

NOTE: This PDF contains a "clean" version of proposed rules (p. 1-36) and a "marked-up" version (p. 37-76) showing additions (underlined) and deletions (strike-through) in red font.

TITLE 30: Professions and Occupations

PART 1601: Mississippi Real Estate Commission

Part 1601 Chapter 1: Licensing

Rule 1.1 Applying for a License

- A. An applicant for a broker's license must pass the National Portion of the broker's examination with a grade of at least 75% and must pass the State Specific Portion of the examination with a grade of at least 80%.
- B. An applicant for a salesperson's license must pass the National Portion of the salesperson's examination with a grade of at least 70% and must pass the State Specific Portion of the examination with a grade of at least 75%.
- C. An application fee must accompany the application and will not be refunded after the applicant is scheduled for the examination.
- D. The approved Examination Testing Provider will administer examination in various locations in and near the State of Mississippi. Applicants will arrange the time and place of their examination with the Testing Provider.
- E. When an applicant is approved for either examination, applicant has two months in which to take and pass both the National Portion and the State Specific Portion of the examination. If the applicant fails to appear for the examination within the two months allowed, applicant's fee will be forfeited and their file closed. If the applicant fails to pass the first examination, applicant will be allowed to take the next examination with the payment of an additional fee to the Testing Provider. If the applicant fails to appear for the second examination, fees will be forfeited and their file closed.
- F. A principal broker may apply on behalf of a business entity chartered by the State of Mississippi to obtain a Brokerage License, except that no license will be issued using an entity name or trade name where there exists in Mississippi, or in a contiguous, multi-state trade area which includes a region of Mississippi, a real estate broker or brokerage having a substantially similar name or trade name.
- G. A real estate licensee of another state who desires to obtain a license under this chapter shall be exempt from the examination provided the examination administered in the other state is determined by the Commission to be equivalent to such examination given in this state and provided that such other state extends this same privilege or exemption to Mississippi real estate licensees.

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

Source: Miss. Code Ann. §§ 73-35-35

Rule 1.2 Changing the Status of a License

- A. To change a license from active to inactive status, licensee shall notify the Commission in writing, shall insure that the license is removed from public display and shall pay the appropriate fee. A licensee who is on inactive status at time of renewal may renew the license on inactive status by filing a renewal application and paying the renewal fee. A broker who terminates a real estate company may place the company license on inactive status. To return to active status, a salesperson or broker associate must file a reactivation and/or transfer application, as applicable. A broker and/or a company license may be activated by notifying the Commission by filing a reactivation letter or transfer application, as applicable, including the required fee.
- B. When a licensee wishes to transfer from one broker to another, the transferring licensee must either use the online facility available through the licensee's Commission license account or file a transfer application signed by both the former and new principal broker accompanied by the transfer fee and must furnish a statement that the licensee is not carrying any listings or pertinent information belonging to the former broker unless that broker so consents. Both the former and new principal broker may acknowledge the license transfer using their Commission online license account. When a licensee has terminated their agency relationship with the former principal broker, the former principal broker shall acknowledge the license transfer within three (3) business days. The former broker cannot refuse to acknowledge or otherwise approve the termination of a salesperson's agency or transfer to a new principal broker.
- C. Any licensee who has entered active-duty military service due to draft laws or national emergency shall, upon his return to civilian life and within twelve (12) months after honorable discharge, be considered, so far as this Commission is concerned, to have been continuously engaged in the real estate business in the same capacity as when the licensee entered military service.

Source: Miss. Code Ann. §§ 73-35-35; 73-35-15

Part 1601 Chapter 2: Fees

Rule 2.1

The current fees duly adopted and established by resolution of the Commission in accordance with Section 73-35-17 shall be prominently displayed on the Commission website and available for public inspection at the offices of the Commission.

The Commission has established the following fee categories applicable to both resident and nonresident licensees:

- A. Application and one year's use of license:
 - (1) Broker
 - (2) Salesperson
 - B. Application for license as a real estate broker issued for brokerage company, partnership, association, or corporation and one year's use of license:
 - (1) Brokerage Company (partnership, association or corporation)
 - (2) Branch Office
 - C. Renewal fees for two-year period:
 - (1) Broker (individual)
 - (2) Brokerage Company (partnership, association, corporation)
 - (3) Salesperson
 - (4) Branch Office
- Penalty fee for late renewal after license expiration and within statutory renewal grace period - 100% of renewal fee.
- D. Changes:
 - (1) Place of business change (active license only)
 - (2) Each transfer of license
 - (3) Status change from active to inactive status
 - (4) Status change from inactive to active status
 - E. Furnishing an official Certificate of Licensure
 - F. Returned Check Charge

Source: Miss. Code Ann. §§ 73-35-35; 73-35-17

Rule 2.2 Miscellaneous Fee Provisions .

- A. Fees and monies payable to the Mississippi Real Estate Commission may be by personal check, cash, cashier's check, money order, or online by electronic check, credit or debit card when such payment facility is available. All personal checks shall be made payable to the Mississippi Real Estate Commission. Any personal checks returned not paid or for any other reason shall constitute justifiable grounds for refusing, suspending or revoking a license.
- B. Checks returned unpaid for non-sufficient funds (NSF) or other reason shall result in a charge up to the maximum amount allowed under Mississippi law.
- C. Non-sufficient fund (NSF) checks offered for license renewal, if not made good by the renewal deadline, will cause the licensee to enter expired status and necessitates the payment of a penalty (100%) by the licensee during the statutory renewal grace period in order to renew. A license will be permanently canceled and closed if a NSF check is not made good or other sufficient payment is not made by the end of the statutory renewal grace period.

Source: Miss. Code Ann. §§ 73-35-35; 73-35-17

Part 1601 Chapter 3: Administration/Conducting Business

Rule 3.1 General Rules

A. Definitions

(1) Branch Office- Any office other than the main place of business operated by a Principal Broker or authorized Managing Broker.

(2) Broker- Any licensed person or business entity who, for a fee, commission, or other valuable consideration, or with the intention or expectation of receiving such, engages in or offers to engage in selling, buying, leasing, exchanging, managing, or listing real estate or the improvements thereon, or negotiating or attempting to negotiate any of those acts on behalf of others.

(3) Broker Associate- A licensed Broker affiliated with a Principal Broker who does not operate as an independent Broker.

(4) Brokerage- The business entity or operation through which a licensed Broker conducts real estate activities; the organizational structure under which licensed real estate services are provided to the public.

(5) Broker Price Opinion- 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.

(6) Licensee- Any individual or business entity that has been granted a real estate license by the Mississippi Real Estate Commission.

(7) Managing Broker- A licensed Broker Associate charged by the Principal Broker with duty to perform certain real estate services outside the Principal Broker's supervision or direction as Managing Broker of a Principal Office or Branch Office of a Brokerage.

(8) Principal Broker- A licensed Broker responsible for operation of a real estate brokerage.

B. Broker Duties and Responsibilities

(1) The duties of a principal broker include, but are not limited to the duties to instruct the licensees licensed under that principal broker in the fundamental duties of real estate law, agency law, contract law, proper documentation, requirements of signature and delivery of copies of all agreements, disclosures, client relations, communications, fair housing, advertising, professional ethics and the Mississippi Real Estate License Law and Commission rules and regulations.

(2) It shall be the duty of the principal broker to exercise proper supervision of the licensable real estate activities of the licensees licensed under that principal broker. Proper supervision includes, but is not limited to maintaining knowledge of the real estate activities conducted by licensees and maintaining communications with licensees regarding the real estate activities conducted under the supervision of the principal broker. A principal broker shall not allow a licensee to use the principal broker's license for the sole purpose of receiving compensation if the principal broker is only providing nominal supervision of the real estate activities being performed under the principal broker's license.

(3) A real estate broker who operates under the supervision of a principal broker must not at any time act independently as a broker. The principal broker shall at all times be responsible for the action of the affiliated broker to the same extent as though that licensee were a salesperson and that affiliated broker shall not perform any real estate service without the full consent and knowledge of his principal broker.

(4) A principal broker may designate a broker associate licensed under the principal broker to perform certain real estate services outside the principal broker's supervision as managing broker of a principal office or branch office of a brokerage. Such designation shall be registered with the Commission setting forth the exact nature of the relationship between the principal broker and the broker associate and the real estate services to be performed outside the principal broker's supervision. A managing broker is responsible for duties of the principal broker that have been specifically assigned to them in the designation registered with the Commission. With respect to licenses, earnest money and escrow accounts, the principal broker may designate a managing broker to share responsibility, but the principal broker remains responsible at all times for compliance with Commission rules and applicable law. The principal broker shall immediately notify the Commission in writing upon the termination of such relationship.

C. Cooperating with Out-of-State Brokers

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

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

(3) A principal nonresident broker described herein is defined as an active, licensed

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

(4) The principal nonresident broker cannot place any sign on real property located in the state of Mississippi without the written consent of the cooperating principal Mississippi broker. When the consent is obtained, the sign of the principal Mississippi broker must be placed in a prominent place and in close proximity to the principal nonresident broker's sign. Any licensed principal Mississippi broker assisting or cooperating in the sale, lease, property management, rental or auction of real property within the state of Mississippi with a principal nonresident broker who fails or refuses to list his or her name in such advertisement, or fails or refuses to cross-list such property with him or her, in writing, shall be deemed in violation of Section 73-35-11 of the Real Estate Broker's License Act, and shall be subject to a revocation or suspension of his or her license. In such instance herein where a principal Mississippi broker enters into a cooperative agreement with a principal nonresident broker pertaining to the sale of real property within the state of Mississippi, the principal Mississippi broker must file two copies of the cooperating agreement with the Mississippi Real Estate Commission.

D. The principal broker shall maintain a principal office for the brokerage. The principal broker shall display, or make available for inspection within that office, the license(s) of the Principal Broker; the Real Estate Company, if any; and licenses of all other licensees operating in that office. The principal broker must display, or make available for inspection within any branch office of the brokerage, the branch office license for that office and licenses of all other licensees operating in that office.

E. Compensation

(1) A Principal Broker shall be the sole recipient of compensation resulting from the sale, purchase, rent, auction, exchange, or property management of Mississippi real property by Licensees licensed under that Broker.

(2) No licensee shall pay any part of a fee, commission, or other compensation received by such licensee in buying, selling, exchanging, leasing, auctioning or renting any real estate except to another licensee through the licensee's principal broker.

(3) Cash, gifts, or other compensation of any kind when provided or promised by a licensee as an inducement intended to facilitate or to close a transaction are strictly prohibited. A de minimis, non-cash gift is permitted with permission of the principal broker when immaterial to the facilitation of or closing of a transaction.

(4) No licensee shall knowingly pay a commission, or other compensation to a licensed person knowing that licensee will in turn pay a portion or all of that which is received to a

person who does not hold a real estate license.

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

(6) A principal broker may maintain an affiliation with a licensee under the principal broker's license for the limited purpose of compensating such licensee for referrals when that licensee is not otherwise performing licensable activities or maintaining presence within the brokerage.

F. Responding to Commission Communications

(1) Any licensee who fails in a timely manner to respond to official Mississippi Real Estate Commission written or electronic communication or who fails or neglects to abide by Mississippi Real Estate Commission's Rules and Regulations shall be deemed, prima facie, to be guilty of improper dealing.

(2) All Commission communications directed to the Brokerage or any persons licensed under the Principal Broker shall be copied to the Principal Broker. The Principal Broker has the duty to ensure that all Commission communications directed to the Brokerage and any persons licensed under the Principal Broker which are properly copied to the Principal Broker are responded to in a timely and reasonably responsive manner.

(3) Principal Brokers and all respondent licensees shall respond to Commission communications relating to matters governed by Complaint Procedure in the rules of the Commission.

G. A real estate broker or salesperson in the ordinary course of business may give an opinion as to the sales price of real estate for the purpose of a prospective listing or sale; however, this opinion as to the listing price or the sale price shall not be referred to as an appraisal and must be completed in compliance with Section 73-35-4 of the Real Estate Broker's License Act and must conform to the Standards established by the National Association of Broker Price Opinion Professionals (NABPOP).

H. When an offer is made on property owned by a party with whom a broker has entered into a listing agreement, such broker shall document and date the seller's personal acceptance or rejection of the offer and upon written request, shall provide a copy of such document to the person making the offer, or their licensed agent if the person is represented.

I. A real estate licensee shall not be exempt from disciplinary actions by the commission when selling property owned by the licensee.

J. Licenses

- (1) The Principal Broker is responsible for reviewing and approving applications for initial activation of licenses for persons performing licensable activity under that Principal Broker.
- (2) Upon receipt of written or electronic notice from the Commission regarding the renewal status of active licensees, the principal broker shall follow up with active licensees seeking to renew a license.
- (3) The Principal Broker shall be responsible for promptly reviewing and acknowledging applications for transfer of an active license to/from another Principal Broker.
- (4) The Principal Broker shall maintain proof of current Errors & Omissions insurance coverage for each Licensee working under their license.

