

2016 Regular Session

SENATE BILL NO. 259

BY SENATOR WHITE

REAL ESTATE. Provides relative to the Louisiana Real Estate License Law. (8/1/16)

AN ACT

To amend and reenact R.S. 37:1433, 1435(C)(1) and (2), (D), (E), (F), and (H), 1436, 1437, 1437.1(A), (B), (C), (D), (F), and (G), 1437.2, 1437.3, 1438, 1439, 1441, 1443(1)(f) and (4), 1446, 1449, 1451, 1465, 1466(F), and to repeal R.S. 37:1435(C)(3) and 1443(3)(g), relative to the licensing of real estate brokers, timeshare interest salespersons, real estate schools and vendors, and real estate instructors; to provide for commission power to grant certain licenses, registrations, and certifications; to provide prohibitions for individual licenses, registrations, and certificates; to provide for the activities of partnerships, limited liability companies, associations, corporations, and other legal entities with regard to the transactions of real estate; to prohibit certain real estate activities without the proper license, registration, or certification; to provide for active and inactive licenses; to provide with regard to timeshare interest salespersons; to provide regarding the dissolution of any legal entity engaged in the activities of real estate; to provide specific guidelines for unlicensed entities not bound by the real estate licensing law; to provide relative to timeshare salespersons registrants and timeshare developers; to provide for a fee schedule, including active and inactive licenses; to provide certain terms, conditions

1 and procedures; and to provide for responsibilities of the commission in the instance
2 of the death of a sponsoring broker; and to provide for related matters.

3 Be it enacted by the Legislature of Louisiana:

4 Section 1. R.S. 37:1433, 1435(C)(1) and (2), (D), (E), (F), and (H), 1436, 1437,
5 1437.1(A), (B), (C), (D), (F), and (G), 1437.2, 1437.3, 1438, 1439, 1441, 1443(1)(f) and (4),
6 1446, 1449, 1451, 1465, and 1466(F) are hereby amended and reenacted to read as follows:

7 §1433. Officers; quorum; meetings; **compensation**

8 A. The commission shall elect from its members a chairman and a secretary
9 and shall select a ~~vice-chairman~~ **vice chairman** to serve in the absence of the
10 chairman.

11 B.(1) ~~Five~~ **Six** members of the commission shall constitute a quorum for all
12 business. The commission shall meet quarterly or more often if necessary.

13 (2) ~~Said~~ **The** commission shall be limited to two regularly scheduled
14 meetings per month. Additional meetings may be called upon application of three
15 members.

16 C. Members of the ~~Louisiana Real Estate Commission~~ **commission** shall be
17 compensated at a rate of not more than fifty dollars a day for each meeting or for
18 attending to commission business, however, a member attending two meetings on
19 the same day shall not be compensated for more than one meeting on that day.
20 Members shall also be reimbursed for their actual expenses covering travel, meals,
21 lodging and other incidental expenses incurred while attending commission meetings
22 or attending to commission business.

23 * * *

24 §1435. Powers of the commission

25 * * *

26 C. The commission may:

27 (1) Adopt all necessary rules and bylaws for the **administration and**
28 enforcement of this Chapter;

29 (2) Require any satisfactory proof it may desire ~~in reference as~~ to the honesty,

1 truthfulness, reputation, and knowledge of any applicant for a real estate broker, or
 2 salesperson's license or registration as a timeshare interest salesperson or of any of
 3 the officers or members of any such applicant, if applicable, to any of the
 4 following; prior to the issuance of any license, or registration; and

5 (a) Real estate broker license.

6 (b) Real estate salesperson license.

7 (c) Real estate school or vendor certification.

8 (d) Timeshare interest salesperson registration.

9 (e) Real estate instructor approval or certification.

10 * * *

11 D. In addition to its general powers, as ~~above~~ provided by way of extension
 12 and not of limitation, the commission is ~~expressly granted the right to~~ may require
 13 any real estate broker or timeshare developer registrant all licensees, registrants,
 14 and certificate holders to keep records, as specified in this Chapter of all real estate
 15 or timeshare transactions. The commission is authorized to inspect such records at
 16 the offices of ~~those~~ the licensees, registrants, and certificate holders, or registrants
 17 by its duly authorized representatives between the hours of 9:00 A.M. and 4:00 P.M.,
 18 with Saturdays, Sundays, and legal holidays excluded, and to subpoena any of the
 19 said records.

20 E. The commission shall have the right to subpoena any licensee, registrant,
 21 certificate holder or witness for the purpose of holding any hearing or in furtherance
 22 of an authorized investigation. Failure by a licensee or registrant to comply with a
 23 subpoena or subpoena duces tecum shall be punishable by the commission as
 24 provided under the provisions of pursuant to R.S. 37:1455.

25 F. The commission ~~may also~~ shall have the right to require that all real
 26 estate ~~brokers~~ licensees and registered timeshare developers ~~registrants shall to~~
 27 deposit all monies or things of value received on behalf of clients in a separate
 28 banking account or accounts in a legally chartered financial institution. ~~Said~~ The
 29 monies so received are not to be commingled with the personal funds of such

1 licensees or registrants.

2 * * *

3 H. The commission ~~may~~ **shall** ~~establish, through the adoption and~~
 4 ~~promulgation of rules~~ **adopt rules, and regulations, and procedures** in accordance
 5 with the Administrative Procedure Act, ~~procedures~~ by which a determination may
 6 be made as to whom a disputed escrow deposit ~~should~~ **shall** be released.

7 §1436. Licensing and registration required

8 A. Licenses issued by the commission shall be classed as active and inactive.

9 B. It shall be unlawful for any person ~~or entity, directly or indirectly,~~
 10 **partnership, limited liability company, association, or corporation, foreign or**
 11 **domestic, whether pursuant to a power of attorney or otherwise, for a fee,**
 12 **commission, or other valuable consideration, or with the intention, in the**
 13 **expectation, or upon the promise of receiving or collecting a fee, commission or**
 14 **other valuable consideration,** to engage in ~~or conduct, or to advertise or hold~~
 15 ~~himself out as engaging in or conducting the business, or acting in the capacity, of~~
 16 ~~a real estate broker or real estate salesperson within the state without first obtaining~~
 17 ~~a license as such broker or salesperson, and being classed as an active licensee, as~~
 18 ~~provided in this Chapter,~~ **any real estate activity relating to any portion of a real**
 19 **estate transaction performed for another,** unless he is exempted, from obtaining
 20 a license as specified herein.

