

REAL ESTATE BROKERS ACT

IN GENERAL.

[73-35-1. Citation of chapter; license requirement.](#)

[73-35-3. Definitions; applicability of chapter.](#)

[73-35-5. Real estate commission created; organization; seal; records.](#)

[73-35-6. Licenses for business entities.](#)

[73-35-7. Qualifications for license.](#)

[73-35-8. Nonresident's license; application.](#)

[73-35-9. Application for license.](#)

[73-35-11. Nonresident may not act except in cooperation with licensed broker of state.](#)

[73-35-13. Written examination requirement; exemption for licensee of another state; reciprocity.](#)

[73-35-14. Real estate schools; regulation by commission.](#)

[73-35-14.1. Standards for real estate schools.](#)

[73-35-14.2. Standards for instructors.](#)

[73-35-14.3. Course content.](#)

[73-35-14.4. Distance learning courses.](#)

[73-35-14.5. Temporary licenses; post-license education.](#)

[73-35-15. Location of business and responsible broker to be designated.](#)

[73-35-16. Real estate licensees required to obtain errors and omissions insurance coverage; persons required to submit proof of errors and omissions insurance; minimum requirements of group policy issued to commission; public bid for group insurance contract; requirements for independent coverage; rules and regulations.](#)

[73-35-17. Fees.](#)

[73-35-18. License renewal; continuing education requirements; exemptions; rules and regulations; reinstatement of expired license.](#)

[73-35-19. Real estate license fund.](#)

[73-35-21. Grounds for refusing to issue or suspending or revoking license; hearing.](#)

[73-35-23. Powers of commission as to violations; hearings upon revocation; subpoena.](#)

[73-35-25. Appeals.](#)

[73-35-27. Duties of commission.](#)

[73-35-29. Administrator to give bond.](#)

[73-35-31. Penalties for violations of chapter.](#)

[73-35-33. License required to sue for compensation; suit by salesperson in own name.](#)

[73-35-35. Commission to adopt rules and regulations.](#)

INTEREST ON REAL ESTATE BROKERS' ESCROW ACCOUNTS ACT.

[73-35-101. Short title.](#)

[73-35-103. Definitions.](#)

[73-35-105. Interest on Real Estate Brokers' Escrow Accounts \(IREBEA\) program.](#)

REAL ESTATE TRANSFER DISCLOSURE REQUIREMENTS.

[89-1-501. Applicability of real estate transfer disclosure requirement provisions.](#)

[89-1-503. Delivery of written statement required; indication of compliance; right of transferee to terminate for late delivery.](#)

[89-1-505. Limit on duties and liabilities with respect to information required or delivered.](#)

[89-1-507. Approximation of certain information required to be disclosed; information subsequently rendered inaccurate.](#)

[89-1-509. Form of seller's disclosure statement.](#)

[89-1-511. Disclosures to be made in good faith.](#)

[89-1-513. Provisions not exhaustive of items to be disclosed.](#)

[89-1-515. Amendment of disclosure.](#)

[89-1-517. Delivery of disclosure.](#)

[89-1-519. Agent; extent of agency.](#)

[89-1-521. Delivery of disclosure where more than one agent; inability of delivering broker to obtain disclosure document; notification to transferee of right to disclosure.](#)

[89-1-523. Noncompliance with disclosure requirements not to invalidate transfer; liability for actual damages.](#)

[89-1-525. Enforcement by Mississippi Real Estate Commission.](#)

[89-1-527. Failure to disclose nonmaterial fact regarding property as site of death or felony crime, as site of act or occurrence having no effect on physical condition of property, or as being owned or occupied by persons affected or exposed to certain diseases; failure to disclose information provided or maintained on registration of sex offenders.](#)

§ 73-35-1. Citation of chapter; license requirement.

This chapter shall be known, and may be cited, as "the Real Estate Brokers License Law of 1954"; and from and after May 6, 1954, it shall be unlawful for any person, partnership, association or corporation to engage in or carry on, directly or indirectly, or to advertise or to hold himself, itself or themselves out as engaging in or carrying on the business, or act in the capacity of, a real estate broker, or a real estate salesperson, within this state, without first obtaining a license as a real estate broker or real estate salesperson as provided for in this chapter.

§ 73-35-3. Definitions; applicability of chapter.

- (1) The term "real estate broker" within the meaning of this chapter shall include all persons, partnerships, associations and corporations, foreign and domestic, who for a fee, commission or other valuable consideration, or who with the intention or expectation of receiving or collecting the same, list, sell, purchase, exchange, rent, lease, manage or auction any real estate, or the improvements thereon, including options; or who negotiate or attempt to negotiate any such activity; or who advertise or hold themselves out as engaged in such activities; or who direct or assist in the procuring of a purchaser or prospect calculated or intended to result in a real estate transaction. The term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary or upon fee, commission or otherwise, to sell such real estate, or parts thereof, in lots or other parcels, including timesharing and condominiums, and who shall sell, exchange or lease, or offer or attempt or agree to negotiate the sale, exchange or lease of, any such lot or parcel of real estate.
- (2) The term "real estate" as used in this chapter shall include leaseholds as well as any and every interest or estate in land, including timesharing and condominiums, whether corporeal or incorporeal, freehold or nonfreehold, and whether said property is situated in this state or elsewhere; provided, however, that the term "real estate" as used in this chapter shall not include oil, gas or mineral leases, nor shall it include any other mineral leasehold, mineral estate or mineral interest of any nature whatsoever.
- (3) One (1) act in consideration of or with the expectation or intention of, or upon the promise of, receiving compensation, by fee, commission or otherwise, in the performance of any act or activity contained in subsection (1) of this section, shall constitute such person, partnership, association or corporation a real estate broker and make him, them or it

subject to the provisions and requirements of this chapter.

- (4) The term "real estate salesperson" shall mean and include any person employed or engaged by or on behalf of a licensed real estate broker to do or deal in any activity as included or comprehended by the definitions of a real estate broker in subsection (1) of this section, for compensation or otherwise.
- (5) Exempt from the licensing requirements of this chapter shall be any person, partnership, association or corporation, who, as a bona fide owner, shall perform any aforesaid act with reference to property owned by them, or to the regular employees thereof who are on a stated salary, where such acts are performed in the regular course of business.
- (6) The provisions of this chapter shall not apply to:
 - (a) Attorneys-at-law in the performance of primary or incidental duties as such attorneys-at-law.
 - (b) Any person holding in good faith a duly executed power of attorney from the owner, authorizing the final consummation and execution for the sale, purchase, leasing or exchange of real estate.
 - (c) The acts of any person while acting as a receiver, trustee, administrator, executor, guardian or under court order, or while acting under authority of a deed of trust or will.
 - (d) Public officers while performing their duties as such.
 - (e) Anyone dealing exclusively in oil and gas leases and mineral rights.
- (7) Nothing in this chapter shall be construed to prohibit life insurance companies and their representatives from negotiating or attempting to negotiate loans secured by mortgages on real estate, nor shall these companies or their representatives be required to qualify as real estate brokers or agents under this chapter.
- (8) The provisions of this chapter shall not apply to the activities of mortgagees approved by the Federal Housing Administration or the United States Department of Veterans Affairs, banks chartered under the laws of the State of Mississippi or the United States, savings and loan associations chartered under the laws of the State of Mississippi or the United States, licensees under the Small Loan Regulatory Law, being [Sections 75-67-101](#) through [75-67-135](#), and under the Small Loan Privilege Tax Law, being [Sections 75-67-201](#) through [75-67-243](#), small business investment companies licensed by the Small Business Administration and chartered under the laws of the State of Mississippi, or any of their affiliates and subsidiaries, related to the making of a loan secured by a lien on real estate or to the disposing of real estate acquired by foreclosure or in lieu of foreclosure or otherwise held as security. No director, officer or employee of any such financial institution shall be required to qualify as a real estate broker or agent under this chapter when engaged in the

aforesaid activities for and on behalf of such financial institution.

§ 73-35-6. Licenses for business entities.

A corporation, partnership, company or association shall be granted a license when individual broker's licenses have been issued to every member, owner, partner or officer of such partnership, company, association or corporation who actively participates in its brokerage business and when any required fee is paid.

§ 73-35-7. Qualifications for license.

Licenses shall be granted only to persons who present, and to corporations, partnerships, companies or associations whose officers, associates or partners present satisfactory proof to the commission that they are trustworthy and competent to transact the business of a real estate broker or real estate salesperson in such manner as to safeguard the interests of the public. Every person who applies for a resident license as a real estate broker: (a) shall be age twenty-one (21) years or over, and have his legal domicile in the State of Mississippi at the time he applies; (b) shall be subject to the jurisdiction of this state, subject to the income tax laws and other excise laws thereof, subject to the road and bridge privilege tax laws thereof; (c) shall not be an elector in any other state; (d) shall have held a license as an active real estate salesperson for twelve (12) months immediately prior to making application for the broker's examination hereafter specified; (e) shall have successfully completed a minimum of one hundred twenty (120) hours of courses in real estate as hereafter specified; and (f) shall have successfully completed the real estate broker's examination as hereafter specified.

An applicant who has not held an active real estate salesperson's license for a period of at least twelve (12) months immediately prior to submitting an application shall have successfully completed a minimum of one hundred fifty (150) classroom hours in real estate courses, which courses are acceptable for credit toward a degree at a college or university as approved by the Southern Association of Colleges and Schools.

Every applicant for a resident license as a real estate salesperson shall be age eighteen (18) years or over, shall be a bona fide resident of the State of Mississippi prior to filing his application, and shall have successfully completed a minimum of sixty (60) hours in courses in real estate as hereafter specified; and shall have successfully completed the real estate salesperson's examination as hereafter specified.

The residency requirements set forth in this section shall not apply to those licensees of other states who qualify and obtain nonresident licenses in this state.

The commission is authorized to exempt from such prelicensing educational requirements, in whole or in part, a real estate licensee of another state who desires to obtain a license under this chapter; provided, however, that the prelicensing educational requirements in the other state are determined by the commission to be equivalent to prelicensing educational requirements in this state and provided that such state extends this same privilege or exemption to Mississippi real estate licensees.

§ 73-35-8. Nonresident's license; application.

- (1) A nonresident may apply for a nonresident's license in Mississippi provided the individual is (i) a licensed broker in another state or (ii) is a broker/salesperson or salesperson affiliated with a resident or nonresident Mississippi broker or (iii) is a nonresident who applies for a broker's license and who will maintain an office in Mississippi. The nonresident broker need not maintain a place of business within Mississippi provided he is regularly actively engaged in the real estate business and maintains a place of business in the other state. The nonresident licensee or applicant shall be subject to all the provisions of this chapter except for the residency requirement and approved equivalent prelicensing education.
- (2) Every nonresident applicant shall file a statement of irrevocable consent with the Real Estate Commission that legal actions may be commenced against him 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 process or pleading authorized by the laws of this state, by the Secretary of State of Mississippi, or by any member of the commission or chief executive officer thereof, the consent stipulating that the service of process or pleading shall be taken in all courts to be valid and binding as if personal service had been made upon the nonresident licensee in this state. The consent shall be duly acknowledged. Every nonresident licensee shall consent to have any hearings conducted by the commission pursuant to [Section 73-35-23](#), Mississippi Code of 1972, at a place designated by the commission.
- (3) Any service of process or pleading shall be served on the executive officer of the commission by filing duplicate copies, one (1) of which shall be filed in the office of the commission and the other forwarded by certified mail to the last known principal address

of the nonresident licensee against whom such process or pleading is directed. No default in any such action shall be taken except upon an affidavit of certification of the commission or the executive officer thereof that a copy of the process or pleading was mailed to the defendant as herein provided, and no default judgment shall be taken in any such action or proceeding until thirty (30) days after the mailing of process or pleading to the defendant.

- (4) An applicant shall sign an agreement to cooperate with any investigation of the applicant's real estate brokerage activities which the commission may undertake.
- (5) Each applicant for a nonresident license must qualify in all respects, including education, examination and fees, as an applicant who is a resident of Mississippi with the exception of the residency requirement and approved equivalent prelicensing education.
- (6) A certification from the Executive Officer of the Real Estate Commission in the state in which the nonresident maintains his principal place of business shall be required. An applicant shall disclose all states in which he has held a real estate license and furnish a certification of licensure from that state or states.
- (7) The applicant/broker shall obtain an appropriate Mississippi license for the firm through which he intends to operate as a broker.
- (8) Any nonresident broker, broker-salesperson and salesperson shall meet Mississippi continuing education requirements after becoming licensed just as any resident licensee.
- (9) A broker or salesperson licensed in this state, on inactive status in good standing and no longer a resident of this state, may, after meeting other requirements for nonresident licensees, make application for a nonresident license without being required to meet current prelicensing educational requirements at the time of application or having to sit for the examination in order to obtain the equivalent nonresident license.
- (10) A nonresident licensee in good standing who changes his legal domicile to the State of Mississippi may obtain a resident license equivalent to his nonresident license without meeting the current educational requirements or sitting for the examination, provided other requirements set forth for residents of the state are met.
- (11) A nonresident licensee may utilize the inactive status for his license under the same requirements as a resident licensee, including but not limited to, continuing education requirements and ceasing active status under a licensed nonresident broker.

§ 73-35-9. Application for license.

- (1) Every applicant for a real estate broker's license shall apply therefor in writing upon blanks prepared by the commission and shall provide such data and information as the

commission may require.

- (2) Such application shall be accompanied by the recommendation of at least three (3) citizens who have been property owners for at least three (3) years, who have known the applicant for three (3) years, and who are not related to the applicant, certifying that the applicant bears a good reputation for honesty and trustworthiness and recommending that a license be granted to the applicant.
- (3) Every applicant for a salesperson's license shall apply therefor in writing upon blanks prepared by the commission and shall provide such data and information as the commission may require.
- (4) Each application for license shall also be accompanied by two (2) photographs of the applicant in such form as the commission may prescribe.
- (5) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with [Section 93-11-64](#), Mississippi Code of 1972.