Source: Miss. Code Ann. §§ 73-35-35

Rule 3.2 Documents

- A. A real estate licensee shall **immediately (at the time of signing)** deliver a true and correct copy of any document to any party or parties executing or bound by such document. Upon demand, a licensee shall deliver to his or her client a copy of any document pertaining to the real estate transaction for which the licensee is engaged.
- B. All exclusive listing agreements shall be in writing, properly identify the property to be sold, and contain all of the terms and conditions under which the transaction is to be consummated; including the sales price, the considerations to be paid, the signatures of all parties to the agreement, and a definite date of expiration. No listing agreement shall contain any provision requiring the listing party to notify the broker of their intention to cancel the listing after such definite expiration date. An "Exclusive Agency" listing or "Exclusive Right to Sell" listing shall clearly indicate in the listing agreement that it is such an agreement.
- C. Agreements and Contracts
 - (1) The Principal Broker is responsible for signature of all agreements, either by the Principal Broker or Licensee authorized by the Principal Broker, whereby Compensation may be paid to the Brokerage.
 - (2) The Principal Broker is responsible for ensuring that all exclusive listing agreements are in writing and include, at minimum, a clear disclosure of whether the listing agreement is an "Exclusive Agency" or "Exclusive Right to Sell" listing agreement; identification of the property to be sold, rented, auctioned or exchanged; the seller's preferences for terms and conditions under which the transaction is to be consummated, including the sales price, considerations, and Compensation to be paid; a definite date of expiration; and all necessary signatures.
 - (3) The Principal Broker is responsible for ensuring that all exclusive buyer representation agreements are in writing and include, at a minimum, a clear disclosure that the agreement is an exclusive buyer representation agreement; all of the terms and conditions under which the buyer will rely upon the broker or brokerage for the purchase, rental, or exchange of real estate, including the considerations and any Compensation to be paid; a definite date of expiration; and all necessary signatures.
 - (4) The Principal Broker must review each document or agreement generated in a real estate transaction within seven (7) Banking Days after it has been accepted, rejected, or withdrawn. If the document originates in an office having a Managing Broker, the Managing Broker may review such document in lieu of the Principal Broker. The document review may be performed electronically or using paper copy. Any document review will record the date of review and the name of the reviewer.

- D. In the event that more than one written offer is made before the owner or seller has accepted an offer, any other written offer received by the listing brokerage, whether from a prospective purchaser or from another licensee cooperating in a sale, shall be presented to the owner unless the listing broker has specific, written instructions from the owner or seller to postpone the presentation of other offers. Principal brokers holding a listing should caution the owner or seller against countering on more than one offer at the same time.
- E. Every real estate contract must reflect whom the principal broker represents by a statement over the signatures of the parties to the contract.
- F. No licensee shall represent to a lender or any other interested party, either verbally or through the preparation of a false sales contract, an amount in excess of the true and actual selling price.
- G. Record Retention
 - (1) A principal broker must keep on file for three years following its consummation, complete records relating to any real estate transaction. This includes, but is not limited to listings, options, leases, offers to purchase, contracts of sale, escrow records, agency agreements and copies of all closing statements.
 - (2) Paper copies of documents being disposed of should be destroyed in a manner protecting their content and confidentiality.
 - (3) Electronic records storage systems or cloud-based repositories of records are acceptable so long as the system meets the following requirements:
 - (a) All official electronic records must be stored in cloud services approved by the Principal Broker or systems with access controls in place and be capable of retrieving and printing hard copies of records upon demand;
 - (b) Access to electronic records must require authentication; and
 - (c) All cloud-stored records must be backed up regularly (daily, weekly, or per business requirement) during the applicable retention period.

Source: Miss. Code Ann. §§ 73-35-35

Rule 3.4 Earnest Money

A. Definitions

(1) Banking Day- The part of any “business day” when a bank’s office is open to the public for conducting substantially all banking functions. For purposes of this definition, “business day” is defined as any calendar day excluding Saturdays, Sundays, and official federal holidays.

(2) Earnest Money- A deposit made by a buyer to demonstrate their good faith and serious intent to purchase real estate.

(3) Escrow- A financial arrangement where a third party (often a Broker, attorney, or escrow company) holds funds, documents, or property on behalf of the parties to a real estate transaction under certain terms and conditions.

(4) Escrow/ Trust Account- A bank account established by a Broker or authorized party for the sole purpose of holding funds, such as Earnest Money deposits and lessee/tenant security deposits on behalf of clients or parties to a real estate transaction.

B. The principal broker is responsible at all times for earnest money deposits. Earnest money accepted by the broker or any licensee for which the broker is responsible and upon acceptance of a mutually agreeable contract is required to deposit the money into an escrow account prior to the close of business of the next banking day. The principal broker is required to promptly account for and remit the full amount of the deposit or earnest money at the consummation or termination of transaction. A licensee is required to pay over to the principal broker all deposits and earnest money immediately upon receipt thereof. Earnest money must be returned promptly when the purchaser is rightfully entitled to same allowing reasonable time for clearance of the earnest money check. In the event of uncertainty or dispute as to the proper disposition of earnest money, the broker may turn earnest money over to a court of law for disposition. Failure to comply with this regulation shall constitute grounds for revocation or suspension of license.

C. When the broker is the agent for the seller and for any reason the seller fails or is unable to consummate the transaction, the broker has no right to any portion of the earnest money deposited by the purchaser, even if a commission has been earned. The entire amount of the earnest money deposit must be returned to the purchaser, and the broker should look to the seller for compensation.

D. The principal broker shall ensure that accurate records are maintained on escrow accounts of all monies received, disbursed, or on hand. All monies shall be individually identified as to a particular transaction. Escrow records shall be kept in accordance with standard accounting practices.

- E. Monies received in an escrow account on behalf of clients or customers are not assets of the broker; however, a broker may deposit and keep in each escrow account or rental account some personal funds for the express purpose of covering service charges and other bank debits related to each account, which must never be paid from funds held in trust.
- F. If a broker, as escrow agent, accepts a check and later finds that such check has not been honored by the bank on which it was drawn, the broker shall immediately notify all parties involved in the transaction.
- G. Upon reasonable notice, the Commission may examine and audit any real estate escrow account maintained by a principal broker or brokerage for holding real estate trust funds on behalf of others. The principal broker shall cooperate fully with any examination and/or audit request. An examination and/or audit of an escrow account may be conducted in person or through electronic means. The principal broker or brokerage shall provide access on the premises, through the production of copies of books and records, or through access to electronic systems, as applicable.

Source: Miss. Code Ann. §§ 73-35-35

Rule 3.5 Real Estate Teams or Groups

- A. A “Team or Group” shall mean a collective name used by two or more active real estate licensees who represent themselves to the public as being part of a single entity which is organized with the written approval of a Principal Broker to perform licensable real estate activity. To qualify as a “Real Estate Team or Group” the active real estate licensees must be working together and each must (a) work under the direct supervision of the same Principal Broker, (b) work together on real estate transactions to provide real estate brokerage services, (c) must represent themselves to the public as being part of a Team or Group, (d) must be designated by a specific team or group name, and (e) must conduct all real estate activity from the primary office or branch office where their individual licenses are displayed.
- B. All Principal Brokers must have specific information on each Team operating within their Brokerage and must register each Team with the Real Estate Commission on forms provided for that purpose; to include a detailed list indicating all approved Team names, the name of the Team Leader, the name of the individual Team members and the name of any unlicensed employee(s) of the Team. The working list(s) should indicate the dates that Team members are added to or deleted from any Team and should enable the Principal Broker and/or the Real Estate Commission to determine Team membership at any point in time. Adjustments to a Team should be filed with the Real Estate Commission within ten (10) working day of any change and should be on forms provided by the Commission.
- C. All teams must appoint a Team Leader, who will be either the Principal Broker or a Broker Associate with a minimum of one years’ real estate experience, and will have supervisory responsibility (under the supervision of the Principal Broker) over the Team members. The Team Leader may be subject to disciplinary action for violations of the Mississippi Real Estate Brokers Act by Team members under their supervision. Team Leaders may lead multiple teams.
- D. A Team Name may, with the written approval of the Principal Broker and the Team Leader, be used in any type of advertising. Any individual whose name is displayed in any advertisement must be an active licensee who is sponsored by the Principal Broker. All advertising must fully comply with the guidelines established in MREC Administrative Rule 3.3. Principal Brokers and Team Leaders must confirm that the name of the Principal Broker or the Brokerage Firm and their telephone number is prominently displayed on all advertising which includes contact information about a Licensee, a Team Member or a Team. The name of the Team must be situated near the name of the Brokerage Firm and shall be identified with the same sized or smaller print as that of the Brokerage.
- E. Neither team names nor team advertising should suggest that the team is an independent real estate brokerage. Team names must not include terms such as (a) real estate brokerage, (b) realty, (c) real estate, or (d) company.

Source: Miss. Code Ann. §§ 73-35-3 (4); 73-35-18 (3); 73-35-21 (d)

Part 1601 Chapter 4: Agency Relationship Disclosure

Rule 4.2 Definitions

- A. "Agency" shall mean the relationship created when one person, the Principal ("client"), delegates to another, the agent ("licensee"), the right to act on the client's behalf in a real estate transaction and to exercise some degree of discretion while so acting. Agency may be entered into by expressed agreement, implied through the actions of the agent and or ratified after the fact by the client accepting the benefits of an agent's previously unauthorized act. An agency gives rise to a fiduciary relationship and imposes on the licensee, as the fiduciary of the client, certain duties, obligations, and high standards of good faith and loyalty.
- B. "Agent" shall mean the licensee who is authorized to act on behalf of and represent a client. A real estate broker is the agent of the client to whom a fiduciary obligation is owed. Salespersons licensed under the broker are subagents of the broker, regardless of the location of the office in which the salesperson works.
- C. "Client" shall mean the person to whom the licensee owes a fiduciary duty. It can be a seller, buyer, lessor, lessee or both.
- D. "Compensation" is that fee paid to a broker for the rendering of services. The ultimate source of payment is not relevant to an agreed agency relationship. Compensation, when considered alone, is not the determining factor in an agency relationship. The relationship can be created regardless of whether the seller pays the fee, the buyer pays the fee, both pay the fee or neither pays a fee.
- E. "Customer" shall mean that person not represented in a real estate transaction. It may be the buyer, seller, lessor or lessee.
- F. "Dual Agency" shall mean a broker representing both parties to a real estate transaction with the disclosed and informed consent of both parties, with written understanding of specific duties and representation to be afforded each party. There may be situations where disclosed dual agency presents conflicts of interest that cannot be resolved without breach of duty to one party or another. Brokers who practice disclosed dual agency should do so with the utmost caution to protect consumers and themselves from inadvertent violation of demanding common law standards of disclosed dual agency.
- G. "Fiduciary Responsibilities" are those duties due the client in a real estate transaction, including:
 - (1) 'Loyalty' - the licensee must put the interests of the client above the interests of the licensee or any third party.
 - (2) 'Obedience' - the licensee agrees to obey any lawful instruction from the client in the execution of the transaction that is the subject of the agency.

- (3) 'Disclosure' - the licensee must disclose to the client any information the licensee becomes aware of in connection with the agency.
 - (4) 'Confidentiality' - the licensee must keep private information provided by the client and information which would give a customer an advantage over the client strictly confidential, unless the licensee has the client's permission to disclose the information. This duty lives on after the agency relationship is terminated.
 - (5) 'Reasonable skill, care and diligence' - the licensee must perform all duties with the care and diligence which may be reasonably expected of someone undertaking such duties.
 - (6) 'Full accounting' - the licensee must provide a full accounting of any money or goods coming into the licensee's possession which belong to the client or other parties.
- H. "Single Agency" shall mean a broker who has chosen to represent only one party to a real estate transaction. It may be either the buyer, seller, lessor or lessee or any party in a transaction.

Source: § Source: Miss. Code Ann. §§ 73-35-3

Rule 4.3 Disclosure Requirements

Source: Source: Miss. Code Ann. §§ 73-35-3

A. In a single agency:

(1) When a broker seeks to represent a seller, the broker must:

- (a) First, secure from the seller a completed “Working With a Real Estate Broker” (WWREB) MREC Agency Disclosure form, disclosing what the agency relationship with the seller entails.
- (b) Second, secure an agreement for representation with the seller.
- (c) **BEFORE any “substantive interaction” with an unrepresented buyer**, (for example: showing the property; eliciting information regarding the buyer’s needs, motivation, or financial position; or furnishing the buyer with an agreement pertaining to the real estate transaction), **the broker shall secure a completed WWREB disclosing the agency relationship between the broker and the unrepresented buyer (the buyer is a “customer”).**
 - 1. For a seller’s agent, “substantive interaction” with a buyer shall NOT include:
 - i. A bona fide “Open House” or model home event (such is not considered a showing of the property).
 - ii. “Small talk,” with a potential buyer, such as location or property style being sought.
 - iii. Responding to general factual questions from a potential buyer concerning properties the broker has advertised for sale or lease.

