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DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 154

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

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

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

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

4 Subchapter I. General Provisions

5 § 2900. Objectives.

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

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

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

16 § 2901. License Requirements; Exemptions.

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

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

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

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

30 (e) This chapter shall not apply to:

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

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

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

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

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

48 § 2902. Definitions.

49 (a) As used in this chapter:

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

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

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

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

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

67 (6) 'Competitive Market Analysis' or 'CMA' means a service provided by a Licensee for the purpose of
68 providing either a potential listing price or use or a potential offering price or use in a Real Estate Services
69 transaction. In this method, Licensees compare properties whose characteristics are similar in location, style, size
70 and amenities to provide an estimated market price or a potential use for a target property or area. The CMA
71 usually consists of an evaluation of similar properties that have recently sold, are currently under agreement to sell
72 and are currently listed or offered for sale. A CMA may also be referred to as a Comparative Market Analysis, a
73 Comparable Market Analysis, a Broker Price Opinion or Broker's Market Analysis. A CMA is not an appraisal.

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

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

78 (9) 'Customer' means a member of the general public working with a Licensee as a potential buyer,
79 seller, exchangor, exchangee, tenant, or landlord of real property or is consulting with a Licensee in one of these

80 capacities for the purpose of entering into a brokerage agreement or transaction, but who has not yet entered into a
81 Statutory or Common Law Agency relationship with a Licensee. A Customer is sometimes referred to as a
82 Prospect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

138 § 2903. Real Estate Commission; Appointments; Qualifications; Terms of Office; Vacancies; Suspension or
139 Removal; Unexcused Absences; Compensation.

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

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

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

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

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

151 (4) Of the 4 public members, 1 public member shall be from each county and 1 public member shall be
152 from the City of Wilmington. To serve on the Commission, a public member shall not be, nor have been within the
153 last 8 years prior to the effective date of appointment, a Licensee, nor a member of the immediate family of a
154 Licensee; shall not be, nor have been with the last 8 years prior to the effective date of appointment, employed by
155 a Broker or Brokerage Organization; shall not have had a financial interest in the providing of goods and services
156 to a Licensee; and shall not be, nor have been within the last 8 years prior to the effective date of appointment,
157 engaged in an activity directly related to providing Real Estate Services.

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

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

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

167 (f) A member of the Commission shall be suspended or removed by the Governor for misfeasance, nonfeasance,
168 malfeasance, misconduct, incompetence or neglect of duty or for unprofessional or dishonorable conduct. A member

169 subject to disciplinary hearing shall be disqualified from Commission business until the charge is adjudicated or the matter
170 is otherwise concluded. A Commission member may appeal any suspension or removal to the Superior Court.

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

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

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

178 § 2904. Organization; Meetings; Officers; Quorum.

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

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

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

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

189 § 2905. Records.

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

194 § 2906. Powers and Duties.

195 (a) The Commission shall have the authority to:

196 (1) Formulate Rules and Regulations, with appropriate notice to those affected; all Rules and Regulations
197 shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act, Chapter

198 101 of Title 29 of the Delaware Code. Each rule or regulation shall implement or clarify a specific section of this
199 chapter.

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

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

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

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

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

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

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

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

219 (10) Conduct hearings and issue orders in accordance with procedures established pursuant to Chapter
220 101 of Title 29.

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

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

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

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

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

232 § 2907. Qualifications of Applicant; Application; Examination; Report to Attorney General; Judicial Review.

233 (a) All applicants shall meet the following conditions:

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

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

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

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

255 a. More than 5 years have elapsed since the applicant has fully discharged all imposed sentences.

256 As used herein, the term "sentence" includes, but is not limited to, all periods of modification of a

257 sentence, probation, parole or suspension. However, sentence does not include fines, restitution or
258 community service, as long as the applicant is in substantial compliance with such fines, restitution and
259 community service.

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

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

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

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

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

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

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

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

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

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

276 (2) Is at least 23 years of age.

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

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

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

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

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

287 (d) Broker. In addition to the requirements of § 2907(c), an applicant who is applying for licensure as a Broker
288 under this chapter shall submit verification of the applicant's responsibility for the day to day management and supervision
289 of a Brokerage Organization and meet the experience and education requirements as defined in the Rules and Regulations.

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

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

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

297 § 2908. Fees.

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

304 § 2909. Reciprocal Licensure.

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

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

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

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

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

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

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

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

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

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

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

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

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

340 § 2910. Issuance and Renewal of Licenses; Additional Licenses; Reinstatement.