21 C. It shall be unlawful for any person **individual, partnership, limited**
 22 **liability company, corporation, or other legal** entity, ~~directly or indirectly, or the~~
 23 **successor or assignee thereof,** to engage in ~~or conduct, or to advertise to hold~~
 24 ~~himself or itself out as engaging in or conducting the business, or acting in the~~
 25 ~~capacity of a timeshare interest salesperson or timeshare developer~~ **create a**
 26 **timeshare plan, or to make sales of timeshare interests, which it owns or**
 27 **purports to own or for another,** without first obtaining a registration as ~~such a~~
 28 ~~timeshare interest salesperson or timeshare developer, as provided in this Chapter,~~
 29 unless he is exempted from obtaining a registration as specified therein.

1 D. Any person, corporation, partnership, limited liability company, or other
 2 **legal** entity ~~who that~~, directly or indirectly for another, with the intention or upon
 3 the promise of receiving any valuable consideration, offers, attempts, or agrees to
 4 perform, or performs any single act described herein, whether as a part of a
 5 transaction, or as an entire transaction, shall be deemed a licensee or registrant within
 6 the meaning of this Chapter. The commission of a single act by such a person or
 7 entity required to be licensed or registered under this Chapter and not so licensed or
 8 registered shall constitute a violation of the provisions of this Chapter.

9 §1437. Application for license

10 A. Any person ~~desiring to act as a real estate broker or as a real estate~~
 11 ~~salesperson, or any corporation, partnership, limited liability company,~~ **partnership,**
 12 **limited liability company, association, or corporation,** or any other legal entity
 13 desiring to conduct real estate activity in this state, shall file an application for a
 14 license with the commission. The application shall be in such form and detail as the
 15 commission shall prescribe, setting forth the following:

16 (1) The name and address of the applicant and the name under which the
 17 applicant intends to conduct business.

18 (2) The place or places, including the city or village with the street and street
 19 number, if any, where the business is to be conducted.

20 (3) Such other information as the commission shall require.

21 B.~~(1)~~ Licenses shall be granted only to persons, **partnerships, limited**
 22 **liability companies, associations, corporations,** or **other legal** entities ~~who that~~
 23 bear a good reputation for honesty, trustworthiness, integrity, and competence to
 24 transact **the** real estate activities ~~requiring licensing in this state~~ **defined in this**
 25 **Chapter,** in such a manner as to safeguard the interest of the public, and only after
 26 satisfactory proof of such qualifications has been presented to the commission.

27 ~~(2)~~**(1)** When an applicant has been convicted of forgery, embezzlement,
 28 obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or
 29 theft, or has been convicted of a felony or a crime involving moral turpitude in any

1 court of competent jurisdiction, such untrustworthiness of the applicant, and the
2 conviction, may in itself be sufficient grounds for refusal of a license.

3 ~~(3)~~**(2)** When an applicant has made a false statement of material fact on his
4 application, such false statement may in itself be sufficient grounds for refusal of a
5 license.

6 ~~(4)~~**(3)** Grounds for suspension or revocation of a real estate license in
7 Louisiana or any other jurisdiction, or the previous suspension or revocation, of a
8 real estate license in Louisiana or any other jurisdiction shall also be grounds for
9 refusal to grant a license.

10 C.~~(1)~~ No individual real estate broker or salesperson's license shall be issued
11 to any person who has not attained the age of eighteen years. No individual real
12 estate broker or salesperson's license shall be issued to any person who is not a high
13 school graduate or the holder of a certificate of high school equivalency.

14 ~~(2)(a)~~**(1)(a)** All applicants for an initial individual real estate broker's license
15 shall have first ~~served actively~~ **been licensed** for four years ~~as a real estate~~
16 ~~salesperson,~~ **with two of the four years occurring immediately preceding**
17 **submission of a broker license application,** and shall show evidence satisfactory
18 to the commission that they have satisfactorily completed at least one hundred fifty
19 hours **of instruction,** or its equivalent, ~~of instruction~~ in real estate courses approved
20 by the commission ~~prior to licensure~~. Satisfactory completion includes passage of
21 an examination on course contents.

22 (b) At least thirty hours of the broker educational requirement shall be
23 obtained in coursework emphasizing broker responsibilities.

24 (c) Each person obtaining an initial real estate broker's license shall complete
25 forty-five post-license education hours within one hundred eighty days after the
26 initial license date. Such hours shall be in subjects required by the commission
27 including but not limited to laws, rules and regulations changes, finance, and the
28 handling of funds. Post-license education hours may be used **in the year completed**
29 to satisfy eight hours of the twelve-hour annual continuing education requirement;

1 however, post-license education hours shall not satisfy the ~~four-hour~~ mandatory
2 continuing education topic specified by the commission.

3 ~~(3)(2)~~ **(2)** The commission, ~~through its education division,~~ may accept ~~real estate~~
4 ~~related~~ **real estate-related** credit hours from an accredited college or university as
5 partial substitution of the broker licensing educational requirement.

6 ~~(4)(3)~~ **(3)** The commission shall have the authority to accept experience in the
7 real estate business or related fields as credit toward fulfillment of the education
8 requirements set forth herein.

9 ~~(5)(a)~~ **(4)(a)** All applicants for a salesperson's license shall show evidence
10 satisfactory to the commission that they have completed ninety hours or its
11 equivalent of instruction in real estate coursework approved by the commission prior
12 to licensure. Satisfactory completion includes passage of an examination on course
13 contents.

14 (b) Each person obtaining an initial salesperson's license shall complete
15 forty-five post-license education hours within one hundred eighty days after the
16 initial license date. Such hours shall be in subjects required by the commission
17 including but not limited to laws, rules and regulations changes, finance, and the
18 handling of funds. Post-license education hours may be used **in the year completed**
19 to satisfy eight hours of the twelve-hour annual continuing education requirement;
20 however, post-license education hours shall not satisfy the four-hour mandatory
21 continuing education topics specified by the commission.