(2) When a broker seeks to represent a buyer, the broker must:

- (a) First, secure from the buyer a completed “Working With a Real Estate Broker” (WWREB) MREC Agency Disclosure form, disclosing what the agency relationship with the buyer entails.
- (b) Second, secure agreement for representation with the buyer.
- (c) **BEFORE any “substantive interaction” with an unrepresented seller** (for example: showing the property; eliciting information regarding the seller’s needs, motivation, or financial position; or furnishing the seller with an agreement pertaining to the real estate transaction), **the broker shall secure a completed WWREB disclosing the agency relationship between the broker and the unrepresented seller (the seller is a “customer”).**

1. For a buyer's agent, "substantive interaction" with a seller shall NOT include:
 - i. A bona fide "Open House" or model home event (such is not considered a showing of the property).
 - ii. "Small talk," with the seller, such as location or property style sought by the broker's buyer client.
- B. **In a dual agency**, when a broker represents a party (seller or buyer) as a client and subsequently seeks to represent the opposite party (buyer or seller) as a client in the same transaction, the broker must obtain the informed written consent of all parties prior to or at the time of formalization of the dual agency. Informed written consent to disclosed dual agency shall be deemed to have been timely obtained if all of the following occur:
 - (1) The party first represented by the broker must have, on the WWREB form, marked "Client (... Dual Agent ...)," and the broker must have secured a representation agreement with said party.
 - (a) If the first client had chosen a single agency, then a new WWREB must be completed with the above-noted Dual Agency status marked.
 - i. If the first client does not agree to this proposed change in agency status, then the opposite party may not be represented.
 - (2) AFTER the above-noted requirements are met, the broker must:
 - (a) Secure from the opposite party a completed WWREB form marked "Client (... Dual Agent ...)," then
 - (b) Secure a representation agreement with the opposite party.
 - (3) The broker must **further confirm** that the buyer and seller understand the consensual dual agency relationship prior to signing the offer to purchase:
 - (a) The buyer shall confirm consent by signing the "MREC Dual Agency Confirmation Form" which shall be attached to the front of the offer to purchase.
 - (b) When the seller is presented with the offer to purchase, the seller shall confirm consent by signing the MREC Dual Agency Confirmation Form attached to the buyer's offer to purchase. This form shall remain attached to the offer to purchase regardless of the outcome of the offer to purchase.
- C. In the event the agency relationship changes between the parties to a real estate transaction, new disclosure forms must be immediately acknowledged by all parties involved.
- D. In the event one or more parties are not available to sign one or more of the MREC disclosure forms, the disclosure may be accomplished orally. The applicable forms will be

so noted by the broker and will be forwarded for signature(s) as soon as possible. Written electronic transmission will fulfill this requirement.

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

<p>“A COPY OF THIS FORM WAS DELIVERED TO (NAME OF RECIPIENT) ON (DATE). (NAME OF RECIPIENT) DECLINED TO SIGN THIS FORM.</p>

- F. The terms of the agency relationship shall be documented on all contracts pertaining to real estate transactions.
- G. MREC mandated disclosure forms may be duplicated in content and size but not altered.
- H. Completed MREC agency disclosure forms shall be maintained in accordance with Rule 3.2G.

Source: Source: Miss. Code Ann. §§ 73-35-35

Part 1601 Chapter 5: Complaint Procedure

Rule 5.2 Definitions

For Part 1601, Chapter 5 only, the following terms have the meanings indicated:

- A. Administrative Hearing: A formal hearing, with record made by a Certified Court Reporter before a Commission Hearing Panel, or Administrative Hearing Officer, to consider and adjudicate disciplinary proceedings or other matters pending on the administrative docket of the Commission.
- B. Administrative Hearing Officer: A staff attorney employed by the Attorney General's office and designated by the Attorney General for the purpose of holding hearings, hearing evidence and rendering decisions on matters determined to be the subject of an administrative hearing.
- C. Administrative Hearing Officer Option: The option for a licensee/Respondent to elect to have his or her Administrative Hearing conducted by an Administrative Hearing Officer instead of a Commission Hearing Panel. When the Administrative Hearing Officer Option is elected, the Administrative Hearing Officer shall have the same powers to conduct administrative hearings and render decisions as would the Commission Hearing Panel.
- D. Agreed Order: A written agreement submitted by the licensee(s) and Commission Staff resolving a Formal Complaint or other matter pending on the administrative docket of the Commission.
- E. Allegation: A claim or accusation of a violation of the Mississippi Real Estate Commission License Law (the Real Estate Brokers License Law of 1954) and/or the Commission's Administrative Rules and/or other applicable laws governing the practice of real estate.
- F. Appellant: A Respondent who makes an appeal of an adverse order, ruling or decision of the Mississippi Real Estate Commission to a circuit court or other appellate court, as may be provided by law.
- G. Commission: The Mississippi Real Estate Commission, including its' Commissioners and authorized employees or legal counsel acting on its behalf.
- H. Commissioners: The seated members of the Mississippi Real Estate Commission as appointed by the Governor with the advice and consent of the Senate pursuant to Miss. Code Ann. §73-35-5.
- I. Commission Hearing Panel: The three to five-member panel of the Commissioners designated to hear disciplinary proceedings, pursuant to Miss. Code Ann. §73-35-21. Commissioners may be designated to sit on an Administrative Hearing Panel on a

rotating basis.

- J. Complaint Counsel: The attorney retained by the Commission to prosecute licensees and other alleged violators of the Mississippi Real Estate Commission License Law, the Commission's Administrative Rules and/or other applicable laws governing the practice of real estate.
- K. Date of Service/Delivery: Date of Service means the delivery of a notice, order, or other document by the Commission to a licensee or other party. When delivery is by hand delivery or personal delivery, delivery is complete when handed to a licensee or other party, or left at the office, dwelling house or usual abode of the licensee or other party with some person of suitable age and discretion. Delivery by electronic means is complete when the licensee or party acknowledges receipt. Delivery by mail is complete upon the date of mailing.
- L. Due Process: Due Process in administrative/disciplinary proceedings before the Mississippi Real Estate Commission means the provision of notice to applicants or licensees of any alleged deficiencies or allegations of violations of the Mississippi Real Estate Commission License Law, Commission Administrative Rules or other applicable laws, and the opportunity to respond and defend against those alleged deficiencies or allegations of violations at an administrative hearing.
- M. Executive Director: The Administrator, Chief Executive Officer, or other designee employed by the Commissioners to manage the day-to-day operations of the Commission.
- N. Formal Complaint: A formal document charging a licensee with a violation of the Mississippi Real Estate Commission License Law, and/or the Commission's Administrative Rules, and/or other laws governing the practice of real estate. A Formal Complaint may result following the conclusion of an investigation of a verified/sworn complaint submitted to the Commission or may be initiated by the Commission.
- O. Full Commission: A majority or quorum of the seated Commissioners of the Mississippi Real Estate Commission.
- P. Hearing Officer: The Chairman or designated Commissioner, or Administrative Hearing Officer, who will preside over administrative hearings before the Commission and exercise those powers as defined in the Administrative Rules of the Mississippi Real Estate Commission.
- Q. Informal Conference: An informal interview or meeting, occurring at any time prior to the Commission entering any order with respect to pending allegation(s), between the Investigative Review Committee, Investigator(s), and the Respondent, and/or Respondent's legal counsel, to explore the issues involved in the allegation(s) and to facilitate the disposition of the allegation(s).

- R. Informal Resolution: A written agreement submitted by the licensee(s) and Commission resolving an allegation of violation(s), or other matter(s) pending on the administrative docket of the Commission wherein the licensee has waived the service of a Formal Complaint and Notice of Hearing.
- S. Investigative Review Committee: An intra-agency committee consisting of Commission Investigative Staff and legal counsel, assembled for the purpose of reviewing allegations of violations of the Mississippi Real Estate Commission License Law and/or the Commission's Administrative Rules and/or other applicable laws governing the practice of real estate.
- T. Licensee: Any individual licensed to practice by the Mississippi Real Estate Commission.
- U. Notice of Hearing: A written notification to a licensee to appear before the Commission, or Administrative Hearing Officer when applicable, for an administrative hearing at a scheduled place, date, and time.
- V. Mississippi Real Estate Commission License Law: §§73-35-1, *et seq.*, and §§89-1-501, *et seq.*, of the Mississippi Code of 1972, as amended.
- W. Respondent: A licensee or applicant against whom the Commission has initiated a formal or informal action.
- X. Time Period: Unless indicated otherwise, when the period is stated in days or a longer unit of time:
- a. In computing any period of time prescribed or allowed by these rules, the day of the event that triggers the period shall not be included.
 - b. Every day, including intermediate Saturdays, Sundays, and legal holidays shall be included. However, when any time period prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
 - c. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, as set forth in Mississippi statute(s). In such case, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. In the event a legal holiday falls on a Sunday, the next following day shall be a legal holiday.
 - d. Whenever a licensee has the right or is required to do some act or take some proceedings within a prescribed time period after the service of a notice, order, or other document by the Commission that is served upon him or her by mail, three (3) days shall be added to the prescribed period.

- Y. Verified Complaint: A written, sworn complaint alleging violations of the Real Estate License Law submitted to the Commission for investigation, conclusion of which investigation may result in dismissal of the verified complaint without further action, or the issuance of a Formal Complaint by the Commission with notice to appear at an administrative hearing.
- Z. Work File: Any and all documentation of a real estate transaction maintained by a licensee. This includes, but is not limited to the following when applicable to a real estate transaction:
- 1) Agency Agreements / Working With a Real Estate Broker forms (WWREB)
 - 2) Contracts of Sale, with addendums
 - 3) Closing documents / Closing Statements
 - 4) Co-Op Agreements
 - 5) Correspondence sent/received during the course of the transaction when same may be reasonably considered material/germane to the transaction
 - 6) Dual Agency Confirmation forms
 - 7) Escrow records
 - 8) Home Inspection Reports
 - 9) Leases
 - 10) Listing agreements, including extensions (must be in writing to be valid)
 - 11) Offers to Purchase
 - 12) Options
 - 13) Property Condition Disclosure Statements (PCDS).
 - 14) Wood Destroying Insect Reports (WDIR)

Source: Miss. Code Ann. §73-35-23, §73-35-25, §73-35-35 (1972, as amended).

Rule 5.3 Investigations of Complaints

- A. Upon receipt of a verified/sworn complaint, or other allegation of violation of the Mississippi Real Estate Commission License Law, the Commission's Administrative Rules or other applicable laws, the Commission's Investigative Staff, with advice and consultation from Commission legal staff/counsel shall make an initial determination whether the information justifies or warrants further investigation. A complaint or inquiry may be dismissed without further investigation based on a determination of either:
 - 1) Lack of Commission jurisdiction; or
 - 2) No apparent violation of the Mississippi Real Estate Commission License Law or the Commission's Administrative Rules governing the practice of real estate.
- B. The Commission may initiate an investigation either:
 - 1) In response to a written or verified/sworn complaint, or other information received by the Commission alleging violation(s) of the Mississippi Real Estate Commission License Law, the Commission's Administrative Rules, or other applicable laws; or
 - 2) The Commission may initiate an investigation based on information independently developed or corroborated by the Investigative Staff of the Commission that has been reduced to writing, describing said information and the acts or omissions constituting any alleged unprofessional conduct or violations. Further investigation based upon information independently developed by the Investigative Staff may commence after the written description of alleged violation(s) has been approved in writing by the Administrator.
- C. Upon commencement of an investigation, the Commission will provide written notice to the applicable licensee(s) and their principal broker of the allegations of violations, including copy of any written or sworn/verified complaint submitted to the Commission. No Commissioner, administrator, employee, investigator, representative, agent or attorney of the Commission shall communicate with a licensee in connection with any preliminary or formal investigation associated with alleged violations of licensing law or regulations prior to the delivery of written notice to the licensee's Responsible Broker.
- D. Licensees will be required to submit their entire work file/documentation of the real estate transaction(s) at issue, along with Affidavit, and his/her written, notarized response to the allegations, within ten (10) days of the date of service of written notice upon the licensee(s) and his/her principal broker(s).

1. The Affidavit submitted must certify that complete, accurate and true copies of all documents germane to the real estate transaction under investigation are being tendered to the Commission. The Affidavit should be signed by the licensee(s) and signature(s) notarized.
 2. The written response of the licensee(s) to the allegations submitted by the complaining party must be signed by the licensee(s) with notarized signature.
- E. Following receipt of the licensee's file documentation with Affidavit and sworn/written response to the allegation(s), said documentation and response will be provided to the complaining party who initiated the complaint/allegations against the licensee, when applicable, for response and for verification of authenticity of transaction documents submitted by the licensee(s).
 - F. After any response/rebuttal is received from the complaining party, the response/rebuttal will be provided to the licensee(s) so that each party is fully aware of the complaining party's allegations, and which documents are considered germane to the Commission review and investigation. The Commission may conduct interviews and written (signed) responses may be requested from the parties for clarification.
 - G. The Commission is authorized to issue subpoenas for the attendance of licensees and/or witnesses for interviews during the course of an investigation, and for the production of documents and records.
 - H. During the course of any investigation, should information be received which indicates acts or omissions on the part of any licensee or licensees not originally the subject of the investigation which might constitute alleged unprofessional conduct or violations, then this information and any alleged charges will be reduced to writing describing said information and the acts or omissions constituting alleged unprofessional conduct or violations. Any new or expanded investigation or initiation of any Formal Complaint against such new licensee(s) based upon such information will commence after the written description of alleged violations has been approved in writing by the Administrator. Notice shall be provided to the principal broker(s) and licensee(s) to be investigated or charged. From and after that point, all provisions pertaining to investigation of the original licensee(s) shall apply to the new licensee(s).
 - I. Licensees have, at all times, the right to retain and consult with legal counsel. Any licensee represented by an attorney of record in proceedings before the Commission shall be entitled to communication through such attorney, and service of documents by the Commission shall be made upon such attorney.

