

TITLE 73. PROFESSIONS AND VOCATIONS
CHAPTER 35. REAL ESTATE BROKERS
IN GENERAL

§ 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) The term "automated valuation method" means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

(6) The term "broker price opinion" means an estimate prepared by a real estate broker, agent, or salesperson that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

§ 73-35-4. Broker's price opinion; preparation, contents and use of opinion

(1) A person licensed under this chapter may prepare a broker's price opinion and charge and collect a fee for such opinion if:

- (a) The license of that licensee is active and in good standing; and
- (b) The broker's price opinion meets the requirements of subsections (3) and (4) of this section.

(2) Notwithstanding any provision to the contrary, a person licensed under this chapter may prepare a broker's price opinion for:

- (a) An existing or potential seller for the purposes of listing and selling a parcel of real property;
- (b) An existing or potential buyer of a parcel of real property;
- (c) A third party making decisions or performing due diligence related to the potential listing, offering, sale, exchange, option, lease or acquisition price of a parcel of real property; or
- (d) An existing or potential lienholder or other third party for any purpose other than as the basis to determine the value of a parcel of real property, for a mortgage loan origination, including first and second mortgages, refinances, or equity lines of credit.
- (e) The provisions of this subsection do not preclude the preparation of a broker's price opinion to be used in conjunction with or in addition to an appraisal.

(3) A broker's price opinion prepared under the authority granted in this section shall be in writing and shall conform to the standards and guidelines published by a nationally recognized association of providers of broker price opinions. The Mississippi Real Estate Commission shall promulgate regulations that are consistent with, but not limited to, the standards and guidelines of a nationally recognized association of providers of broker price opinions.

(4) A broker's price opinion shall be in writing and contain the following:

- (a) A statement of the intended purpose of the price opinion;
- (b) A brief description of the subject property and property interest to be priced;
- (c) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;

- (d) Any assumptions or limiting conditions;
 - (e) A disclosure of any existing or contemplated interest of the broker or salesperson issuing the opinion;
 - (f) The effective date of the price opinion;
 - (g) The name and signature of the broker or salesperson issuing the price opinion;
 - (h) The name of the real estate brokerage firm for which the broker or salesperson is acting;
 - (i) The signature date;
 - (j) A disclaimer stating that, "This opinion is not an appraisal of the market value of the property, and may not be used in lieu of an appraisal. If an appraisal is desired, the services of a licensed or certified appraiser must be obtained. This opinion may not be used by any party as the primary basis to determine the value of a parcel of real property for a mortgage loan origination, including first and second mortgages, refinances or equity lines of credit.";
 - (k) A certification that the licensee is covered by errors and omissions insurance, to the extent required by state law, for all liability associated with the preparation of the broker's price opinion.
- (5) If a broker's price opinion is submitted electronically or on a form supplied by the requesting party:
- (a) A signature required by paragraph (g) of subsection (4) may be an electronic signature, as defined in Section 75-12-3.
 - (b) A signature required by paragraph (g) of subsection (4) and the disclaimer required by paragraph (j) of subsection (4) may be transmitted in a separate attachment if the electronic format or form supplied by the requesting party does not allow additional comments to be written by the licensee. The electronic format or the form supplied by the requesting party must:
 - (i) Reference the existence of a separate attachment; and
 - (ii) Include a statement that the broker's price opinion is not complete without the attachment.
- (6) Notwithstanding any provisions to the contrary, a person licensed pursuant to this chapter may not prepare a broker's price opinion for any purpose in lieu of an appraisal when an appraisal is required by federal or state statute. A broker's price opinion which estimates value or worth of a parcel of real estate rather than sales price shall be deemed to be an appraisal and may not be prepared by a licensed broker or sales agent under the authority of their licensee but may only be prepared by a duly licensed appraiser and must meet the regulations promulgated by the Mississippi Real Estate Appraiser Licensing and Certification Board. A broker's price opinion may not under any circumstances be referred to as a valuation or appraisal.

§ 73-35-4.1. Disclosure of information concerning size or area of property involved in real estate transaction; liability; remedy for violation of section

(1) (a) In connection with any real estate transaction, the size or area, in square footage or otherwise, of the subject property, if provided by any real estate licensee in accordance with paragraph (b)(i) and (ii), shall not be considered any warranty or guarantee of the size or area information, in square footage or otherwise, of the subject property.