§ 73-35-11. Nonresident may not act except in cooperation with licensed broker of state.

It shall be unlawful for any licensed broker, salesperson or other person who is not licensed as a Mississippi resident or nonresident broker or salesperson and a licensed broker or licensed salesperson in this state to perform any of the acts regulated by this chapter, except that a licensed broker of another state who does not hold a Mississippi real estate license may cooperate with a licensed broker of this state provided that any commission or fee resulting from such cooperative negotiation shall be stated on a form filed with the commission reflecting the compensation to be paid to the Mississippi broker.

Whenever a Mississippi broker enters into a cooperative agreement under this section, the Mississippi broker shall file within ten (10) days with the commission a copy of each such written agreement. By signing the agreement, the nonresident broker who is not licensed in this state agrees to abide by Mississippi law, and the rules and regulations of the commission; and further agrees that civil actions may be commenced against him in any court of competent jurisdiction in any county of this state in which a claim may arise.

The Mississippi broker shall require a listing or joint listing of the property involved. The written

cooperative agreements shall specify all material terms of each agreement, including but not limited to its financial terms.

The showing of property located in Mississippi and negotiations pertaining thereto shall be supervised by the Mississippi broker. In all advertising of real estate located in Mississippi, the name and telephone number of the Mississippi broker shall appear and shall be given equal prominence with the name of the nonresident broker who is not licensed in this state.

The Mississippi broker shall be liable for all acts of the above cooperating broker, as well as for his own acts, arising from the execution of any cooperative agreement.

The Mississippi broker shall determine that the cooperating broker is licensed as a broker in another state.

All earnest money pertaining to a cooperative agreement must be held in escrow by the Mississippi broker unless both the buyer and seller agree in writing to relieve the Mississippi broker of this responsibility.

§ 73-35-13. Written examination requirement; exemption for licensee of another state; reciprocity.

- (1) In addition to proof of his honesty, trustworthiness and good reputation, the applicant shall take a written examination which shall be held at least four (4) times each year at regular intervals and on stated times by the commission and shall test reading, writing, spelling, elementary arithmetic and his general knowledge of the statutes of this state relating to real property, deeds, mortgages, agreements of sale, agency, contract, leases, ethics, appraisals, the provisions of this chapter and such other matters the commission certifies as necessary to the practice of real estate brokerage in the State of Mississippi. The examination for a broker's license shall differ from the examination for a salesperson's license, in that it shall be of a more exacting nature and require higher standards of knowledge of real estate. The commission shall cause examinations to be conducted at such times and places as it shall determine.
- (2) In event the license of any real estate broker or salesperson is revoked by the commission subsequent to the enactment of this chapter, no new license shall be issued to such person unless he complies with the provisions of this chapter.
- (3) No person shall be permitted or authorized to act as a real estate broker or salesperson until he has qualified by examination, except as hereinbefore provided. Any individual who

fails to pass the examination for salesperson upon two (2) occasions, shall be ineligible for a similar examination, until after the expiration of three (3) months from the time such individual last took the examination. Any individual who fails to pass the broker's examination upon two (2) occasions, shall be ineligible for a similar examination until after the expiration of six (6) months from the time such individual last took the examination, and then only upon making application as in the first instance.

- (4) If the applicant is a partnership, association or corporation, said examination shall be taken on behalf of said partnership, association or corporation by the member or officer thereof who is designated in the application as the person to receive a license by virtue of the issuing of a license to such partnership, association or corporation.
- (5) Upon satisfactorily passing such examination and upon complying with all other provisions of law and conditions of this chapter, a license shall thereupon be issued to the successful applicant who, upon receiving such license, is authorized to conduct the business of a real estate broker or real estate salesperson in this state.
- (6) The commission is authorized to exempt from such examination, in whole or in part, a real estate licensee of another state who desires to obtain a license under this chapter; provided, however, that the examination administered in the other state is determined by the commission to be equivalent to such examination given in this state and provided that such other state extends this same privilege or exemption to Mississippi real estate licensees.

§ 73-35-14. Real estate schools; regulation by commission.

- (1) An institution or organization desiring to conduct a school or offer a course of instruction to prepare persons to be licensed under this chapter, or to offer post-licensure courses, shall apply to the commission for accreditation, and shall submit evidence that it is prepared to carry out a prescribed minimum curriculum in real estate principles and practices as set forth in this chapter and can meet other standards established by the commission. An investigation of the school and of the institution or organization with which such school is affiliated shall be made by the commission. If, in the opinion of the commission, the requirements for an accredited school for instruction in real estate principles and practices are met, the commission shall approve the school as an accredited real estate school upon payment of the fees set forth in this chapter and such other fees as established by the commission. All schools so accredited shall register at required intervals on a form provided and pay the required registration fees specified in this chapter and such other fees as established by the commission.

- (2) The commission shall have the authority to revoke, suspend or otherwise discipline the accreditation of any real estate school, prelicense education provider or post-license education provider if the commission determines that the school or education provider is not meeting or has not met the standards required for such accreditation. If the commission determines that any accredited real estate school or education provider is not maintaining the standards required by the commission, notices thereof in writing specifying the defect or defects shall be given promptly to the school or provider. If such defect or defects are not remedied in the time specified by the commission, the commission shall hold a hearing to determine the disciplinary action, if any, to be taken. Such hearing will be noticed to the school or provider, who will be allowed to attend the hearing and present to the commission its reasons why it should not be disciplined.
- (3) A college or university in the State of Mississippi accredited by the Southern Association of Colleges and Schools or the comparable regional accrediting authority shall be an approved education provider for prelicense courses for both the broker's and salesperson's license by virtue of such accreditation. Such colleges and universities are not required to meet any other standards provided herein.

§ 73-35-14.1. Standards for real estate schools.

- (1) Minimum standards for initial and continuing accreditation as a real estate school or prelicense education provider shall include:
 - (a) Payment of any fees established by the commission. If the school or provider is accredited as a prelicense school or prelicense education provider, fees shall include a biennial fee of Two Thousand Five Hundred Dollars (\$2,500.00).
 - (b) The school or prelicense education provider must maintain an annual average pass rate of at least sixty-five percent (65%) on each of the real estate broker's license examination and the real estate salesperson's license examination. The term annual average pass rate shall be as defined by the commission. If a school or prelicense education provider does not meet the minimum annual average pass rate, the commission shall allow the school or prelicense education provider a minimum of a three-month time period in which to attain the minimum annual average pass rate.
 - (c) Schools and prelicense education providers must use a method for instructor evaluation by students attending prelicense education classes. The commission may establish minimum standards for instructor evaluation. In the event the provider does not meet those minimum standards, the commission may revoke a provider's authority to offer prelicense education courses. Schools and prelicense education providers must provide the results of such instructor evaluations to the commission in the manner the commission directs.

- (2) The commission may establish by rule such other standards for schools, prelicense education providers and post-license education providers as the commission may deem necessary.

§ 73-35-14.2. Standards for instructors.

- (1) Minimum standards for instructors for prelicense and post-license education courses required for licensure as a real estate broker or a real estate salesperson shall include:
 - (a) Licensure as a Mississippi real estate broker or real estate salesperson for the immediate past five (5) years prior to application; or
 - (b) Current certification as a Certified Public Accountant; or
 - (c) Attainment of a Juris Doctor (J.D.) or Bachelor of Laws (L.L.B.) degree from a law school whose accreditation is recognized by the Mississippi Supreme Court; or
 - (d) Demonstration of significant expertise in a particular real estate related subject area, as determined and approved by the commission.
- (2) The commission may establish by rule such other standards for instructors of prelicense education and post-license education as the commission may deem necessary.

§ 73-35-14.3. Course content.

- (1) Minimum standards for the content for education courses required for licensure as a real estate broker or a real estate salesperson shall include content on:
 - (a) The provisions of this chapter and any rules and regulations promulgated hereunder;
 - (b) Listing property;
 - (c) Property valuation/appraisal;
 - (d) Real estate arithmetic;
 - (e) Characteristics of real property;
 - (f) Agency and nonagency relationships;
 - (g) Real estate sale contracts/agreements of sale;
 - (h) Leasing and property management;
 - (i) Transfer of title/ownership/deeds;
 - (j) Settlement procedures;

- (k) Financing;
 - (l) Professional responsibilities and ethics;
 - (m) Fair housing;
 - (n) Federal laws affecting real estate.
- (2) A prelicense course must meet any standards that the Association of Real Estate Licensing Law Officials (ARELLO), or its successor(s), may have for prelicense courses, including, without limitation, standards for content, form, examination, facilities and instructors. If ARELLO or its successor(s) operate a certification program for prelicense courses, a prelicense course must be certified by ARELLO or its successor(s) before the commission may approve the course.
 - (3) The commission may establish by rule such other standards for prelicense education course content as the commission may deem necessary.
 - (4) No more than eight (8) prelicense hours may be earned in a single day.
 - (5) Courses covering the general content of subsection (1) of this section that are acceptable for credit toward a degree at a college or university as approved by the Southern Association of Colleges and Schools or the comparable regional accrediting authority shall qualify for the minimum standards for prelicense education by virtue of said accreditation. A semester-hour credit shall be equal to fifteen (15) classroom hours and a quarter-hour credit shall be equal to ten (10) classroom hours. Courses given under this section by such accredited institutions are not required to meet ARELLO standards or certifications. The commission may establish by rule that specific areas of the general content areas listed in subsection (1) of this section are not required to be met by courses offered by the accredited institutions under this subsection.

§ 73-35-14.4. Distance learning courses.

- (1) The term "distance learning course(s)" shall mean any course approved by the commission in which the student is not physically present in a classroom with the instructor, including, without limitation, correspondence courses, video/DVD based courses and online electronic courses.
- (2) The commission may approve distance learning courses for prelicense education, post-license education and continuing education courses. Any distance learning course must meet any standards that the Association of Real Estate Licensing Law Officials (ARELLO), or its successor(s), may have for such courses, including, without limitation, standards for content, form, examination, facilities and instructors. If no ARELLO standards exist for a

distance learning course, the commission shall establish by rule such minimum standards. If ARELLO or its successor(s) operate a certification program for distance learning courses, a distance learning course must be certified by ARELLO or its successor(s) before the commission may approve the course.

§ 73-35-14.5. Temporary licenses; post-license education.

- (1) Upon passing the Mississippi broker's or salesperson's examination and complying with all other conditions for licensure, a temporary license shall be issued to the applicant. The fee for the temporary license shall also be the same for the permanent license as provided in [Section 73-35-17](#). A temporary license shall be valid for a period of one (1) year following the first day of the month after its issuance.
- (2) All Mississippi residents who apply for and receive a nonresident Mississippi broker's or salesperson's license shall be subject to the requirements under this section, including temporary licensure and completion of a thirty-hour post-license course.
- (3) The holder of a temporary license shall not be issued a permanent license until he has satisfactorily completed a thirty-hour post-license course prescribed by the commission and offered by providers specifically certified by the commission to offer this mandated post-license education. The holder of a temporary license shall complete the entire thirty-hour course within twelve (12) months of issuance of his temporary license; otherwise this temporary license shall automatically be placed on inactive status by the Mississippi Real Estate Commission. If the holder of the temporary license does not complete the course and have his permanent license issued within one (1) year following the first day of the month after its issuance, the temporary license shall automatically expire and lapse. A temporary license is not subject to renewal procedures in this chapter and may not be renewed.
- (4) The thirty-hour post-license course shall be offered by providers certified and approved by the commission, and an annual certification fee of One Thousand Dollars (\$1,000.00) shall be charged to providers. The thirty-hour post-license coursework shall be offered in no less than fifteen-hour increments of classroom instruction. No more than eight (8) hours may be earned in a single day. The commission shall determine standards for approval of post-license courses and course providers, and shall require certification of such coursework of the applicant. There shall be different content criteria for post-license education for salesperson licensees and for broker licensees. In the post-license course for salesperson licensees, a minimum of twenty-four (24) hours of the thirty-hour coursework shall be in the following subjects: agency relationships, contracts, earnest money, antitrust, fair housing, ethics and property condition disclosure. The remaining six (6) hours shall be in subjects intended to enhance the competency of salesperson licensees in representing consumers, and may include the following subjects: pricing property, environmental issues,

home inspections, leases and property management, and mortgage processes. In the post-license course for broker licensees, a minimum of twenty-four (24) hours of the thirty-hour coursework shall be in the following subjects: managing escrow accounts, intraoffice confidentiality, broker responsibilities to licensees, office policies and procedures (including agency office policies), broker agreements with licensees and assistants and Mississippi Real Estate Commission required forms and any other subject as the commission may, by rule, require to be included in such course. The remaining six (6) hours shall be in subjects intended to enhance the competency of brokers, including, without limitation, managing agents, recruiting, retention, budgeting and financial planning.

- (5) The holder of an active license who has satisfactorily completed the post-license course and whose permanent license has been issued shall not be subject to the sixteen-hour continuing education requirement in this chapter for the first renewal of his permanent license.

§ 73-35-15. Location of business and responsible broker to be designated.

- (1) Every person, partnership, association or corporation licensed as a real estate broker shall be required to have and maintain a definite place of business, which shall be a room either in his home or an office elsewhere, to be used for the transaction of real estate business, or such business and any allied business. The certificate of registration as broker and the certificate of each real estate salesperson employed by such broker shall be prominently displayed in said office. The said place of business shall be designated in the license. In case of removal from the designated address, the licensee shall make application to the commission before removal, or within ten (10) days after removal, designating the new location of such office, whereupon the commission shall forthwith issue a new license for the new location for the unexpired period.
- (2) All licenses issued to a real estate salesperson or broker-salesperson shall designate the responsible broker of such salesperson or broker-salesperson. Prompt notice in writing, within three (3) days, shall be given to the commission by any real estate salesperson of a change of responsible broker, and of the name of the principal broker into whose agency the salesperson is about to enter; and a new license shall thereupon be issued by the commission to such salesperson for the unexpired term of the original license upon the return to the commission of the license previously issued. The change of responsible broker or employment by any licensed real estate salesperson without notice to the commission as required shall automatically cancel his license. Upon termination of a salesperson's agency, the responsible broker shall within three (3) days return the salesperson's license to the commission for cancellation. It shall be unlawful for any real estate salesperson to perform any of the acts contemplated by this chapter either directly or indirectly after his agency has been terminated and his license has been returned for cancellation until his license has

been reissued by the commission.

