



Maryland  
**REAL ESTATE**  
Practice & Law

**FIFTEENTH EDITION**

Donald A. White

**Dearborn™**  
Real Estate Education

# Maryland Real Estate Practice & Law

15th Edition

Donald A. White

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# PREFACE

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As a student entering a real estate prelicensing course, you face exciting challenges. You must learn a large body of theory and understand how it applies to real estate practice. You will want to know legal principles and real estate theory so well that when you get your license, you will be able to do the right thing almost automatically.

If you fail to understand and appreciate law and theory, you can suffer devastating financial and legal consequences. On the other hand, if you build your educational foundation in real estate carefully, you should be able to make the money you want and not lose the money you've made through costly mistakes.

The purpose of this book is to present, as clearly as possible, many of the laws and operating requirements for real estate brokerage in the State of Maryland. It builds on basic information presented in Dearborn™ Real Estate Education's real estate principles texts. The author has been careful to avoid duplicating information presented in the principles texts. Therefore, you should study each subject area in *both* the national text and in this book.

When you have completed each unit, be certain that you can both *answer* every question and *understand* the explanations given in the answer keys found at the end of the book.

You will want to make frequent use of the Appendix "Maryland Real Estate-Related Websites." It contains several carefully chosen "hub" sites that give you access to multiple official sources for real estate law and regulation at various levels of government.

While the author has exercised care in providing information pertaining to the laws governing the practice of real estate in Maryland, the reader is urged to consult with legal counsel regarding any statutory enactment and should not rely solely on this publication as legal authority for compliance with any statute.

Throughout your real estate course, you'll be studying and taking practice tests in preparation for the Maryland Real Estate Licensing Examination. That examination is prepared and administered for the State Real Estate Commission by an independent testing service, PSI Examination Services, Inc., Las Vegas, Nevada. *Maryland Real Estate Practice & Law* is designed to familiarize you with the Maryland-specific subject matter you will find on that examination. The questions at the end of each unit are prepared in a multiple-choice format similar to the one used in the licensing examination.

The statutes and regulations discussed in this book are those enacted at the time of its publication.

## ACKNOWLEDGMENTS

The publishers would like to thank Donald A. White, the original author of this textbook. Mr. White, who was first licensed as a real estate salesperson in 1967, also taught licensing courses at Prince George's Community College from 1972 to 2013 and was a charter member of the Real Estate Educators Association.

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# UNIT



## Maryland Real Estate License Laws and Related Regulations

### OVERVIEW

In this unit, you are provided with licensing requirements, fees, statuses, and renewal requirements, including continuing education. Topics addressed include the duties and powers of the Maryland Real Estate Commission (MREC), prohibited acts outlined in our license laws and what it entails to receive and maintain a real estate license. In addition, the contributions made to regulating the industry by statutory law (Title 17 Maryland Real Estate Broker's Act) and administrative law (COMAR regulations) are covered.

In this unit, as throughout the book, this information is not only basic to passing the State licensing examination but also essential guidance for proper conduct of real estate licensees in their everyday life.

### LEARNING OBJECTIVES

*When you have completed this unit, you will be able to*

- › **explain** the role of the Maryland Real Estate Commission and the types of licenses it issues,
- › **list** the requirements needed to obtain a real estate license in Maryland,
- › **list** the prohibited acts pertaining to the practice of real estate in Maryland and their consequences, and
- › **identify** additional regulations affecting the real estate industry in Maryland.

### KEY TERMS

affiliate  
administrative law  
associate brokers  
brokers  
clock hours  
Code of Maryland  
Regulations (COMAR)  
common law  
continuing education

executive director  
General Assembly  
guaranty fund  
inactive status  
irrevocable consent  
Maryland Real Estate  
Commission (MREC)  
nonresidential property  
pocket cards

real estate  
reciprocity agreements  
red flags  
reinstatement  
salespersons  
statutory law  
summary actions  
Title 17

## HISTORY AND SOURCES OF MARYLAND LICENSE LAW

The Maryland Real Estate Brokers Act, a law designed to protect the public interest, became effective June 1, 1939. Since then, there have been frequent revisions. All the work of real estate licensees is affected by this important statute. It is, therefore, the basis of much of this unit.

The Maryland Real Estate Brokers Act appears as Title (Chapter) 17 in the *Business Occupations and Professions* Article of the Annotated Code of Maryland. This textbook refers to that statute as the “Brokers Act” and as “**Title 17.**” It is helpful to note that each book that contains Maryland law is called an *Article*; each article is divided into chapter-like *titles*.

Real estate brokerage is governed both by **statutory law**, such as the Brokers Act mentioned previously, and by **administrative law**, found in the **Code of Maryland Regulations (COMAR)**. Regulations governing the practice of real estate brokerage are enacted and enforced by the Maryland Real Estate Commission (MREC)—a body within the executive branch of government. The Maryland Real Estate Brokers Act was enacted by the legislative branch of Maryland government: the **General Assembly**. Therefore, it is an example of statutory (legislative) law, while COMAR is administrative law.

In addition to statutes and regulations, some aspects of common law apply to real estate brokerage in Maryland. **Common law** is called the *unwritten law* because it is not written by a legislative body; it is found in numerous volumes of decisions from courts of appeal. That’s where the unwritten law is written. Such court decisions are needed in situations for which no relevant statute exists or when an existing statute is challenged as unconstitutional. They also arise in cases of ambiguity where uncertainty of language or intent makes a statute difficult to apply.

On occasion, older laws no longer seem to make sense to the courts called on to give their opinions. Judges may then “modernize” the law. This is in contrast to strict construction, which takes statutes at their face value and defers to the original intention of their writers. For example, in 1965, the U.S. Supreme Court held that the Civil Rights Act of 1866 still applied literally—word for word—and was still the law of the land almost a century after it was written. Their decision was an example of strict construction and greatly advanced the cause of civil rights.

Statutes are voted into law by legislative bodies, but common law is handed down by judges. Decisions made by courts of appeal become binding on lower courts within their judicial area. The higher the court of appeal making a decision, the more numerous the lower courts in which that decision becomes the standard—the precedent—for their decisions.

The Maryland Real Estate Commission, one of the largest licensing boards within the Department of Labor, Licensing, and Regulation, adopts and enforces regulations to implement the Brokers Act. These regulations are administrative law. Regulations apply statutes to the details of particular situations. The Code of Maryland Regulations contains regulations adopted by all 18 of Maryland’s licensing boards.

The Brokers Act and regulations from COMAR relating to real estate can be found in many college and public libraries in bound volumes in the legal reference section. They are also available to the public through the Real Estate Commission website: [www.dllr.state.md.us/license/law/mreclaw.shtml](http://www.dllr.state.md.us/license/law/mreclaw.shtml).

## DEFINITIONS OF TERMS [§ 17-101]

As used in Title 17, certain terms have specific definitions that apply to either a section of the law or the entire statute. For example, a real estate broker is defined as an individual who provides real estate brokerage services. *Consideration* in this section refers to *compensation* (payment) for brokerage services, defined as any of the following acts:

- For consideration and for another person—selling, buying, exchanging, or leasing any real estate or collecting rent for its use
- For consideration, assisting another person to locate or obtain for purchase or lease any residential real estate
- Engaging regularly in a business of dealing in real estate or leases or options on real estate
- Engaging in a business, the primary purpose of which is promoting the sale of real estate through a listing in a publication issued primarily for promotion of real estate sales
- Engaging in a business that subdivides land located in any state into lots and then selling those subdivided lots
- For consideration, serving as a consultant for any of the activities in this list

Although Maryland law generally defines *persons* as “individuals, receivers, trustees, guardians, personal representatives, fiduciaries, or representatives of any kind and any partnership, firm, association, or other entity,” only natural persons (individuals) may hold Maryland real estate licenses. However, a broker’s license, rather than showing the broker’s actual name, may show the name under which the broker is operating—typically a company name. This is called the broker’s designated name. Branch offices are issued certificates rather than licenses. Time-share licenses are issued to brokerage firms that deal in time-shares.

In the statute and in this book, *Commission* refers to the State Real Estate Commission. When the term *licensed* is used, it refers to the status of an individual licensed by that Commission.