22 ~~(6)(a)(i)~~ **(5)(a)** In addition to all other education requirements set forth in this
23 Chapter, **regardless of initial license date,** the license of an individual real estate
24 broker or salesperson shall not be renewed unless the broker or salesperson shall
25 furnish proof of completion of twelve hours per year of continuing education
26 pertaining to matters, including but not limited to laws, rules, and regulations relative
27 to licensing, appraisal, finance, taxes, zoning, environmental quality, and the United
28 States Department of Housing and Urban Development. ~~Four~~ **A minimum of four**
29 of the required annual continuing education hours shall be in subjects specified by

1 the commission. Post-license education hours may be used to satisfy eight hours of
2 the twelve-hour annual continuing education requirement; however, post-license
3 education hours shall not satisfy the ~~four-hour~~ mandatory continuing education
4 topics specified by the commission.

5 ~~(ii)~~**(b)** The commission shall promulgate rules and regulations necessary to
6 implement the continuing education **and post-license education** requirement and
7 may mandate the completion of courses in specific real estate-related subjects. Such
8 rules and regulations may require passage of an examination in order to satisfy the
9 continuing education **and post-license education** requirement.

10 D. Every applicant for a license shall submit a sworn statement attesting that
11 he has knowledge of and understands the provisions of the Fair Housing Act of 1968
12 and the Louisiana Equal Housing Opportunity Act, and any amendments thereto or
13 any successor legislation subsequently following, and that ~~he~~ **the applicant** shall not
14 induce or attempt to induce any person to sell or rent any dwelling by representations
15 regarding the entry or prospective entry into an area, subdivision, or neighborhood
16 of a person or persons of a particular race, color, religion, or national origin.

17 E. A nonresident may obtain a broker's or salesperson's license and engage
18 in the real estate business in this state under conditions prescribed by the
19 commission.

20 §1437.1. Timeshare registration

21 A. Any person or entity desiring to engage directly in the business of selling
22 timeshare interests must register with the commission.

23 B.~~(1)~~**(a)** The application for registration shall be in such form as may be
24 required by the commission and in accordance with R.S. 9:1131.9 so that only
25 persons who have a good reputation for honesty, trustworthiness, and integrity may
26 be so registered.

27 ~~(b)~~**(1)** The commission shall approve or deny such applications for
28 registration within forty-five days from receipt of the application by the commission.

29 (2) When an applicant has been convicted of forgery, embezzlement,

1 obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or
 2 theft, or has been convicted of a felony or a crime involving moral turpitude in any
 3 court of competent jurisdiction, such untrustworthiness of the applicant, and the
 4 conviction, may in itself be sufficient grounds for refusal of a timeshare interest sales
 5 registration.

6 (3) When an applicant has made a false statement of material fact on his
 7 application, such false statement may in itself be sufficient grounds for refusal of a
 8 timeshare interest sales registration.

9 (4) Grounds for suspension or revocation of a registration, or real estate
 10 license, or the previous revocation of a real estate license or registration in Louisiana
 11 or any other jurisdiction, shall be grounds for refusal to grant a timeshare interest
 12 sales registration.

13 (5) ~~No~~ A timeshare registration shall **not** be issued to any person who has not
 14 attained the age of eighteen years. ~~No~~ A timeshare interest sales registration shall **not**
 15 be issued to any person who is not a high school graduate or the holder of a
 16 certificate of high school equivalency.

17 C. The provisions of this Section ~~with regard to registering as timeshare~~
 18 ~~interest salespersons do~~ **shall** not apply to a licensed real estate broker or salesperson
 19 or to employees of a **timeshare** developer registered under this Section.

20 D. Notwithstanding any other provisions of law, a timeshare developer may
 21 not avoid liability to timeshare purchasers for the acts of timeshare interest
 22 salespersons or **real estate** licensees on the basis that the timeshare interest
 23 salesperson **or real estate licensee** is merely an independent contractor.

24 * * *

25 F. Except for the provisions contained in R.S. 9:1131.12, the changes and
 26 additions affected by Act No. 999 of the 1985 Regular Session of the Legislature
 27 shall not apply to any timeshare project ~~which has filed and been~~ approved to operate
 28 ~~as a timeshare project~~ by the Louisiana Real Estate Commission on or before June
 29 1, 1985, and for which protection **if all of the following conditions have been met.**

1 **(1) Protection** under the federal bankruptcy law has not been filed ~~and~~
2 ~~whose,~~

3 **(2) The** developer has not been suspended by the Louisiana Real Estate
4 Commission, ~~and which, if approved prior to July 20, 1984,~~

5 **(3) The project** has been actively and consistently marketed as a timeshare
6 project, **if approved prior to July 20, 1984.**

7 G. Any timeshare interest salesperson or seller of a timeshare interest shall
8 comply with the provisions of the Louisiana Real Estate License Law and the rules
9 adopted pursuant thereto, including licensure, unless otherwise exempt.

10 **(1)** The Louisiana Real Estate License Law shall not apply to a **timeshare**
11 developer registered under this Section, ~~solely acting for itself~~ as sole owner or sole
12 lessor ~~with reference to~~ **of** real estate solely owned or solely leased by the developer,
13 ~~or~~ a registered affiliated entity, ~~or a~~ registered wholly-owned subsidiary of the
14 developer, ~~or an,~~

15 **(2) The Louisiana Real Estate License Law shall not apply to an** existing
16 timeshare owner who, ~~for compensation,~~ refers prospective purchasers, ~~but only if~~
17 ~~the existing timeshare owner refers~~ **for compensation, provided that the existing**
18 **timeshare owner adheres to all of the following:**

19 **(a) Refers** no more than twenty prospective purchasers in any calendar year
20 ~~limits his or her,~~

21 **(b) Limits such** activities to referring prospective purchasers of timeshare
22 interests to the developer or the developer's employees or agents, ~~and does,~~

23 **(c) Does** not show, discuss terms or conditions, or otherwise participate in
24 negotiation with regard to timeshare interests.

25 §1437.2. Corporations; limited liability companies; partnerships; ~~real estate brokers'~~

26 **broker** licenses

27 A. Any corporation, limited liability company, or partnership formed under
28 the laws of this state or any foreign corporation, limited liability company, or
29 partnership ~~which~~ **that** has been granted a certificate of authority to do business in

1 this state may be granted a real estate broker's license by the commission upon
2 application and compliance with the requirements of this Chapter.