§ 73-35-16. Real estate licensees required to obtain errors and omissions insurance coverage; persons required to submit proof of errors and omissions insurance; minimum requirements of group policy issued to commission; public bid for group insurance contract; requirements for independent coverage; rules and regulations.

(1) The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

- (a) "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period such as the policy term.
- (b) "Claims-made" means policies written under a claims-made basis which shall cover claims made (reported or filed) during the year the policy is in force for incidents which occur that year or during any previous period the policyholder was insured under the claims-made contract. This form of coverage is in contrast to the occurrence policy which covers today's incident regardless of when a claim is filed even if it is one or more years later.
- (c) "Extended reporting period" means a designated period of time after a claims-made policy has expired during which a claim may be made and coverage triggered as if the claim had been made during the policy period.
- (d) "Licensee" means any active individual broker, broker-salesperson or salesperson, any partnership or any corporation.
- (e) "Per-claim limit" means the maximum limit payable, per licensee, for damages arising out of the same error, omission or wrongful act.
- (f) "Prior acts coverage" applies to policies on a claims-made versus occurrence basis. Prior acts coverage responds to claims that are made during a current policy period, but the act or acts causing the claim or injuries for which the claim is made occurred prior to the inception of the current policy period.
- (g) "Proof of coverage" means a copy of the actual policy of insurance, a certificate of insurance or a binder of insurance.
- (h) "Retroactive date" means a provision, found in many claims-made policies, that the policy shall not cover claims for injuries or damages that occurred before the retroactive date even if the claim is first made during the policy period.

(2) The following persons shall submit proof of insurance:

- (a) Any active individual broker, active broker-salesperson or active salesperson;

- (b) Any partnership (optional); or
 - (c) Any corporation (optional).
- (3) Individuals whose licenses are on inactive status are not required to carry errors and omissions insurance.
- (4) All Mississippi licensees shall be covered for activities contemplated under this chapter.
- (5) Licensees may obtain errors and omissions coverage through the insurance carrier approved by the Mississippi Real Estate Commission and provided on a group policy basis. The following are minimum requirements of the group policy to be issued to the commission, including, as named insureds, all licensees who have paid their required premium:
- (a) All activities contemplated under this chapter are included as covered activities;
 - (b) A per-claim limit is not less than One Hundred Thousand Dollars (\$100,000.00);
 - (c) An annual aggregate limit is not less than One Hundred Thousand Dollars (\$100,000.00);
 - (d) Limits apply per licensee per claim;
 - (e) Maximum deductible is Two Thousand Five Hundred Dollars (\$2,500.00) per licensee per claim for damages;
 - (f) Maximum deductible is One Thousand Dollars (\$1,000.00) per licensee per claim for defense costs; and
 - (g) The contract of insurance pays, on behalf of the injured person(s), liabilities owed.
- (6) (a) The maximum contract period between the insurance carrier and the commission is to be five (5) consecutive policy terms, after which time period the commission shall place the insurance out for competitive bid. The commission shall reserve the right to place the contract out for bid at the end of any policy period.
- (b) The policy period shall be a twelve-month policy term.
 - (c) The retroactive date for the master policy shall not be before July 1, 1994.
 - (i) The licensee may purchase full prior acts coverage on July 1, 1994, if the licensee can show proof of errors and omissions coverage that has been in effect since at least March 15, 1994.

- (ii) If the licensee purchases full prior acts coverage on July 1, 1994, that licensee shall continue to be guaranteed full prior acts coverage if the insurance carriers are changed in the future.
 - (iii) If the licensee was not carrying errors and omissions insurance on July 1, 1994, the individual certificate shall be issued with a retroactive date of July 1, 1994. This date shall not be advanced if the insurance carriers are changed in the future.
 - (iv) For any new licensee who first obtains a license after July 1, 1994, the retroactive date shall be the effective date of licensure.
 - (v) For any licensee who changes status of license from inactive to active, the retroactive date shall be the effective date of change to "active" licensure.
- (d) Each licensee shall be notified of the required terms and conditions of coverage for the policy at least thirty (30) days before the renewal date of the policy. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the renewal date of the policy by each licensee who elects not to participate in the insurance program administered by the commission.
- (e) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a premium of no more than Two Hundred Fifty Dollars (\$250.00) per twelve-month' policy period, the requirement of insurance coverage under this section shall be void during the applicable contract period.
- (7) Licensees may obtain errors and omissions coverage independently if the coverage contained in the policy complies with the following minimum requirements:
- (a) All activities contemplated under this chapter are included as covered activities;
 - (b) A per-claim limit is not less than One Hundred Thousand Dollars (\$100,000.00);
 - (c) The deductible is not more than Two Thousand Five Hundred Dollars (\$2,500.00) per licensee per claim for damages and the deductible is not more than One Thousand Dollars (\$1,000.00) per licensee per claim for defense costs; and
 - (d) If other insurance is provided as proof of errors and omissions coverage, the other insurance carrier shall agree to a noncancelable policy or to provide a letter of commitment to notify the commission thirty (30) days before the intention to cancel.
- (8) The following provisions apply to individual licensees:
- (a) The commission shall require receipt of proof of errors and omissions insurance from

new licensees within thirty (30) days of licensure. Any licenses issued at any time other than policy renewal time shall be subject to a pro rata premium.

- (b) For licensees not submitting proof of insurance necessary to continue active licensure, the commission shall be responsible for sending notice of deficiency to those licensees. Licensees who do not correct the deficiency within thirty (30) days shall have their licenses placed on inactive status. The commission shall assess fees for inactive status and for return to active status when errors and omissions insurance has been obtained.
 - (c) Any licensee insured in the state program whose license becomes inactive shall not be charged an additional premium if the license is reactivated during the policy period.
- (9) The commission is authorized to adopt such rules and regulations as it deems appropriate to handle administrative duties relating to operation of the program, including billing and premium collection.

§ 73-35-17. Fees.

- (1) A fee not to exceed One Hundred Fifty Dollars (\$150.00) shall accompany an application for a real estate broker's license, and in the event that the applicant successfully passes the examination, no additional fee shall be required for the issuance of a license for a one-year period; provided, that if an applicant fails to pass the examination, he may be eligible to take the next or succeeding examination without the payment of an additional fee. In the event a contract testing service is utilized, the fee associated with administering the test shall be collected by the testing provider and the application fee for any real estate license shall be collected by the commission.
- (2) For each license as a real estate broker issued to a member of a partnership, association or officer of a corporation other than the member or officer named in the license issued to such partnership, association or corporation, a fee not to exceed Seventy-five Dollars (\$75.00) shall be charged.
- (3) A fee not to exceed One Hundred Twenty Dollars (\$120.00) shall accompany an application for a real estate salesperson's license, and in the event that the applicant successfully passes the examination, no additional fee shall be required for the issuance of a license for a one-year period; provided, that if an applicant fails to pass the examination, he may be eligible to take the next or succeeding examination without the payment of an additional fee. In the event a contract testing service is utilized, the fee associated with administering the test shall be collected by the testing provider and the application fee for any real estate license shall be collected by the commission.

- (4) Except as provided in [Section 33-1-39](#), it shall be the duty of all persons, partnerships, associations, companies or corporations licensed to practice as a real estate broker or salesperson to register with the commission annually or biennially, in the discretion of the commission, according to rules promulgated by it and to pay the proper registration fee. An application for renewal of license shall be made to the commission annually no later than December 31 of each year, or biennially on a date set by the commission. A licensee failing to pay his renewal fee after the same becomes due and after two (2) months' written notice of his delinquency mailed to him by United States certified mail addressed to his address of record with the commission shall thereby have his license automatically cancelled. Any licensee renewing in this grace period shall pay a penalty in the amount of one hundred percent (100%) of the renewal fee. The renewal fee shall not exceed Seventy-five Dollars (\$75.00) per year for real estate brokers, partnerships, associations and corporations. The renewal fee for a real estate salesperson's license shall not exceed Sixty Dollars (\$60.00) per year.
- (5) For each additional office or place of business, an annual fee not to exceed Fifty Dollars (\$50.00) shall be charged.
- (6) For each change of office or place of business, a fee not to exceed Fifty Dollars (\$50.00) shall be charged.
- (7) For each duplicate or transfer of salesperson's license, a fee not to exceed Fifty Dollars (\$50.00) shall be charged.
- (8) For each duplicate license, where the original license is lost or destroyed, and affidavit made thereof, a fee not to exceed Fifty Dollars (\$50.00) shall be charged.
- (9) To change status as a licensee from active to inactive status, a fee not to exceed Twenty-five Dollars (\$25.00) shall be charged. To change status as a licensee from inactive to active status, a fee not to exceed Fifty Dollars (\$50.00) shall be charged.
- (10) For each bad check received by the commission, a fee not to exceed Twenty-five Dollars (\$25.00) shall be charged.
- (11) A fee not to exceed Five Dollars (\$5.00) per hour of instruction may be charged to allay costs of seminars for educational purposes provided by the commission.
- (12) A fee not to exceed Twenty-five Dollars (\$25.00) may be charged for furnishing any person a copy of a real estate license, a notarized certificate of licensure or other official record of the commission.
- (13) A fee not to exceed One Hundred Dollars (\$100.00) shall be charged to review and process the application and instructional materials for each curriculum seeking acceptance as a real estate continuing education course developed to satisfy the mandatory continuing education requirements for this chapter, with the period of approval expiring after one (1) year. A fee not to exceed Fifty Dollars (\$50.00) shall be charged for each renewal of a

previously approved course, with the period of renewal expiring after one (1) year.

- (14) Fees, up to the limits specified herein, shall be established by the Mississippi Real Estate Commission.

§ 73-35-18. License renewal; continuing education requirements; exemptions; rules and regulations; reinstatement of expired license.

- (1) Each individual applicant for renewal of a license issued by the Mississippi Real Estate Commission shall, on or before the expiration date of his license, or at a time directed by the commission, submit proof of completion of not less than sixteen (16) clock hours of approved course work to the commission, in addition to any other requirements for renewal. The sixteen (16) clock hours' course work requirement shall apply to each two-year license renewal, and hours in excess thereof shall not be cumulated or credited for the purposes of subsequent license renewals except as provided in this subsection (1). The commission shall develop standards for approval of courses and shall require certification of such course work of the applicant. The commission may determine any required subject matter within the mandated sixteen (16) hours; provided that the required subjects shall not exceed eight (8) hours of the total sixteen (16) hours. Approved continuing education hours earned in the final three (3) months of a licensee's renewal period, if in excess of the required minimum sixteen (16) hours, may be carried over and credited to the next renewal period. However, no more than six (6) hours may be carried over in this manner. Any member of the Mississippi Legislature who has a real estate license shall be credited with eight (8) hours of credit for the attendance of each year of a legislative session. No person may receive continuing education credit for prelicense education courses taken, except as follows: a licensee whose license is on inactive status and whose continuing education credits are at least thirty (30) hours in arrears may, at the discretion of the commission, receive continuing education credit for retaking prelicense coursework, provided the entire prelicense course is retaken.
- (2) This section shall apply to renewals of licenses which expire on and after July 1, 1994; however, an applicant for first renewal who has been licensed for not more than one (1) year shall not be required to comply with this section for the first renewal of the applicant's license. The provisions of this section shall not apply to persons who have held a broker's or salesperson's license in this state for at least twenty-five (25) years and who are older than seventy (70) years of age. Inactive licensees are not required to meet the real estate continuing education requirements specified in this section; however, such inactive licensees, before activating their license to active status, must cumulatively meet requirements missed during the period their license was inactive.
- (3) The commission shall promulgate rules and regulations as necessary to accomplish the purposes of this section in accordance with the Mississippi Administrative Procedures Law.

§ 73-35-19. Real estate license fund.

All fees charged and collected under this chapter shall be paid by the administrator at least once a week, accompanied by a detailed statement thereof, into the treasury of the state to credit of a fund to be known as the "Real Estate License Fund," which fund is hereby created. All monies which shall be paid into the State Treasury and credited to the "Real Estate License Fund" are hereby appropriated to the use of the commission in carrying out the provisions of this chapter including the payment of salaries and expenses, printing an annual directory of licensees, and for educational purposes. Maintenance of a searchable, internet-based web site shall satisfy the requirement for publication of a directory of licensees under this section.

§ 73-35-21. Grounds for refusing to issue or suspending or revoking license; hearing.