Source: Miss. Code Ann. § 73-35-21, §73-35-23, §73-35-35 (1972, as amended)

Rule 5.5 Commencement of Disciplinary Proceedings/Administrative Hearings

- A. If an allegation is not resolved informally or the Investigative Review Committee determines that an allegation warrants the issuance of a Formal Complaint, Commission staff may commence disciplinary proceedings by issuing a Formal Complaint and Notice of Hearing.
- B. A Respondent shall be notified of the administrative hearing at least fifteen (15) days in advance of the date set for the hearing by written Notice of Hearing. The Formal Complaint shall set forth the charges and allegations against the Respondent in sufficient detail to provide sufficient disclosure and notice of all alleged violations of the Mississippi Real Estate License Law and/or the Commission Administrative Rules and other applicable laws governing the practice of real estate.
- C. The Commission's staff will serve the Formal Complaint and Notice of Hearing on Respondent, with copy to the principal broker, by:
 - 1) Certified mail, postage pre-paid, to the last known address of the Respondent on record with the Commission; or
 - 2) Personal Delivery; or
 - 3) Electronic Delivery including email or facsimile.
- D. Beginning no later than July 1, 2022, a Respondent will be provided a Notice of Option for Administrative Hearing Officer, along with service of the Formal Complaint and Notice of Hearing. The Notice of Option for Administrative Hearing Officer will set forth the option for the Respondent to request, in writing, that the administrative hearing be conducted by an Administrative Hearing Officer instead of a Commission Hearing Panel. A Respondent who chooses to have the administrative hearing conducted by an Administrative Hearing Officer must notify the Commission of that choice within ten (10) days of the date of service of the Formal Complaint, Notice of Hearing and Notice of Option for Administrative Hearing Officer.
- E. A Respondent may file a response to the Formal Complaint but is not required to do so. Any written response to the charges set forth in a Formal Complaint must be filed with the Commission at least ten (10) days in advance of the date set for the hearing.
- F. A Respondent may waive the right to a formal Administrative Hearing. Such waiver of the right to a hearing must be in writing, signed by the Respondent, and filed with the Commission.
- G. A Formal Complaint may be resolved by agreement at any time prior to an Administrative Hearing by Agreed Order signed by Respondent and subject to approval by the full Commission.
- H. All pleadings or other papers permitted or required to be filed with the Commission in

connection with a pending disciplinary/administrative proceeding shall be filed by personal delivery or by certified mail to the office of the Commission, or by email properly addressed to the Commission Administrator. Service is effective upon personal delivery, mailing or, when delivered by email, upon acknowledged receipt of such email service.

- I. A Respondent who is represented by legal counsel with respect to the disciplinary/administrative proceeding shall personally or through such counsel, give written notice to the Commission of the name, address, and telephone number of such counsel. Following receipt of proper notice of representation, all further notices, pleadings, subpoenas, orders, or other process related to the proceeding shall be served on Respondent through the designated counsel of record until such time as the withdrawal of counsel is filed with the Commission.

Source: Miss. Code Ann. § 73-35-23, §73-35-35 (1972, as amended).

Rule 5.8 Administrative Hearings

- A. Formal Administrative Hearings are conducted pursuant to Miss. Code Ann. §73-35-23 which provides that hearings may be conducted before the Commission or an Administrative Hearing Officer. When hearings are conducted before the Commission, one Commissioner present at the hearing shall serve as the Hearing Officer for the hearing.
- B. All testimony and other proceedings shall be recorded by a certified court reporter who shall be retained by the Commission. Costs incurred for the certified court reporter may be taxed to the Respondent as part of the costs of the proceedings in the final Order of the Commission as allowed or provided by statute or these Administrative Rules. No costs shall be taxed to a prevailing Respondent.
- C. At an Administrative Hearing, Complaint Counsel and Respondent shall have opportunity to present evidence on all issues of fact and argument on all issues of law, to call, examine, and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts of the matter.
- D. The Commission Hearing Panel or Administrative Hearing Officer is not bound by strict rules of evidence, but all determinations of violations made by the Commission Hearing Panel or Administrative Hearing Officer must be based upon the preponderance of evidence standard of proof. The designated Hearing Officer shall rule on all evidentiary issues.
- E. All hearings are open to the public pursuant to the Mississippi Open Meetings Law, Miss. Code Ann. §§25-41-1, *et seq.*
- F. In all disciplinary/administrative hearings before the Commission or Administrative Hearing Officer, the record of the case will include:
 - 1) The Formal Complaint and Notice of Hearing;
 - 2) All pleadings and rulings issued;
 - 3) Evidence received or considered at the hearing;
 - 4) Certified transcript of the proceedings taken by a certified court reporter; and
 - 5) The Commission's Order or other disposition made by the Commission.
- G. Formal Hearings before the Commission or Administrative Hearing Officer shall be conducted in the following order:
 - 1) Opening statements
 - 2) Complaint Counsel's case in chief
 - 3) Respondent's case in chief
 - 4) Complaint Counsel's rebuttal
 - 5) Closing statements, if requested

- H. Questioning of witnesses shall be conducted in the following order:
 - 1) Direct examination
 - 2) Cross examination
 - 3) Redirect examination
- I. The Hearing Officer will have the authority to preside over the hearing in accordance with the requirements of the case in a manner that ensures due process.
- J. The Commission Hearing Panel or Administrative Hearing Officer shall render a decision, setting forth Findings of Fact and Conclusions of Law and final Order. Although the Commission Hearing Panel or Administrative Hearing Officer's decision may be announced immediately following deliberations, adequate time shall be allowed for preparation of the written Order. A copy of such order shall be sent to Respondent via certified mail at his or her last known address or served personally upon Respondent. A copy shall be sent to Respondent, Respondent's counsel of record and principal broker for Respondent using email addresses on file.

Source: Miss. Code Ann. §73-35-23, §73-35-25, §73-35-35 (1972, as amended).

Part 1601 Chapter 6: Continuing Education

Rule 6.2 Procedures and Criteria for Approval of Courses

- A. Definitions:
 - (1) "Provider" - any individual person, partnership, association, legally established corporation or LLC, educational organization, or other entity that sponsors, offers, organizes, provides or promotes real estate continuing education courses.
 - (2) "Instructor" - a person who delivers educational material information directly to students.
- B. A provider desiring approval of continuing education course referred to in Section 73-35-18, Mississippi Code of 1972, Annotated, shall make application to the Commission on forms provided by the Commission. The provider, course, and instructor must receive concurrent approval.
- C. All requests for course accreditation shall be submitted on forms provided by MREC and will require copies of all student materials as well as documentation that includes the following:
 - (1) Course descriptions of each subject in the course.
 - (2) Measurable learning objectives for each subject.
 - (3) Specific process for evaluation and improvement of content.
 - (4) Specific processes for selecting and evaluating instructors.
 - (5) Specific processes for record-keeping and the administration of examinations.
- D. For courses offered through distance learning:
 - (1) Courses in Mississippi license law, contract law, and agency shall include course content and application specific to Mississippi practice and custom.
 - (2) Out-of-state providers must provide copies or screen prints of all Mississippi specific content for MREC review and approval.
 - (3) On-line or CD-ROM courses relating to Mississippi license law and agency must include instruction in the use of the Mississippi mandatory forms as well as provide a mechanism for the student to view and download the forms.
- E. Standards for approval of course:

- (1) A proposed continuing education course shall be a real estate oriented educational session or course intended to improve skills of licensees and to keep licensees abreast of changing real estate practices and laws.
- (2) Courses shall be taught only by approved, qualified instructors.
- (3) Courses shall be offered in minimum one-hour segments.
- (4) Courses, instructors and providers shall be approved for one (1) year periods and shall be required to renew if the course is to be continued.
- (5) Licensees shall physically attend in order to receive a certificate.

Source: Miss. Code Ann. §§ 73-35-35

Rule 6.4 Administrative Requirements

- A. Providers of continuing education courses shall furnish the Commission with a class roster within thirty (30) days after completion of each course listing each Mississippi licensee in attendance in alphabetical order. Attendance records shall be provided to the Commission via said roster, to the attendee upon completion of the course, and retained by the provider subject to inspection. Providers may utilize written or electronic processes for the purpose of certifying and providing documentation of individual attendance.
- B. Attendance and other records of each provider must be kept on file for a period of three years and are subject to inspection by the Commission at any time during normal business hours.

Source: Miss. Code Ann. §§ 73-35-35

Rule 6.5 Advertising and Solicitation

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

Source: Miss. Code Ann. §§ 73-35-35

TITLE 30: Professions and Occupations

PART 1603: Board Organization and Members

Chapter 1: Board Organization

Rule 1.1 Commission Organization and Operations

- A. The Mississippi Real Estate Commission consists of five (5) persons who are appointed by the Governor with the advice and consent of the Senate. Each appointee shall have been a resident and citizen of Mississippi for at least six (6) years prior to their appointment and shall have been a real estate broker for at least five (5) years. There shall be one (1) Commissioner from each Supreme Court District, as such Districts are constituted at the time of appointment, and two (2) from the state at large. Any member of the Commission may be reappointed by the Governor. The Commission shall organize by selecting from its members a Chair and may do all things necessary and convenient to promulgate rules and regulations.
- B. The administration of Commission operations is delegated to an Executive Director appointed by the Commission for a term of four (4) years with the advice and consent of the Senate. The Executive Director may be reappointed by the Commission.
- C. The public may obtain and submit information about the Commission and its operations at info@mrec.state.ms.us.

Source: Miss. Code Ann. § 73-35-5; 73-35-35

TITLE 30: Professions and Occupations

PART 1601: Mississippi Real Estate Commission

Part 1601 Chapter 1: Licensing

Rule 1.1 Applying for a License

- A. An applicant for a broker's license must pass the National Portion of the broker's examination with a grade of at least 75% and must pass the State Specific Portion of the examination with a grade of at least 80%.
- B. An applicant for a salesperson's license must pass the National Portion of the salesperson's examination with a grade of at least 70% and must pass the State Specific Portion of the examination with a grade of at least 75%.
- C. An application fee must accompany the application and will not be refunded after the applicant is scheduled for the examination.
- D. The approved Examination Testing Provider will administer examination in various locations in and near the State of Mississippi. Applicants will arrange the time and place of their examination with the Testing Provider.
- E. When an applicant is approved for either examination, applicant has two months in which to take and pass both the National Portion and the State Specific Portion of the examination. If the applicant fails to appear for the examination within the two months allowed, applicant's fee will be forfeited and their file closed. If the applicant fails to pass the first examination, applicant will be allowed to take the next examination with the payment of an additional fee to the Testing Provider. If the applicant fails to appear for the second examination, fees will be forfeited and their file closed.
- F. A principal broker may apply on behalf of a business entity chartered by the State of Mississippi to obtain a Brokerage License. If a corporation has been chartered by the state of Mississippi, the license will be issued in the corporate name except that no license will be issued using an entity name or trade name for a corporation, company, or trade name where there exists in Mississippi, or in a contiguous, multi-state trade area which includes a region of Mississippi, that county or trade area a real estate broker or brokerage real estate agency having a substantially similar name or trade name.
- G. A real estate licensee of another state who desires to obtain a license under this chapter shall be exempt from the examination provided the examination administered in the other state is determined by the Commission to be equivalent to such examination given in this state and provided that such other state extends this same privilege or exemption to Mississippi real estate licensees.

Real estate education courses obtained through sources (providers) other than those set forth in Section 73-35-7 of the statute but which are accepted in the state where the

applicant is licensed, may be accepted by the Commission provided the state where the applicant is licensed has entered into a reciprocal agreement with this state.

Source: Miss. Code Ann. §§ 73-35-35

Rule 1.2 Changing the Status of a License

- A. To change a license from active to inactive status, licensee shall notify the Commission in writing, shall insure that the license is ~~removed from public display~~returned to the Commission and shall pay the appropriate fee. A licensee who is on inactive status at time of renewal may renew the license on inactive status by filing a renewal application and paying the renewal fee. A broker who terminates a real estate ~~company/business~~ may place the ~~company/business~~ license on inactive status. To return to active status, a salesperson or broker ~~associate/salesperson~~ must file a reactivation and/or transfer application, as applicable. A broker and/or a ~~company/business~~ license may be activated by notifying the Commission by filing a reactivation letter or transfer application, as applicable, including the required fee.
- B. When a licensee wishes to transfer from one broker to another, the transferring licensee must either use the online facility available through the licensee's Commission license account or file a transfer application signed by both the former and new principal broker accompanied by the transfer fee and must furnish a statement that the licensee is not carrying any listings or pertinent information belonging to the former broker unless that broker so consents. Both the former and new principal broker may acknowledge the license transfer using their Commission online license account. When a licensee has terminated their agency relationship with the former principal broker, the former principal broker shall acknowledge the license transfer within three (3) business days. The former broker cannot refuse to acknowledge or otherwise approve the termination of a salesperson's agency or transfer to a new principal broker.
- C. Any licensee who has entered ~~active-duty~~active-duty military service due to draft laws - _____ or national —emergency shall, upon his return to civilian life and within twelve (12) months after —honorable discharge, be considered, so far as this Commission is concerned, to have been —continuously engaged in the real estate business in the same capacity as when the licensee —entered military service.