## LICENSES AND CERTIFICATES ISSUED BY THE COMMISSION (TITLE 17, SUBTITLE III)

The Commission issues three levels of license for individuals delivering real estate brokerage services: broker, associate broker, and salesperson. It issues branch office certificates. It also registers time-share developers. Currently, there are almost 43,000 active licensees, including more than 4,300 brokers, 3,000 associate brokers, and 35,300 salespersons; these totals do not include inactive licenses. Licenses may be kept on inactive status no longer than three years, after which they expire. Expired licenses are then held three years from the date of their expiration, during which time they may be reinstated as discussed later in this unit. Persons named on inactive or expired licenses may not perform acts of real estate brokerage. For instance, they may not receive compensation from participation in referral companies.

In addition to the three basic levels of license, each level has subtypes. Broker licenses may be resident, nonresident, reciprocal, or temporary/for commercial only. Associate broker and salesperson licenses include resident, nonresident, and reciprocal. (Maryland has reciprocal licensing agreements only with Pennsylvania and Oklahoma.) In addition to being licensed, some associate brokers and salespersons may also be *registered* to manage branch offices.

To have an active license, a salesperson or an associate broker must be affiliated with and under the authority of a licensed broker. Individuals affiliate with **brokers** either as employees or nonemployees of their broker. Currently, the vast majority of Maryland real estate brokerage affiliates are in a nonemployee relationship with their brokers. Affiliates, although fully subject to supervision and control by their brokers, can still meet Internal

Revenue Service (IRS) requirements for qualified real estate agent—also called statutory nonemployees—and be treated as self-employed from the point of view of reporting income for taxation.

Affiliates meet the IRS requirements for statutory nonemployee (self-employed) status when their broker does not withhold federal or state income taxes or pay their Social Security or Medicare assessments. Affiliates' paychecks are "net" to them, leaving them responsible for paying all of their own taxes. Section 3508 of the IRS Code specifies that such qualified real estate agents may report their income as "self-employed" persons using Schedule 1040C. To be recognized as a qualified real estate agent, affiliates must

- be licensed real estate agents (hold an active real estate license);
- receive "substantially all"—meaning at least 90%—of their brokerage remuneration for production rather than for hours worked; and
- act pursuant to written contracts with their brokerage firms, which state that, for federal tax purposes, the affiliates will not be treated as employees.

Throughout this book, *affiliate* (the noun) refers either to a licensed associate broker or a licensed salesperson. **Associate brokers** are individuals who have met the educational, experience, and testing requirements for becoming real estate brokers but who request licenses that authorize them to provide real estate brokerage services only under a broker with whom they affiliate as associate brokers. Despite their education and experience, their duties and authority are no greater than those of salespersons. **Salespersons** and associate brokers are individuals who aid brokers, with whom they are affiliated, in providing real estate brokerage services. Salespersons and associate brokers are *general agents* of their broker. Note, however, that brokers are *special agents* of their clients.

**Real estate**, as used in the Brokers Act, is defined as any interest in real property anywhere. It even includes interests in condominiums, time-share estates, and time-share licenses, as those terms are defined in the *Real Property* Article, as well as fee estates and life estates.

In the Brokers Act, the term *state* refers to any state in the United States, its territories, possessions, or the District of Columbia. In this book, when *State* is capitalized, it refers to the State of Maryland. In the statute, *Department* refers to the Department of Labor, Licensing, and Regulation under whose authority the Commission operates. *Secretary* refers to the chief executive of that department.

## Persons Not Subject to the Brokers Act When Performing Acts of Real Estate Brokerage [§ 17-102]

Certain persons are permitted to perform real estate brokerage activities without being licensed or governed by the provisions of the Brokers Act. However, like all persons in the State, they are governed in their real estate dealings by other Maryland laws, such as those in the *Real Property* Article. Examples are

- persons acting under a judgment or order of a court;
- public officers performing the duties of their office;
- landlords or owners of any real estate, unless their primary business is providing real estate brokerage services;
- persons engaging in a single transaction selling or leasing real estate, if they are acting under a power of attorney executed by the owner of that real estate;

- auctioneers, licensed by various jurisdictions within Maryland, to sell real estate at public auction; and
- persons acting as receivers, trustees, personal representatives, or guardians.

### **Persons Who Must Conform to the Brokers Act When Performing Acts of Real Estate Brokerage Although They Are Not Required to Hold Brokerage Licenses [§ 17-301(b)]**

In contrast, other persons, when performing acts of real estate brokerage, are governed by and must still conform to the relevant requirements of the Brokers Act, although they need not hold real estate licenses. They are

- financial institutions in the leasing or selling of property they have acquired through foreclosure or by receiving a deed or an assignment in lieu of foreclosure;
- homebuilders in the rental or initial sale of homes they have constructed (although homebuilders and their salespersons must be registered with the Home Builder and Home Builder Sales Representative Registration Unit of the Consumer Affairs Division in the Office of the Attorney General);
- agents of a licensed real estate broker or of an owner of real estate, while managing or leasing that real estate for that broker or for the property's owner;
- persons who negotiate the sale, lease, or transfer of businesses when the sale does not include any interest in real property other than the lease for the property where the business operates; and
- owners who subdivide and sell not more than six lots of their own unimproved property in any one calendar year. (Note that if they or their family have owned the property for 10 years or more, there is no limit on the number of the lots they may sell.)

In 2016, legislation was put in place that narrows the exemption for lawyers. Presently, lawyers can only share in a real estate commission if they are licensed in Maryland and provide real estate services to another person in the course of their regular practice of law.

## **THE MARYLAND REAL ESTATE COMMISSION (MREC) [§§ 17-201–17-214]**

The **Maryland Real Estate Commission (MREC)** is one of several commissions within the Department of Labor, Licensing, and Regulation. It consists of nine members, five of whom hold real estate licenses and are chosen—one each—from the Eastern Shore, Baltimore Metropolitan Area, Baltimore City, Southern Maryland, and Western Maryland. These five members must have held Maryland real estate licenses for at least 10 years and have resided in the areas from which they are appointed for at least five years, both immediately before their appointment. The other four members are consumer members who must not have had an ownership interest in or received compensation from an entity regulated by the Commission in the year just before their appointment. They may not be licensees or otherwise be subject to regulation by the Commission.

Members are appointed by the governor with the advice of the Secretary and the advice and consent of the Senate. Membership terms, which are staggered to ensure regulatory continuity, begin on June 1 and end four years later, either with reappointment or on the appointment of a qualified replacement. Members may be removed before the end of their terms by the governor in cases of incompetence or misconduct.



Each year, members of the Commission elect, from among themselves, a chairperson to preside at their meetings. This officer is covered by a surety bond. The Commission meets each month with a majority of the members then under appointment constituting a quorum. Meetings are open to the public.

The Commission has adopted bylaws for the conduct of its meetings and regulations for the conduct of hearings and for issuance of licensing applications. With 10 days' advance written notice, a member of the public may speak before the Commission.

The Commission's **executive director**, who is appointed by and serves at the pleasure of the Secretary, is not a member of the Commission. Neither is the executive director the chairperson of the Commission. The executive director, a State employee who is also covered by a surety bond, attends and participates in the monthly meetings, directs the day-to-day operations of the Commission, and supervises its office staff and field inspectors between monthly meetings.

### **Duties and Powers [§ 17-209, § 17-212]**

The Commission's primary are administration and enforcement of the Brokers Act through the licensing process. To carry out this duty, the Commission is empowered to

- investigate complaints of unlicensed brokerage activity,
- investigate complaints about licensee behavior,
- conduct hearings and administer oaths,
- issue subpoenas for attendance of witnesses or production of evidence,
- take depositions, and
- seek injunctions (in certain circumstances).

The Commission adopts, maintains, and enforces General Regulations and a Code of Ethics that set forth standards of conduct for all individuals who are under the authority of the Brokers Act. The General Regulations (09.11.01) and the Code of Ethics (09.11.02) are found in COMAR under 09.11.

The Commission must investigate any written, sworn complaint alleging that an unauthorized person has provided real estate brokerage services. The Commission has statutory authority to hold hearings on alleged violations and to impose penalties not to exceed

- \$5,000 for the first proven violation of any Title 17 provision,
- \$15,000 and/or two years' imprisonment for the second violation, and
- \$25,000, and/or three years' imprisonment for the third or subsequent violation.