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

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

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

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

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

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

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

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

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

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

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

367 § 2911. Complaints.

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

370 § 2912. Grounds for Discipline.

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

373 (1) Has made any substantial misrepresentation; or

374 (2) Has made any false promise of a character likely to influence, persuade or induce; or

- 375 (3) Has pursued a continued and flagrant course of misrepresentation or the making of false promises
376 through Licensees or advertising or otherwise; or
- 377 (4) Has failed, within a reasonable time, to account for or to remit any money coming into the Licensee's
378 possession which belongs to others; or
- 379 (5) Has illegally practiced Real Estate Services; or
- 380 (6) Has incompetently or negligently practiced Real Estate Services in such manner as to not safeguard
381 the interest of the public; or
- 382 (7) Has paid a commission or valuable consideration to any Person for acts or services performed in
383 violation of this chapter; or
- 384 (8) Has assisted a Person in providing Real Estate Services who does not hold a license to provide Real
385 Estate Services in this State.
- 386 (9) Has violated a provision of this chapter, any of the Rules and Regulations established thereunder, or
387 any order of the Commission; or
- 388 (10) Has received or made an arrangement or agreement to receive, directly or indirectly, any form of
389 valuable consideration for products or services relating to a Real Estate Services transaction without prior written
390 disclosure by the Licensee to the Customer or Client of the Licensee and the payor for the product or service; or
- 391 (11) Has misrepresented the availability of or the content of any statutorily required form such as the
392 Seller's Disclosure of Real Property Condition Report Form and/or the Radon Disclosure as provided in Chapter
393 25 of Title 6; or
- 394 (12) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license or
395 renew a license as a Real Estate Service Provider; has impersonated another individual holding a license, or has
396 allowed another individual to use that Licensee's license, or has aided or abetted an individual not licensed as a
397 Real Estate Service Provider to represent himself or herself as a Real Estate Service Provider; or
- 398 (13) Has been convicted of a crime that is Substantially Related to the practice of Real Estate Services. A
399 copy of the record of Conviction certified by the clerk of the court entering the Conviction shall be conclusive
400 evidence therefore; or
- 401 (14) Has had a license as a Real Estate Service Provider suspended or revoked, or other disciplinary
402 action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying
403 grounds for such action in another jurisdiction have been presented to the Commission by certified record and the
404 Commission has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1

405 or more of the acts defined in this chapter. Every individual licensed as a Real Estate Service Provider in this State
406 shall be deemed to have given consent to the release of this information by the Commission or other comparable
407 agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence
408 of such acts or offenses; or

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

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

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

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

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

426 § 2913. Hearing Procedures.

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

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

433 § 2914. Disciplinary Sanctions.

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

436 (1) Issue a letter of reprimand;

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

438 a. Report regularly to the Commission upon the matters which are the basis for the probation;

439 and/or

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

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

442 (4) Suspend any Licensee's license.

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

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

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

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

452 § 2915. Temporary suspension pending hearing

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

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

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

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

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

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

484 § 2916. Reinstatement of a Suspended License or Issuance of a New License After Revocation; Removal From
485 Probationary Status; Replacement of License.

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

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

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

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

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

499 § 2917. Effect of Revocation of Broker's License.

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

505 § 2918. Form and Display of License.

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

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

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

511 § 2919. Maintenance of Place of Business; Office Permits.

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

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

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

519 (d) If the Broker maintains more than one office, the Broker shall apply for and obtain an additional Broker's
520 License and office permit in the Broker's name for each branch office. A branch office permit shall be subject to the
521 requirements set forth in Sections 2919(a) and (b). The application for a branch office shall state the address of the branch

522 office and the Designated On-Site Supervisor. The Designated On-Site Supervisor shall be a Licensee with a minimum of
523 five (5) years of continuous Real Estate Services experience, which shall be documented on the branch office application.
524 The branch office, any Licensees associated with the office and the Designated On-Site Supervisor shall be under the
525 direction and supervision of the Broker.

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

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

530 § 2920. Notice of Change in Location of Business; New License.

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

534 § 2921. Notice and Procedure on Termination of Licensee's Employment; New License as Prerequisite to
535 Resumption; Inactive Status.

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

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

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

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

549 (c) A Licensee may transfer his or her license from one Broker to another upon completion of a form as provided
550 in the Rules and Regulations and upon payment of the prescribed fee. The releasing Broker must file a completed form

551 with the Commission within 5 business days of obtaining a sponsoring Broker and the transferring Licensees signatures on
552 the form.