3 B. Every application for a ~~corporate~~ **real estate broker license issued to a**
4 **corporation**, limited liability company, or partnership ~~real estate broker's license~~
5 shall be submitted by a licensed individual real estate broker who has been chosen
6 by the corporation, limited liability company, or partnership as its qualifying broker.

7 **(1) An individual real estate broker may serve as a qualifying broker for more**
8 **than one corporation, limited liability company, or partnership.**

9 **(2) A corporation, limited liability company, or partnership may**
10 **designate a new qualifying broker at any time, as provided in R.S. 37:1441(C).**

11 C. ~~Upon dissolution, a corporation, limited liability company, or partnership~~
12 ~~shall return the license of the designated qualifying broker, and the license of every~~
13 ~~sponsored licensee to the commission within ten days of the dissolution. A~~
14 **corporation, limited liability company, or partnership shall notify the**
15 **commission within five calendar days of its dissolution, accompanied by notice**
16 **of the termination of the broker license, as provided in R.S. 37:1441, for each**
17 **sponsored licensee, at which time the commission shall cancel the real estate**
18 **broker license of the corporation, limited liability company, or partnership,**
19 **thereby prohibiting such entity from performing any act for which a real estate**
20 **broker license is required.**

21 D. ~~Upon termination of a qualifying broker's affiliation with a corporation,~~
22 ~~limited liability company, or partnership for any reason, the corporation, limited~~
23 ~~liability company, or partnership shall notify the commission and designate a new~~
24 ~~qualifying broker within five working days. A corporation, limited liability company,~~
25 ~~or partnership may designate a new qualifying broker at any time.~~

26 E. ~~Upon the merger or consolidation with another A corporation, limited~~
27 ~~liability company, or partnership, the corporation, limited liability company, or~~
28 ~~partnership shall notify the commission not later than **within** five **working calendar**~~
29 ~~days following the effective date of the merger or consolidation **with another**~~

1 **corporation, limited liability company, or partnership.**

2 §1437.3. Inactive license

3 A. ~~Effective January 1, 1990, an~~ **An** inactive license status shall be
4 established.

5 B. Any licensee in good standing with the commission may elect to place his
6 license in an inactive license status ~~with the commission provided he applies for a~~
7 ~~transfer to an inactive status and remits~~ **by submitting the appropriate transfer**
8 **application and remitting** the applicable fees as set forth in this Chapter. Former
9 licensees ~~may, within~~ **Within** the ~~six-month~~ **three-month** delinquency period
10 **immediately following the expiration of the last active license** and upon payment
11 of appropriate renewal and inactive license transfer fees, **former licensees may**
12 transfer their license to **the** inactive status.

13 C. During the period the license is in **the** inactive status, the licensee shall be
14 prohibited from engaging in any activity requiring a real estate license. The licensee
15 shall be required to renew the inactive license on a ~~yearly~~ **an annual** basis by filing
16 the required renewal application and paying the ~~annual~~ inactive renewal fees as
17 specified in this Chapter.

18 D. The licensee may request transfer from inactive status to active status at
19 any time, provided the inactive license ~~has been renewed as provided for in this~~
20 ~~Chapter and~~ is current at the time the request is received at the commission.

21 E. An inactive licensee will not be required to fulfill the continuing education
22 requirement established for active licensees on a yearly basis; however, upon
23 application to return to active license status the licensee must have completed the
24 continuing education specified ~~in the following Paragraphs~~ **as follows:**

25 (1) **Licensees remaining in the active status for less than one year shall**
26 **have completed the twelve hour continuing education requirement for the**
27 **previous year.**

28 (2) Licensees remaining in the inactive status from one to five years shall
29 complete the number of **continuing education** hours ~~of continuing education~~

1 specified **herein** for the ~~period~~ **following periods** of inactivity indicated below:

2 (a) One to **less than** three years ~~of~~ **in the** inactive status - twenty hours of
3 continuing education.

4 (b) Three to **less than** five years ~~of~~ **in the** inactive status - forty hours of
5 continuing education.

6 ~~(2)~~**(3)** If the licensee remains in the inactive status for two to five renewal
7 periods, ~~he~~ **the licensee** must complete a four-hour course covering Louisiana real
8 estate license law ~~and~~ **or** commission rules and regulations as part of the hours
9 specified in Paragraph ~~(1)~~ **(2)** of this Subsection to be eligible to return to active
10 license status. ~~This~~ **The** required four-hour course must be completed within one
11 year prior to the date of the **license** transfer ~~of the license~~ to the active status.

12 ~~(3)~~**(4)(a)** The licensee may remain in the inactive license status indefinitely,
13 provided ~~he~~ **the licensee** complies with the ~~yearly~~ **annual** inactive renewal
14 procedures. Licensees remaining ~~on~~ **in the** inactive status for ~~longer than a five-year~~
15 ~~period~~ **with five or more years shall** be required to complete a maximum of eighty
16 hours of approved continuing education within the five-year period immediately
17 preceding the request to return to active license status.

18 **(b)** Such continuing education shall include a four-hour Louisiana real estate
19 license law ~~and~~ **or** commission rules and regulations course ~~which must~~. **The course**
20 **shall** be completed within one year prior to the date of the **license** transfer ~~of the~~
21 ~~license~~ to the active status.

22 ~~(c)~~ ~~However, any applicant who~~ **Any licensee that** has continued to obtain
23 **annual** continuing education in the required areas during the period that ~~he~~ **the**
24 **licensee** is in **the** inactive status may cumulate those hours and be eligible to
25 ~~reactivate his license~~ **transfer to the active status** at any time.

26 ~~(4)~~**(5)** Any request by an inactive licensee to transfer to active status shall be
27 accompanied by payment of the prescribed fees and proof of completion of the
28 applicable continuing education hours.