Source: Miss. Code Ann. §§ 73-35-35; 73-35-15

Part 1601 Chapter 2: Fees

Rule 2.1

~~The following fees are set by the Commission. The current fees duly adopted and established by resolution of the Commission in accordance with Section 73-35-17 shall be prominently displayed on the Commission website and available for public inspection at the offices of the Commission.:~~

The Commission has established the following fee categories applicable to both resident and nonresident licensees:

A. Application and one year's use of license:

- | | | |
|-----|------------------|----------|
| (1) | Broker..... | \$150.00 |
| (2) | Salesperson..... | \$120.00 |

B. Application for license as a real estate broker issued for brokerage company, partnership, association, or ~~—~~ corporation and one year's use of license:

- | | | |
|-----|--|----------|
| (1) | <u>Brokerage Company</u> (P partnership, association or corporation or corporation)..... | \$ 75.00 |
| (2) | Branch Office..... | \$ 50.00 |

C. Renewal fees for two-year period: ~~(Maximum):~~

- | | | |
|-----|--|----------|
| (1) | Broker (individual)..... | \$150.00 |
| (2) | Broker <u>age Company</u> (partnership, association, corporation)..... | \$150.00 |
| (3) | Salesperson..... | \$120.00 |
| (4) | Branch Office..... | \$100.00 |

Penalty fee for late renewal after license expiration and within statutory renewal grace period - 100% of renewal fee.

D. Changes:

- | | | |
|-------------------------------|---|---------------------|
| (1) | Place of business change (active license only)..... | \$ 50.00 |
| (2) | Each duplicate license..... | \$ 50.00 |
| (2) (3) | Each transfer of license..... | \$ 50.00 |
| (3) (4) | Status change from active to inactive status..... | \$ 25.00 |
| (4) (5) | Status change from inactive to active status..... | \$ 50.00 |

E. Furnishing an official Certificate of Licensure ~~Check charge:~~

- | | | |
|------------------|--|---------------------|
| (1) — | Each check returned not paid to the Commission..... | \$ 25.00 |
|------------------|--|---------------------|

F. Returned Check Charge

| Source: Miss. Code Ann. §§ 73-35-35; 73-35-17

Rule 2.2 Miscellaneous Fee Provisions ~~All fees are the same for both Resident and Nonresident Licenses.~~

- A. Fees and monies payable to the Mississippi Real Estate Commission may be by personal check, cash, cashier's check, ~~or~~ money order, or online by electronic check, credit or debit card when such payment facility is available. All personal checks shall be made payable to the Mississippi Real Estate Commission. Any personal checks returned not paid or for any other reason shall constitute justifiable grounds for refusing, suspending or revoking a license.
- B. Checks returned unpaid for non-sufficient funds (NSF) or other reason shall result in a charge up to the maximum amount allowed under Mississippi law.
- C. Non-sufficient fund (NSF) checks offered for license renewal, if not made good by the renewal deadline, will cause the licensee to enter expired~~be in non-renewal~~ status and necessitates the payment of a penalty (100%) by the licensee during the statutory renewal grace period in order to renew. A license will be permanently canceled and closed if a NSF check is not made good or other sufficient payment is not made by the end of the statutory renewal grace period.

Source: Miss. Code Ann. §§ 73-35-35; 73-35-17

Part 1601 Chapter 3: Administration/Conducting Business

Rule 3.1 General Rules

A. Definitions

(1) Branch Office- Any office other than the main place of business operated by a Principal Broker or authorized Managing Broker.

(2) Broker- Any licensed person or business entity who, for a fee, commission, or other valuable consideration, or with the intention or expectation of receiving such, engages in or offers to engage in selling, buying, leasing, exchanging, managing, or listing real estate or the improvements thereon, or negotiating or attempting to negotiate any of those acts on behalf of others.

(3) Broker Associate- A licensed Broker affiliated with a Principal Broker who does not operate as an independent Broker.

(4) Brokerage- The business entity or operation through which a licensed Broker conducts real estate activities; the organizational structure under which licensed real estate services are provided to the public.

(5) Broker Price Opinion- 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.

(6) Licensee- Any individual or business entity that has been granted a real estate license by the Mississippi Real Estate Commission.

(7) Managing Broker- A licensed Broker Associate charged by the Principal Broker with duty to perform certain real estate services outside the Principal Broker's supervision or direction as Managing Broker of a Principal Office or Branch Office of a Brokerage.

(8) Principal Broker- A licensed Broker responsible for operation of a real estate brokerage.

B. Broker Duties and Responsibilities

(1) ~~It shall be the duty of the responsible~~ The duties of a principal broker include, but are not limited to the duties to ~~to~~ instruct the licensees licensed under that —principal

broker in the fundamental duties of real estate law, agency law, contract law, proper documentation, requirements of signature and delivery of copies of all agreements, disclosures, client relations, communications, fair housing, advertising, professional ethics and the Mississippi Real Estate License Law and Commission rules and regulations. ~~real estate practice, ethics of the profession and the — Mississippi Real Estate License Law and to exercise supervision of their real estate activities for which a license is required.~~

(2) It shall be the duty of the principal broker to exercise proper supervision of the licensable real estate activities of the licensees licensed under that principal broker. Proper supervision includes, but is not limited to maintaining knowledge of the real estate activities conducted by licensees and maintaining communications with licensees regarding the real estate activities conducted under the supervision of the principal broker. A principal broker shall not allow a licensee to use the principal broker's license for the sole purpose of receiving compensation if the principal broker is only providing nominal supervision of the real estate activities being performed under the principal broker's license.

~~B.~~ (3) A real estate broker who operates under the supervision of a principal responsible broker must not at any time act independently as a broker. The principal responsible broker shall at all times be responsible for the action of the affiliated broker to the same extent as though that licensee were a salesperson and that affiliated broker shall not perform any real estate service without the full consent and knowledge of his employing or supervising principal broker.

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

(4) A principal broker may designate a broker associate licensed under the principal broker to perform certain real estate services outside the principal broker's supervision as managing broker of a principal office or branch office of a brokerage. Such designation shall be registered with the Commission setting forth the exact nature of the relationship between the principal broker and the broker associate and the real estate services to be performed outside the principal broker's supervision. A managing broker is responsible for duties of the principal broker that have been specifically assigned to them in the designation registered with the Commission. With respect to licenses, earnest money and escrow accounts, the principal broker may designate a managing broker to share responsibility, but the principal broker remains responsible at all times for compliance with Commission rules and applicable law. The principal broker shall immediately notify the Commission in writing upon the termination of such relationship.

C.. Cooperating with Out-of-State Brokers

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

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

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

(4) The ~~responsible principal~~ nonresident broker cannot place any sign on real property located in the state of Mississippi without the written consent of the cooperating ~~responsible principal~~ Mississippi broker. When the consent is obtained, the sign of the ~~responsible principal~~ Mississippi broker must be placed in a prominent place and in close proximity to the ~~responsible principal~~ nonresident broker's sign. Any licensed ~~responsible principal~~ Mississippi broker assisting or cooperating in the sale, lease, property management, rental or auction of real property within the state of Mississippi with a ~~responsible principal~~ nonresident broker who fails or refuses to list his or her name in such advertisement, or fails or refuses to cross-list such property with him or her, in writing, shall be deemed in violation of Section 73-35-11 of the Real Estate Broker's License Act, and shall be subject to a revocation or suspension of his or her license. In such instance herein where a ~~responsible principal~~ Mississippi broker enters into a cooperative agreement with a ~~responsible principal~~ nonresident broker pertaining to the sale of real property within the state of Mississippi, the ~~responsible principal~~ Mississippi broker must file two copies of the cooperating agreement with the Mississippi Real Estate Commission.

D. ~~A responsible broker must maintain an office and display the license therein. If the broker — has more than one office, the broker shall display a branch office — license in each branch office. The broker is responsible for the real estate practices of those licensees. The principal broker shall maintain a principal office for the brokerage. The principal broker shall display, or make available for inspection within that office, the license(s) of the Principal Broker; the Real Estate Company, if any; and licenses of all other licensees operating in that office. The principal broker must display, or make available for~~

inspection within any branch office of the brokerage, the branch office license for that office and licenses of all other licensees operating in that office.

E. Compensation

(1) A Principal Broker shall be the sole recipient of compensation resulting from the sale, purchase, rent, auction, exchange, or property management of Mississippi real property by Licensees licensed under that Broker.

(2) No licensee shall pay any part of a fee, commission, or other compensation received by such licensee in buying, selling, exchanging, leasing, auctioning or renting any real estate except to another licensee through the licensee's ~~principal~~ ~~responsible~~ broker.

(3) Cash, gifts, or other compensation of any kind when provided or promised by a licensee as an inducement intended to facilitate or to close a transaction are strictly prohibited. A de minimis, non-cash gift is permitted with permission of the principal broker when immaterial to the facilitation of or closing of a transaction.

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

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

(6) A principal broker may maintain an affiliation with a licensee under the principal broker's license for the limited purpose of compensating such licensee for referrals when that licensee is not otherwise performing licensable activities or maintaining presence within the brokerage.

F. Responding to Commission Communications

(1) Any licensee who fails in a timely manner to respond to official Mississippi Real Estate Commission written ~~or electronic~~ communication or who fails or neglects to abide by Mississippi Real Estate Commission's Rules and Regulations shall be deemed, prima facie, to be guilty of improper dealing.

(2) All Commission communications directed to the Brokerage or any persons licensed under the Principal Broker shall be copied to the Principal Broker. The Principal Broker has the duty to ensure that all Commission communications directed to the Brokerage and any persons licensed under the Principal Broker which are properly copied to the Principal Broker are responded to in a timely and reasonably responsive manner.

(3) Principal Brokers and all respondent licensees shall respond to Commission communications relating to matters governed by Complaint Procedure in the rules of the Commission.

- G. A real estate broker or salesperson in the ordinary course of business may give an opinion as to the sales price of real estate for the purpose of a prospective listing or sale; however, this opinion as to the listing price or the sale price shall not be referred to as an appraisal and must be completed in compliance with Section 73-35-4 of the Real Estate Broker's License Act and must conform to the Standards established by the National Association of Broker Price Opinion Professionals (NABPOP).
- H. When an offer is made on property owned by a party with whom a broker has entered into a listing agreement, such broker shall document and date the seller's personal acceptance or rejection of the offer and upon written request, shall provide a copy of such document to the person making the offer, or their licensed agent if the person is represented.
- I. A real estate licensee shall not be exempt from disciplinary actions by the commission when selling property owned by the licensee.

J. Licenses

(1) The Principal Broker is responsible for reviewing and approving applications for initial activation of licenses for persons performing licensable activity under that Principal Broker.

(2) Upon receipt of written or electronic notice from the Commission regarding the renewal status of active licensees, the principal broker shall follow up with active licensees seeking to renew a license.

(3) The Principal Broker shall be responsible for promptly reviewing and acknowledging applications for transfer of an active license to/from another Principal Broker.

(4) The Principal Broker shall maintain proof of current Errors & Omissions insurance coverage for each Licensee working under their license.

Source: Miss. Code Ann. §§ 73-35-35; 73-35-15

Rule 3.2 Documents

- A. A real estate licensee shall **immediately (at the time of signing)** deliver a true and correct copy of any ~~document~~instrument to any party or parties executing or bound by such document~~the same~~. Upon demand, a licensee shall deliver to his or her client a copy of any document pertaining to the real estate transaction for which the licensee is engaged.
- B. All exclusive listing agreements shall be in writing, properly identify the property to be sold, and contain all of the terms and conditions under which the transaction is to be consummated; including the sales price, the considerations to be paid, the signatures of all parties to the agreement, and a definite date of expiration. No listing agreement shall contain any provision requiring the listing party to notify the broker of their intention to cancel the listing after such definite expiration date. An "Exclusive Agency" listing or "Exclusive Right to Sell" listing shall clearly indicate in the listing agreement that it is such an agreement.
- C. Agreements and Contracts
- (1) The Principal Broker is responsible for signature of all agreements, either by the Principal Broker or Licensee authorized by the Principal Broker, whereby Compensation may be paid to the Brokerage.
- (2) The Principal Broker is responsible for ensuring that all exclusive listing agreements are in writing and include, at minimum, a clear disclosure of whether the listing agreement is an "Exclusive Agency" or "Exclusive Right to Sell" listing agreement; identification of the property to be sold, rented, auctioned or exchanged; the seller's preferences for terms and conditions under which the transaction is to be consummated, including the sales price, considerations, and Compensation to be paid; a definite date of expiration; and all necessary signatures.
- (3) The Principal Broker is responsible for ensuring that all exclusive buyer representation agreements are in writing and include, at a minimum, a clear disclosure that the agreement is an exclusive buyer representation agreement; all of the terms and conditions under which the buyer will rely upon the broker or brokerage for the purchase, rental, or exchange of real estate, including the considerations and any Compensation to be paid; a definite date of expiration; and all necessary signatures.