- (1) The commission may, upon its own motion and shall upon the verified complaint in writing of any person, hold a hearing for the refusal of license or for the suspension or revocation of a license previously issued, or for such other action as the commission deems appropriate. The commission shall have full power to refuse a license for cause or to revoke or suspend a license where it has been obtained by false or fraudulent representation, or where the licensee in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:
 - (a) Making any substantial misrepresentation in connection with a real estate transaction;
 - (b) Making any false promises of a character likely to influence, persuade or induce;
 - (c) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;
 - (d) Any misleading or untruthful advertising;
 - (e) Acting for more than one (1) party in a transaction or receiving compensation from more than one (1) party in a transaction, or both, without the knowledge of all parties for whom he acts;
 - (f) Failing, within a reasonable time, to account for or to remit any monies coming into his possession which belong to others, or commingling of monies belonging to others with his own funds. Every responsible broker procuring the execution of an earnest money contract or option or other contract who shall take or receive any cash or checks shall deposit, within a reasonable period of time, the sum or sums so received in a trust or escrow account in a bank or trust company pending the consummation or termination of the transaction. "Reasonable time" in this context means by the close of business of the next banking day;

- (g) Entering a guilty plea or conviction in a court of competent jurisdiction of this state, or any other state or the United States of any felony;
 - (h) Displaying a "for sale" or "for rent" sign on any property without the owner's consent;
 - (i) Failing to furnish voluntarily, at the time of signing, copies of all listings, contracts and agreements to all parties executing the same;
 - (j) Paying any rebate, profit or commission to any person other than a real estate broker or salesperson licensed under the provisions of this chapter;
 - (k) Inducing any party to a contract, sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract, where such substitution is motivated by the personal gain of the licensee;
 - (l) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this chapter from any person, except his employer who must be a licensed real estate broker; or
 - (m) Any act or conduct, whether of the same or a different character than hereinabove specified, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing.
- (2) No real estate broker shall practice law or give legal advice directly or indirectly unless said broker be a duly licensed attorney under the laws of this state. He shall not act as a public conveyancer nor give advice or opinions as to the legal effect of instruments nor give opinions concerning the validity of title to real estate; nor shall he prevent or discourage any party to a real estate transaction from employing the services of an attorney; nor shall a broker undertake to prepare documents fixing and defining the legal rights of parties to a transaction. However, when acting as a broker, he may use an earnest money contract form. A real estate broker shall not participate in attorney's fees, unless the broker is a duly licensed attorney under the laws of this state and performs legal services in addition to brokerage services.
- (3) It is expressly provided that it is not the intent and purpose of the Mississippi Legislature to prevent a license from being issued to any person who is found to be of good reputation, is able to give bond, and who has lived in the State of Mississippi for the required period or is otherwise qualified under this chapter.
- (4) In addition to the reasons specified in subsection (1) of this section, the commission shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in [Section 93-11-153](#). The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall

be governed by [Section 93-11-157](#) or [93-11-163](#), as the case may be. If there is any conflict between any provision of [Section 93-11-157](#) or [93-11-163](#) and any provision of this chapter, the provisions of [Section 93-11-157](#) or [93-11-163](#), as the case may be, shall control.

- (5) Nothing in this chapter shall prevent an associate broker or salesperson from owning any lawfully constituted business organization, including, but not limited to, a corporation, limited liability company or limited liability partnership, for the purpose of receiving payments contemplated in this chapter. The business organization shall not be required to be licensed under this chapter and shall not engage in any other activity requiring a real estate license.

§ 73-35-23. Powers of commission as to violations; hearings upon revocation; subpoena.

- (1) The commission is hereby authorized and directed to take legal action against any violator of this chapter. Upon complaint initiated by the commission or filed with it, the licensee or any other person charged with a violation of this chapter shall be given fifteen (15) days' notice of the hearing upon the charges filed, together with a copy of the complaint. The applicant or licensee or other violator shall have an opportunity to be heard in person or by counsel, to offer testimony, and to examine witnesses appearing in connection with the complaint. Hearings shall be held at the offices of the Mississippi Real Estate Commission, or at the commission's sole discretion, at a place determined by the commission.

At such hearings, all witnesses shall be sworn and stenographic notes of the proceedings shall be taken and filed as a part of the record in the case. Any party to the proceedings shall be furnished with a copy of such stenographic notes upon payment to the commission of such fees as it shall prescribe, not exceeding, however, the actual cost to the commission. The commission shall render a decision on any complaint and shall immediately notify the parties to the proceedings in writing of its ruling, order or decision.

- (2) In addition to the authority granted to the commission as hereinabove set forth, the commission is hereby vested with the authority to bring injunctive proceedings in any appropriate forum against any violator or violators of this chapter, and all judges or courts now having the power to grant injunctions are specifically granted the power and jurisdiction to hear and dispose of such proceedings.
- (3) The commission is hereby authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers. The process issued by the commission shall extend to all parts of the state, and such process shall be served by any person designated by the commission for such service. The person serving such process receive such compensation as may be allowed by the commission, not to exceed the fee prescribed by law for similar services. All witnesses who are subpoenaed and who appear in

any proceedings before the commission receive the same fees and mileage as allowed by law, and all such fees shall be taxed as part of the costs in the case.

- (4) Where in any proceeding before the commission any witness shall fail or refuse to attend upon subpoena issued by the commission, shall refuse to testify, or shall refuse to produce any books and papers the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the same manner as the attendance and testimony of witnesses in civil cases are enforced in the courts of this state.
- (5) The commission may obtain legal counsel privately to represent it in proceedings when legal counsel is required.

§ 73-35-25. Appeals.

- (1) Any applicant or licensee or person aggrieved shall have the right of appeal from any adverse ruling or order or decision of the commission to the circuit court of the county of residence of the applicant, licensee or person, or of the First Judicial District of Hinds County, within thirty (30) days from the service of notice of the action of the commission upon the parties in interest.
- (2) Notice of appeals shall be filed in the office of the clerk of the court who shall issue a writ of certiorari directed to the commission commanding it, within thirty (30) days after service thereof, to certify to such court its entire record in the matter in which the appeal has been taken. The appeal shall thereupon be heard in due course by said court, without a jury, which shall review the record and make its determination of the cause between the parties.
- (3) Any order, rule or decision of the commission shall not take effect until after the time for appeal to said court shall have expired. In the event an appeal is taken by a defendant, such appeal may act, in the discretion of the court, as a supersedeas and the court shall dispose of said appeal and enter its decision promptly.
- (4) Any person taking an appeal shall post a satisfactory bond in the amount of Five Hundred Dollars (\$500.00) for the payment of any costs which may be adjudged against him.
- (5) Actions taken by the commission in suspending a license when required by [Section 93-11-157](#) or [93-11-163](#) are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by [Section 93-11-157](#) or [93-11-163](#) shall be taken in accordance with the appeal procedure specified in [Section 93-11-157](#) or [93-11-163](#), as the case may be, rather than the procedure specified in this section.

§ 73-35-27. Duties of commission.

- (1) The commission is hereby authorized to assist in conducting or holding real estate courses or institutes, and to incur and pay the necessary expenses in connection therewith, which courses or institutes shall be open to any licensee or other interested parties.
- (2) The commission is hereby authorized to assist libraries, real estate institutes, and foundations with financial aid, or otherwise, in providing texts, sponsoring studies, surveys and educational programs for the benefit of real estate and the elevation of the real estate business.

§ 73-35-29. Administrator to give bond.

The administrator, appointed by the commission, in the discretion of the commission, shall give bond in such sum and with such surety as the commission may direct and approve, and the premium thereon shall be paid by the commission.

§ 73-35-31. Penalties for violations of chapter.

- (1) Any person violating a provision of this chapter shall, upon conviction of a first violation thereof, if a person, be punished by a fine or not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for a term not to exceed ninety (90) days, or both; and if a corporation, be punished by a fine of not more than Two Thousand Dollars (\$2,000.00). Upon conviction of a second or subsequent violation, if a person, shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Two Thousand Dollars (\$2,000.00), or by imprisonment for a term not to exceed six (6) months, or both; and if a corporation, be punished by a fine of not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00). Any officer or agent of a corporation, or any member or agent of a partnership or association, who shall personally participate in or be accessory to any violation of this chapter by such corporation, partnership or association, shall be subject to the penalties herein prescribed for individuals.
- (2) In case any person, partnership, association or corporation shall have received any sum of money, or the equivalent thereto, as commission, compensation or profit by or in consequence of his violation of any provision of this chapter, such person, partnership, association or corporation shall also be liable to a penalty of not less than the amount of the sum of money so received and not more than four (4) times the sum so received, as

may be determined by the court, which penalty may be sued for and recovered by any person aggrieved and for his use and benefit, in any court of competent jurisdiction.

- (3) No fee, commission or other valuable consideration may be paid to a person for real estate brokerage activities as described in subsection (1) of [Section 73-35-3](#) unless the person provides evidence of licensure under the provisions of this chapter or provides evidence of a cooperative agreement provided under the authority of [Section 73-35-11](#).

§ 73-35-33. License required to sue for compensation; suit by salesperson in own name.

- (1) No person, partnership, association or corporation shall bring or maintain an action in any court of this state for the recovery of a commission, fee or compensation for any act done or services rendered, the doing or rendering of which is prohibited under the provisions of this chapter for persons other than licensed real estate brokers, unless such person was duly licensed hereunder as a real estate broker at the time of the doing of such act or the rendering of such service.
- (2) No real estate salesperson shall have the right to institute suits in his own name for the recovery of a fee, commission or compensation for services as a real estate salesperson, but any such action shall be instituted and brought by the broker employing such salesperson. However, any real estate salesperson shall have the right to bring an action in his own name if the action is against the broker employing such salesperson for the recovery of any fees owed to him.

§ 73-35-35. Commission to adopt rules and regulations.

The commission may act by a majority of the members thereof, and authority is hereby given to the commission to adopt, fix and establish all rules and regulations in its opinion necessary for the conduct of its business, the holdings of hearings before it, and otherwise generally for the enforcement and administration of the provisions of this chapter.

Further, the commission is empowered with the authority to adopt such rules and regulations as it deems appropriate to regulate the sale of timesharing and condominium properties within the state of Mississippi and the sale of timesharing and condominium properties in other states to residents of Mississippi.

§ 73-35-101. Short title.

[Sections 73-35-101](#) through [73-35-105](#) shall be known and may be cited as the "Interest on Real Estate Brokers' Escrow Accounts Act."

§ 73-35-103. Definitions.

As used in [Sections 73-35-101](#) through [73-35-105](#), the following terms shall have the meanings ascribed herein unless the context clearly indicates otherwise:

- (a) "Real estate broker" or "broker" means an individual, partnership or corporation licensed pursuant to [Section 73-35-1](#) et seq., and as defined under [Section 73-35-3\(1\)](#).
- (b) "IREBEA" means the program created and governed by [Sections 73-35-101](#) through [73-35-105](#).
- (c) "Interest earnings" means the total interest earnings generated by the IREBEA at each individual financial institution.
- (d) "Local affiliate of Habitat for Humanity International, Inc.," means an independently run 501(c)(3) organization that acts in partnership with and on behalf of Habitat for Humanity International, Inc., to coordinate all aspects of Habitat home building in a specific geographical area.
- (e) Local affiliate of Fuller Center for Housing, Inc., means an independently run 501(c)(3) organization that acts in partnership with and on behalf of Fuller Center for Housing, Inc., to coordinate all aspects of home building on behalf of the Fuller Center in a specific geographical area.
- (f) "Chair of real estate" means the endowment fund held and administered by any Mississippi university. For those universities which do not designate or which do not have a "chair of real estate," the term "chair of real estate" includes a professorship of real estate.

§ 73-35-105. Interest on Real Estate Brokers' Escrow Accounts (IREBEA) program.

- (1) The IREBEA program shall be a voluntary program based upon willing participation by real estate brokers, whether proprietorships, partnerships or professional corporations.
- (2) IREBEA shall apply to all clients or customers of the participating brokers whose funds on

deposit are either nominal in amount or to be held for a short period of time.

- (3) The following principles shall apply to clients' or customers' funds which are held by brokers who elect to participate in IREBEA:
 - (a) No earnings on the IREBEA accounts may be made available to or utilized by a broker.
 - (b) Upon the request of the client or customer, earnings may be made available to the client whenever possible upon deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional broker-client or broker-customer relationships do not compel brokers either to invest clients' or customers' funds or to advise clients or customers to make their funds productive.
 - (c) Clients' or customers' funds which are nominal in amount or to be held for a short period of time shall be retained in an interest-bearing checking or savings trust account with the interest, less any service charge or fees, made payable at least quarterly to any chair of real estate, local affiliate of Habitat for Humanity International, Inc., or local affiliate of Fuller Center for Housing, Inc. A separate accounting shall be made annually for all funds received.
 - (d) The broker shall select in writing that the chair of real estate, local affiliate of Habitat for Humanity International, Inc., or local affiliate of Fuller Center for Housing, Inc., shall be the beneficiary of such funds for the interest earnings on such funds. The interest earnings shall not be divided between one or more beneficiaries.
 - (e) The determination of whether clients' or customers' funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each broker, and no charge of ethical impropriety or other breach of professional conduct shall attend a broker's exercise of judgment in that regard.
 - (f) Notification to clients or customers whose funds are nominal in amount or to be held for a short period of time is unnecessary for those brokers who choose to participate in the program. Participation in the IREBEA program is accomplished by the broker's written notification to an authorized financial institution. That communication shall contain an expression of the broker's desire to participate in the program and, if the institution has not already received appropriate notification, advice regarding the Internal Revenue Service's approval of the taxability of earned interest or dividends to a chair of real estate, or a local affiliate of Habitat for Humanity International, Inc., or local affiliate of Fuller Center for Housing, Inc.
- (4) The following principles shall apply to those clients' or customers' funds held in trust accounts by brokers who elect not to participate in IREBEA:
 - (a) No earnings from the funds may be made available to any broker.
 - (b) Upon the request of a client or customer, earnings may be made available to the client

or customer whenever possible upon deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional broker-client or broker-customer relationships do not compel brokers either to invest clients' or customers' funds or to advise clients or customers to make their funds productive.

- (c) Clients' or customers' funds which are nominal in amount or to be held for short periods of time, and for which individual income generation allocation is not arranged with a financial institution, shall be retained in a noninterest-bearing demand trust account.
 - (d) The determination of whether clients' or customers' funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each broker, and no charge of ethical impropriety or other breach of professional conduct shall attend a broker's exercise of judgment in that regard.
- (5) The Mississippi Real Estate Commission shall adopt appropriate and necessary rules in compliance with the provisions of [Sections 73-35-101](#) through [73-35-105](#).