553 § 2922. Real Estate Guaranty Fund.

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

561 (b) If the aggrieved Person obtains a final judgment against a Licensee for loss or damage sustained by reason of
562 theft or forgery (as defined in Title 11) or by reason of fraud, misrepresentation or deceit by or on the part of such Licensee
563 or employee thereof who does not hold a license, such aggrieved Person may file a verified claim with the Commission
564 seeking an order directing payment from the Fund of any amount unpaid upon the judgment, subject to the limitations
565 stated in subsection (a) of this section and this subsection. The verified claim shall be filed within 60 days after the final
566 judgment has been obtained. The verified claim shall include a copy of the complaint, counterclaim or cross-claim, if any,
567 a certified copy of the judgment and copies of any documentation relating to steps taken to collect on the judgment. The
568 Commission shall proceed upon such claim in a summary manner and, upon the hearing thereof, the aggrieved Person shall
569 be required to show:

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

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

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

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

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

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

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

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

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

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

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

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

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

611 § 2923. Deposits and Escrow Accounts; Accounting; Records Inspection and Audit.

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

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

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

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

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

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

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

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

637 § 2924. Penalties.

638 A Person not currently licensed under this chapter when guilty of engaging in the practice of providing Real Estate
639 Services, or using in connection with that Person's name, or otherwise assuming or using any title or description conveying,
640 or tending to convey the impression that the person is qualified to provide Real Estate Services, such offender shall be

641 guilty of a misdemeanor. Upon the first offense, that person shall be fined not less than \$500 nor more than \$5,000 for each
642 offense. For a second or subsequent conviction, the fine shall be not less than \$1,000 nor more than \$10,000 for each
643 offense. The Justices of the Peace shall have jurisdiction over all violations of this section.

644 § 2925. Enforcement.

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

648 Subchapter II. Business Relationships

649 § 2926. Applicability.

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

653 § 2927. Certain Psychological Impacts Not Material Facts.

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

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

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

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

667 § 2928. Internet and World Wide Web.

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

671 acknowledge receipt of it electronically. However, an exclusive business relationship or obligation for the Customer or
672 Client to pay any compensation may only be created by a written brokerage agreement signed by the Customer or Client as
673 a separate document. If the brokerage agreement is signed electronically it may not be part of a general consent to the terms
674 of use of an Internet or World Wide Web site or other electronic device, but must be a conspicuous separate document.

675 § 2929. Financial Information.

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

681 § 2930. Compensation.

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

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

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

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

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

712 § 2931. Competitive Market Analysis ("CMA").

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

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

718 (1) An existing or potential seller or owner for the purpose of listing a property for sale or lease; or

719 (2) An existing or potential buyer or tenant for the purpose of purchasing or leasing a property for sale or
720 lease;

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

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

729 § 2932. Common Law of Agency.

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

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

735 (c) Common Law Agency Disclosure.

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

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

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

745 (4) Licensees shall not function in the capacity of a Common Law Agent for transactions concerning a
746 one to four family residential property unless they have established that relationship in writing and the policy of
747 the Broker is to represent only the seller or buyer as a single Agent for each transaction and never as a Dual Agent.
748 § 2933. Statutory Agency.

749 (a) The Common Law of Agency relative to brokerage relationships in Real Estate Services transactions
750 established pursuant to this chapter is expressly abrogated for any Licensee functioning as a Broker, Associate Broker, or
751 Salesperson, Licensee owner, or Brokerage Organization as defined in this chapter as a Statutory Agent. The remainder of
752 this subchapter is intended to occupy completely the field of law relative to brokerage relationships for those Real Estate
753 Services transactions with the Licensee or Licensees functioning as Statutory Agents. For those areas where the public,
754 Licensees, regulators, or courts need further guidance as to the conduct of Statutory Agents, Customers and Clients, the law
755 governing independent contractor relationships shall apply to the extent it is not inconsistent with the provisions of this
756 chapter.

757 (b) Statutory interpretation. Performing the functions of a Statutory Agent as described in this chapter and the
758 Rules and Regulations of the Commission shall not be construed to automatically or by implication create a Common Law
759 Agency relationship. Section 2933 through 2938 shall be construed as rules of conduct describing how a Licensee works

760 for Clients, works with Customers, or interacts with the general public as a Statutory Agent in the capacity of an
761 independent contractor and not as a Common Law Agent.