(4) The Principal Broker must review each document or agreement generated in a real estate transaction within seven (7) Banking Days after it has been accepted, rejected, or withdrawn. If the document originates in an office having a Managing Broker, the Managing Broker may review such document in lieu of the Principal Broker. The document review may be performed electronically or using paper copy. Any document review will record the date of review and the name of the reviewer.

~~H. All exclusive buyer representation agreements shall be in writing and properly identify the terms and conditions under which the buyer will rely on the broker for the purchase of real estate; including the sales price range acceptable to the buyer, the considerations to be paid, the signatures of all parties to the agreement, and a definite date of expiration. An Exclusive Buyer Representation agreement shall clearly indicate in the body of the document that it is such an agreement.~~

D. In the event that more than one written offer is made before the owner or seller has accepted an offer, any other written offer received by the listing brokerage, whether from a prospective purchaser or from another licensee cooperating in a sale, shall be presented to the owner unless the listing broker has specific, written instructions from the owner or seller to postpone the presentation of other offers. Principal B~~roker~~s holding a listing should caution the owner or seller against countering on more than one offer at the same time.

E. Every real estate contract must reflect whom the principal broker represents by a statement over the signatures of the parties to the contract.

F. No licensee shall represent to a lender or any other interested party, either verbally or through the preparation of a false sales contract, an amount in excess of the true and actual selling price.

G. Record Retention

(1) A principal~~real-estate~~ broker must keep on file for three years following its consummation, complete records relating to any real estate transaction. This includes, but is not limited to listings, options, leases, offers to purchase, contracts of sale, escrow records, agency agreements and copies of all closing statements.

(2) Paper copies of documents being disposed of should be destroyed in a manner protecting their content and confidentiality.

(3) Electronic records storage systems or cloud-based repositories of records

are acceptable so long as the system meets the following requirements:

(a) All official electronic records must be stored in cloud services approved by the Principal Broker or systems with access controls in place and be capable of retrieving and printing hard-copies of records upon demand;

(b) Access to electronic records must require authentication; and

(c) All cloud-stored records must be backed up regularly (daily, weekly, or per business requirement) during the applicable retention period.

Source: Miss. Code Ann. §§ 73-35-35

Rule 3.4 Earnest Money

A. Definitions

(1) Banking Day- The part of any “business day” when a bank’s office is open to the public for conducting substantially all banking functions. For purposes of this definition, “business day” is defined as any calendar day excluding Saturdays, Sundays, and official federal holidays.

(2) Earnest Money- A deposit made by a buyer to demonstrate their good faith and serious intent to purchase real estate.

(3) Escrow- A financial arrangement where a third party (often a Broker, attorney, or escrow company) holds funds, documents, or property on behalf of the parties to a real estate transaction under certain terms and conditions.

(4) Escrow/ Trust Account- A bank account established by a Broker or authorized party for the sole purpose of holding funds, such as Earnest Money deposits and lessee/tenant security deposits on behalf of clients or parties to a real estate transaction.

B. The responsible principal broker is responsible at all times for earnest money deposits. Earnest money accepted by the broker or any licensee for which the broker is responsible and upon acceptance of a mutually agreeable contract is required to deposit the money into an escrow account prior to the close of business of the next banking day. The responsible principal broker is required to promptly account for and remit the full amount of the deposit or earnest money at the consummation or termination of transaction. A licensee is required to pay over to the responsible principal broker all deposits and earnest money immediately upon receipt thereof. Earnest money must be returned promptly when the purchaser is rightfully entitled to same allowing reasonable time for clearance of the earnest money check. In the event of uncertainty or dispute as to the proper disposition of earnest money, the broker may turn earnest money over to a court of law for disposition. Failure to comply with this regulation shall constitute grounds for revocation or suspension of license.

C. When the broker is the agent for the seller and for any reason the seller fails or is unable to consummate the transaction, the broker has no right to any portion of the earnest money deposited by the purchaser, even if a commission has been earned. The entire amount of the earnest money deposit must be returned to the purchaser and the broker should look to the seller for compensation.

- D. The principal broker shall ensure that ~~A~~ accurate records ~~shall be kept are~~ maintained on escrow accounts of all monies received, disbursed, or on hand.
- ~~E.~~ All monies shall be individually identified as to a particular transaction. Escrow records shall be kept in accordance with standard accounting practices. ~~and shall be subject to inspection at all times by the Commission.~~
- E. Monies received in an escrow-trust account on behalf of clients or customers are not assets of the broker; however, a broker may deposit and keep in each escrow account or rental account some personal funds for the express purpose of covering service charges and other bank debits related to each account, which must never be paid from funds held in trust.
- F. If a broker, as escrow agent, accepts a check and later finds that such check has not been honored by the bank on which it was drawn, the broker shall immediately notify all parties involved in the transaction.
- G. Upon reasonable notice, the Commission may examine and audit any real estate escrow account maintained by a principal broker or brokerage for holding real estate trust funds on behalf of others. The principal broker shall cooperate fully with any examination and/or audit request. An examination and/or audit of an escrow account may be conducted in person or through electronic means. The principal broker or brokerage shall provide access on the premises, through the production of copies of books and records, or through access to electronic systems, as applicable.
- ~~F.~~

Source: Miss. Code Ann. §§ 73-35-35

Rule 3.5 Real Estate Teams or Groups

- A. A “Team or Group” shall mean a collective name used by two or more active real estate licensees who represent themselves to the public as being part of a single entity which is organized with the written approval of a Principal Broker to perform licensable real estate activity. To qualify as a “Real Estate Team or Group” the active real estate licensees must be working together and each must (a) work under the direct supervision of the same Principal Broker, (b) work together on real estate transactions to provide real estate brokerage services, (c) must represent themselves to the public as being part of a Team or Group, (d) must be designated by a specific team or group name, and (e) must conduct all real estate activity from the primary office or branch office where their individual licenses are displayed.
- B. All Principal Brokers must have specific information on each Team operating within their Brokerage and must register each Team with the Real Estate Commission on forms provided for that purpose; to include a detailed list indicating all approved Team names, the name of the Team Leader, the name of the individual Team members and the name of any unlicensed employee(s) of the Team. The working list(s) should indicate the dates that Team members are added to or deleted from any Team and should enable the Principal Broker and/or the Real Estate Commission to determine Team membership at any point in time. Adjustments to a Team should be filed with the Real Estate Commission within ten (10) working day of any change and should be on forms provided by the Commission.
- C. All teams must appoint a Team Leader, who will be either the Principal Broker or a Broker Associate with a minimum of one years’ real estate experience, and will have supervisory responsibility (under the supervision of the Principal Broker) over the Team members. The Team Leader may be subject to disciplinary action for violations of the Mississippi Real Estate Brokers Act by Team members under their supervision. Team Leaders may lead multiple teams.
- D. A Team Name may, with the written approval of the Principal Broker and the Team Leader, be used in any type of advertising. Any individual whose name is displayed in any advertisement must be an active licensee who is sponsored by the Principal Broker. All advertising must fully comply with the guidelines established in MREC Administrative Rule 3.3. Principal Brokers and Team Leaders must confirm that the name of the Principal Broker or the Brokerage Firm and their telephone number is prominently displayed on all advertising which includes contact information about a Licensee, a Team Member or a Team. The name of the Team must be situated near the name of the Brokerage Firm and shall be identified with the same sized or smaller print as that of the Brokerage.
- E. Neither team names nor team advertising should suggest that the team is an independent real estate brokerage. Team names must not include terms such as (a) real estate brokerage, (b) realty, (c) real estate, or (d) company.

Source: Miss. Code Ann. §§ 73-35-3 (4); 73-35-18 (3); 73-35-21 (d)

Part 1601 Chapter 4: Agency Relationship Disclosure

Rule 4.2 Definitions

- A. "Agency" shall mean the relationship created when one person, the Principal ("~~client~~"), delegates to another, the agent ("~~licensee~~"), the right to act on ~~the client's~~ this behalf in a real estate transaction and to exercise some degree of discretion while so acting. Agency may be entered into by expressed agreement, implied through the actions of the agent and or ratified after the fact by the ~~principal~~client accepting the benefits of an agent's previously unauthorized act. An agency gives rise to a fiduciary relationship and imposes on the ~~licensee~~agent, as the fiduciary of the ~~client~~principal, certain duties, obligations, and high standards of good faith and loyalty.
- B. "Agent" shall mean ~~the licensee~~ one who is authorized to act on behalf of and represent ~~a client~~another. A real estate broker is the agent of the ~~principal~~-(client) to whom a fiduciary obligation is owed. Salespersons licensed ~~under the broker~~ are subagents of the ~~broker~~, regardless of the location of the office in which the salesperson works.
- C. "Client" shall mean the person to whom the ~~licensee~~agent owes a fiduciary duty. It can be a seller, buyer, ~~lessor, lessee~~landlord, tenant or both.
- D. "Compensation" is that fee paid to a broker for the ~~rendering of services~~. The ultimate source of payment is not relevant to an agreed agency relationship. Compensation, when considered alone, is not the determining factor in an agency relationship. The relationship can be created regardless of whether the seller pays the fee, the buyer pays the fee, both pay the fee or neither pays a fee.
- E. "Customer" shall mean that person not represented in a real estate transaction. It may be the buyer, seller, ~~lessor or lessee~~landlord or tenant.
- F. "~~Dual Agency~~Disclosed Dual Agent" shall mean ~~a broker~~that agent representing both parties to a real estate transaction with the ~~disclosed and~~ informed consent of both parties, with ~~written~~ understanding of specific duties and representation to be afforded each party. There may be situations where disclosed dual agency presents conflicts of interest that cannot be resolved without breach of duty to one party or another. Brokers who practice disclosed dual agency should do so with the utmost caution to protect consumers and themselves from inadvertent violation of demanding common law standards of disclosed dual agency.
- G. "Fiduciary Responsibilities" are those duties due the ~~principal~~-(client) in a real estate transaction, including are:
- (1) 'Loyalty' - the ~~licensee~~agent must put the interests of the ~~client~~principal above the interests of the ~~licensee~~agent or any third party.
 - (2) 'Obedience' - the ~~agent~~licensee agrees to obey any lawful instruction from the ~~principal~~client in the execution of the transaction that is the subject of the agency.

- (3) 'Disclosure' - the agentlicensee must disclose to the principalclient any information the agentlicensee becomes aware of in connection with the agency.
- (4) 'Confidentiality' - the agentlicensee must keep private information provided by the principalclient and information which would give a customer an advantage over the principalclient strictly confidential, unless the agentlicensee has the principalclient's permission to disclose the information. This duty lives on after the agency relationship is terminated.
- (5) 'Reasonable skill, care and diligence' - the agentlicensee must perform all duties with the care and diligence which may be reasonably expected of someone undertaking such duties.
- (6) 'Full accounting' - the agentlicensee must provide a full accounting of any money or goods coming into the agentlicensee's possession which belong to the principalclient or other parties.

H. H. — "Single Agency" shall mean a broker who has chosen to represent only one party to a real estate transaction. It may be either the buyer, seller, lessor or lessee or any party in a transaction.

First Substantive Meeting" shall be:

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

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

~~(a) Showing the property of a seller to a represented buyer.~~

~~(b) Eliciting any confidential information from a seller concerning their real estate needs, motivation, or financial qualifications.~~

~~(c) The execution of any agreements governed by Section 73-35-3 of the MS Code.~~

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

~~(a) A bona fide "open House" or model home showing which encompasses (3) (a) above only; however, whenever an event described in (3) (b) or (3) (c) occurs, disclosure must be made.~~

~~(b) Preliminary conversations or "small talk" concerning price range, location and property styles.~~

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

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

Source: § Source: Miss. Code Ann. §§ 73-35-3

Rule 4.3 Disclosure Requirements

- ~~A. In a single agency, a broker is required to disclose, in writing, to the party for whom the broker is an agent in a real estate transaction that the broker is the agent of the party. The written disclosure must be made before the time an agreement for representation is entered into between the broker and the party. This shall be on an MREC Agency Disclosure Form.~~
- ~~B. In a single agency, a real estate broker is required to disclose, in writing, to the party for whom the broker is not an agent, that the broker is an agent of another party in the transaction. The written disclosure shall be made at the time of the first substantive meeting with the party for whom the broker is not an agent. This shall be on an MREC Agency Disclosure Form.~~
- ~~C. Brokers operating in the capacity of disclosed dual agents must obtain the informed written consent of all parties prior to or at the time of formalization of the dual agency. Informed written consent to disclosed dual agency shall be deemed to have been timely obtained if all of the following occur:~~
- ~~(1) The seller, at the time an agreement for representation is entered into between the broker and seller, gives written consent to dual agency by signing the Consent To Dual Agency portion of MREC Form A.~~
 - ~~(2) The buyer, at the time an agreement for representation is entered into between the broker and buyer, gives written consent to dual agency by signing the Consent To Dual Agency portion of MREC Form A.~~
 - ~~(3) The Broker must confirm that the buyer(s) understands and consents to the consensual dual agency relationship prior to the signing of an offer to purchase. The buyer shall give his/her consent by signing the MREC Dual Agency Confirmation Form which shall be attached to the offer to purchase. The Broker must confirm that the seller(s) also understands and consents to the consensual dual agency relationship prior to presenting the offer to purchase. The seller shall give his/her consent by signing the MREC Dual Agency Confirmation Form attached to the buyer's offer. The form shall remain attached to the offer to purchase regardless of the outcome of the offer to purchase.~~
- ~~D. In the event the agency relationship changes between the parties to a real estate transaction, new disclosure forms will be acknowledged by all parties involved.~~
- ~~E. In the event one or more parties are not available to sign one or more of the Disclosure Forms, the disclosure will be accomplished orally. The applicable form will be so noted by the Broker and said forms will be forwarded for signature(s) as soon as possible. Written electronic transmission will fulfill this requirement.~~
- ~~F. In the event any party receiving a disclosure form requests not to sign that form~~

acknowledging receipt, the Broker shall annotate the form with the following statement:

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

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

Source: Source: Miss. Code Ann. §§ 73-35-3

A. In a single agency:

(1) When a broker seeks to represent a seller, the broker must:

- (a) First, secure from the seller a completed “Working With a Real Estate Broker” (WWREB) MREC Agency Disclosure form, disclosing what the agency relationship with the seller entails.
- (b) Second, secure an agreement for representation with the seller.
- (c) **BEFORE any “substantive interaction” with an unrepresented buyer, (for example: showing the property; eliciting information regarding the buyer’s needs, motivation, or financial position; or furnishing the buyer with an agreement pertaining to the real estate transaction), the broker shall secure a completed WWREB disclosing the agency relationship between the broker and the unrepresented buyer (the buyer is a “customer”).**
 - 1. For a seller’s agent, “substantive interaction” with a buyer shall NOT include:
 - i. A bona fide “Open House” or model home event (such is not considered a showing of the property).
 - ii. “Small talk,” with a potential buyer, such as location or property style being sought.