§ 89-1-501. Applicability of real estate transfer disclosure requirement provisions.

- (1) The provisions of [Sections 89-1-501](#) through [89-1-523](#) apply only with respect to transfers by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase or ground lease coupled with improvements, of real property on which a dwelling unit is located, or residential stock cooperative improved with or consisting of not less than one (1) nor more than four (4) dwelling units, when the execution of such transfers is by, or with the aid of, a duly licensed real estate broker or salesperson.
- (2) There are specifically excluded from the provisions of [Sections 89-1-501](#) through 89-1-523:
 - (a) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.
 - (b) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by any foreclosure sale after default, in an obligation secured by a mortgage, transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu

of foreclosure.

- (c) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust.
- (d) Transfers from one co-owner to one or more other co-owners.
- (e) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.
- (f) Transfers between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree.
- (g) Transfers or exchanges to or from any governmental entity.
- (h) Transfers of real property on which no dwelling is located.
- (i) The provisions of [Section 89-1-527](#).

§ 89-1-503. Delivery of written statement required; indication of compliance; right of transferee to terminate for late delivery.

The transferor of any real property subject to [Sections 89-1-501](#) through [89-1-523](#) shall deliver to the prospective transferee the written property condition disclosure statement required by [Sections 89-1-501](#) through [89-1-523](#), as follows:

- (a) In the case of a sale, as soon as practicable before transfer of title.
- (b) In the case of transfer by a real property sales contract, or by a lease together with an option to purchase, or a ground lease coupled with improvements, as soon as practicable before execution of the contract. For the purpose of this paragraph, execution means the making or acceptance of an offer.

With respect to any transfer subject to paragraph (a) or (b), the transferor shall indicate compliance with [Sections 89-1-501](#) through [89-1-523](#) either on the receipt for deposit, the real property sales contract, the lease, or any addendum attached thereto or on a separate document.

If any disclosure, or any material amendment of any disclosure, required to be made by [Section 89-1-501](#) through [89-1-523](#), is delivered after the execution of an offer to purchase, the

transferee shall have three (3) days after delivery in person or five (5) days after delivery by deposit in the mail, to terminate his or her offer by delivery of a written notice of termination to the transferor or the transferor's agent.

§ 89-1-505. Limit on duties and liabilities with respect to information required or delivered.

- (1) Neither the transferor nor any listing or selling agent shall be liable for any error, inaccuracy or omission of any information delivered pursuant to [Sections 89-1-501](#) through [89-1-523](#) if the error, inaccuracy or omission was not within the personal knowledge of the transferor or that listing or selling agent, was based on information timely provided by public agencies or by other persons providing information as specified in subsection (2) that is required to be disclosed pursuant to [Sections 89-1-501](#) through [89-1-523](#), and ordinary care was exercised in obtaining and transmitting it.
- (2) The delivery of any information required to be disclosed by [Sections 89-1-501](#) through [89-1-523](#) to a prospective transferee by a public agency or other person providing information required to be disclosed pursuant to [Sections 89-1-501](#) through [89-1-523](#) shall be deemed to comply with the requirements of [Sections 89-1-501](#) through [89-1-523](#) and shall relieve the transferor or any listing or selling agent of any further duty under [Sections 89-1-501](#) through [89-1-523](#) with respect to that item of information.
- (3) The delivery of a report or opinion prepared by a licensed engineer, land surveyor, geologist, structural pest control operator, contractor or other expert, dealing with matters within the scope of the professional's license or expertise, shall be sufficient compliance for application of the exemption provided by subsection (1) if the information is provided to the prospective transferee pursuant to a request therefor, whether written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of [Section 89-1-509](#) and, if so, shall indicate the required disclosures, or parts thereof, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or parts thereof, other than those expressly set forth in the statement.

§ 89-1-507. Approximation of certain information required to be disclosed; information subsequently rendered inaccurate.

If information disclosed in accordance with [Sections 89-1-501](#) through [89-1-523](#) is subsequently rendered inaccurate as a result of any act, occurrence or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of [Sections 89-1-501](#) through [89-1-523](#). If at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the transferor, and the transferor or his agent has made a reasonable effort to ascertain it, the transferor may use an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the best information available to the transferor or his agent,

and is not used for the purpose of circumventing or evading [Sections 89-1-501](#) through [89-1-523](#).

§ 89-1-509. Form of seller's disclosure statement.

The disclosures required by [Sections 89-1-501](#) through [89-1-523](#) pertaining to the property proposed to be transferred shall be set forth in, and shall be made on a copy of a disclosure form, the structure and composition of which shall be determined by the Mississippi Real Estate Commission.

§ 89-1-511. Disclosures to be made in good faith.

Each disclosure required by [Sections 89-1-501](#) through [89-1-523](#) and each act which may be performed in making the disclosure, shall be made in good faith. For purposes of [Sections 89-1-501](#) through [89-1-523](#), "good faith" means honesty in fact in the conduct of the transaction.

§ 89-1-513. Provisions not exhaustive of items to be disclosed.

The specification of items for disclosure in [Sections 89-1-501](#) through [89-1-523](#) does not limit or abridge any obligation for disclosure created by any other provision of law or which may exist in order to avoid fraud, misrepresentation or deceit in the transfer transaction.

§ 89-1-515. Amendment of disclosure.

Any disclosure made pursuant to [Sections 89-1-501](#) through [89-1-523](#) may be amended in writing by the transferor or his agent, but the amendment shall be subject to the provisions of [Section 89-1-503](#).

§ 89-1-517. Delivery of disclosure.

Delivery of disclosure required by [Sections 89-1-501](#) through [89-1-523](#) shall be by personal delivery to the transferee or by mail to the prospective transferee. For the purposes of [Sections 89-1-501](#) through [89-1-523](#), delivery to the spouse of a transferee shall be deemed delivery to

the transferee, unless provided otherwise by contract.

§ 89-1-519. Agent; extent of agency.

Any person or entity, other than a duly licensed real estate broker or salesperson acting in the capacity of an escrow agent for the transfer of real property subject to [Sections 89-1-501](#) through [89-1-523](#) shall not be deemed the agent of the transferor or transferee for purposes of the disclosure requirements of [Sections 89-1-501](#) through [89-1-523](#), unless the person or entity is empowered to so act by an express written agreement to that effect. The extent of such an agency shall be governed by the written agreement.

§ 89-1-521. Delivery of disclosure where more than one agent; inability of delivering broker to obtain disclosure document; notification to transferee of right to disclosure.

- (1) If more than one (1) licensed real estate broker is acting as an agent in a transaction subject to [Sections 89-1-501](#) through [89-1-523](#), the broker who has obtained the offer made by the transferee shall, except as otherwise provided in [Sections 89-1-501](#) through [89-1-523](#), deliver the disclosure required by [Sections 89-1-501](#) through [89-1-523](#) to the transferee, unless the transferor has given other written instructions for delivery.
- (2) If a licensed real estate broker responsible for delivering the disclosures under this section cannot obtain the disclosure document required and does not have written assurance from the transferee that the disclosure has been received, the broker shall advise the transferee in writing of his rights to the disclosure. A licensed real estate broker responsible for delivering disclosures under this section shall maintain a record of the action taken to effect compliance.

§ 89-1-523. Noncompliance with disclosure requirements not to invalidate transfer; liability for actual damages.

No transfer subject to [Sections 89-1-501](#) through [89-1-523](#) shall be invalidated solely because of the failure of any person to comply with any provision of [Sections 89-1-501](#) through [89-1-523](#). However, any person who willfully or negligently violates or fails to perform any duty prescribed by any provision of [Sections 89-1-501](#) through [89-1-523](#) shall be liable in the amount of actual damages suffered by a transferee.

§ 89-1-525. Enforcement by Mississippi Real Estate Commission.

The Mississippi Real Estate Commission is authorized to enforce the provisions of [Sections 89-1-501](#) through [89-1-523](#). Any violation of the provisions of [Sections 89-1-501](#) through [89-1-523](#) shall be treated in the same manner as a violation of the Real Estate Broker License Law of 1954, [Section 73-35-1](#) et seq., and shall be subject to same penalties as provided in that chapter.

§ 89-1-527. Failure to disclose nonmaterial fact regarding property as site of death or felony crime, as site of act or occurrence having no effect on physical condition of property, or as being owned or occupied by persons affected or exposed to certain diseases; failure to disclose information provided or maintained on registration of sex offenders.

(1) The fact or suspicion that real property is or was:

- (a) The site of a natural death, suicide, homicide or felony crime (except for illegal drug activity that affects the physical condition of the property, its physical environment or the improvements located thereon);
- (b) The site of an act or occurrence that had no effect on the physical condition of the property, its physical environment or the improvements located thereon;
- (c) Owned or occupied by a person affected or exposed to any disease not known to be transmitted through common occupancy of real estate including, but not limited to, the human immunodeficiency virus (HIV) and the acquired immune deficiency syndrome (AIDS);

does not constitute a material fact that must be disclosed in a real estate transaction. A failure to disclose such nonmaterial facts or suspicions shall not give rise to a criminal, civil or administrative action against the owner of such real property, a licensed real estate broker or any affiliated licensee of the broker.

(2) A failure to disclose in any real estate transaction any information that is provided or maintained, or is required to be provided or maintained, in accordance with [Section 45-33-21](#) through [Section 45-33-57](#), shall not give rise to a cause of action against an owner of real

property, a licensed real estate broker or any affiliated licensee of the broker. Likewise, no cause of action shall arise against any licensed real estate broker or affiliated licensee of the broker for revealing information to a seller or buyer of real estate in accordance with [Section 45-33-21](#) through [Section 45-33-57](#). Any factors related to this paragraph, if known to a property owner or licensee shall be disclosed if requested by a consumer.

- (3) Failure to disclose any of the facts or suspicions of facts described in subsections (1) and (2) shall not be grounds for the termination or rescission of any transaction in which real property has been or will be transferred or leased. This provision does not preclude an action against an owner of real estate who makes intentional or fraudulent misrepresentations in response to a direct inquiry from a purchaser or prospective purchaser regarding facts or suspicions that are not material to the physical condition of the property including, but not limited to, those factors listed in subsections (1) and (2).

MISSISSIPPI REAL ESTATE COMMISSION

RULES AND REGULATIONS

I. APPLYING FOR A LICENSE

- A. An applicant for a broker's license must pass the broker's examination with a grade of at least 80%.

An applicant for a salesperson's license must pass the salesperson's examination with a grade of at least 75%.

- B. An application fee must accompany the application and will not be refunded after the applicant is scheduled for examination.
- C. The Commission will hold examinations in Jackson. Applicants will be notified as to the time and place of the examination.
- D. When an applicant is approved for examination, applicant has two months in which to take the examination. If the applicant fails to appear for the examination within the two months allowed, applicant's fee will be forfeited and file closed. If the applicant fails to pass the first examination, applicant will be allowed to take the next examination without the payment of additional fees. If the applicant fails to appear for the second examination, fees will be forfeited and file closed.
- E. If a corporation has been chartered by the state of Mississippi, the license will be issued in the corporate name except that no license will be issued for a corporation, company, or trade name where there exists in that county or trade area a real estate broker or real estate agency having a substantially similar name.
- F. A real estate licensee of another state who desires to obtain a license under this chapter shall be exempt from the examination provided the examination administered in the other state is determined by the Commission to be equivalent to such examination given in this state and provided that such other state extends this same privilege or exemption to Mississippi real estate licensees.

Real estate education courses obtained through sources (providers) other than those set forth in Section 73-35-7 of the statute but which are accepted in the state where the applicant is licensed, may be accepted by the Commission provided the state where the applicant is licensed has entered into a reciprocal agreement with this state.

II. CHANGING OF STATUS OF A LICENSE

- A. To change a license from active to inactive status, licensee shall notify the Commission in writing, shall insure that the license is returned to the Commission and shall pay the appropriate fee. A licensee who is on inactive status at time of renewal may renew the license on inactive status by filing a renewal application and paying the renewal fee. A broker who terminates a real estate business may place the business license on inactive status. To return to active status, a salesperson or broker/salesperson must file a transfer application. A broker and/or a business license may be activated by notifying the Commission by letter or transfer application including required fee.

- B. When a licensee wishes to transfer from one broker to another, the transferring licensee must file a transfer application signed by the new broker accompanied by the transfer fee and must furnish a statement that the licensee is not carrying any listings or pertinent information belonging to the former broker unless that broker so consents.

- C. Any licensee who has entered active duty military service due to draft laws or national emergency shall, upon his return to civilian life and within twelve (12) months after honorable discharge, be considered, so far as this Commission is concerned, to have been continuously engaged in the real estate business in the same capacity as when the licensee entered military service.

III. FEES

A. The following fees are set by the Commission in accordance with Section 73-35-17:

Application, examination and one year's use of license:

Broker	\$135.00
Salesperson	\$110.00

Application for license as a real estate broker issued for partnership, association, or corporation and one year's use of license:

Partnership, association or corporation	\$ 75.00
Branch Office	\$ 50.00

Renewal fees for two-year period (effective 7/1/99):

Broker (individual)	\$150.00
Broker (partnership, association, corporation)	\$150.00
Salesperson	\$120.00
Branch Office	\$100.00
Penalty for late renewal within grace period	100%

Changes:

Place of business change (active license only)	\$ 50.00
Each duplicate license	\$ 50.00
Each transfer of license	\$ 50.00
Status change from active to inactive status	\$ 25.00

Status change from inactive to active status \$ 50.00

Check charge:

Each check returned not paid to the Commission \$ 25.00

All fees are the same for both Resident and Nonresident Licenses.

- B. Fees and monies payable to the Mississippi Real Estate Commission may be by personal check, cash, cashier's check or money order. All personal checks shall be made payable to the Mississippi Real Estate Commission. Any personal checks returned not paid or for any other reason shall constitute justifiable grounds for refusing, suspending or revoking a license.