(An "unauthorized person" is one who neither holds a required license nor is exempt from the requirement to have one.)

### **Other Powers and Duties [§§ 17-208–17-214]**

The Commission has many powers and duties. In the course of its operation, it routinely

- issues, renews, suspends, or revokes licenses;
- orders investigations and holds hearings as needed;
- after hearings, reprimands and/or fines licensees who are found to have violated laws or regulations;

- forwards the license fees it collects to the comptroller, who distributes such funds to the State Real Estate Commission Fund;
- collects fines and forwards them to the general fund of the State;
- submits an annual report of its activities to the Secretary;
- certifies, on request of any person and payment of the required fee, the licensing status and qualifications of any person who is the subject of the request;
- approves the content of educational courses for licensing and for continuing education;
- adopts regulations and a code of ethics to implement Title 17;
- convenes hearing boards (panels) of three members, at least one of whom must be a consumer member and one a professional member (licensee) from among the commissioners; and
- maintains and administers a guaranty fund to reimburse members of the public as much as \$50,000 for actual losses caused by licensees and their employees.

## REQUIREMENTS FOR LICENSURE

Before providing real estate brokerage services in the State, individuals generally must be licensed by the Commission either as real estate brokers or as associate brokers or salespersons affiliated with and working under the authority of a licensed broker. Licenses are granted for a two-year term beginning on the date they are issued.

### Brokers [§ 17-305]

To qualify for the real estate broker license, applicants must

- be of good character and reputation and at least 18 years of age,
- have completed a 135-hour course in real estate—including three clock hours of real estate ethics—approved by the Commission,
- have been licensed as real estate salespersons actively and lawfully for at least three years, and
- have passed the broker prelicensing examination.

For applicants who are qualified to practice law in this State, the Commission waives the education and experience requirements but not the examination requirement. Broker education requirements for all other persons are in addition to the salesperson (60-hour) requirements they may have previously met. However, an individual who has been engaged in real estate practice as a licensed real estate broker in another state for at least three of the five years immediately preceding submission of application is considered to have satisfied the broker educational requirements.

### Associate Brokers [§ 17-304]

To qualify for the associate real estate broker license, an applicant must meet the education and experience requirements for a broker license. The applicant must also obtain written commitment from a licensed real estate broker to accept the applicant as an associate broker of the firm when all other associate broker requirements have been satisfied.

## Salespersons [§ 17-303]

To qualify for issuance of the salesperson license, an applicant must

- be of good character and reputation,
- be at least 18 years of age,
- successfully complete a basic (60-hour) course in real estate—including three clock hours of real estate ethics—approved by the Commission,
- pass the required examination, and
- obtain written commitment from a licensed real estate broker to accept the applicant as a salesperson of the firm when all other salesperson licensing requirements have been satisfied.

## General Rules [§ 17-307]

The usual steps leading to a license are education, examination, and application. Applicants must successfully complete preclicensing education requirements before taking salesperson or broker examinations. The specific time limits for salesperson and broker are presented in Figure 1.1. The Commission's required application forms and required fees are shown in Figure 1.2.

**FIGURE 1.1:** Deadlines for Testing and Licensure

<b>Deadlines for Testing and Licensure</b>	<b>Time Requirement</b>	<b>Consequences of Failing to Meet the Requirement</b>	<b>Authority</b>
Deadline for candidate to pass the salesperson licensing exam	Not more than one year after completing 60-hour education requirements	Any prior or partial test results become invalid. Candidate must complete a new salesperson preclicensing course before taking (or retaking) licensing exam.	Gen Reg .11-F Gen Reg .11-G (1)
Deadline for candidate to apply for salesperson license	Not more than one year after passing both portions of the salesperson exam	Complete a new salesperson preclicensing course.	Gen Reg .11-G (1)
Deadline for candidate to pass the broker licensing exam	Not more than one year after satisfying 135-hour education requirements	Any prior or partial test results become invalid. Candidate must complete a new broker preclicensing course before taking (or retaking) licensing exam.	Gen Reg .14-H(1)
Deadline for candidate to apply for broker license	Not more than one year after passing both portions of the broker exam	Complete a new broker preclicensing course.	Gen Reg .14-I

**FIGURE 1.2:** Usual License Fees

	<b>Original License Fee</b>	<b>Guaranty Fund Assessment*</b>	<b>Total Original Fees</b>	<b>Renewal or Exchange of License Fee</b>
Broker	\$170	\$20	\$190	\$170
Associate Broker	\$110	\$20	\$130	\$110
Salesperson	\$70	\$20	\$90	\$70

The proper fees must accompany every application. These fees are set and subject to annual change by the Commission. Applicants are also required to pay the testing service a \$61 examination fee to register, take, or retake all or part of either real estate examination. Standard examination registration fees, which are neither refundable nor transferable, may be paid by check, money order, company check, or cashier's check. Cash is not accepted.

#### **Fees for other services:**

Certificate of License History (5-yr.)	\$25	Reactivate Inactive License	\$50
Certificate of License History (full)	\$75	Reinstatement of License/Late Fee	\$150
Broker Business Address Change	\$5	Transfer to Another Broker	\$25
Broker Business Name Change	\$25	Time-Share Registration	\$100
Branch Office License	\$5	Dishonored Check	\$35
Personal Name Change	\$25		

\* The guaranty fund initial assessment, paid on issuance of the first license to an applicant, is not paid on renewals unless needed to replenish the guaranty fund. This has happened only once in the past 38 years.

## **Requirements for Nonresidents [§ 17-514]**

Salesperson, associate broker, and broker applicants who are not residents of the State must submit to the Commission their **irrevocable consent**, which allows them to be served with official documents without the server having to travel to a foreign (out-of-state) jurisdiction to present them. Applicants are required to submit any additional documentation that the Commission requires to determine their professional competence, good character, and reputation. Broker applicants must also submit or pay for a credit report.

## **Licenses for Nonresidents to Perform Commercial Brokerage [§§ 17-536–17-540]**

In the previous sections, a “nonresident real estate broker” is a person licensed by a jurisdiction other than Maryland to provide real estate brokerage services there. That broker may either be an individual, a partnership, joint venture, limited liability company, limited liability partnership, or corporation depending on the jurisdiction. “Nonresident real estate salespersons” (and associate brokers) are individuals who are licensed, not by the Commission but by another state, to provide real estate brokerage services under a nonresident real estate broker—in this context, a broker who has complied with the Commission’s detailed requirements for a temporary license to perform acts of brokerage involving Maryland commercial property. Nonresident brokers may qualify for such a license only if their own

state grants similar privileges to Maryland licensees. The nonresident broker may deal with commercial property only through and under a licensed Maryland real estate broker with whom the nonresident has a written agreement detailing the entire relationship for specific proposed transactions. Nonresident commercial licenses are rarely issued: only two have been issued in the past 11 years.

### **Waiver of Requirements for Licensure [§ 17-308]**

The Commission may waive any requirement for individual licenses for applicants who hold comparable or equivalent licenses granted by another state if those applicants pay the required application fees, meet the relevant requirements, and submit certification of license history from the other state. If applicants are seeking broker licenses based on their comparable licenses in another state, they must provide adequate evidence of actively maintaining brokerage offices there.