- iii. Responding to general factual questions from a potential buyer concerning properties the broker has advertised for sale or lease.

(2) When a broker seeks to represent a buyer, the broker must:

- (a) First, secure from the buyer a completed “Working With a Real Estate Broker” (WWREB) MREC Agency Disclosure form, disclosing what the agency relationship with the buyer entails.
- (b) Second, secure agreement for representation with the buyer.
- (c) **BEFORE any “substantive interaction” with an unrepresented seller (for example: showing the property; eliciting information regarding the seller’s needs, motivation, or financial position; or furnishing the seller with an agreement pertaining to the real estate transaction), the broker shall secure a completed WWREB disclosing the agency relationship between the broker and the unrepresented seller (the seller is a “customer”).**

1. For a buyer’s agent, “substantive interaction” with a seller shall NOT include:

- i. A bona fide “Open House” or model home event (such is not considered a showing of the property).
- ii. “Small talk,” with the seller, such as location or property style sought by the broker’s buyer client.

B. In a dual agency, when a broker represents a party (seller or buyer) as a client and subsequently seeks to represent the opposite party (buyer or seller) as a client in the same transaction, the broker must obtain the informed written consent of all parties prior to or at the time of formalization of the dual agency. Informed written consent to disclosed dual agency shall be deemed to have been timely obtained if all of the following occur:

- (1) The party first represented by the broker must have, on the WWREB form, marked “Client (... Dual Agent ...),” and the broker must have secured a representation agreement with said party.

- (a) If the first client had chosen a single agency, then a new WWREB must be completed with the above-noted Dual Agency status marked.

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- i. If the first client does not agree to this proposed change in agency status, then the opposite party may not be represented.

- (2) AFTER the above-noted requirements are met, the broker must:

(a) Secure from the opposite party a completed WWREB form marked “Client (... Dual Agent ...),” then

(b) Secure a representation agreement with the opposite party.

(3) The broker must **further confirm** that the buyer and seller understand the consensual dual agency relationship prior to signing the offer to purchase:

(a) The buyer shall confirm consent by signing the “MREC Dual Agency Confirmation Form” which shall be attached to the front of the offer to purchase.

(b) When the seller is presented with the offer to purchase, the seller shall confirm consent by signing the MREC Dual Agency Confirmation Form attached to the buyer’s offer to purchase. This form shall remain attached to the offer to purchase regardless of the outcome of the offer to purchase.

C. In the event the agency relationship changes between the parties to a real estate transaction, new disclosure forms must be immediately acknowledged by all parties involved.

D. In the event one or more parties are not available to sign one or more of the MREC disclosure forms, the disclosure may be accomplished orally. The applicable forms will be so noted by the broker and will be forwarded for signature(s) as soon as possible. Written electronic transmission will fulfill this requirement.

E. In the event any party receiving a disclosure form requests not to sign that form acknowledging receipt, the broker shall annotate the form with the following statement:

“A COPY OF THIS FORM WAS DELIVERED TO

(NAME OF RECIPIENT) ON (DATE). (NAME OF RECIPIENT)

DECLINED TO SIGN THIS FORM.

F. The terms of the agency relationship shall be documented on all contracts pertaining to real estate transactions.

G. MREC mandated disclosure forms may be duplicated in content and size but not altered.

H. Completed MREC agency disclosure forms shall be maintained in accordance with Rule 3.2G.

Source: Source: Miss. Code Ann. §§ 73-35-35

Part 1601 Chapter 5: Complaint Procedure

Rule 5.2 Definitions

For Part 1601, Chapter 5 only, the following terms have the meanings indicated:

- A. **Administrative Hearing:** A formal hearing, with record made by a Certified Court Reporter before a Commission Hearing Panel, or Administrative Hearing Officer, to consider and adjudicate disciplinary proceedings or other matters pending on the administrative docket of the Commission.
- B. **Administrative Hearing Officer:** A staff attorney employed by the Attorney General's office and designated by the Attorney General for the purpose of holding hearings, hearing evidence and rendering decisions on matters determined to be the subject of an administrative hearing.
- C. **Administrative Hearing Officer Option:** The option for a licensee/Respondent to elect to have his or her Administrative Hearing conducted by an Administrative Hearing Officer instead of a Commission Hearing Panel. When the ~~the~~ Administrative Hearing Officer Option is elected, the Administrative Hearing Officer shall have the same powers to conduct administrative hearings and render decisions as would the Commission Hearing Panel.
- D. **Agreed Order:** A written agreement submitted by the licensee(s) and Commission Staff resolving a Formal Complaint or other matter pending on the administrative docket of the Commission.
- E. **Allegation:** A claim or accusation of a violation of the Mississippi Real Estate Commission License Law (the Real Estate Brokers License Law of 1954) and/or the Commission's Administrative Rules and/or other applicable laws governing the practice of real estate.
- F. **Appellant:** A Respondent who makes an appeal of an adverse order, ruling or decision of the Mississippi Real Estate Commission to a circuit court or other appellate court, as may be provided by law.
- G. **Commission:** The Mississippi Real Estate Commission, including its' Commissioners and authorized employees or legal counsel acting on its behalf.
- H. **Commissioners:** The seated members of the Mississippi Real Estate Commission as appointed by the Governor with the advice and consent of the Senate pursuant to Miss. Code Ann. §73-35-5.
- I. **Commission Hearing Panel:** The three to five-member panel of the Commissioners designated to hear disciplinary proceedings, pursuant to Miss. Code Ann. §73-35-21 Commissioners may be designated to sit on an Administrative Hearing Panel on a

rotating basis.

- J. Complaint Counsel: The attorney retained by the Commission to prosecute licensees and other alleged violators of the Mississippi Real Estate Commission License Law, the Commission's Administrative Rules and/or other applicable laws governing the practice of real estate.
- K. Date of Service/Delivery: Date of Service means the delivery of a notice, order, or other document by the Commission to a licensee or other party. When delivery is by hand-delivery or personal delivery, delivery is complete when handed to a licensee or other party, or left at the office, dwelling house or usual abode of the licensee or other party with some person of suitable age and discretion. Delivery by electronic means is complete when the licensee or party acknowledges receipt. Delivery by mail is complete upon the date of mailing.
- L. Due Process: Due Process in administrative/disciplinary proceedings before the Mississippi Real Estate Commission means the provision of notice to applicants or licensees of any alleged deficiencies or allegations of violations of the Mississippi Real Estate Commission License Law, Commission Administrative Rules or other applicable laws, and the opportunity to respond and defend against those alleged deficiencies or allegations of violations at an administrative hearing.
- M. Executive Director: The Administrator, Chief Executive Officer, or other designee employed by the Commissioners to manage the day-to-day operations of the Commission.
- N. Formal Complaint: A formal document charging a licensee with a violation of the Mississippi Real Estate Commission License Law, and/or the Commission's Administrative Rules, and/or other laws governing the practice of real estate. A Formal Complaint may result following the conclusion of an investigation of a verified/sworn complaint submitted to the Commission or may be initiated by the Commission.
- O. Full Commission: A majority or quorum of the seated Commissioners of the Mississippi Real Estate Commission.
- P. Hearing Officer: The Chairman or designated Commissioner, or Administrative Hearing Officer, who will preside over administrative hearings before the Commission and exercise those powers as defined in the Administrative Rules of the Mississippi Real Estate Commission.
- Q. Informal Conference: An informal interview or meeting, occurring at any time prior to the Commission entering any order with respect to pending allegation(s), between the Investigative Review Committee, Investigator(s), and the Respondent, and/or Respondent's legal counsel, to explore the issues involved in the allegation(s) and to facilitate the disposition of the allegation(s).

- R. Informal Resolution: A written agreement submitted by the licensee(s) and Commission resolving an allegation of violation(s), or other matter(s) pending on the administrative docket of the Commission wherein the licensee has waived the service of a Formal Complaint and Notice of Hearing.
- S. Investigative Review Committee: An intra-agency committee consisting of Commission Investigative Staff and legal counsel, assembled for the purpose of reviewing allegations of violations of the Mississippi Real Estate Commission License Law and/or the Commission's Administrative Rules and/or other applicable laws governing the practice of real estate.
- T. Licensee: Any individual licensed to practice by the Mississippi Real Estate Commission.
- U. Notice of Hearing: A written notification to a licensee to appear before the Commission, or Administrative Hearing Officer when applicable, for an administrative hearing at a scheduled place, date, and time.
- V. Mississippi Real Estate Commission License Law: §§73-35-1, *et seq.*, and §§89-1-501, *et seq.*, of the Mississippi Code of 1972, as amended.
- W. Respondent: A licensee or applicant against whom the Commission has initiated a formal or informal action.
- X. Time Period: Unless indicated otherwise, when the period is stated in days or a longer unit of time:
- a. In computing any period of time prescribed or allowed by these rules, the day of the event that triggers the period shall not be included.
 - b. Every day, including intermediate Saturdays, Sundays, and legal holidays shall be included. However, when any time period prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
 - c. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, as set forth in Mississippi statute(s). In such case, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. In the event a legal holiday falls on a Sunday, the next following day shall be a legal holiday.
 - d. Whenever a licensee has the right or is required to do some act or take some proceedings within a prescribed time period after the service of a notice, order, or other document by the Commission that is served upon him or her by mail, three (3) days shall be added to the prescribed period.

- Y. Verified Complaint: A written, sworn complaint alleging violations of the Real Estate License Law submitted to the Commission for investigation, conclusion of which investigation may result in dismissal of the verified complaint without further action, or the issuance of a Formal Complaint by the Commission with notice to appear at an administrative hearing.
- Z. Work File: Any and all documentation of a real estate transaction maintained by a licensee. This includes, but is not limited to the following when applicable to a real estate transaction:
- 1) Agency Agreements / Working With a Real Estate Broker forms (WWREB)
 - 2) Contracts of Sale, with addendums
 - 3) Closing documents / Closing Statements
 - 4) Co-Op Agreements
 - 5) Correspondence sent/received during the course of the transaction when same may be reasonably considered material/germane to the transaction
 - 6) Dual Agency Confirmation forms
 - 7) Escrow records
 - 8) Home Inspection Reports
 - 9) Leases
 - 10) Listing agreements, including extensions (must be in writing to be valid)
 - 11) Offers to Purchase
 - 12) Options
 - 13) Property Condition Disclosure Statements (PCDS), ~~with Informational Statement or Seller's Statement of Exclusion, when applicable~~
 - 14) Wood Destroying Insect Reports (WDIR)

Source: Miss. Code Ann. §73-35-23, §73-35-25, §73-35-35 (1972, as amended).

