

Minimum Services Bill takes effect October 9

HB 150 was signed into law this summer making the effective date October 9, 2006. Articles have appeared in the *In Contract* (March and July/August) and the *Ohio REALTOR®* (September and October) addressing this law. Following are excerpts from these articles. Special credit goes to Lori Garland, Assistant Vice President, Ohio Association of REALTORS® who wrote the comprehensive articles in the *Ohio REALTOR®* magazine.

This new law requires that a ['Waiver of Duties Statement'](#) form is signed when certain fiduciary duties are waived.

Why do we need this new law?

The law was designed to address situations which have emerged from the various business models emerging in the real estate industry, ranging from "fee-for service" to Multiple Listing Service entry only agreements.

These "limited-service" listing agreements, in which the listing broker offers reduced services or no services other than placement in the MLS, have left many real estate professionals in an ethical quandary.

In some situations, home sellers who employ limited-service brokerages are essentially representing themselves in the transaction. Often, when they encounter difficulties in the process, they ask the buyer's agent for advice.

Real estate agents that assist sellers in such instances could leave themselves exposed to claims of dual agency. On the other hand, choosing not to assist the seller places the transaction in jeopardy and may not be in the best interest of the buyer the REALTOR® represents.

The new law defines a licensee's duties as well as which of those duties may be waived. Further, the law requires that the new 'Waiver of Duties Statement' form (opposite) is signed when any of those duties is waived.

Licensee's fiduciary duties

The new law clarifies the fiduciary duties an Ohio real estate licensee owes to their buyer or seller as listed in Ohio Revised Code 4735.62. These duties are spelled out under 'Required Duties' on the form (opposite). They include:

1. Exercising reasonable skill and care in representing the client and carrying out the responsibilities of the agency relationship;
2. Performing the terms of any written agency agreement;
3. Following any lawful instructions of the client;
4. Performing all duties specified in this chapter in a manner that is loyal to the interest of the client;
5. Complying with all requirements of this chapter and other applicable statutes, rules, and regulations, including the Ohio fair housing law, division (H) of section 4112.02 of the Revised Code and the federal fair housing law, 42 U.S.C.A. 3601;
6. Disclosing to the client any material facts of the transaction of which the licensee is aware or should be aware in the exercise of reasonable skill and care and that are not confidential information pursuant to a current or prior agency or dual agency relationship;
7. Advising the client to obtain expert advice related to material matters when necessary or appropriate;
8. Accounting in a timely manner for all moneys and property received in which the client has or may have an interest;
9. Keeping confidential all confidential information, unless the licensee is permitted to disclose the information pursuant to division (B) of section 4735.74 of the Revised Code. This requirement includes not disclosing confidential information to any licensee who is not an agent of the client.

Negotiating directly with a seller or buyer

HB 150 makes an exception to the prohibition of negotiating directly with another broker's client *if* that broker has given written authorization to negotiate directly with his client. The broker's written authorization could be provided in an email, letter, print advertising or through the MLS. If written authorization is provided, the buyer's agent may:

1. Delivering or communicating any offer, counteroffer or proposal;
2. Discussing or reviewing the terms of any offer, counteroffer or proposal;
3. Facilitating communication regarding an offer, counteroffer, or proposal and
4. Preparing any response as directed. *However*, a buyer's agent may not prepare a counteroffer at the seller's request, unless this activity is specifically authorized by the listing broker.

Ohio Revised Code 4735.75 specifically provides that negotiations conducted by a licensee pursuant to the exclusive broker's authorization will not create or imply an agency relationship between the licensee and that broker's client.

Advertising as For Sale By Owner

Ohio Revised Code 4735.16(B)(2) prohibits a broker who is representing a seller under an exclusive right to sell listing agreement from advertising the property as a "for sale by owner" or otherwise mislead the public to believe that the seller is not represented by a broker.

FYI -- HB 150 was originally drafted to impose new requirements on licensed junk yard owners and to require scrap metal processors to maintain specified records regarding canceled motor vehicle titles. The original minimum services bill - HB 491 - got shut down in the 11th hour due to an amendment attached at the last minute dealing with an Ohio Department of Development matter. OAR legislative staff, thinking quickly, incorporated the elements of the minimum services legislation into HB 150 and it was passed.

When to use the 'Waiver of Duties Statement'

A licensee must use the Waiver of Duties Statement if his client is waiving one or more of the duties listed in the "Duties That May Be Waived" section of the form. The Waiver must be signed at the time the listing agreement is entered into.

A copy of the Waiver of Duties Statement is not required to be provided to the buyer's agent as the ODRE considers this to be confidential information. That said, the form may be provided with the seller's consent.