### **Reciprocity [§§ 17-3A-01–17-3A-10]**

To facilitate transactions involving parties from other states seeking to buy, rent, or sell property in Maryland and Maryland residents seeking to buy, rent, or sell in other states, the 2006 legislative session made provisions for reciprocal real estate brokerage licensing. Under the terms of any reciprocal licensing agreement, the Brokers Act requires the following:

- That each state recognize the previous education, experience, and examination of applicants for any of the licensure classes authorized in the applicants' home state as satisfying the requirements for licensure in the reciprocal state
- That applicants submit consent to service of process, in a form required by the Commission (similar to the irrevocable consent required of traditional nonresident applicants by § 17-514)
- That applicants verify they have read and agree to comply with all laws of the state for which they are seeking reciprocal licensure
- That applicants, other than brokers, provide certification from their broker that the broker is currently licensed and will actively and personally supervise the applicants performing real estate brokerage services in the state where they would be receiving the reciprocal licensure
- That neither state requires additional continuing education to renew reciprocal licenses
- That applicants furnish to Maryland, certificates of licensure or records of good standing from the state from which the applicants are applying. (Such statements must contain the applicants' names, addresses, licensure classifications, and history of past or present disciplinary proceedings. Applicants themselves must give written statements as to whether they are subjects of any disciplinary proceedings or criminal investigations anywhere and whether they have been convicted in the United States of any felony or certain misdemeanors or of any crimes that violate the Maryland Brokers Act.)
- That each state requires that brokers holding reciprocal licenses, who later open principal places of business in the state that granted them reciprocal licenses, promptly notify that state and obtain a standard nonresident license within 90 days after establishing those principal places of business
- That applicants for standard nonresident licenses may be required to pass the state portion of a licensure examination required by the state granting the reciprocal licenses.
- That states have the right, for cause, to deny applications for reciprocal licensure

Maryland has signed **reciprocity agreements** with only Pennsylvania and Oklahoma but is negotiating with other states. Many states have multiple reciprocity agreements, often found on each state's website. In each situation, the details of the reciprocity may be very different from those of the Maryland program. The Maryland Real Estate Commission appears to be proceeding with great care to establish the reciprocity authorized by the 2006 legislation. Barriers to agreement between states sometimes include unwillingness to renew without the reciprocal license holder completing the host state's continuing education requirements, passing a host state's law exam, or taking the same number of preclicensure hours as required by the host state. Maryland law requires mutual concession in all these areas. In September 2017, there were 118 reciprocal brokers, 46 reciprocal associate brokers, and 288 reciprocal salespersons.

### **Pocket Cards and License Certificates [§ 17-309]**

Pocket Cards and License License certificates and pocket cards issued by the Commission show the

- name of the licensee,
- designated name of the licensed real estate broker with whom a salesperson or associate broker is affiliated,
- date the license will expire, and
- licensing registration number of the licensee.

License certificate and pocket card images issued for affiliates are downloaded digitally by their brokers. **Pocket card** images are detached and given to affiliates to sign and carry. Affiliates also sign their license certificate images. Each signed license certificate image is retained in the office out of which each licensee operates. Although no such requirement is explicitly stated anywhere in the Brokers Act or in any regulation, the Commission states that licensees are expected to carry their pocket cards whenever they engage in real estate brokerage activity.

When a licensee or a firm takes a new name, upon receipt of the required application fee (\$25), a revised license certificate and pocket card image is forwarded to the broker. This process would also occur for an address change for the brokerage firm (\$5).

### **Unlicensed Activity: A Violation of Title 17 [§ 17-613 (d)]**

Real estate broker licenses authorize their holders to provide real estate brokerage services to the public. Persons who hold associate broker and salesperson licenses may never provide real estate brokerage services in their own name or in the name of any broker with whom they are not affiliated. They may only provide brokerage services in the name of the broker under whom they are licensed.

Salespersons and associate brokers on inactive status have no broker. Therefore, they have no one under whom they are authorized to provide brokerage services. Their licenses and pocket cards have been returned to the Commission. Performing any act of real estate brokerage while on inactive status is a violation of law, which is a misdemeanor punishable initially by a fine as much as \$5,000 and by as much as two years' imprisonment and a fine of \$15,000 for a second conviction for the same offense. Any person found guilty of a third or subsequent violation of any provision of the sections listed in subsection (a) of 17-613 is subject to a fine not exceeding \$25,000 or three years' imprisonment or both.

## **Exchange of Licenses and Additional Licenses and Affiliations [§§ 17-311–17-313]**

A licensed real estate broker may also hold licenses as a real estate salesperson or associate broker, affiliated under another licensed real estate broker. This requires submission of additional proper applications to the Commission and payment of additional license fees. A broker in one company who works at the same time for the broker of another company as an affiliate must obtain a commitment for such affiliation from that other broker and must inform that broker of the other license. A broker may operate more than one real estate company, but for each additional real estate brokerage company, the broker must obtain a separate real estate broker's license. Therefore, it is legally possible for an individual to hold two or more broker licenses simultaneously. For example, an individual may hold one license for a broker's residential resale company in town and another license for the broker's vacation rental property firm at the shore.

Licensees who hold salesperson, associate broker, or broker licenses may exchange those licenses for other levels of license by complying with procedures established by the Commission and paying the required additional fees. Affiliates may obtain additional licenses and become affiliated with additional Maryland brokers by obtaining a commitment from each additional broker, paying the required additional licensing fees, and giving notice of such multiple relationships to all their brokers.

## **Reinstatement After Nonrenewal [§ 17-314]**

**Reinstatement** of a license that has expired due to nonrenewal is possible within the three-year period following the date of its expiration. Reinstatement requires that applicants show proof of having met all applicable continuing education requirements for the period(s) since expiration, having paid all past-due renewal fees, and having paid a \$150 reinstatement fee. They must also meet the requirement of good character and reputation. Neither timely nor late renewal of a license affects the power of the Commission to bring charges for prior acts or conduct.

## **Transfer of Affiliation [§ 17-311]**

Affiliates may apply to the Commission to transfer their affiliation from one broker to another after obtaining, from the new broker, a commitment stating that, upon termination of the current affiliation and issuance of new license certificates and pocket cards, they will become affiliated with the new broker. They must also submit to the Commission, either from their former brokers or from themselves, a statement confirming termination of their prior relationship with their transfer applications. It is advisable in every case, although not clearly required by law or regulation, that the former broker be informed of the details of the transfer.

## **Dishonored Checks [§ 17-521]**

In the event of a dishonored check, licensees are not considered to have properly renewed their licenses until they pay both the original amount of the renewal fees and a collection fee of \$35 for each dishonored check.

## LICENSE TERM, TRANSFER, AND RENEWAL [§ 17-314]

If the Commission has the brokers' current email addresses, license expiration date reminders and renewal application forms for brokers and their affiliates are emailed no less than 30 days before the licenses expire. If the Commission receives notice the email was undeliverable, then the reminder would be forwarded to the licensee by regular mail. The notices state the

- dates on which the current licenses expire;
- dates by which the Commission must receive the renewal applications, if licensees use hard-copy (paper) applications for renewal; and
- amount of the renewal fees (see Figure 1.2).

Although the usual mode of application for renewal is online—a method that enables instantaneous and less expensive processing—the Commission continues to accept and process hard-copy renewal and upgrade applications.

## Continuing Education Requirements [§ 17-315]

**Continuing education** for license renewal is measured in clock hours, with credit allowed only for approved, individual courses of not less than one and a half and not more than six hours in length. A **clock hour** is defined in COMAR 09.11.06.01 B(3) as 50 minutes of actual instruction per 60-minute hour.

Completion of the specified number of continuing education hours, including some in specific subjects, is required for renewal of any level of license (see Figure 1.3). The standard requirement for all levels of license, regardless of any law or real estate degrees held, is 15 hours of approved instruction made up of

- three clock hours of local, state, and federal legislative and regulatory updates;
- one and a half clock hours dealing with fair housing;
- three clock hours of “Maryland Real Estate Commission’s Code of Ethics, Flipping, and Predatory Lending”;
- three clock hours of “Principles of Agency and Agency Disclosure” (course taught by instructors certified by Commission);
- three clock hours of “Broker Supervision” for brokers, branch managers, and team leaders (course taught by instructors certified by Commission); and
- additional electives needed to reach the required total hours.



**FIGURE 1.3:** Continuing Education Requirements for License Renewal

Category Designation on Certificate	Subject Matter and Those Required to Complete Specific Courses	CE Hours per 2-Year Renewal
A	Legislative Update	3
C	Fair Housing (Licensees performing only commercial transactions may substitute federal Americans with Disabilities Act.)	1.5
D	Ethics, Flipping, and Predatory Lending	3
H	Principles of Agency and Agency Disclosure†	3
I	Requirements of Broker Supervision††	3
B, E, F, G	Electives Including Professional Enhancement, Disclosure, Antitrust or Technology	1.5–4.5
Total Hours Required for All Licensees		15

† All licensees to complete each license renewal  
 Commercial agents can take MREC Agency – commercial to meet this requirement

†† Brokers, branch managers, and team leaders to complete each license renewal

There are certain exceptions:

- Licensees who perform only nonresidential brokerage may substitute one and a half hours of instruction in the Americans with Disabilities Act for the fair housing requirement, but they still must complete a total of 15 hours.
- Holders of reciprocal licenses of any level are not required to complete any Maryland-approved hours of instruction when renewing their licenses, but they must comply with continuing education requirements in their home state.