29 §1438. Applicability

1 A. The provisions of this Chapter shall not apply to:

2 (1) Any **unlicensed** person, partnership, limited liability company,
3 association, or corporation, foreign or domestic, ~~which has not been granted a real~~
4 ~~estate license in Louisiana and which, as owner or lessor, either individually or~~
5 ~~through an employee or representative and performs acts of ownership with~~
6 ~~reference to property owned by him, except persons in the business of selling or~~
7 ~~managing timeshare interests.~~ **provided that the following requirements are met:**

8 **(a) The unlicensed person, partnership, limited liability company,**
9 **association, or corporation, foreign or domestic, is the owner or lessor of the**
10 **property.**

11 **(b) The unlicensed person, partnership, limited liability company,**
12 **association, or corporation, foreign or domestic, performs acts of ownership**
13 **regarding the property, either individually or through an employee or**
14 **representative.**

15 **(c) The provisions of this Section shall not include any unlicensed person,**
16 **partnership, limited liability company, association, corporation, foreign or**
17 **domestic, in the business of selling or managing timeshare interests.**

18 (2) The service rendered by an attorney at law on behalf of a client ~~which~~
19 **that** may be required in the normal course of other legal representation.

20 (3) A receiver, trustee in bankruptcy, administrator, executor, tutor, or civil
21 sheriff for any parish of this state.

22 (4) A trustee selling under a deed of trust or a mortgage.

23 (5) Any individual, corporation, partnership, trust, limited liability company,
24 joint venture, or other entity ~~which~~ **that** sells, exchanges, leases, or manages its own
25 property, except persons, corporations, partnerships, trusts, limited liability
26 companies, joint ventures, and other entities ~~who~~ **that** are in the business of selling
27 timeshare interests.

28 (6) Any salaried person employed by a licensed real estate broker for and on
29 behalf of the owner of any real estate ~~which~~ **that** the licensed broker has contracted

1 to manage for the owner, if the salaried employee is limited in his employment to **the**
 2 **following:**

3 (a) Delivering a lease application, a lease, or any amendment thereof to any
 4 person.

5 (b) Receiving a lease application, lease, or amendment thereof, a security
 6 deposit, rental payment, or any related payment for delivery to and made payable to
 7 a property manager or owner.

8 (c) Showing a rental unit to any person, as long as the employee is acting
 9 under the direct instructions of the broker, including the execution of leases or rental
 10 agreements, provided the broker is responsible for the actions of his employees.

11 (d) Providing information about a rental unit, a lease, an application for lease,
 12 or the status of a security deposit or the payment of rent to any person.

13 (e) Assisting in the performance of property management functions by
 14 carrying out administrative, clerical, or maintenance tasks.

15 (7) Any person employed by a housing authority to manage its property or
 16 otherwise managing property of the Department of Housing and Urban
 17 Development, but only with respect to the management of such property.

18 (8) Any person managing agricultural property.

19 §1439. Issuance of license, certificate, or registration

20 A. Upon compliance with the provisions of this Chapter and with the rules
 21 and regulations of the commission, the commission shall issue the appropriate
 22 license, certificate, or registration and shall prescribe the form of such license,
 23 certificate, or registration.

24 ~~B. Each individual real estate broker's license and each corporation, limited~~
 25 ~~liability company, or partnership real estate broker's license shall show the name and~~
 26 ~~street address of the business and shall also show the mailing address of the business~~
 27 ~~if it is different from the street address~~ **A broker license issued to an individual,**
 28 **partnership, limited liability company, association, corporation, or other legal**
 29 **entity, shall include the business name, the street address of the business, and**

1 the mailing address of the business, if it is different from the street address.

2 C. Each sales or associate broker license shall ~~show the~~ include the
3 following information:

4 (1) The name of the licensee.

5 (2) The ~~license shall also show the~~ name of the sponsoring individual real
6 estate broker, or the name of the ~~corporation, partnership, or limited liability~~
7 ~~company or other entity~~ partnership, limited liability company, association,
8 corporation, or other legal entity, under which the license is issued.

9 (3) The license of each associate broker or salesperson shall be delivered ~~or~~
10 ~~mailed to and kept in the custody and control of~~ to the individual real estate broker
11 or ~~designated qualifying broker by whom the associate broker or salesperson is~~
12 ~~sponsored~~ the partnership, limited liability company, association, corporation,
13 or other legal entity, under which the license is issued in the manner and mode
14 determined by the commission.

15 D. Each timeshare developer registration shall ~~show~~ include the name and
16 street address of the developer and, ~~shall also show his~~ the mailing address of the
17 developer, if it is different from the street address.

18 E. Each timeshare sales registration shall ~~show the name and~~ include all of
19 the following information:

20 (1) The name of the sales registrant.

21 (2) The residential address of the sales registrant, and ~~shall also show his~~ the
22 mailing address of the sales registrant, if it is different from the residential address.

23 (3) Each individual timeshare sales registration shall ~~show the~~ The name of
24 the developer ~~by whom the registrant is employed~~ who employs the sales
25 registrant.

26 F. The timeshare sales registration shall be delivered ~~or mailed~~ to the
27 developer in the manner and mode determined by the commission and shall be
28 kept in the custody and control of that developer.

29 F. G.(1) Associate brokers, salespersons, and timeshare interest salespersons

1 shall not conduct any activities requiring ~~licensing or registering~~ **a license or**
 2 **registration** until ~~their~~ **such** license or registration has been issued and is in the
 3 custody of ~~their~~ **the** sponsoring broker or employing timeshare developer, ~~or.~~

4 **(2) This provision shall not apply if** the sponsoring broker or employing
 5 timeshare developer has received written authorization from the commission
 6 authorizing such activity pending the issuance of the license or timeshare registration
 7 by the commission.

8 * * *

9 §1441. Return of license or registration upon transfer or termination

10 A. When the ~~association~~ **sponsorship** of an associate broker or salesperson
 11 ~~with his sponsoring broker~~ is terminated ~~by either party~~ for any reason, the
 12 ~~sponsoring broker~~ **terminating party** shall ~~send the associate broker's or~~
 13 ~~salesperson's license, by hand delivery or by certified or registered mail,~~ **submit a**
 14 **form attesting to the termination** to the commission, within five **calendar** days of
 15 such termination.