Rule 5.3 Investigations of Complaints

- A. Upon receipt of a verified/sworn complaint, or other allegation of violation of the Mississippi Real Estate Commission License Law, the Commission's Administrative Rules or other applicable laws, the Commission's Investigative Staff, with advice and consultation from Commission legal staff/counsel shall make an initial determination whether the information justifies or warrants further investigation. A complaint or inquiry may be dismissed without further investigation based on a determination of either:
- 1) Lack of Commission jurisdiction; or
 - 2) No apparent violation of the Mississippi Real Estate Commission License Law or the Commission's Administrative Rules governing the practice of real estate.
- B. The Commission may initiate an investigation either:
- 1) In response to a written or verified/sworn complaint, or other information received by the Commission alleging violation(s) of the Mississippi Real Estate Commission License Law, the Commission's Administrative Rules, or other applicable laws; or
 - 2) The Commission may initiate an investigation based on information independently developed or corroborated by the Investigative Staff of the Commission that has been reduced to writing, describing said information and the acts or omissions constituting any alleged unprofessional conduct or violations. Further investigation based upon information independently developed by the Investigative Staff may commence after the written description of alleged violation(s) has been approved in writing by the Administrator.
- C. Upon commencement of an investigation, the Commission will provide written notice to the applicable licensee(s) and their ~~Responsible~~principal ~~b~~Broker of the allegations of violations, including copy of any written or sworn/verified complaint submitted to the Commission. No Commissioner, administrator, employee, investigator, representative, agent or attorney of the Commission shall communicate with a licensee in connection with any preliminary or formal investigation associated with alleged violations of licensing law or regulations prior to the delivery of written notice to the licensee's Responsible Broker.
- D. Licensees will be required to submit their entire work file/documentation of the real estate transaction(s) at issue, along with Affidavit, and his/her written, notarized response to the allegations, within ten (10) days of the date of service of written notice upon the licensee(s) and his/her ~~Responsible~~principal ~~b~~Broker(s).
1. The Affidavit submitted must certify that complete, accurate and true

copies of all documents germane to the real estate transaction under investigation are being tendered to the Commission. The Affidavit should be signed by the licensee(s) and signature(s) notarized.

2. The written response of the licensee(s) to the allegations submitted by the complaining party must be signed by the licensee(s) with notarized signature.

- E. Following receipt of the licensee's file documentation with Affidavit and sworn/written response to the allegation(s), said documentation and response will be provided to the complaining party who initiated the complaint/allegations against the licensee, when applicable, for response and for verification of authenticity of transaction documents submitted by the licensee(s).
- F. After any response/rebuttal is received from the complaining party, the response/rebuttal will be provided to the licensee(s) so that each party is fully aware of the complaining party's allegations, and which documents are considered germane to the Commission review and investigation. The Commission may conduct interviews and written (signed) responses may be requested from the parties for clarification.
- G. The Commission is authorized to issue subpoenas for the attendance of licensees and/or witnesses for interviews during the course of an investigation, and for the production of documents and records.
- H. During the course of any investigation, should information be received which indicates acts or omissions on the part of any licensee or licensees not originally the subject of the investigation which might constitute alleged unprofessional conduct or violations, then this information and any alleged charges will be reduced to writing describing said information and the acts or omissions constituting alleged unprofessional conduct or violations. Any new or expanded investigation or initiation of any Formal Complaint against such new licensee(s) based upon such information will commence after the written description of alleged violations has been approved in writing by the Administrator. Notice shall be provided to the ~~Responsible principal~~ Broker(s) and licensee(s) to be investigated or charged. From and after that point, all provisions pertaining to investigation of the original licensee(s) shall apply to the new licensee(s).
- I. Licensees have, at all times, the right to retain and consult with legal counsel. Any licensee represented by an attorney of record in proceedings before the Commission shall be entitled to communication through such attorney, and service of documents by the Commission shall be made upon such attorney.

Source: Miss. Code Ann. § 73-35-21, §73-35-23, §73-35-35 (1972, as amended)

Rule 5.5 Commencement of Disciplinary Proceedings/Administrative Hearings

- A. If an allegation is not resolved informally or the Investigative Review Committee determines that an allegation warrants the issuance of a Formal Complaint, Commission staff may commence disciplinary proceedings by issuing a Formal Complaint and Notice of Hearing.
- B. A Respondent shall be notified of the administrative hearing at least fifteen (15) days in advance of the date set for the hearing by written Notice of Hearing. The Formal Complaint shall set forth the charges and allegations against the Respondent in sufficient detail to provide sufficient disclosure and notice of all alleged violations of the Mississippi Real Estate License Law and/or the Commission Administrative Rules and other applicable laws governing the practice of real estate.
- C. The Commission's staff will serve the Formal Complaint and Notice of Hearing on Respondent, with copy to the ~~Responsible principal~~ bBroker, by:
 - 1) Certified mail, postage pre-paid, to the last known address of the Respondent on record with the Commission; or
 - 2) Personal Delivery; or
 - 3) Electronic Delivery including email or facsimile.
- D. Beginning no later than July 1, 2022, a Respondent will be provided a Notice of Option for Administrative Hearing Officer, along with service of the Formal Complaint and Notice of Hearing. The Notice of Option for Administrative Hearing Officer will set forth the option for the Respondent to request, in writing, that the administrative hearing be conducted by an Administrative Hearing Officer instead of a Commission Hearing Panel. A Respondent who chooses to have the administrative hearing conducted by an Administrative Hearing Officer must notify the Commission of that choice within ten (10) days of the date of service of the Formal Complaint, Notice of Hearing and Notice of Option for Administrative Hearing Officer.
- E. A Respondent may file a response to the Formal Complaint but is not required to do so. Any written response to the charges set forth in a Formal Complaint must be filed with the Commission at least ten (10) days in advance of the date set for the hearing.
- F. A Respondent may waive the right to a formal Administrative Hearing. Such waiver of the right to a hearing must be in writing, signed by the Respondent, and filed with the Commission.
- G. A Formal Complaint may be resolved by agreement at any time prior to an Administrative Hearing by Agreed Order signed by Respondent and subject to approval by the full Commission.
- H. All pleadings or other papers permitted or required to be filed with the Commission in connection with a pending disciplinary/administrative proceeding shall be filed by

personal delivery or by certified mail to the office of the Commission, or by email properly addressed to the Commission Administrator. Service is effective upon personal delivery, mailing or, when delivered by email, upon acknowledged receipt of such email service.

- I. A Respondent who is represented by legal counsel with respect to the disciplinary/administrative proceeding shall personally or through such counsel, give written notice to the Commission of the name, address, and telephone number of such counsel. Following receipt of proper notice of representation, all further notices, pleadings, subpoenas, orders, or other process related to the proceeding shall be served on Respondent through the designated counsel of record until such time as the withdrawal of counsel is filed with the Commission.

Source: Miss. Code Ann. § 73-35-23, §73-35-35 (1972, as amended).

Rule 5.8 Administrative Hearings

- A. Formal Administrative Hearings are conducted pursuant to Miss. Code Ann. §73-35-23 which provides that hearings may be conducted before the Commission or an Administrative Hearing Officer. When hearings are conducted before the Commission, one Commissioner present at the hearing shall serve as the Hearing Officer for the hearing.
- B. All testimony and other proceedings shall be recorded by a certified court reporter who shall be retained by the Commission. Costs incurred for the certified court reporter may be taxed to the Respondent as part of the costs of the proceedings in the final Order of the Commission as allowed or provided by statute or these Administrative Rules. No costs shall be taxed to a prevailing Respondent.
- C. At an Administrative Hearing, Complaint Counsel and Respondent shall have opportunity to present evidence on all issues of fact and argument on all issues of law, to call, examine, and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts of the matter.
- D. The Commission Hearing Panel or Administrative Hearing Officer is not bound by strict rules of evidence, but all determinations of violations made by the Commission Hearing Panel or Administrative Hearing Officer must be based upon the preponderance of evidence standard of proof. The designated Hearing Officer shall rule on all evidentiary issues.
- E. All hearings are open to the public pursuant to the Mississippi Open Meetings Law, Miss. Code Ann. §§25-41-1, *et seq.*
- F. In all disciplinary/administrative hearings before the Commission or Administrative Hearing Officer, the record of the case will include:

- 1) The Formal Complaint and Notice of Hearing;
- 2) All pleadings and rulings issued;
- 3) Evidence received or considered at the hearing;
- 4) Certified transcript of the proceedings taken by a certified court reporter; and
- 5) The Commission's Order or other disposition made by the Commission.

G. Formal Hearings before the Commission or Administrative Hearing Officer shall be conducted in the following order:

- 1) Opening statements
- 2) Complaint Counsel's case in chief
- 3) Respondent's case in chief
- 4) Complaint Counsel's rebuttal
- 5) Closing statements, if requested

H. Questioning of witnesses shall be conducted in the following order:

- 1) Direct examination
- 2) Cross examination
- 3) Redirect examination

I. The Hearing Officer will have the authority to preside over the hearing in accordance with the requirements of the case in a manner that ensures due process.

J. The Commission Hearing Panel or Administrative Hearing Officer shall render a decision, setting forth Findings of Fact and Conclusions of Law and final Order. Although the Commission Hearing Panel or Administrative Hearing Officer's decision may be announced immediately following deliberations, adequate time shall be allowed for preparation of the written Order. A copy of such order shall be sent to Respondent via certified mail at his or her last known address or served personally upon Respondent. A copy shall be sent to Respondent, Respondent's counsel of record and Responsible principal ~~b~~Broker for Respondent using email addresses on file.

Source: Miss. Code Ann. §73-35-23, §73-35-25, §73-35-35 (1972, as amended).

Part 1601 Chapter 6: Continuing Education

Rule 6.2 Procedures and Criteria for Approval of Courses

- A. Definitions:
 - (1) "Provider" - any individual person, partnership, association, legally established corporation or LLC, educational organization, or other entity that sponsors, offers, organizes, provides or promotes real estate continuing education courses.
 - (2) "Instructor" - a person who delivers educational material information directly to students.
- B. A provider desiring approval of continuing education course referred to in Section 73-35-18, Mississippi Code of 1972, Annotated, shall make application to the Commission on forms provided by the Commission. The provider, course, and instructor must receive concurrent approval.
- C. All requests for course accreditation shall be submitted on forms provided by MREC and will require copies of all student materials as well as documentation that includes the following:
 - (1) Course descriptions of each subject in the course.
 - (2) Measurable learning objectives for each subject.
 - (3) Specific process for evaluation and improvement of content.
 - (4) Specific processes for selecting and evaluating instructors.
 - (5) Specific processes for record-keeping and the administration of examinations.
- D. For courses offered through distance learning:
 - (1) Courses in Mississippi license law, contract law, and agency shall include course content and application specific to Mississippi practice and custom.
 - (2) Out-of-state providers must provide copies or screen prints of all Mississippi specific content for MREC review and approval.
 - (3) On-line or CD-ROM courses relating to Mississippi license law and agency must include instruction in the use of the Mississippi mandatory forms as well as provide a mechanism for the student to view and download the forms.

E. Standards for approval of course:

- (1) A proposed continuing education course shall be a real estate oriented educational session or course intended to improve skills of licensees and to keep licensees abreast of changing real estate practices and laws.
- (2) Courses shall be taught only by approved, qualified instructors.
- (3) Courses shall be offered in minimum one-~~two~~-hour segments.
- (4) Courses, instructors and providers shall be approved for one (1) year periods and shall be required to renew if the course is to be continued.
- (5) Licensees shall physically attend in order to receive a certificate.

Source: Miss. Code Ann. §§ 73-35-35

Rule 6.4 Administrative Requirements - ~~Applies to VI A. 2. & 3.~~

- A. Providers of continuing education courses shall furnish the Commission with a class roster within thirty (30) days after completion of each course listing each Mississippi licensee in attendance in alphabetical order. Attendance records shall be provided to the Commission via said roster, to the attendee upon completion of the course, and retained by the provider subject to inspection. Providers may utilize written or electronic processes for the purpose of certifying and providing documentation of individual attendance.

~~Providers of continuing education courses shall furnish the Commission with a class roster within thirty (30) days after completion of each course listing each Mississippi licensee in attendance in alphabetical order.~~

- ~~B. Providers will utilize a three-part certificate for the purpose of certifying individual attendance. One designated part shall be returned completed to the commission, one designated part shall be given to each attendee at the conclusion of the course, and the remaining par shall be retained by the provider furnishing such information as may be called for on the certificate.~~

- B. Attendance and other records of each provider must be kept on file for a period of three years and are subject to inspection by the Commission at any time during normal business hours.

Source: Miss. Code Ann. §§ 73-35-35

Rule 6.5 Advertising and **S**solicitation

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

Source: Miss. Code Ann. §§ 73-35-35

TITLE 30: Professions and Occupations

PART 1603: Board Organization and Members

Chapter 1: Board Organization

Rule 1.1 ~~Members.~~ Commission Organization and Operations

- A. The Mississippi Real Estate Commission consists of five (5) persons who are appointed by the Governor with the advice and consent of the Senate. Each appointee shall have been a resident and citizen of Mississippi for at least six (6) years prior to their appointment and shall have been a real estate broker for at least five (5) years. There shall be ~~at least~~ one (1) Commissioner from each ~~Congressional~~ Supreme Court District, as such Districts are constituted ~~as of July 1, 2002, and one (1) additional Commissioner shall be appointed without regard to residence in any particular Congressional District at the time of appointment, and two (2) from the state at large.~~ Any member of the Commission may be reappointed by the Governor. The Commission shall organize by selecting from its members a Chair~~man~~ and may do all things necessary and convenient to promulgate rules and regulations.
- B. The administration of Commission operations is delegated to an Executive Director appointed by the Commission for a term of four (4) years with the advice and consent of the Senate. The Executive Director may be reappointed by the Commission.
- C. The public may obtain and submit information about the Commission and its operations at info@mrec.state.ms.us.

Source: Miss. Code Ann. § 73-35-5; 73-35-35