In the Brokers Act, **nonresidential property** is defined in detail as

- (1) real property improved by five or more single-family units;
- (2) improved and unimproved real property zoned for commercial, industrial, or nonresidential use by the local zoning authority of the county or municipality in which the property is located; and
- (3) unimproved real property zoned for improvement as multifamily units by the local zoning authority of the county or municipality in which the property is located, [but not including]:
  - (1) property zoned for agricultural use; or
  - (2) single-family units, including a condominium or co-op unit, for sale or for lease, or otherwise conveyed or to be conveyed on a single basis.

All required continuing education must be completed before one’s license can be renewed. Those renewing in a timely manner pay the Commission the required renewal fees and affirm that they have completed the required number of hours of continuing education. Licensees renewing electronically are notified at the end of their online session if they have been chosen for an audit of their course claims. If chosen, they will be required by the Commission to submit certificates for all the courses they claimed in their renewal application.

A person whose license has expired for nonrenewal may normally apply for reinstatement of that license at any time within three years after its expiration date at a cost of \$150. However,

those who have made false claims of educational completion may be given one month to complete the missing education requirements, must pay a \$1,500 penalty for the false application, as well as pay a \$150 reinstatement fee. Their names, their violations, and their fines are then displayed on the Commission's website for several years.

Approved courses may be presented by the Maryland Association of REALTORS® or its member boards, the Real Estate Brokers of Baltimore City, Inc., or any similar professional association or by an educational institution approved by the Maryland Higher Education Commission. These courses must be taught by qualified instructors who are experienced in the real estate industry. The Commission's guidelines require that continuing education instructors have experience and expertise in the area or activity about which they are teaching.

When licensees complete each unit of study, the training institution that conducted the course issues certificates of completion to each student stating the

- number of clock hours,
- name and date of the course taken,
- code letter of the subject category, and
- names of the teacher and/or the organization presenting the training.

The education provider has 10 days to upload reports of credits earned to the Commission's database system.

The Commission may waive continuing education requirements for licensees who show good cause for being unable to meet the requirement.

### **Inactive Status [§ 17-316]**

The Commission will place the licenses of associate real estate brokers and real estate salespersons into **inactive status** when they are no longer affiliated with licensed real estate brokers, and their license certificates and pocket cards are returned to the Commission.

A licensee whose license is on inactive status may not provide real estate brokerage services through that license. This prohibition forbids accepting fees for referrals. An inactive licensee is not affiliated with any broker and may not be compensated for any act of real estate brokerage. Individuals with inactive licenses may not be paid by a referral company.

The placement of a license on inactive status does not affect the power of the Commission to suspend or revoke the license or to take any other disciplinary action against the licensee.

Unless an inactive license is reactivated, it expires three years after the date it is placed on inactive status. Renewal of an inactive license requires complying with continuing education requirements. Please note that renewal is not reactivation.

The Commission will reactivate the license of real estate brokers on inactive status and reissue license certificates and pocket cards to them if they request reactivation and pay to the Commission the \$50 reactivation fee. Salespersons and associate brokers returning from inactive status must do the same and also submit broker affiliation commitments, contingent on the reactivations. While on inactive status, a salesperson or an associate broker has no broker.

## Licensure and the Deceased Broker [§ 17-319]

On the death of a licensed real estate broker, any adult member of the family may carry on the brokerage firm for up to six months to close and terminate the business. To do this, the certificate and pocket card of the deceased broker must be surrendered to the Commission. Any information required by the Commission must also be submitted.

Before the end of the six-month period for carrying on the business of a deceased real estate broker, an individual may qualify for and receive from the Commission the license of the deceased broker, if that individual

- is a member of the immediate family of the decedent,
- has been continuously licensed as a real estate salesperson for the immediately preceding three years,
- passes the real estate broker examination required by this subtitle, and
- either physically or electronically surrenders her real estate salesperson license certificate and pocket card to the Commission.

There must also have been compliance with the conditions for carrying on the business as stated in the first paragraph of this section.

A person receiving the reissued license of a deceased real estate broker may hold and use that license for as long as four years without meeting the 135-hour educational requirement. However, if the requirement has not been met within four years, the license expires.

## Return of Licenses; Terminating Affiliation [COMAR 09.11.01.08]

The license certificates and pocket cards of an affiliate must be returned to the Commission by the affiliate's broker

- on the request of an affiliate (a real estate salesperson or associate real estate broker),
- on the death of an affiliate, or
- after a hearing before the Commission and on a finding that the license of an affiliate is to be suspended or revoked.

Real estate brokers are required to surrender to the Commission, promptly on demand, any such person's license that may be in their possession or control. Failure to do so is grounds for disciplinary action.

In the event of an affiliate's termination (discharge), a broker must

- immediately mail to the licensee, at the last known address of that individual, notice of such termination;
- submit written notice to the Commission, including a copy of the notice mailed to the licensee; and
- return the license certificate of the licensee to the Commission.

## Licensing Out-of-State Applicants [§ 17-514]

The Commission will issue licenses only to those nonresident applicants who file with the Commission a signed statement of irrevocable consent, in addition to all other required documents and fees. By submitting this statement, applicants agree that suits and actions may be commenced against them without their actually being served papers notifying them

of forthcoming legal actions. They are also consenting that official delivery of papers to the executive director of the Commission will bind them in any action, suit, or proceeding brought against them in any county in which the cause of action arose or the complaining party resides.

When serving process on the executive director of the Commission, persons filing must immediately send a copy of the filing, by certified mail, to the principal office of the person against whom the action is directed.

Note that the signature block on license examination applications contains these words:

*If the address of this registration is not within the State of Maryland, I do hereby irrevocably consent that suits and actions may be commenced against me in the proper courts of the State of Maryland as required by the Maryland Annotated Code.*

Maryland law states that if any nonresident real estate broker, associate broker, or salesperson participates in any real estate transaction, divides a fee, and/or holds deposits from any such transaction in Maryland, that very act is construed (considered) to give irrevocable consent.

## PROCESSING COMPLAINTS

The Commission's website provides a downloadable form upon which complaints against licensees may be submitted. Upon receiving a properly completed complaint form, the Commission sends a copy of it to the broker of the company involved, together with a letter from the Commission's executive director, stating that the broker must respond in writing with a full explanation of the allegations and what action the broker recommends. A broker's failure to respond to this inquiry may be considered grounds for disciplinary action.

A copy of the executive director's letter is also sent to the complainant. Later, when the broker's answer is received, the Commission sends its own reply, together with a copy of the broker's response, to the complainant.

The Commission may commence proceedings on a complaint made by a Commission member or by other persons (who must make such complaints under oath). Complaints must be in writing and state specifically the facts on which the complaint is based, and they may be accompanied by documentary or other evidence.

After reviewing the content of the complaint, the Commission may refer it for investigation if it appears an infraction has occurred. A complaint not referred for investigation is considered dismissed. Within 30 days of such dismissal, any member of the Commission may file an exception disagreeing with the dismissal. If such exception is taken, the full Commission will hold a hearing to consider proceeding with an investigation.

If an exception is not filed, the dismissal is considered a final decision of the Commission. "Final decision" means that any party aggrieved by the decision may then appeal to the appropriate court; decisions may not be appealed until they are final. Only final decisions may be appealed.

If the Commission or its designee, based on an investigative report, determines that grounds exist for disciplinary action, the matter is referred for a hearing. Complaints not referred for a hearing after investigation must be dismissed. This has the same effect as a final decision: any party aggrieved by that dismissal may make judicial appeal.

## Hearings and Notices

Except as otherwise provided in the *State Government* Article (e.g., situations where summary action is needed), before the Commission takes any final action, it gives the individual against whom the action is contemplated an opportunity for a hearing before the Commission or a hearing board.