16 ~~(1) No associate broker or salesperson shall act as such, either directly or~~
 17 ~~indirectly, under authority of such license after the date the license has been~~
 18 ~~dispatched to the commission.~~ **Upon submission of a form indicating the**
 19 **termination of sponsorship, the license of an associate broker or salesperson**
 20 **shall no longer be in force or effect, and the associate broker or salesperson**
 21 **shall be prohibited from conducting real estate activities, as defined in this**
 22 **Chapter, until such time as the associate broker or salesperson obtains a new**
 23 **sponsoring broker.**

24 **(2) Such An** associate broker or salesperson, ~~upon sponsorship by another~~
 25 ~~licensed broker,~~ **whose sponsorship has been terminated,** shall be entitled to **a**
 26 **license** ~~transfer the license upon written request~~ **submission of a form indicating**
 27 **the transfer to a new broker to the commission** and payment of the required fee;
 28 ~~however, not more than one license shall be issued to any associate broker or~~
 29 ~~salesperson for the same period of time.~~

1 B.~~(1)~~ When the association **affiliation** of a timeshare sales registrant with his
 2 a registered developer is terminated ~~by either party~~ for any reason, the developer
 3 shall send the sales registration certificate, by hand delivery or certified or registered
 4 mail, to **notify** the commission **in writing** within five days of such termination.

5 (2) Any timeshare sales registrant, ~~who wishes to begin a new business~~
 6 ~~relationship with another developer~~ **whose affiliation with a registered developer**
 7 **has been terminated**, shall notify the commission, in writing ~~and by certified or~~
 8 ~~registered mail~~, prior to beginning that business relationship **an affiliation with**
 9 **another registered developer**.

10 (3) ~~No timeshare sales registrant shall act as such, either directly or~~
 11 ~~indirectly, under authority of such registration after the certificate has been~~
 12 ~~dispatched to the commission. Such timeshare registrant shall, upon acceptance by~~
 13 ~~a new developer, be allowed to transfer his registration to that developer upon receipt~~
 14 ~~of all appropriate fees and paperwork.~~ **When an affiliate timeshare sales registrant**
 15 **is terminated by a registered timeshare developer, such sales registration shall**
 16 **no longer be in force or effect, until such time that the commission receives a**
 17 **written notice that the timeshare sales registrant is affiliated with a new**
 18 **developer and the prescribed fees have been remitted.**

19 C. When the association ~~of~~ **between** a designated qualifying broker ~~with~~ **and**
 20 ~~a corporation, limited liability company, or partnership,~~ **limited liability company,**
 21 **association, corporation, or other legal entity, foreign or domestic**, is terminated
 22 ~~by either party~~ for any reason, the following actions shall be taken:

23 (1) **The terminating party shall submit a copy of the letter or resignation**
 24 **or termination to the commission, within five calendar days of such termination.**

25 (2) The designated **outgoing** qualifying broker shall notify all associate
 26 brokers and salespersons sponsored by him in writing by certified or registered mail
 27 **sponsored licensees within five calendar days** of the termination, **including** and
 28 the effective date, **by certified or registered mail** of the termination.

29 (2)(3) Neither the licensed ~~corporation, limited liability company, or~~

1 partnership, limited liability company, association, corporation, or other legal
 2 entity, foreign or domestic, nor any associate broker or salesperson licensee
 3 sponsored by the terminated ~~designated~~ qualifying broker, shall engage in any real
 4 estate activity requiring ~~licensing~~ a license until a new qualifying broker has been
 5 designated by the ~~corporation, limited liability company, or partnership,~~ limited
 6 liability company, association, corporation, or other legal entity, foreign or
 7 domestic and the designation has been reflected in the files of the commission.

8 (4) Upon termination of a qualifying broker's association with a
 9 partnership, limited liability company, association, corporation or other legal
 10 entity, foreign or domestic, such entity shall designate a new qualifying broker
 11 and shall notify the commission by submission of a form indicating the
 12 designation of such broker within five calendar days of the termination.

13 ~~(3)~~(5) Upon designation of a new qualifying broker, the outgoing qualifying
 14 broker shall ~~deliver~~ provide custody of the licenses of all sponsored licensees to the
 15 new designated qualifying broker.

16 ~~(4)~~(6) ~~The new designated qualifying broker shall inform all associate~~
 17 ~~brokers or salespersons licensed with the corporation, limited liability company, or~~
 18 ~~partnership in writing~~ All sponsored licensees of the partnership, limited liability
 19 company, association, corporation, or other legal entity, foreign or domestic
 20 shall be informed of the change in the designation of a qualifying broker,
 21 including the effective date, by certified or registered mail, ~~of his designation as~~
 22 ~~qualifying broker and of the effective date of the designation~~ not later than five
 23 calendar days following the effective date of the designation.

24 ~~(5)~~ ~~The outgoing qualifying broker shall return his license as qualifying~~
 25 ~~broker for the corporation, limited liability company, or partnership to the~~
 26 ~~commission within five days following the effective date of the designation of the~~
 27 ~~new qualifying broker.~~

28 * * *

29 §1443. Fees

1 The commission may charge:

2 (1) Initial fees for licensing or certification:

3 * * *

4 (f) Instructor **application**/certification \$ 35.00

5 * * *

6 (4) Delinquent fees, in addition to the renewal fee, if not renewed by

7 December thirty-first of the applicable license, registration, or certification period:

8 (a) January 1 - February 15 **Active and inactive Licensees** \$ 50.00

9 (b) February 16 - March 31 **Active Licensees** \$ 200.00

10 (c) **February 16 - March 31 Inactive Licensees** **\$ 50.00**

11 (d) **January 1 - January 31 Real estate schools, vendors, and**
12 **pre-license instructors** **\$ 50.00**

13 * * *

14 §1446. Compensation; independent contractor status of salespersons and associate
15 brokers

16 A. No payment of a commission or compensation shall be made by any
17 licensee or registrant to any person who has not first secured ~~his~~ **a** license or
18 registration under the provisions of this Chapter. This Subsection shall not apply to
19 a **nonresident** broker who is currently licensed in his state of residence.

20 B. No payment of a commission or other compensation shall be made by any
21 broker to any licensee ~~or registrant~~ when the paying broker has knowledge that the
22 receiving licensee ~~or registrant~~ has agreed to pay or intends to pay or otherwise
23 deliver a portion of the commission or compensation to an unlicensed person or
24 entity.