(b) (i) If a real estate licensee provides any party to a real estate transaction with third-party information concerning the size or area, in square footage or otherwise, of the subject property involved in the transaction, the licensee shall identify the source of the information.

(ii) For the purposes of this section, "third-party information" means:

1. An appraisal or any measurement information prepared by a licensed appraiser;
2. A surveyor developer's plan prepared by a licensed surveyor;
3. A tax assessor's public record; or
4. A builder's plan used to construct or market the property.

(c) A real estate licensee has no duty to the seller or purchaser of real property to conduct an independent investigation of the size or area, in square footage or otherwise, of a subject property, or to independently verify the accuracy of any third-party information.

(d) A real estate licensee who has complied with the requirements of this section, as applicable, shall have no further duties to the seller or purchaser of real property regarding disclosed or undisclosed property size or area information, and shall not be subject to liability to any party for any damages sustained with regard to any conflicting measurements or opinions of size or area, including exemplary or punitive damages.

(2) (a) If a real estate licensee has provided third-party information to any party to a real estate transaction concerning size or area of the subject real property, a party to the real estate transaction may recover damages from the licensee in a civil action only when a licensee knowingly violates the duty to disclose the source of the information as required in this section. However, nothing in this section shall provide immunity from civil liability to any licensee who knowingly misrepresents the size or area of the subject real property.

(b) The sole and exclusive civil remedy at common law or otherwise for a violation of this section by a real estate licensee shall be an action for actual damages suffered by the party as a result of such violation and shall not include exemplary or punitive damages.

(c) For any real estate transaction commenced after July 1, 2013, any civil action brought pursuant to this section shall be commenced within two (2) years after the date of transfer of the subject real property.

(d) In any civil action brought pursuant to this section, the prevailing party shall be allowed court costs and reasonable attorney fees to be set by the court and collected as costs of the action.

(e) A transfer of a possessory interest in real property subject to the provisions of this section may not be invalidated solely because of the failure of any person to comply with the provisions of this section.

(f) The provisions of this section shall apply to, regulate and determine the rights, duties, obligations and remedies, at common law or otherwise, of the seller marketing the seller's real property for sale through a real estate licensee, and of the purchaser of real property offered for sale through a real estate licensee, with respect to disclosure of third-party information concerning the subject real property's size or area, in square footage or otherwise, and this section hereby supplants and abrogates all common-law liability, rights, duties, obligations and remedies of all parties therefor.

§ 73-35-5. Real estate commission created; organization; seal; records

(1) There is hereby created the Mississippi Real Estate Commission. The commission shall consist of five (5) persons, to be appointed by the Governor with the advice and consent of the Senate. Each appointee shall have been a resident and citizen of this state for at least six (6) years prior to his appointment, and his vocation for at least five (5) years shall have been that of a real estate broker. One (1) member shall be appointed for the term of one (1) year; two (2) members for terms of two (2) years; two (2) members for terms of four (4) years; thereafter, the term of the members of said commission shall be for four (4) years and until their successors are appointed and qualify. There shall be at least one (1) commissioner from each congressional district, as such districts are constituted as of July 1, 2002. The commissioners appointed from each of the congressional districts shall be bona fide residents of the district from which each is appointed. One (1) additional commissioner shall be appointed without regard to residence in any particular congressional district. Members to fill vacancies shall be appointed by the Governor for the unexpired term. The Governor may remove any commissioner for cause. The State of Mississippi shall not be required to furnish office space for such commissioners. The provisions of this section shall not affect persons who are members of the Real Estate Commission as of January 1, 2002. Such members shall serve out their respective terms, upon the expiration of which the provisions of this section shall take effect. Nothing provided herein shall be construed as prohibiting the reappointment of any member of the said commission.

(2) The commission shall organize by selecting from its members a chairman, and may do all things necessary and convenient for carrying into effect the provisions of this chapter, and may from time to time promulgate rules and regulations. Each member of the commission shall receive per diem as authorized in Section 25-3-69, Mississippi Code of 1972, and his actual and necessary expenses incurred in the performance of duties pertaining to his office as authorized in Section 25-3-41, Mississippi Code of 1972.

(3) The commission shall adopt a seal by which it shall authenticate its proceedings. Copies of

all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this chapter shall be open to public inspection except pending investigative files.

§ 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 preclicensing 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 preclicensing 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 preclicensing 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 preclicensing 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 (12) months' 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 non-cancelable 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).