762 (c) Presumed Statutory Agency.

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

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

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

773 § 2934. Commencement and Termination of Duties.

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

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

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

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

788 a. The Customer or Client to whom the information pertains grants written consent;

789 b. Disclosure of the information, such as defects actually known by the Licensee or previously
790 disclosed by the seller on the Seller's Disclosure of Real Property Condition Report or Radon Disclosure
791 or any other statutorily required form, is required by law;

792 c. The information is made public or becomes public by the words or conduct of the Customer or
793 Client to whom the information pertains or from a source other than the Licensee or Brokerage
794 Organization; or

795 d. Disclosure is necessary to defend the Licensee or Brokerage Organization against an action of
796 wrongful conduct in an administrative or judicial proceeding or before a committee of a professional
797 association.

798 § 2935. Duty to Cooperate.

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

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

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

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

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

810 (4) Hold the Escrow Deposit.

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

818 § 2936. Broker, Associate Broker and Salesperson as a Statutory Agent.

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

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

825 (1) Performing the duties required by this chapter;

826 (2) Performing the terms of the written brokerage agreement, if any;

827 (3) Exercising reasonable skill and care as a Licensee;

828 (4) Advising the parties to obtain expert advice on material matters about which the Licensee knows but
829 the specifics of which are beyond the expertise of such Licensee;

830 (5) Accounting in a timely manner for all money and property received;

831 (6) Helping to keep the parties informed regarding the progress of the transaction;

832 (7) Performing Ministerial Tasks to assist the parties in complying with the terms and conditions of any
833 contract;

834 (8) Disclosing to all prospective buyers or tenants any adverse material facts actually known by the
835 Licensee;

836 (9) Informing the parties that they shall not be vicariously liable for acts of other Licensees;

837 (10) Informing the parties that notice given to the designated Licensee is considered notice to their Client;

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

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

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

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

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

- 848 (1) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the
849 property;
- 850 (2) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;
- 851 (3) What the personal motivating factors are for any party to a transaction;
- 852 (4) That a seller, buyer, landlord, or tenant will agree to terms other than those offered;
- 853 (5) Any material confidential information about the parties or property unless disclosure is required by
854 statute or regulation or failure to disclose such information would constitute fraud or intentional misrepresentation;
- 855 (6) Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize any
856 real property pursuant to § 2927 of this chapter unless required to be disclosed by § 2927 of this chapter; or
- 857 (7) Any facts or suspicions that any party or someone in the community is a registered sex offender under
858 subchapter III of Chapter 41 of Title 11 as amended from time to time, but if asked shall refer the Person to the
859 Delaware State Police to seek this information.
- 860 (d) Confidentiality Exception. For transactions of properties other than those marketed as (i) one to four family
861 residences, or (ii) single family lots of land intended for one to four family residence, Designated Agents who are not Dual
862 Agents are exempt from this subsection (c); instead, a duty of confidentiality by the agent to the Client shall apply after a
863 Client relationship is formed.
- 864 (e) Actions permitted by Agents. An Agent may do the following without breaching any obligation, duty, or
865 responsibility to a Customer or Client:
- 866 (1) List and advertise competing properties for sale or lease;
- 867 (2) Show Customers or Clients alternative properties not owned by their Broker's other Clients;
- 868 (3) Show properties in which 1 Customer or Client is interested to their other Customers or Clients;
- 869 (4) Present offers on the same property for more than one Customer or Client;
- 870 (5) Disseminate information that is generally available to Licensees. For example, providing information
871 on comparable sales and the Licensee's interpretation, advice, and opinion about this information with the
872 Customer or Client retaining the authority to decide what to do with this information;
- 873 (6) Assist buyers and sellers in preparing offers and counteroffers, providing that the forms used advise
874 the parties that they may seek legal advice prior to signing. Presenting all offers and counteroffers in a timely
875 manner regardless of whether the property is subject to a contract for sale, lease or letter of intent unless instructed
876 otherwise by the Customer or Client;
- 877 (7) Develop negotiating strategies or options for how to proceed with a transaction;

878 (8) Perform Ministerial Tasks;

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

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

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

887 (12) Provide Customers with factual information they request. Provide Clients with relevant factual
888 information. Tell Clients about their choices of how to proceed and provide them with relevant information.
889 Provide Clients with information and advice when presented with questions from the Client or a request for
890 advice.