25 C. Associate brokers, salespersons, and timeshare interest salespersons shall
26 not pay or offer to pay any commission or valuable consideration for the
27 performance of any act herein specified.

28 D. Payment of **a** commission or compensation may be made to and accepted
29 by former licensees and registrants for transactions negotiated by them while duly

1 licensed or registered by the commission.

2 E. ~~Current licensees who transfer their licenses from one broker to another~~
3 ~~broker~~ **An active licensee** may accept compensation from their former broker for
4 ~~business transactions which~~ **transactions that** were instituted **initiated by the**
5 **licensee** while **under sponsorship of a former sponsoring or qualifying** broker,
6 so long as **provided that** the compensation is transmitted through ~~their~~ **the** current
7 sponsoring **or qualifying** broker.

8 F. ~~Associate brokers and salespersons~~ **An active real estate licensee** shall not
9 accept a commission or other valuable consideration for the performance of any act
10 herein specified, or for performing any act relating thereto, from any person, except
11 their sponsoring or qualifying broker.

12 G. Associate brokers and salespersons may assign or direct that commissions
13 or other compensation earned in connection with a real estate transaction be paid by
14 their licensed sponsoring broker to an unlicensed corporation of which the associate
15 broker or salesperson is the sole officer, director, and shareholder, or an unlicensed
16 limited liability company of which the associate broker or salesperson is the sole
17 manager.

18 H. A **sponsored** real estate ~~salesperson or associate~~ **licensee** shall be an
19 independent contractor of the **sponsoring or qualifying** broker ~~with whom he is~~
20 ~~affiliated~~ for all purposes and shall not be an employee of the **sponsoring or**
21 **qualifying** broker, if all of the following conditions are met:

22 (1) The real estate salesperson or associate broker is a licensee.

23 (2) Substantially all of the ~~real estate salesperson's or associate broker's~~
24 **sponsored licensee's** remuneration for the services performed is directly related to
25 sales or other output rather than the number of hours worked.

26 (3) There is a written agreement between the ~~real estate salesperson or~~
27 ~~associate broker~~ **sponsored licensee** and the **sponsoring or qualifying** broker that
28 specifies that the ~~real estate salesperson or associate broker~~ **sponsored licensee** will
29 not be treated as an employee.

* * *

§1449. Broker to insure provision of contract; retention of records

A. Licensees acting in the capacity of an agent or subagent, and registrants shall insure that their respective principal party signing any document in a real estate transaction is provided a copy of the document immediately after the signing of the document.

B. Licensees and registrants shall insure that persons signing any document in a real estate transaction ~~which~~ **that** pertains to more than one party are provided with a copy of the completed document bearing the signatures of all parties to the transaction within five days after the final signature is affixed to the document.

C. Written agreements for the sale or management of real estate shall specify a definite expiration date ~~which~~ **that** shall not be subject to qualifying terms or conditions.

D.**(1)** Individual real estate brokers shall retain **all of the following records**, readily available and properly indexed, for a period of five years,~~the bank:~~

(a) Bank statements, copies of deposit slips, and cancelled checks on all escrow or trust accounts ~~and copies.~~

(b) Copies of all documents ~~which~~ **that pertain** in any way ~~pertain~~ to real estate transactions wherein ~~they~~ **the individual real estate broker** or licensees sponsored by ~~them~~ **the individual real estate broker** have appeared in a licensing capacity.

(2) ~~This requirement~~ **The requirement regarding copies** shall not be altered by the ~~change of status~~ **transfer** of a broker to that of an associate broker, ~~or an unlicensed person, or transfer to inactive status~~ **an inactive license**.

E.**(1)** ~~Corporate, limited liability company, and partnership~~ **Partnerships, limited liability companies, associations, corporations, or other legal entities, foreign or domestic** real estate brokers shall ~~maintain~~ **retain the following records**, readily available and properly indexed, for a period of five years,~~the bank:~~

(a) Bank statements, copies of deposit slips, and cancelled checks on all

1 escrow or trust accounts ~~and copies.~~

2 (b) Copies of all documents ~~which~~ that pertain in any way ~~pertain~~ to real
3 estate transactions wherein ~~they, their~~ the partnership, limited liability company,
4 association, corporation, or other legal entity, foreign or domestic, the
5 designated qualifying broker, or licensees sponsored by ~~them~~ same, have appeared
6 in a licensing capacity.

7 (2) This requirement, regarding copies, shall not be altered by the ~~failure of~~
8 ~~the corporate, limited liability company, or partnership,~~ limited liability company,
9 association, corporation, or other legal entity, foreign or domestic, real estate
10 ~~brokers to renew their license or the transfer of~~ transferring the broker license to
11 the inactive status or failure to renew such license.

12 * * *

13 §1451. Death or incapacity of a real estate broker

14 A. ~~In the event of the death of a sponsoring broker, any associate broker~~
15 ~~affiliated with the deceased broker or, in the absence of an associate broker, a~~
16 ~~salesperson sponsored by the deceased broker, may, after proper notification to and~~
17 ~~approval in writing by the commission, complete, carry out, and enforce any~~
18 ~~contracts to which the deceased broker was a party. The commission shall be~~
19 notified in writing when a sponsoring broker dies and shall have the authority
20 to appoint an active licensed associate broker or salesperson to complete, carry
21 out, and enforce any incomplete real estate business activities of the deceased
22 sponsoring broker, including real estate contracts left pending at the time of the
23 death.

24 (1) The associate broker or salesperson shall immediately notify all
25 sponsored licensees that the sponsoring broker has died. Such notice shall
26 advise the sponsored licensees that no new contracts shall be instituted.

27 (2) In the absence of any sponsored licensees, the commission shall have
28 the authority to appoint an active licensed broker to complete, carry out, and
29 enforce any incomplete real estate activities of the deceased sponsoring broker,

1 including real estate contracts left pending at the time of the death.

