office staff working for the Brokerage Organization on that transaction.

(12) Provide Customers with factual information they request. Provide Clients with relevant factual information. Tell Clients about their choices of how to proceed and provide them with relevant information.

Provide Clients with information and advice when presented with questions from the Client or a request for advice.

(f) No imputed knowledge. There is no imputation of knowledge or information by operation of law among or between the Customer, Client, Broker, Associate Broker, Salesperson, Brokerage Organization and other Licensees or persons within a Brokerage Organization.

(g) Notice. Notice as defined by law or in the agreement of sale or lease given to a party shall be considered effective notice. Unless specified otherwise in the agreement of sale or lease, notice only given to a designated Associate Broker(s) or Salesperson(s) shall also be considered effective notice to the Client of that Associate Broker or Salesperson. Notice to the Broker is not considered notice to the designated Associate Broker(s), designated Salesperson(s), or Client. Notice only to the designated Associate Broker or Salesperson is not considered notice to the Broker, or the rest of the Brokerage Organization.

§ 2937. Vicarious Liability; Protections When Working With a Statutory Agent.

(a) A Customer or Client shall not be liable for a wrongful act, error, omission, or misrepresentation of the Licensee except to the extent the Customer or Client had actual knowledge of the wrongful act, error, omission, or misrepresentation.

(b) A Licensee shall not be liable for a wrongful act, error, omission, or misrepresentation of the Customer or Client except to the extent the Licensee had actual knowledge of the wrongful act, error, omission, or misrepresentation.

(c) Nothing in this section shall be construed to diminish or limit any of the other duties or responsibilities of the Licensee under this chapter, or the rules promulgated hereunder.

(d) This Chapter does not otherwise limit the liability of a Broker, for an act, error, or omission of a Licensee in the Brokerage Organization. Notwithstanding any other provision of this Chapter, the employer of the Licensee is vicariously liable as the employer would be under the doctrine of respondeat superior whether the Licensee is employed by the Broker or Brokerage Organization as an employee or as an independent contractor.

(e) This section does not apply if the Licensee or Brokerage Organization is hired as a Common Law Agent.

§ 2938. Consumer Information Statement; Confidentiality.

(a) The Commission shall establish by Rule and Regulation a Consumer Information Statement (“CIS”). The Commission may provide alternative Consumer Information Statements for residential properties, properties that do not contain any residential units, commercial transactions, property management, or other brokerage situations as the

Commission deems appropriate. At a minimum, the form shall provide a summary of what a Licensee is permitted or prohibited from doing as provided by §§ 2935 and 2936 of this chapter. The CIS shall explain the circumstances when the consumer may hire the Licensee as a Common Law Agent, but that this would require other detailed disclosures of conflicts of interests and could involve significant potential legal liability and financial risk for the consumer.

(b) The Consumer Information Statement required by this chapter shall be delivered to the consumer no later than the earlier of (i) the first scheduled appointment, (ii) the first showing of a property, or (iii) making an offer, unless the consumer has already been given the CIS by another Licensee. A listing Licensee who knows that the buyer is working with another Licensee is not required to give that buyer a CIS. A Licensee working with a buyer who knows that the seller is working with another Licensee is not required to give a CIS to that seller. The CIS must be signed by the Customer or Client prior to signing an agreement of sale, listing agreement or any other brokerage agreement, unless otherwise exempt from providing a CIS.

(c) The CIS shall be available to the consumer at open houses, but does not need to be personally presented by the Licensee unless the consumer asks for more than factual information about the property or expresses interest in making an offer on the property during the open house.

(d) The duties of confidentiality as required by § 2936(c) of this sub-chapter begin upon the first contact between a Licensee and the Customer. The other Statutory duties between a Licensee and Client as required by this sub-chapter begin upon the earlier of (i) the first scheduled appointment, (ii) the first showing of a property, (iii) making an offer, or (iv) otherwise working for the Client, unless a CIS is signed indicating there is no agency relationship. For transactions exempt from providing the CIS, the duties of the Agent commence when the parties form an agency relationship.

(e) Nonrenewable leases of 120 days or less are exempt from the requirement to provide the CIS to the potential tenant; provided, however, that the duties of confidentiality required by § 2936(c) of this chapter and the rest of this chapter still apply to those leases. The Broker may still choose to provide the CIS as a matter of Brokerage Organization policy.

(f) Transactions of properties other than those marketed as (i) one to four family residential properties, or (ii) single lot sales of land intended for a one to four family residence, are exempt from the requirement to provide the CIS to the potential parties; however the balance of this chapter shall still apply unless specifically exempted. In lieu of providing a CIS, the agreement of Sale or lease shall include the following language after the confirmation of the

agency relationships: “The parties acknowledge that they have certain rights and responsibilities under Delaware agency law (Title 24 of the Delaware Code, Chapter 29) and may consult with their legal counsel”.

(g) For rental of residential property not otherwise exempt from the requirement to provide the CIS, the CIS shall be given to the potential tenant no later than the earlier of (i) the first scheduled appointment, (ii) the first showing of a property, or (iii) making an offer, but does not need to be signed until the potential tenant decides to complete a rental application or the signing of a lease.”

Section 2. This bill shall take effect six months after its enactment into law.