Non-sufficient fund (NSF) checks, if not made good by renewal deadline, will cause the licensee to be in non-renewal status and necessitates the payment of a penalty (100%) by licensee.

IV. CONDUCTING BUSINESS

A. GENERAL RULES

1. It shall be the duty of the responsible broker to instruct the licensees licensed under that broker in the fundamentals of real estate practice, ethics of the profession and the Mississippi Real Estate License Law and to exercise supervision of their real estate activities for which a license is required.
2. A real estate broker who operates under the supervision of a responsible broker must not at any time act independently as a broker. The responsible broker shall at all times be responsible for the action of the affiliated broker to the same extent as though that licensee were a salesperson and that affiliated broker shall not perform any real estate service without the full consent and knowledge of his employing or supervising broker.

However, should the responsible broker agree that a broker under his supervision may perform certain real estate services outside the responsible broker's supervision or direction, the responsible broker shall notify the Commission in writing as to the exact nature of such relationship and the names of the broker or brokers involved. The responsible broker shall immediately notify the Commission in writing upon the termination of such relationship.

3. A licensed Mississippi broker may cooperate with a broker licensed in another state who does not hold a Mississippi license through the use of a cooperative agreement. A separate cooperative agreement must be filed for each property, prospective user or transaction with said writing reflecting the compensation to be paid to the Mississippi licensed broker. The listing or property management agreement for the Mississippi real property shall in such cases remain in the name of the Mississippi licensed broker.

The commissions or other compensation resulting from the sale/rent/lease/property management or auction of the Mississippi real property and which are earned during the period the cooperative agreement is in force shall be divided on a negotiable basis between the Mississippi broker and the nonresident broker.

A nonresident broker described herein is defined as an active, licensed real estate broker of another state who does not possess an active nonresident real estate broker's license issued by the Mississippi Real Estate Commission (MREC). A Mississippi broker described herein is a real estate broker whose license is on active status and whose license was issued by MREC either as a resident Mississippi broker or as a nonresident Mississippi broker.

The nonresident broker cannot place any sign on real property located in the state of Mississippi without the written consent of the cooperating Mississippi broker. When the consent is obtained, the sign of the Mississippi broker must be placed in a prominent place and in close proximity to the nonresident broker's sign. Any licensed Mississippi broker assisting or cooperating in the sale, lease,

property management, rental or auction of real property within the state of Mississippi with a nonresident broker who fails or refuses to list his or her name in such advertisement, or fails or refuses to cross-list such property with him or her, in writing, shall be deemed in violation of Section 73-35 of the Real Estate Broker's License Act, and shall be subject to a revocation or suspension of his or her license. In such instance herein where a Mississippi broker enters into a cooperative agreement with a nonresident broker pertaining to the sale of real property within the state of Mississippi, the Mississippi broker must file two copies of the cooperating agreement with the Mississippi Real Estate Commission.

4. A responsible broker must maintain an office and display the license therein. If the broker has more than one office, the broker shall display a branch office license in each branch office. The broker is responsible for the real estate practices of those licensees.
5. No licensee shall pay any part of a fee, commission, or other compensation received by such licensee in buying, selling, exchanging, leasing, auctioning or renting any real estate except to another licensee through the licensee's responsible broker.

No licensee shall knowingly pay a commission, or other compensation to a licensed person knowing that licensee will in turn pay a portion or all of that which is received to a person who does not hold a real estate license.

A licensee who has changed to inactive status or who has transferred to another responsible broker may received compensation from the previous responsible broker if the commission was generated from activity during the time that the licensee was under the supervision of that responsible broker.

6. Any licensee who fails in a timely manner to respond to official Mississippi Real Estate Commission written communication or who fails or neglects to abide by Mississippi Real Estate Commission's Rules and Regulations shall be deemed, prima facie, to be guilty of improper dealing.
7. A real estate broker or salesperson in the ordinary course of his business may give an opinion as to the price of real estate for the purpose of a prospective listing or sale; however, this opinion as to the listing price or the sale price shall not be referred to as an appraisal and further, no compensation, fee, or other consideration shall be charged for such opinion other than the real estate commission or brokerage services rendered in connection with the sale of the real property involved.
8. When an offer is made on property owned by a party with whom a broker has entered into a listing agreement, such broker shall document and date an acceptance or rejection of the offer and upon written request, shall provide a copy of such document to the person making the offer.
9. A real estate licensee shall not be exempt from disciplinary actions by the commission when selling property owned by the licensee.

B. DOCUMENTS

1. A real estate licensee shall **immediately (at the time of signing)** deliver a true and correct copy of any instrument to any party or parties executing the same.
2. All exclusive listing agreements shall be in writing, properly identify the property to be sold, and contain all of the terms and conditions under which the transaction is to be consummated; including the sales price, the considerations to be paid, the signatures of all parties to the agreement, and a definite date of

expiration. No listing agreement shall contain any provision requiring the listing party to notify the broker of their intention to cancel the listing after such definite expiration date. An "Exclusive Agency" listing or "Exclusive Right to Sell" listing shall clearly indicate in the listing agreement that it is such an agreement.

3. All exclusive buyer representation agreements shall be in writing and properly identify the terms and conditions under which the buyer will rely on the broker for the purchase of real estate; including the sales price, the considerations to be paid, the signatures of all parties to the agreement, and a definite date of expiration. The buyer may terminate the agreement upon fifteen (15) calendar days written notice to the buyer's exclusive agent. An Exclusive Buyer Representation agreement shall clearly indicate in the body of the document that it is such an agreement.
4. In the event that more than one written offer is made before the owner has accepted an offer, any other written offer received by the broker, whether from a prospective purchaser or from another licensee cooperating in a sale, shall be presented to the owner. Broker should caution the seller against countering on more than one offer at the same time.
5. Every contact must reflect whom the broker represents by a statement over the signatures of the parties to the contract.
6. No licensee shall represent to a lender or any other interested party, either verbally or through the preparation of a false sales contract, an amount in excess of the true and actual selling price.
7. A real estate broker must keep on file for three years following its consummation, complete records relating to any real estate transaction. This includes, but is not limited to: listings, options, leases, offers to purchase, contracts of sale, escrow records, and copies of closing statements.

C. ADVERTISING

1. The use of any copyrighted term or insignia on stationery, office signs, or in advertising by any licensee not authorized to do so, will be considered as "substantial misrepresentation" and cause for refusal, suspension, or revocation of the license.
2. A licensee shall not advertise to sell, buy, exchange, auction, rent or lease property in a manner indicating that the offer to sell, buy, exchange, auction, rent, or lease such property is being made by a private party not engaged in the real estate business. No advertisement shall be inserted by a licensee in any publication where only a post office box number, telephone number, or street address appears. Every licensee, when advertising real estate in any publication, shall indicate that the party advertising is licensed in real estate. All advertising must be under the direct supervision and in the name of the responsible broker or in the name of the real estate firm.

When a licensee is advertising their own property for sale, purchase or exchange which is not listed with a broker, the licensee must indicate that he or she is licensed. The disclosure of licensee's status must be made in all forms of advertising, including the "for sale" sign.

In addition to disclosing their licensed status in advertisements, licensees are required to disclose their licensed status on all contracts for real estate in which they have an ownership interest.

3. A broker shall advertise in the name in which the license is issued. A broker may use a descriptive term after the broker's name to indicate the occupation in which engaged, for example, "realty", "real estate", "property management". If

advertising in any other form, a partnership, trade name, association, company or corporation license must be obtained prior to advertising in that manner.

D. EARNEST MONEY

1. The responsible broker is responsible at all times for deposits. Earnest money accepted by the broker or any licensee for which the broker is responsible and upon acceptance of a mutually agreeable contract is required to deposit the money into a trust account prior to the close of business of the next banking day. The responsible broker is required to promptly account for and remit the full amount of the deposit or earnest money at the consummation or termination of transaction. A licensee is required to pay over to the responsible broker all deposits and earnest money immediately upon receipt thereof. Earnest money must be returned promptly when the purchaser is rightfully entitled to same allowing reasonable time for clearance of the earnest money check. In the event of uncertainty as to the proper disposition of earnest money, the broker may turn money over to a court of law for disposition. Failure to comply with this regulation shall constitute grounds for revocation or suspension of license.
2. When the broker is agent for the seller and for any reason the seller fails or is unable to consummate the transaction, the broker has no right to any portion of the money deposited by the purchaser, even if a commission has been earned. The money must be returned to the purchaser and the broker should look to the seller for compensation.
3. Accurate records shall be kept on escrow accounts of all monies received, disbursed, or on hand. All monies shall be identified as to a particular transaction. Escrow records shall be kept in accord with standard accounting practices and shall be subject to inspection at all times by the Commission.

Monies received in a trust account on behalf of clients or customers are not assets of the broker; however, a broker may deposit and keep in each escrow

account or rental account some personal funds for the express purpose of covering service charges and other bank debits related to each account.

4. If a broker, as escrow agent, accepts a check and later finds that such check has not been honored by the bank on which it was drawn, the broker shall immediately notify all parties involved in the transaction.

E. AGENCY RELATIONSHIP DISCLOSURE

1. PURPOSE:

Consumers shall be fully informed of the agency relationships in real estate transactions identified in Section 73-35-3. This rule places specific requirements on Brokers to disclose their agency relationship. This does not abrogate the laws of agency as recognized under common law and compliance with the prescribed disclosures will not always guarantee that a Broker has fulfilled all of his responsibilities under the common law of agency. Compliance will be necessary in order to protect licensees from impositions of sanctions against their license by the Mississippi Real Estate Commission.

Special situations, where unusual facts exist or where one or more parties involved are especially vulnerable, could require additional disclosures not contemplated by this rule. In such cases, Brokers should seek legal advice prior to entering into an agency relationship.

2. DEFINITIONS:

- (a) "Agency" shall mean the relationship created when one person, the Principal (client), delegates to another, the agent, the right to act on his behalf in a real estate transaction and to exercise some degree of discretion while so acting. Agency may be entered into by expressed agreement, implied through the actions of the agent and or ratified after the fact by the principal accepting the benefits of an agent's previously unauthorized act. An agency gives rise to a fiduciary relationship and imposes on the agent, as the fiduciary of the principal, certain duties,

obligations, and high standards of good faith and loyalty.

- (b) "Agent" shall mean one who is authorized to act on behalf of and represent another. A real estate broker is the agent of the principal (client) to whom a fiduciary obligation is owed. Salespersons licensed under the broker are subagents of the Broker, regardless of the location of the office in which the salesperson works.

- (c) "Client" shall mean the person to whom the agent owes a fiduciary duty. It can be a seller, buyer, landlord, tenant or both.

- (d) "Compensation" is that fee paid to a broker for the rendering of services. Compensation, when considered alone, is not the determining factor in an agency relationship. The relationship can be created regardless of whether the seller pays the fee, the buyer pays the fee, both pay the fee or neither pays a fee.

- (e) "Customer" shall mean that person not represented in a real estate transaction. It may be the buyer, seller, landlord or tenant.

- (f) "Disclosed Dual Agent" shall mean that agent representing both parties to a real estate transaction with the informed consent of both parties, with written understanding of specific duties and representation to be afforded each party. There may be situations where disclosed dual agency presents conflicts of interest that cannot be resolved without breach of duty to one party or another. Brokers who practice disclosed dual agency should do so with the utmost caution to protect consumers and themselves from inadvertent violation of demanding common law standards of disclosed dual agency.

(g) "Fiduciary Responsibilities" are those duties due the principal (client) in a real estate transaction are:

- (1) 'Loyalty' - the agent must put the interests of the principal above the interests of the agent or any third party.
- (2) 'Obedience' - the agent agrees to obey any lawful instruction from the principal in the execution of the transaction that is the subject of the agency.
- (3) 'Disclosure' - the agent must disclose to the principal any information the agent becomes aware of in connection with the agency.
- (4) 'Confidentiality' - the agent must keep private information provided by the principal and information which would give a customer an advantage over the principal strictly confidential, unless the agent has the principal's permission to disclose the information. This duty lives on after the agency relationship is terminated.
- (5) 'Reasonable skill, care and diligence' - the agent must perform all duties with the care and diligence which may be reasonably expected of someone undertaking such duties.
- (6) 'Full accounting' - the agent must provide a full accounting of any money or goods coming into the agent's possession which belong to the principal or other parties.

(h) "First Substantive Meeting" shall be:

- (1) In a real estate transaction in which the Broker is the agent for the seller, first substantive meeting shall be before or just immediately prior to the first of any of the following:
 - a) Showing the property to a prospective buyer.
 - b) Eliciting confidential information from a buyer concerning the buyers' real estate needs, motivation, or financial qualifications.
 - c) The execution of any agreements governed by Section 73-35-3 of the Mississippi Code of 1972 Annotated.
- (2) For the seller's agent, the definition shall not include:
 - a) A bona fide "open house" or model home showing which encompasses (1) (a) above only; however, whenever an event described in (1) (b) or (1) (c) occurs, disclosure must be made.
 - b) Preliminary conversations or "small talk" concerning price range, location and property styles.
 - c) Responding to general factual questions from a prospective buyer concerning properties that have been advertised for sale or lease.

(3) In a real estate transaction in which the Broker is the agent for the buyer, first substantive meeting shall be at the initial contact with a seller or a seller's agent or before or just immediately prior to the first of any of the following:

- a) Showing the property of a seller to a represented buyer.
- b) Eliciting any confidential information from a seller concerning their real estate needs, motivation, or financial qualifications.
- c) The execution of any agreements governed by Section 73-35-3 of the MS Code.

(4) For the buyer's agent, the definition shall not include:

- a) A bona fide "open House" or model home showing which encompasses (3) a) above only; however, whenever an event described in (3) b) or (3) c) occurs, disclosure must be made.
- b) Preliminary conversations or "small talk" concerning price range, location and property styles.