At least 10 days before the hearing, notice is served personally on the individuals against whom complaints have been made, or it is sent by certified mail to their last known addresses. If the individuals are licensees other than brokers, at least 10 days before the hearing, the Commission must serve notice of the hearing to each real estate broker with whom the individuals are affiliated.

The individuals may have attorneys represent them at hearings. This does not mean they can fail to appear and merely send their attorneys. It means that they can bring attorneys to represent them in their hearings. If the individuals against whom action is contemplated fail or refuse to appear, the Commission may proceed to hear and determine the matter without their presence. Unlike the meetings of panels to hear complaints and examine reports of investigators, these final meetings of panels are open to the public.

## Real Estate Hearing Board [§ 17-324]

The Commission establishes two or three real estate hearing boards—often called panels—each consisting of three Commission members. At least one member of each panel must be a professional member, and at least one must be a consumer member. From among each hearing board's members, the Commission designates a chairperson.

## Referral of Cases

The Commission (or one of its hearing panels) may order a final public hearing on any complaint that has been filed with the Commission or on any other matter for which a hearing may be required.

Before deciding to hold hearings, a panel will meet privately to review

- complaints and consider whether they provide a reasonable basis for disciplinary hearings, and
- claims against the guaranty fund to determine what further action to take.

Panels meet publicly to

- hear licensees' responses to and defenses against complaints, and
- then decide whether to authorize punitive actions against them.

Hearing boards exercise the same powers as, and conduct hearings for, the Commission. They report their decisions and actions to the Commission. Panels specifically advise the Commission of any action they take against licensees involved in monetary loss, misappropriation of funds, or fraud.

## Hearing Regulations [COMAR 09.11.03]

COMAR—the Code of Maryland Regulations—provides for four types of hearings:

- Judicial hearings
- Applications for licensure
- Revocation or suspension of licenses
- Claims against the guaranty fund

Hearings are conducted under several levels of overlapping hearing regulations.

On dismissal of a complaint, the complainant and the licensee are notified in writing. The dismissal of a complaint after investigation is not reviewable further. Other complaints substantially based on the same facts are usually similarly dismissed.

## Summary Actions [§ 17-328]

**Summary actions** are those taken before holding hearings to protect the public quickly against imminent loss. They are then followed by hearings for which formal, timely notice is given.

## Revocation After Actions of Other Agencies [§ 17-327]

The Commission may summarily order the revocation of the license of any licensee after that licensee is convicted in a court of law of a violation of this title, the conviction is final, and the period for appeal has expired.

The license of any nonresident licensee may be revoked if the real estate regulatory agency of the state where the licensee is a resident revokes the license issued by that state and certifies its order of revocation to the Commission.

When the Commission orders summary revocations under this section, it gives licensees written notice of the revocations and the findings on which they were based. After the revocations are effective, the Commission grants the licensees whose licenses have been revoked an opportunity to be heard promptly, either before the Commission or before a hearing board.

Rather than summarily order revocations of licenses under this section, the Commission may elect not to revoke the licenses until after the licensees are given opportunity for hearings. If the Commission elects to give the licensees opportunity for hearings before revoking the license, the Commission gives notice and holds those hearings in the manner required for other hearings.

In any hearings held because of convictions or revocations by other agencies, the Commission considers only evidence of whether or not the alleged convictions or revocations, in fact, occurred. However, in such hearings, licensees may present matters in mitigation of the offenses charged.

## Summary Suspension for Trust Fund and Other Violations [§ 17-328]

The Commission may summarily order the suspension of a licensee who

- fails to account promptly for any funds held in trust;
- on demand, fails to display to the Commission all records and books, and fails to account for any funds held in trust;
- has been convicted of a crime as defined in § 17-322(B)(24) (i.e., a felony, a misdemeanor that is directly related to the fitness and qualification of the applicant or licensee to provide real estate brokerage services, or a crime that constitutes a violation of any provision of the Brokers Act); or
- fails, within 10 days after the conviction or within 10 days following release from incarceration as a result of the conviction, whichever is later, to disclose to the Commission that the licensee has been convicted of a crime as previously defined.

The Commission gives the licensee notice and supporting reasons for its action and offers the opportunity to be heard later.

A summary suspension may start immediately or at any later date set by the order, and it will continue until the licensee complies with the conditions set forth by the Commission in its order or until the Commission orders a different disposition after a hearing held under this section.

## Judicial Review [§ 17-329]

A party who strongly disagrees with a final decision of the Commission may appeal to a circuit court. Upon appeal, that court may set a bond not to exceed \$50,000 and stay (delay) the suspension or revocation. The bond money would be for the use and benefit of any member of the public who might suffer financial loss because of any further violations of the Brokers Act by the plaintiff licensee.

## Notice of Revocation or Suspension [§ 17-330]

Whenever a licensee's license is revoked or suspended and a stay is not ordered by the Commission or a court, the Commission notifies the

- licensee,
- real estate broker with whom the licensee is affiliated,
- Maryland Association of REALTORS®, and
- local board or association of REALTORS® and the Realtist organization in the area of the licensee's office.

If the Commission revokes or suspends the license of a nonresident licensee, the Commission also notifies the Real Estate Commission or other licensing authority in the state where the licensee is a resident, reporting the cause for the revocation or suspension of the license. Figure 1.4 clarifies some often-confused terms used in license activation.

**FIGURE 1.4:** License Status Actions

Process	Occasion
Renewal	Extends a license for another two-year term. 15 hours of continuing education is needed for all license renewals. Inactive licenses also require renewal. A license that is not renewed expires.
Reissuance (reactivation)	Licensee returns from inactive to active status and affiliates with a broker. Inactive status cannot exceed three years.
Reinstatement	Revives license that expired at time of renewal. A three-year period exists for reinstatement with payment of \$150 fee. Restores license after suspension or revocation.
Referral (not a license process or status)	Licensee has an active license and places it voluntarily with a referral company, indicating the licensee won't actively sell. It is an active license and would need to follow the renewal process.

License status would include Active, Inactive, Expired, Suspended or Revoked. Only Active status allows for the acceptance of a commission or any portion of a commission.

## REAL ESTATE GUARANTY FUND (TITLE 17, SUBTITLE IV)

The **guaranty fund** exists to reimburse members of the public for actual financial losses at the hands of real estate licensees and their unlicensed employees. The maximum reimbursement for any claim is \$50,000.

### Use of Monies Collected

The Commission deposits all money collected for the guaranty fund with the State treasurer, who invests it, with the investment earnings credited to the fund.

### Initial Assessment for Fund

Before granting initial licenses to applicants, the Commission requires that they pay \$20 assessments that are credited to the guaranty fund. Regardless of how many times an individual applies to the Commission for licenses, the Commission makes only one such assessment. However, if the amount in the guaranty fund falls below \$250,000, the Commission assesses all the individuals then holding licenses a fee—typically payable at renewal—sufficient to return the guaranty fund to that minimum level. At the end of 2013, the fund contained slightly more than \$1.4 million.

### Claims Against the Fund

A person may recover compensation from the guaranty fund only for actual financial losses. Claims must be based on acts or omissions that occurred in the provision of real estate brokerage services by licensees or unlicensed employees of a licensed real estate broker. Claims must involve transactions that relate to real estate located in Maryland and be based on acts or omissions in which money or property is obtained from a person by theft, embezzlement, false pretenses, forgery, or an act that constitutes fraud or misrepresentation. For example, when managing rental property, a licensee uses tenant security deposits for their own office expenses, leaving the landlord to refund the client at the landlord's own expense.



A claim against the guaranty fund must

- be in writing and under oath,
- state the amount of loss claimed,
- state the facts on which the claim is based, and
- be accompanied by documentation or other evidence that supports the claim.

At any claim hearing, the burden of proof is on the claimant to establish the validity of the claim.

A person may not recover from the guaranty fund any loss that relates to

- the purchase of any interest in a limited partnership that invests in real estate,
- a joint venture that is promoted by a real estate licensee for the purpose of investment in real estate, or
- the purchase of commercial paper secured by real estate.