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

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

900 § 2937. Vicarious Liability; Protections When Working With a Statutory Agent.

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

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

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

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

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

913 § 2938. Consumer Information Statement; Confidentiality.

914 (a) The Commission shall establish by Rule and Regulation a Consumer Information Statement (“CIS”). The
915 Commission may provide alternative Consumer Information Statements for residential properties, properties that do not
916 contain any residential units, commercial transactions, property management, or other brokerage situations as the
917 Commission deems appropriate. At a minimum, the form shall provide a summary of what a Licensee is permitted or
918 prohibited from doing as provided by §§ 2935 and 2936 of this chapter. The CIS shall explain the circumstances when the
919 consumer may hire the Licensee as a Common Law Agent, but that this would require other detailed disclosures of conflicts
920 of interests and could involve significant potential legal liability and financial risk for the consumer.

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

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

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

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

939 (f) Transactions of properties other than those marketed as (i) one to four family residential properties, or (ii)
940 single lot sales of land intended for a one to four family residence, are exempt from the requirement to provide the CIS to
941 the potential parties; however the balance of this chapter shall still apply unless specifically exempted. In lieu of providing
942 a CIS, the agreement of Sale or lease shall include the following language after the confirmation of the agency
943 relationships: "The parties acknowledge that they have certain rights and responsibilities under Delaware agency law (Title
944 24 of the Delaware Code, Chapter 29) and may consult with their legal counsel".

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

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

SYNOPSIS

This bill is the result of recommendations made by the Joint Sunset Committee. The bill presents extensive revisions to make the Real Estate Commission's licensing law consistent with other Title 24 boards and commissions. In addition, the amendments include new language and terms to coincide with modern practices and to provide greater clarity for practitioners and the public. In particular, the bill replaces and updates provisions relating to Commission objectives and powers and duties, licensure requirements, reciprocity, grounds for discipline and sanctions.

The bill includes a definition of the term "Comparative Market Analysis" in order to delineate the scope of permissible activities for a licensee and to clarify that a Comparative Market Analysis is not an appraisal. The bill also includes a definition of "Property Management Services" and an exemption for a provider of Property Management Services. This additional language specifies that an individual engaging in Property Management Services is exempt from the statute, except to the extent that the individual is involved in selling or leasing.

The bill amends the "Powers and Duties" section of the statute in order to give the Commission the explicit authority to issue cease and desist orders and impose fines for unlicensed practice.

The bill makes explicit that there are three licensure categories in the real estate profession. Currently, there are just two licensure categories referenced in the statute: broker and salesperson. The term "broker of record," designating the individual responsible for the brokerage organization, is mentioned only in the Commission's Rules and Regulations. The bill designates the three licensure categories as Broker (formerly broker of record), Associate Broker (formerly broker) and Salesperson. These three terms will create greater protection for the public by making clear that the Broker is the individual ultimately responsible for the real estate transaction.

The bill also creates standards for reciprocal licensure. Currently, out-of-state applicants are issued non-resident licenses. The amendment creates several methods whereby an out-of-state applicant may obtain a Delaware license. The bill also adds requirements for licensure for all applicants to ensure that the Commission has the authority to consider the applicant's disciplinary history in other jurisdictions.

The bill gives the Commission the authority to grant additional licenses to licensees, where the Brokers are notified and agree with the arrangement. This amendment brings Delaware into line with practices in other states. The bill also requires licensees to disclose, at the time of renewal, any criminal convictions since the last renewal.

With respect to disciplinary matters, the bill gives the Commission the authority to permanently revoke a license. The bill also includes a provision for temporary suspension of a license, pending a hearing, where the activity of the licensee presents a clear and immediate danger to the public health, welfare or safety. The new provision gives the authority to temporarily suspend a license to the Secretary of State, with the concurrence of the Commission Chairperson.

The bill gives the public easier access to the Guaranty Fund. Currently, an aggrieved party must file a claim with the Guaranty Fund within 60 days after filing a lawsuit. Pursuant to the amendment to the statute, an aggrieved party must give notice within 60 days after obtaining a judgment.

The bill significantly amends the statute in connection with agency relationships to afford greater protection to the public. With the amendments, statutory agency will be presumed and not predicated on the signing of the consumer information statement. Further, statutory agency begins on first contact between the licensee and the member of the public. With this amendment, the member of the public will be afforded a range of protections, such as the duty of confidentiality.

This bill becomes effective six months after its enactment into law.

Author: Senator Bunting