- c) Responding to general factual questions from a prospective buyer concerning properties that have been advertised for sale or lease.

- (i) "Single Agency" shall mean a broker who has chosen to represent only one party to a real estate transaction. It may be either the buyer, seller, lessor or lessee or any party in a transaction governed by Section 73-35-3.

3. DISCLOSURE REQUIREMENTS:

- a) In a single agency, a broker is required to disclose, in writing, to the party for whom the broker is an agent in a real estate transaction that the broker is the agent of the party. The written disclosure must be made before the time an agreement for representation is entered into between the broker and the party. This shall be on an MREC Agency Disclosure Form.

- b) In a single agency, a real estate broker is required to disclose, in writing, to the party for whom the broker is not an agent, that the broker is an agent of another party in the transaction. The written disclosure shall be made at the time of the first substantive meeting with the party for whom the broker is not an agent. This shall be on an MREC Agency Disclosure Form.

- c) Brokers operating in the capacity of disclosed dual agents must obtain the informed written consent of all parties prior to or at the time of formalization of the dual agency. Informed written consent to disclosed dual agency shall be deemed to have been timely obtained if all of the following occur:

- (1) The seller, at the time an agreement for representation is entered into between the broker and seller, gives written consent to dual agency by signing the Consent To Dual Agency portion of MREC Form A.
 - (2) The buyer, at the time an agreement for representation is entered into between the broker and buyer, gives written consent to dual agency by signing the Consent To Dual Agency portion of MREC Form A.
 - (3) The Broker must confirm that the buyer(s) understands and consents to the consensual dual agency relationship prior to the signing of an offer to purchase. The buyer shall give his/her consent by signing the MREC Dual Agency Confirmation Form which shall be attached to the offer to purchase. The Broker must confirm that the seller(s) also understands and consents to the consensual dual agency relationship prior to presenting the offer to purchase. The seller shall give his/her consent by signing the MREC Dual Agency Confirmation Form attached to the buyer's offer. The form shall remain attached to the offer to purchase regardless of the outcome of the offer to purchase.
- d) In the event the agency relationship changes between the parties to a real estate transaction, new disclosure forms will be acknowledged by all parties involved.
- e) In the event one or more parties are not available to sign one or more of the Disclosure Forms, the disclosure will be accomplished orally. The applicable form will be so noted by the Broker and said forms will be forwarded for signature(s) as soon as possible. Written electronic transmission will fulfill this requirement.

- f) In the event any party receiving a disclosure form requests not to sign that form acknowledging receipt, the Broker shall annotate the form with the following statement:

“A COPY OF THIS FORM WAS DELIVERED TO _____
DATE_____. RECIPIENT DECLINED TO ACKNOWLEDGE RECEIPT
OF THIS FORM.”

- g) The terms of the agency relationship shall be ratified on all contracts pertaining to real estate transactions.
- h) The Commission mandated disclosure form may be duplicated in content and size but not altered.
- i) Completed Agency Disclosure Forms shall be maintained in accordance with Rules and Regulations IV. B (6).

4. DISCLOSURE EXCEPTION:

A licensee shall not be required to comply with the provisions of Section 3, when engaged in transactions with any corporation, non-profit corporation, professional corporation, professional association, limited liability company, partnership, real estate investment trust, business trust, charitable trust, family trust, or any governmental entity in transactions involving real estate.

Operating under this exception in no way circumvents the common law of agency.

V. COMPLAINTS AND NOTIFICATIONS TO THE COMMISSION

- A. All complaints submitted to the Commission shall be properly certified on forms furnished by the Commission.
- B. Every licensee shall, within ten days, notify the Real Estate Commission of any adverse court decisions in which the licensee appeared as a defendant.
- C. It shall be mandatory for a responsible broker to notify the Commission if the responsible broker has reason to believe that a licensee for whom the broker is responsible has violated the Real Estate License Law or Rules and Regulations of the Commission.
- D. If a broker finds that a licensee licensed under that broker has been operating independently or through some other broker, the broker shall notify the Commission immediately and forward said individual's license to the Commission.
- E. A Real Estate Commissioner shall avoid private interviews, arguments, briefs or communication that may influence said Commissioner's decision on any pending complaints or hearings.
- F. The expiration, suspension or revocation of a responsible broker's license shall automatically suspend the license of every real estate licensee currently under the supervision of that broker. In such cases, a licensee may transfer to another responsible broker.

VI. CONTINUING EDUCATION

A. Approved Courses

1. Any course that meets the educational requirements as set forth in Section 73-35-7 of the Mississippi Real Estate Brokers License Act of 1954, as Amended.
2. Any course sponsored or provided by the Commission.
3. Any course which has been individually approved by the Commission pursuant to the provisions of this rule and which must be approved prior to presentation of the course, except that, in the Commission's discretion, courses which have not received such prior approval but which meet the proper criteria may be approved for credit for licensees who have completed such course.
4. Any course which has been approved for real estate continuing education by any state or country which is a member of the Association of Real Estate License Law Officials and which course satisfies the requirements set forth in VI (B) (3) with the exception of instruction in license law which pertains solely to a state other than Mississippi.

B. Procedures and Criteria for Approval of Courses

1. Definitions:

"Provider" - any person, partnership, association, corporation, educational organization, or other entity that sponsors, offers, organizes, provides or promotes real estate continuing education courses.

"Instructor" - a person who delivers educational material information directly to students.

2. A provider desiring approval of continuing education course referred to in Section 73-35-18, Mississippi Code of 1972, Annotated, shall make application to the Commission on forms provided by the Commission. The provider, course, and instructor must receive concurrent approval.
3. All requests for course accreditation shall be submitted on forms provided by MREC and will require copies of all student materials as well as documentation that includes the following:
 - (a) Course descriptions of each subject in the course.
 - (b) Measurable learning objectives for each subject.
 - (c) Specific process for evaluation and improvement of content.
 - (d) Specific processes for selecting and evaluating instructors.
 - (e) Specific processes for record-keeping and the administration of examinations.
4. For courses offered through distance learning:

- (a) Courses in Mississippi license law, contract law, and agency shall include course content and application specific to Mississippi practice and custom.
- (b) Out-of-state providers must provide copies or screen prints of all Mississippi specific content for MREC review and approval.
- (c) On-line or CD-ROM courses in Mississippi license law and agency must include instruction in the use of the Mississippi mandatory forms as well as a mechanism for the student to view and download the forms.

5. Standards for approval of course:

- (a) A proposed continuing education course shall be a real estate oriented educational session or course intended to improve skills of licensees and to keep licensees abreast of changing real estate practices and laws.
- (b) Courses shall be taught only by approved, qualified instructors.
- (c) Courses shall be offered in minimum two-hour segments.
- (d) Courses, instructors and providers shall be approved for one (1) year periods and shall be required to refile if the course is to be continued.

- (e) Licensees shall physically attend in order to receive a certificate.

C. Qualifications of Instructors

The education and experience of the instructor must be appropriate to teach the subject matter.

D. Administrative Requirements - Applies to VI A. 2. & 3.

1. Providers of continuing education courses shall furnish the Commission with a class roster within thirty (30) days after completion of each course listing each Mississippi licensee in attendance in alphabetical order.
2. Providers will utilize a three-part certificate for the purpose of certifying individual attendance. One designated part shall be returned completed to the commission, one designated part shall be given to each attendee at the conclusion of the course, and the remaining par shall be retained by the provider furnishing such information as may be called for on the certificate.
3. Attendance and other records of each provider must be kept on file for a period of three years and are subject to inspection by the Commission at any time during normal business hours.

E. Advertising and solicitation

1. An approved real estate provider must include, in all forms of advertising, the school's name and the physical location of its principal place of business.
2. An approved real estate provider may not advertise through oral statements or written text in such a manner that the statement is included or contained in any advertisement by a real estate broker and no advertisement of a licensed school may refer to the brokerage operation or include the telephone number of any individual broker.
3. An approved real estate provider may not:
 - (a) Indicate any name other than the name approved by the Mississippi Real Estate Commission (MREC).
 - (b) Indicate that it has been endorsed, recommended, or certified by the MREC except that the provider may advertise that it is approved by the MREC to provide instruction in real estate courses.
 - (c) Indicate that successful completion of its curriculum will result in passing a real estate licensing exam, may not make any guarantee of employment to a student or prospective student, and may not promote the business or any real estate licensee, real estate franchise, or network.

F. Relationship with providers

1. No real estate education presentation may be conducted in a facility that is also utilized for conducting the business of real estate brokerage unless all participants are licensees of the brokerage firm conducting the courses.
2. No real estate education provider will allow in-person or electronic solicitation of students for employment. A provider may not post, distribute, or display written material concerning employment nor use any approved course for the purpose of discussing, inducting, or promoting affiliation with any broker or brokerage firm during the prescribed class hours nor during the breaks between such class hours.
3. Providers may advertise that a course meets a portion of the continuing education requirements; however, no advertisement shall be used which states or implies that the Mississippi Real Estate Commission has approved or passed on the merits of a course.

G. Suspension or Revocation of Approval

Failure to comply with any provision of this rule shall constitute grounds for suspension or revocation of the approval of a course, a provider or an instructor, or other such action as deemed appropriate by the Commission.

VII. INSPECTION OF OFFERINGS FROM OUT OF STATE

Out-of-state land developers who desire to advertise out-of-state property in Mississippi (except in national publications) shall first contact the Mississippi Real Estate Commission to have the property approved for advertising. The Mississippi Real Estate

Commission may in its discretion conduct an on-site inspection of the property at the cost of the developer. The developer shall, upon request from the Mississippi Real Estate Commission, provide such documentation which will establish the truth and accuracy of the proposed advertisements. A Mississippi broker who becomes the agent or representative of the out-of-state developer, shall be responsible for the truth and accuracy of representation, offerings and advertising of such properties in the State of Mississippi.

VIII. TIME-SHARING

A. DEFINITIONS:

1. "Accommodations" means any structure, service improvement, facility, apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or any other private or commercial structure which is situated on real property and designed for occupancy by one or more individuals.
2. "Assessment" means the share of funds required for the payment of common expense which is assessed from time to time against each purchaser by the managing entity.
3. "Common Expenses" means taxes, casualty and liability insurance, and those expenses properly incurred for the maintenance, operation, and repair of all accommodations constituting the time-sharing plan.
4. "Offer to sell," "offer for sale," "offered for sale," or "offer" means solicitation of purchasers, the taking of reservations, or any other method whereby a purchaser is offered the opportunity to participate in a time-sharing plan.

5. "Seller" means any developer or any other person, or agent or employee thereof, who is offering time-share periods for sale to the public in the ordinary course of business, except a person who has acquired a time-share period for owner occupancy and later offers it for resale.

6. "Time-sharing plan" and "interval ownership" means any arrangement, plan, scheme or similar device; whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser receives a right to use accommodations for a specific period of time.

B. Contracts

Every seller of a time-share plan shall furnish each purchaser of such plan a fully completed copy of a contract pertaining to such sale, which contract shall include the following:

1. The actual date the contract is executed by all parties.

2. The names and addresses of the seller, the developer, and the timesharing plan.

3. The total financial obligation of the purchaser, including the initial purchase price and any additional charges to which the purchaser may be subject, such as reservation, maintenance, management and recreation charges.

4. The estimated date of availability of each accommodation or facility which is not completed.
5. A description of the nature and duration of the time-share period being sold, including whether any interest in real property is being conveyed and the specific number of years or months constituting the term of the contract.
6. Immediately prior to the space reserved in the contract for the signature of the purchaser, the following statements:

"YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN 5 WORKING DAYS FROM THE DATE YOU SIGN THIS CONTRACT AND UNTIL 5 WORKING DAYS AFTER YOU RECEIVE THE PUBLIC OFFERING STATEMENT. IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE SELLER IN WRITING OF YOUR INTENT TO CANCEL. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE UPON THE DATE SENT AND SHALL BE SENT TO (Name of Seller) AT (Address of Seller). NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THIS CONTRACT."

7. A statement that:

"IF YOU CANCEL THE CONTRACT DURING A 5 DAY CANCELLATION PERIOD, THE DEVELOPER SHALL REFUND TO YOU ALL PAYMENTS MADE UNDER THE CONTRACT WITHIN 30 DAYS AFTER RECEIPT OF YOUR CANCELLATION NOTICE."

8. The statements in paragraph 6 and 7 above shall not be waived.

C. Public offering statement:

Each developer shall file with the Commission a complete copy of the public offering statement to be used in the sale of the time share units. Until the Commission approves the public offering statement, any contract regarding the sale of the time-sharing plan shall be voidable by the purchaser. The proposed offering statement shall be received, reviewed and monitored in the following manner:

1. Within 20 days after receipt of public offering statement, the Commission shall determine whether it is adequate to meet the requirements of this section and shall notify the developer by mail that the Commission has either approved the public offering statement or found specified deficiencies, and within 20 days after receipt of proof of correction, the Commission shall notify the developer by mail that it has either approved the filing or found additional specified deficiencies. If the Commission fails to respond within 20 days, the filing shall be deemed approved.
2. Any material change to the public offering statement shall be filed with the Commission within 20 days of the change. The Commission shall approve, or cite for deficiencies, the change within 10 days after the date of filing. If the Commission fails to respond within 20 days, the change shall be deemed approved.
3. Every public offering statement must disclose, in a manner satisfactory to the Commission, the following:
 - (a) A cover sheet that gives:
 - (1) The name of the Time-share development.

(2) The following statement in conspicuous print:

"THIS CONTAINS IMPORTANT MATTERS IN PURCHASING A TIME-SHARE UNIT OR INTERVAL OWNERSHIP. THE BUYER SHOULD READ AND UNDERSTAND ALL CONTRACTS AND OTHER SALES MATERIAL BEFORE PURCHASING A TIME-SHARE UNIT."