A claim under the guaranty fund may not be filed by the spouse or by the personal representative of the spouse of the individual alleged to be responsible for the act or omission giving rise to the claim. Any claim must be filed with the Commission within three years of the loss or discovery of the loss.

### **Notice to Buyer**

Real estate brokers must include in each sales contract a written notice that buyers are protected by the guaranty fund in an amount not exceeding \$50,000. Although only buyers are mentioned in this notice, sellers may also submit claims.

### **Action by Commission on a Claim**

Upon receiving claims, the Commission must act promptly by

- forwarding copies to licensees and/or unlicensed employees alleged to be responsible and to their brokers;
- requiring a written response, within 10 days, from each of those individuals concerning the allegations set forth in the claim (this 10-day period is shorter than the 20 days required for response to other inquiries from the Commission);
- reviewing the claim and any responses to the claim; and
- conducting an investigation.

On the basis of its review of a claim and any investigation it conducts, the Commission either schedules a hearing or dismisses the claim.

### **Special Disposition of Smaller Claims**

If the claim is \$5,000 or less, the Commission, through a designated staff member, such as its executive director, may issue a proposed order either to pay or to deny the claim. Both the claimant and the licensee receive a copy of this proposed order.

Within 30 days, either the claimant or the licensee may request a hearing or file written exceptions to the order. If either happens, the Commission must schedule a hearing on the claim. If no hearing is requested and no exceptions taken, the proposed order becomes a final order of the Commission.

## Other Claims

The Commission gives notice of the hearing and opportunity to appear before the Commission to both the claimants and the licensees or unlicensed employees alleged to be responsible. The Commission must send the required notices to every party involved before conducting the hearing.

When the persons alleged to be responsible are licensees, the Commission may combine this hearing with disciplinary proceedings against licensees arising from the same facts alleged in a claim. A claimant may be party to that portion of the proceedings about the claim but may be a witness only in the disciplinary portion.

The misdemeanor penalty for knowingly making a false statement or material misstatement of fact about a guaranty fund matter is a fine and/or imprisonment. This procedure would have to be in a court of law; the Commission has no power to impose a sentence of imprisonment.

## Payments by the Guaranty Fund

If a claim proves valid, the Commission orders its payment by the guaranty fund. The amount of compensation recoverable from the guaranty fund is limited to the actual monetary loss incurred by the claimant. The payout may never be more than \$50,000 for any one claim. The amount paid may not include

- losses other than those from the original transaction,
- commissions owed to a licensee acting as either a principal or an agent in a real estate transaction, or
- any attorney's fees incurred in seeking money from the fund.

Payment is not made until either the time for seeking judicial review is over or any judicial stay has expired. The Commission orders payment of claims in the order in which they were awarded.

## Reimbursement of Guaranty Fund

When payments are made from the guaranty fund, the Commission immediately and without further proceedings suspends the licenses of the offending licensees. Licensees suspended in this way are not reinstated until they repay to the fund the full amounts owed, plus interest, and make formal application for reinstatement. Reimbursement of the fund does not affect any sanction imposed by the Commission against the individual under the disciplinary provisions of Subtitle 3.

After payments of claims by the guaranty fund, responsible licensees are required to reimburse the fund in full for the amounts it paid, plus interest of at least 10%. (General Regulation .23 presently sets the rate at 12%.) The licensees responsible for an individual claim are jointly and severally liable. That is, each does not bear a proportionate share; rather, each remains individually responsible for the entire unpaid amount.

If licensees do not reimburse the guaranty fund as provided, the Commission may have the State Central Collection Unit sue them for the amount that has not been reimbursed and seek liens against their real property.

## PROHIBITED ACTS [§ 17-322]

After giving proper notice, conducting any needed investigation, holding the required hearing, and reaching its conclusions, the Commission is empowered to deny a license to any applicant, and to fine, reprimand, suspend, or revoke the licenses of any licensees who, in residential or commercial dealings,

- fraudulently obtain or attempt to obtain licenses for themselves or others;
- fraudulently use licenses;
- willfully make misrepresentations or knowingly make false promises directly or through other persons;
- intentionally or negligently fail to disclose to any person with whom they deal material facts that they know or should know that relate to properties with which they deal;
- as affiliates, provide or attempt to provide real estate brokerage services on behalf of real estate brokers without informing in writing any other real estate broker under whom the affiliates are licensed;
- fail to follow the law concerning the conduct of dual agency;
- retain or attempt to retain the services of any unlicensed individuals (in such a way as to evade the law prohibiting payment of a commission to an unlicensed individual);
- guarantee, authorize, or permit other persons to guarantee future profits from the resale of real property;
- solicit, sell, or offer to sell real property so as to influence or attempt to influence a prospective party to the sale of real property by offering prizes or free lots, conducting a lottery or contest, or advertising “free appraisals” unless prepared to appraise real estate free of charge for any person and for any purpose;
- accept a listing contract to sell real property that fails to provide a definite termination date that is effective automatically, not requiring further notice from either the buyer or the seller;
- accept a listing contract to sell real property that provides for a net return to a seller and leaves the licensees free to sell the real property at any price higher than the net price;
- knowingly solicit a party to an exclusive listing contract with another licensee to terminate that contract and enter a new contract with the licensees making the solicitation;
- solicit a party to a sales contract, lease, or agreement that was negotiated by other licensees to breach that contract, lease, or agreement for the purpose of substituting a new contract, lease, or agreement, either for the benefit of the licensees making the solicitation or for their firm;
- for any transactions in which the licensees have served either as brokers or affiliates of brokers, fail to furnish promptly to each party to the transactions copies of the listing contracts to sell or rent real property, the contracts of sale, or the lease agreements;
- for any transactions in which the licensees have served as or on behalf of a real estate broker, fail to keep copies of all executed listing contracts to sell or rent real property, contracts of sale, or lease agreements;
- whether or not acting for monetary gain, knowingly induce or attempt to induce persons to transfer real estate or discourage or attempt to discourage persons from buying real estate by making representations about the existing or potential proximity of real property owned or used by individuals of a particular race, color, religion, sex, handicap, familial status, or national origin or by representing that the existing or potential proximity of real property owned or used by individuals of a particular race, color, religion, national origin,

et cetera, will or may result in the lowering of property values; a change in the racial, religious, or ethnic character of a block, neighborhood, or area; an increase in criminal or antisocial behavior in the area; or a decline in the quality of the schools serving the area;

- use any of the following material if it includes the name of an organization or association of which the licensees are not members: contract forms for the listing of real property for sale, rent, or exchange; contract forms for the sale, rent, or exchange of real property; or any advertising matter;
- as real estate brokers or affiliates, advertise the sale or rent of or an offer to buy real property while failing to disclose in the advertisement the names of the licensee advertisers and the fact that the advertisers are indeed real estate licensees;
- advertise in any misleading or untruthful manner;
- as affiliates, advertise the sale or rent of or an offer to buy real property in their own names while failing to disclose in the advertisement the designated name of the real estate broker on whose behalf the affiliates are acting;
- for real estate brokerage services provided by associate real estate brokers or real estate salespersons, accept commissions or other valuable considerations from persons other than the real estate brokers with whom they are affiliated;
- fail to account for or to remit promptly any money that comes into their possession;
- pay or receive a rebate, profit, compensation, or commission in violation of any provision of this act;
- under the laws of the United States or of any state, are convicted in a court of law of felonies or misdemeanors that are directly related to their fitness and qualification to provide real estate brokerage services or of a crime that constitutes a violation of any provision of the Brokers Act;
- engage in conduct that demonstrates bad faith, incompetence, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;
- with actual knowledge of their violations, associate with licensees in transactions or practices that violate any provision of the Brokers Act;
- fail as real estate brokers to exercise reasonable and adequate supervision over the provision of real estate brokerage services by other individuals on their behalf;
- provide to any parties contracts that do not contain a notice of a buyer's right of selection, as required by the Brokers Act;
- require a buyer to employ a particular title insurance company, settlement company, escrow company, or title lawyer in violation of this act;
- fail to make the disclosure of representation as required by Section 17-528;
- violate any trust accounts provision of this act that relates to trust money;
- violate any other provision of this act;
- violate any regulation adopted under this act or any provision of the Code of Ethics; or
- violate Section 17-320(d) by failing as branch office managers to exercise reasonable and adequate supervision over the brokerage work of sales agents or associate brokers registered with their offices.