2 B. ~~The associate broker or salesperson approved by the commission to~~
3 ~~complete the real estate business activities of the deceased sponsoring broker shall:~~

4 (1) ~~Immediately notify all sponsored licensees of the death of the broker.~~

5 (2) ~~Advise all sponsored licensees that no new contracts shall be instituted~~
6 ~~and that their licenses shall be returned to the commission.~~

7 (3) ~~Return the licenses of the sponsored licensees to the commission within~~
8 ~~five days.~~

9 C. ~~In the event that a deceased broker did not have any sponsored licensees,~~
10 ~~the commission may designate a broker to monitor any pending real estate~~
11 ~~transactions initiated by the deceased broker.~~

12 D. In the event of the physical or mental impairment of an individual real
13 estate broker, the commission ~~may~~ **shall have the authority to** appoint another
14 individual real estate broker to complete, carry out, and enforce any **incomplete real**
15 **estate business activities of the impaired sponsoring broker, including real**
16 **estate** contracts ~~to which the impaired broker was a party~~ **left pending at the time**
17 **of the impairment.**

18 E.C. In the event of the physical or mental impairment of a sponsoring
19 broker, an associate broker or, in the absence of an associate broker, a salesperson
20 sponsored by the broker may be appointed by the commission to temporarily assume
21 the duties and responsibilities of the broker.

22 F.D. In the event of the death or physical or mental incapacity of a qualifying
23 broker, the commission shall be immediately notified and the licensed corporation,
24 limited liability company, or partnership shall appoint a new qualifying broker
25 within five days.

26 * * *

27 §1465. Real estate franchises

28 No ~~A~~ **A** person, partnership, limited liability company, **association,** or
29 corporation, **foreign or domestic, acting in the capacity of a franchisor** shall, ~~as~~

1 a franchisor, **not** enter into a franchise agreement with a real estate broker in this
 2 state unless the franchisor has appointed a Louisiana licensed real estate broker to
 3 act as its representative in this state ~~and registered with the commission in the~~
 4 ~~manner the commission requires by regulation.~~

5 §1466. Errors and omissions insurance; mandatory for all licensees

6 * * *

7 F. ~~Each licensee shall be notified of the required terms and conditions of~~
 8 ~~coverage for the annual policy at least thirty days prior to the annual renewal date.~~
 9 ~~A certificate of coverage, showing compliance with the required terms and~~
 10 ~~conditions of coverage, must be filed with the commission by the annual license~~
 11 ~~renewal date by each An active licensee who opts not to participate in the group~~
 12 ~~insurance program administered by the commission that elects to obtain~~
 13 ~~independent errors and omissions insurance shall file a form verifying that they~~
 14 ~~have independent coverage, as prescribed by the commission, with the annual~~
 15 ~~license renewal.~~

16 * * *

17 Section 2. R.S. 37:1435(C)(3) and 1443(3)(g) are hereby repealed.

The original instrument was prepared by Mary Dozier O'Brien. The following digest, which does not constitute a part of the legislative instrument, was prepared by Linda Nugent.

DIGEST

SB 259 Reengrossed

2016 Regular Session

White

Present law provides wide powers for the Louisiana Real Estate Commission regarding licensing and certification and the duties of those involved in the real estate business in Louisiana.

Proposed law provides that the commission may grant the following credentials: real estate broker license, real estate salesperson license, real estate school or vendor certification, timeshare interest salesperson registration and real estate instructor approval/certification.

Present law provides for the granting of general commission powers as to brokers and timeshare developers.

Proposed law includes all licensees, registrants, and certificate holders.

Present law provides prohibitions for individual licensees, registrants, and certificate holders.

Proposed law provides that partnerships, limited liability companies, associations,

corporations are prohibited from conducting any real estate activities for valuable consideration without a license.

Present law provides that certain actions taken in the area of timeshare interests are prohibited without a license.

Proposed law adds the creation of a timeshare plan to the list of proscribed actions.

Present law requires four years experience as a real estate salesperson as a prerequisite for licensing.

Proposed law provides that experience required for a broker's license shall include two of the four years immediately precede the application for a broker's license.

Present law provides relative to liability of a timeshare developer for actions of brokers and timeshare salespersons.

Proposed law disallows a previous waiver of liability of timeshare developers for actions of brokers and timeshare salespersons on the basis that they operate as independent contractors.

Present law provides with respect to the dissolution of a legal entity engaged in timeshare development.

Proposed law provides that upon dissolution of any legal entity in possession of a broker's license to notify the commission within five days of the dissolution.

Present law provides for the categories of active and inactive license.

Proposed law provides requirements for moving from an inactive license to active, including continuing education requirements.

Present law provides that provisions of the licensing law shall not apply to certain unlicensed entities.

Proposed law provides specific guidelines for unlicensed entities not bound by the Louisiana Real Estate Licensing Law.

Present law provides relative to the issuance of a real estate broker license.

Proposed law provides for individual, partnership, limited liability company, association, corporation and other legal entities in the provisions regarding issuance of licenses.

Present law provides relative to timeshare sales registrant and timeshare developer requirements as they relate to real estate licensing law.

Proposed law adds requirements regarding the licensing of brokers and salespersons as they function in the area of timeshare properties.

Present law provides for the return of licenses or registrations upon transfer or termination.

Proposed law provides requirements particularly regarding the termination of sponsorship of associate brokers and salespersons.

Present law provides for a fee schedule.

Proposed law revises fee schedule and adds certain fees, particularly as to active and inactive licenses and real estate schools, vendors, and pre-license instructors.

Present law provides relative to the death of a sponsoring broker.

Proposed law provides that the commission may appoint an active license broker to complete transactions pending at the time of the death.

Present law provides that the commission may promulgate and enforce rules and qualifications relative to applications for licenses or registration.

Proposed law deletes this language and provides that the commission may adopt all necessary rules and by-laws for the administration and enforcement of the law.

Effective August 1, 2016.

(Amends R.S. 37:1433, 1435(C)(1) and (2), (D), (E), (F) and (H), 1436, 1437, 1437.1(A), (B), (C), (D), (F), and (G), 1437.2, 1437.3, 1438, 1439, 1441, 1443(1)(f) and (4), 1446, 1449, 1451, 1465, 1466(F); repeals R.S. 37:1435(C)(3) and 1443(3)(g))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Revised language relative to persons and entities desiring to conduct real estate activity applying for license.
2. Lowered fee relative to certain inactive licensees from \$200 to \$50.

Senate Floor Amendments to engrossed bill

1. Technical amendments.