- (b) The name and principal address of the developer.
- (c) The address of the time share units.
- (d) A general description of all time-share facilities that will be available to the purchaser and a schedule for completion if not complete.
- (e) The number and type of time-share units in the development, and the number of units that may be time-shared in the future.
- (f) Any fee due from the buyer upon closing and the purpose of the fee.
- (g) A copy of a current certificate of title from a licensed attorney.
- (h) A statement disclosing the mutual right to cancel.

- (i) Any restraints or alienation of any number or portion of any time-share periods, including any fees due to the developer upon resale of the time-share unit.
- (j) A statement of the insurance coverage required by this regulation.
- (k) Any fees due or expected to become due regarding use of facilities of the buyer and for general maintenance fees, and the identity of the managing entity.
- (l) A complete explanation of the time-shared form of ownership being offered.
- (m) A statement of whether a time-share exchange program is offered, and a complete explanation of all liabilities and benefits of said program.
- (n) A copy of the rules, regulations, conditions, or limitations for using the time-share unit or other facilities in the development.
- (o) A statement of any other matter, condition or circumstance that affects the time-share period.

D. Escrows:

The developer shall:

1. Deposit with an escrow agent fifty percent (50%) of the receivables from purchasers of such plans, less applicable local, state and federal sales taxes.
 - (a) Its purpose is to protect the purchaser's right to refund if at any time the accommodations are no longer available as provided in the contract; except seller shall have the option to repair or replace the accommodations.
 - (b) The purchaser shall be entitled to a refund from the escrow account upon conditions described herein.

2. In lieu of the escrow account provided in item 1., a seller of time-sharing plans may:
 - (a) Assign to an escrow sufficient receivables, the income from which shall be adequate to pay in full and satisfy all liens and encumbrances secured by the accommodations.
 - (1) The escrow agent shall provide to the seller and lender a monthly statement of the account.
 - (2) When all liens and encumbrances on the time-sharing facility have been fully discharged, the escrow account may be discontinued.
 - (b) Sell, hypothecate or discount receivables, the proceeds from which shall be deposited with an escrow agent and administered in the manner prescribed by Rule VII.D.1. above. In no event shall the purchaser of said receivables be relieved from compliance with VII.D.2(a).
 - (c) When any portion of the time-sharing accommodations and facilities have been fully released from all liens or encumbrances,

the escrow requirements of these items may be proportionately decreased.

3. In lieu of establishing the escrow account provided in item D.1. above, post a surety bond in the total amount of the contract with the Mississippi Real Estate Commission. The bond shall be conditioned upon the faithful compliance of the seller with the provisions of this section and the seller's contract with the purchaser and shall be payable to the Commission for the benefit of any purchaser injured by the seller's violation of this section or failure to perform. The bond may be reduced periodically in the ratio of the amount of time used by purchasers in relation to the total sold to purchasers.
4. Any funds escrowed shall be placed with an insured bank having trust powers and located in this state.
5. An escrow agent holding funds may invest such escrowed funds in securities of the United States Government, or any agency thereof, or in savings or time deposits institutions insured by an agency of the United States Government. Developer may receive the interest granted by any such investments.
6. Each escrow agent shall maintain separate books and records for each time-sharing plan.
7. Compliance with conditions:
 - (a) If the time-share plan is one which lease time-share interests are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds and property upon presentation of:

- (1) An affidavit by the developer that all of the following conditions have been met:
 - a) Expiration of the cancellation period.
 - b) Completion of construction.
 - c) Conveyance of the lease time-share interest.
 - d) Execution and recordation of the non-disturbance and notice to creditors instrument.
- (2) A copy of the conveyance of the lease time-share interest with evidence that it has been irretrievably delivered to the proper Chancery Clerk for recordation.
- (3) A certified copy of the recorded non-disturbance and notice to creditors instruments. The non-disturbance and notice to creditors instrument shall be executed by every person having an interest in, or having a lien, mortgage, or other encumbrance upon, the time-share property or accommodations or facilities the use of which are sold in conjunction with the time-share sale. However, persons whose interest in the time-share property is limited to ownership of lease time-share interests need not execute the non-disturbance instrument with respect to such interests. The instrument shall state that:
 - a) If the party seeking enforcement is not in default of its obligations, the instrument may be enforced by both the seller and any purchaser of the time-share plan.
 - b) The instrument shall be effective as between the time-share purchaser and the interest holder despite any rejection or cancellation of the contract between the time-share purchaser and developer during bankruptcy

proceedings of the developer.

c) So long as the interest holder has any interest in the accommodations, facilities, or plan, the interest holder will fully honor all rights of the time-share purchasers in and to the time-share plan, will honor the purchaser's right to cancel their contracts and receive appropriate refunds, and will comply with all other requirements of these rules. The instrument shall contain language sufficient to provide subsequent creditors of the developer and interest holders with notice of the existence of the time-share plan and of the rights of purchasers and shall serve to protect the interest of the time-share purchaser from any claims of subsequent creditors. A copy of the recorded non-disturbance and notice to creditors instrument, when required, shall be provided to each time-share purchaser at the time the purchaser contract is executed.

(b) If the time-share plan is one in which ownership time-share interests are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds and property upon presentation of:

(1) An affidavit by the developer that all of the following conditions have been met:

a) Expiration of the cancellation period.

b) Completion of construction. With respect to any time-share project whose developer has obtained approval of its public offering statement from the Mississippi Real Estate Commission prior to release of the escrow funds, completion of construction shall mean at a

minimum that a temporary certificate of occupancy has been issued for the unit from which the sale has been made.

c) Conveyance of merchantable title to the ownership time-share interest.

(2) Sufficient conveyance, mortgage, tax, paving lien, and other certificates to show conveyance of merchantable title, or, if the time-share estate is sold by agreement to purchase, a certified copy of the recorded non-disturbance and notice to creditors instrument, as described above. In lieu of the certificates sufficient to show conveyance of merchantable title, the developer may tender to the escrow agent a policy of title insurance sufficient to show conveyance of merchantable title.

(c) If the developer has previously provided a certified copy of any document required under these rules, the developer may for all subsequent disbursements substitute a true and correct copy of the certified copy, provided no changes to the documents have been made or are required to be made.

(d) Developers, sellers, escrow agents, and their employees and agents have a fiduciary duty to purchasers with respect to funds required to be escrowed under these rules. Any developer, seller, escrow agent, or any employee or agent of a developer, seller, or escrow agent who fails to comply with rules concerning the establishment of an escrow account, deposits of funds, and property into escrow, or withdrawal therefrom, shall be in violation of the Mississippi Real Estate Brokers Act of 1954, as amended, and the Rules and Regulations of the Commission. The failure to establish an escrow or to place funds therein as required under these rules is prima facie evidence of an intentional and purposeful violation.

E. Insurance:

Seller shall provide the purchaser with liability and casualty insurance at the seller's expense for the accommodations in an amount equal to the replacement cost of such accommodations until such time as the managing entity takes charge and provides full insurance coverage on units in the development.

F. Cancellations:

Seller shall refund all payments made by the purchaser under the contract and return all negotiable instruments, other than checks, executed by the purchaser in connection with the contract within 30 days from the receipt of the notice of cancellation transmitted to the seller from the purchaser or if the purchaser has received benefits under the contract, refund all payments made less benefits actually received by the purchaser during the time before the date of cancellation.

G. Advertising:

1. "Advertising materials" include:

- (a) All of the Developers promotional brochures, pamphlets, advertisements, or other materials to be disseminated to the public in connection with the sale of time-shares.
- (b) Transcripts of radio and television advertisements.
- (c) Lodging certificates.
- (d) Transcripts of standard verbal sales presentations.

(e) Any other advertising materials.

2. No advertising shall:

(a) Misrepresent a fact or create a false or misleading impression regarding the time-sharing plan.

(b) Make a prediction of increases in the price or value of time-share periods.

(c) Contain any contradicting statements.

(d) Describe any improvements to the time-sharing plan that will not be built or that is described as completed when it is not completed.

3. No promotional device, sweepstakes, lodging, certificate, gift award, premium, discount, drawing, prize or display may be utilized without a disclosure that:

(a) The promotional device is being used for the purposes of soliciting sales of time-sharing periods.

(b) The promotional device is being used to obtain the names and addresses of prospective purchasers and that any names and addresses acquired may be used for the purpose of soliciting sales of time-share periods.

- (c) States the name and address of each time-sharing plan or business entity participating in the program.
- (d) States the date and year when all prizes are to be awarded.
- (e) States the method by which all prizes are to be awarded.
- (f) States whether it is a national program with numerous sponsors and the gifts offered are not limited solely to customers of said development, but apply also to other developments.

H. Management:

1. Before the first sale of a time-share period, the developer shall create or provide for a managing entity, which may be the developer, a separate management firm, or an owner's association, or some combination thereof.
2. The managing entity shall act in the capacity of fiduciary to the purchasers of the time-sharing plans.
3. The duties of the managing entity shall include, but are not limited to:
 - (a) Management and maintenance of all accommodations constituting the time-sharing plan.

- (b) Collection of all assessments for common expenses.
- (c) The assessment of property taxes and casualty insurance and liability insurance against the owners, for which management shall be primarily liable and shall maintain a bond to insure the tax and insurance payments.
- (d) Maintenance of all books and records concerning the time-sharing plan, and making all of them reasonably available for inspection by any purchaser, or the authorized agent of such purchaser.
- (e) Arranging for an annual independent audit to be conducted of all the books and financial records of the time-sharing plan by a certified public accountant. A copy of the audit shall be forwarded to the officers of the owner's association; or, if no association exists, the owner of each time-sharing period shall be notified in writing that such audit is available upon request.
- (f) Scheduling occupancy of the time-share units so that all purchasers will be provided the use and possession of the accommodations that they have purchased.
- (g) Performing any other functions and duties that are necessary and proper to maintain the accommodations as provided in the contract and as advertised.
- (h) Notifying purchasers of maintenance fees and the identity of the managing entity.

4. Not later than three (3) years from the date of approval of the public offering statement, the managing entity shall cause an owner association to be formed as a non-profit corporation which shall take over.

I. Liens:

1. The managing entity has a lien on a time-share period from the date an assessment becomes due.
2. The managing entity may bring an action in its name to foreclose a lien for assessments, if provided in the mortgage, in the manner a mortgage of real property is foreclosed, and/or may also bring an action to recover a money judgement for the unpaid assessments, or, when no interest in real property is conveyed, an action under the Uniform Commercial Code.
3. The lien is effective from the date of recording in the public records of the county or counties in which the accommodations are located.
4. A judgment in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.
5. Labor or materials furnished to a unit shall not be the basis for the filing of a lien against the time-share unit of any time-share period owner not expressly consenting to or requesting the labor or materials.

J. Exchange Program:

1. An exchange agent or developer shall distribute to new purchasers with the public offering statement, materials concerning participation in an exchange program containing the following:
 - (a) The manner in which the program is operated, the identity of the persons operating the program, and the affiliation between the persons operating the program and the developer;
 - (b) Whether membership, participation, or both, in the program are voluntary or mandatory;
 - (c) The costs or ranges of costs of membership and participation in the program as of a specified date, not more than one year before the disclosure statement is delivered to the purchaser, and the person to whom those costs are payable;
 - (d) Whether and how any of the costs specified in paragraph (c) may be altered, which costs are to be fixed on a case-by-case basis, and the manner in which they are to be fixed in each case;
 - (e) A description of the availability of time-share units represented to be participating in the exchange program;
 - (f) The reservation and confirmation or other procedures to effectuate the exchange of occupancy rights.

K. Licensing:

Any seller of a time-sharing plan must be a licensed Real Estate Broker or Real Estate Salesperson pursuant to Mississippi Law and is subject to all law requirements of the Real Estate Licensure Law.

IX. ERRORS AND OMISSIONS INSURANCE COVERAGE:

A. Administration

1. Invitation to bid on the Errors and Omissions coverage shall be by advertisement published in the appropriate newspaper having state-wide coverage.
2. Selection and approval of carrier shall be by Commissioners utilizing consultants or committees as deemed appropriate by the Commission.
3. Upon approval of the carrier, invoices shall be sent by the Commission, via First Class Mail, to all licensees including companies, corporations, so forth, along with the necessary information of the various coverages, the period of coverage and minimum requirements for independent coverage if desired by a licensee.
4. Coverage shall be a twelve-month period beginning October 1, 1994, and continuing thereafter on twelve-month basis.
5. Premiums shall be collected by the carrier or the Commission, at the Commission's discretion.
6. The Commission shall maintain computer and written records as required for accurate documentation and administration of this program.

B. Licensee Status:

1. Active licensees not submitting the required premium or providing the required proof of acceptable independent coverage within 30 days after

the due date of the premium shall be placed automatically on inactive status at end of the 30 day period.

2. Inactive licensees will not be required to pay the premium until changing to active status and it will be assessed on a pro rata basis. However, inactive licensees will be invoiced at the beginning of the policy period. They may pay the full premium at that time if they desire.
3. New licensees will be given notice when their license is issued to provide proof of coverage within 30 days of the issuance of license or pay the premium specified on a pro rata basis. Failure to do so will result in license being changed to inactive status.

C. Independent Coverage

1. Licensees having independent coverage shall submit proof of coverage by the beginning of the policy period as set forth above. Any deficiency in supplying proof of coverage must be corrected within no more than 30 days after the beginning of the policy period. Proof of coverage shall be by a "Certificate of Insurance" provided by the independent insurance carrier.
2. Minimum requirements of independent coverage shall be:
 - (a) Coverage must be for all activities for which a real estate license is required under this Chapter.
 - (b) A per-claim limit is not less than \$100,000.
 - (c) The deductible is not more than \$2,500.00 per licensee, per claim, for any damages and the deductible is not more than \$1,000.00 per licensee, per claim, for defense costs.

- (d) The independent insurance carrier shall agree to a non-cancelable policy or provide a letter of commitment to notify the Commission 30 days prior to intention to cancel.