Instead of, or in addition to, suspension or revocation, for any violation of the Brokers Act (Title 17), the Commission may impose a penalty not exceeding \$5,000 for a first violation, \$15,000 for a second, and \$25,000 for a third or subsequent violation. To determine the amount of the penalty imposed, the Commission considers

- the seriousness of the violation,
- the harm caused by the violation,
- the good faith of the licensee, and
- any history of previous violations by the licensee.

The Commission pays any penalty collected into the general fund of the State.

The Commission considers several facts when granting, denying, renewing, suspending, or revoking licenses or reprimanding licensees when the individuals concerned have been convicted of certain crimes. In the case of felonies and misdemeanors, the Commission considers the

- nature of the crime,
- and relationship of the crime to the activities authorized by the license.

In the case of felonies, the Commission considers the

- relevance of the conviction to the fitness and qualification of the applicants or licensees to provide real estate brokerage services,
- length of time since the conviction, and
- behavior and activities of the applicants or licensees before and after their convictions.

The Drug Enforcement Act of 1990 authorizes the Commission to impose sanctions upon licensees for a controlled substance offense.

A Maryland statute, Child Support—Enforcement Procedures, subjects licensees to having their licenses suspended and renewals denied if they are overdue in the payment of child support awarded by Maryland or any other state.

### **Additional Prohibited Acts Punishable by Imprisonment**

There are real estate–related criminal offenses for which imprisonment of an individual is a possible penalty. Note that the term *person* includes licensees, nonlicensees, individuals, and business entities such as corporations, partnerships, limited liability companies, and so forth. Although the Commission is empowered to pursue all violators of these provisions, including nonlicensees, and to impose monetary penalties of as much as \$25,000, only a court of law can try, convict, and sentence an individual to prison.

In addition to being reprimanded, suspended, revoked, and fined by action of the Commission, the Brokers Act provides for imposition also, by a court of law, of fines not to exceed \$5,000 and/or imprisonment not to exceed one year for a first offense, \$15,000 and two years' imprisonment for a second offense, and \$25,000 and three years' imprisonment for third or subsequent violations that involve the following sections of the Brokers Act:

- § 17–502 Proper handling of trust money
- § 17–525 Discriminatory real estate practices in Baltimore City
- § 17–526 Discriminatory real estate practices in Montgomery County

- § 17–527 Mass solicitation of listings that violates Baltimore City and Baltimore County laws
- § 17–530 Failure to disclose agency relationship to opposing parties or their agents
- § 17–532 Duties to client, including performance of dual agency and presentation of Property Condition Disclosure/Disclaimer Statement
- § 17–601 License generally required for performance of brokerage
- § 17–602 Forbidden misrepresentation by affiliates' holding themselves out to be brokers
- § 17–603 Broker's use of unauthorized individuals; lending license certificates
- § 17–604 Payment of prohibited compensation
- § 17–605 Payment to nonlicensed lawyers simply for referrals; certain mass solicitation
- § 17–606 Requirements for advertisements placed upon property subject to ground rent
- § 17–607 Requiring use of any particular title insurance, settlement, escrow company, mortgage lender, financial institution, or title lawyer
- § 17–608 Discriminatory representations to encourage sales or discourage purchases
- § 17–609 Solicitation intended to change racial composition of neighborhood
- § 17–610 Misstatement of facts in guaranty fund complaints
- § 17–611 Violation of suspension order in designated real estate conservation areas

Maryland courts are required to report to the Commission, for appropriate action, all convictions of licensees for violation of this act with respect to blockbusting and discriminatory real estate practices in Baltimore City or Montgomery County. The Commission enforces the provisions of the sections concerning Montgomery County. For this purpose, it receives complaints, conducts investigations, issues subpoenas, and holds hearings.

### **Real Estate Brokerage Practice in Baltimore City**

Although Baltimore City does not issue or require a separate real estate license to perform real estate activities there, local law does regulate the activities of licensees who practice in that city. Many of the prohibited acts are similar, if not identical, to State law. The Baltimore City real estate license law is found in Section 132 of Article 19 of the Baltimore City Code under the title “Real Estate Practices.”

## **MARYLAND SECURITIES ACT**

The Maryland Securities Act requires licensing of persons engaged in the offer and sale of real estate–related securities, including limited partnership interests in real property. The Maryland Securities Commission regulates all activities construed to be securities-related business. To inquire whether certain activities could be construed as securities-related business, contact the Maryland Securities Commissioner.

## REAL ESTATE APPRAISERS AND HOME INSPECTORS ACT

Title 16 of the *Business Occupations and Professions* Article of the Annotated Code of Maryland establishes licensing and certification procedures for real estate appraisers as well as for home inspectors. Title 16 creates a nine-member State Commission of Real Estate Appraisers and Home Inspectors within the Department of Labor, Licensing, and Regulation to administer that act.

### BUILDING INSPECTIONS

*Business Occupations and Professions* Article Title 16 requires individuals who provide home inspections to be licensed by the State Commission of Real Estate Appraisers and Home Inspectors. It is unlawful to provide such inspections for consideration without this license. For doing so, there are both civil and criminal penalties, including a fine of no more than \$5,000 per violation. Exempt from this requirement are state and local government inspectors and building code enforcement officials acting within the scope of their employment, as well as licensed construction professionals acting within the scope of their licenses when their services may be required in the building or remodeling of real property as long as they are not claiming to be licensed home inspectors.

Real estate licensees are not required to be skilled in building inspection, but they are expected to be alert for red flags that exist in a property with which they are dealing. **Red flags** are physical indications that there may be a defect in the property not readily apparent to a layperson or an inexperienced home purchaser. Red flags often suggest the presence of latent defects, as defined in *Real Property* Article Section 10-702 (also found within “Seller Disclosure” segment).

When known by any party, such defects must be brought to the attention of all parties entering into a transaction. Parties should be strongly advised to seek the expert advice of a licensed home inspector or a licensed structural engineer.

## CHANGES IN THE MARYLAND REAL ESTATE BROKERS ACT AND RELATED REGULATIONS

From time to time, changes are made in the Brokers Act and the Regulations of the Commission. The material included in this unit is current as of the date of publication. However, readers are cautioned to ascertain whether changes have been made since publication of this book.

Before the Commission adopts, amends, or repeals regulations, it publishes notice of the proposed action in the *Maryland Register* together with an estimate of economic impact, a notice of opportunity for public comment on the proposal, and the text of the proposed changes. No less than 45 days after such publication, the Commission may take final action on the proposal. At that time, a report of its final action is published in the *Maryland Register*. The Commission’s final action takes effect 10 days after that notice appears, unless the Commission specifies a later date.

While the Commission can make changes in its own regulations and code of ethics (both found in COMAR), only the General Assembly can make changes in the statute, the Brokers Act (Title 17).

Both Title 17 and the regulations are available for study and downloading through the Maryland Real Estate Commission website (<https://www.dllr.state.md.us/license/mrec/>) by clicking the tab “Laws & Regulations.” then selecting “Regulations Online – 09.11.”

To prepare for the salesperson or broker license exam, students may wish to focus on “General Regulations” (09.11.01.01 to 09.11.01.27) and “Code of Ethics” (09.11.02.01 to 09.11.02.03).

## KEY POINT REVIEW

- The real estate industry is governed by statutory law called the Maryland Brokers Act (**Title 17**) and **administrative law** (COMAR regulations).
- **Common law** is known as the unwritten law and relies on customs and judicial precedent. When a judge “modernizes” a law, it is called judicial activism—in contrast, a law may instead be utilized as written, which is called strict construction.
- The **Maryland Real Estate Commission (MREC)** issues, denies, suspends, and revokes licenses. The Commission also has the right to amend, adopt, and repeal rules and regulations. Before making these changes, the Commission must post it in the Maryland Register for 45 days.
- MREC is composed of five licensed professional members and four unlicensed consumer members.
- Requirements for professional members: at least 10 years licensed and living in the area they represent for 5 years.
- Employees include **executive director**, education director and investigation team.
- Members are appointed by the governor for four-year terms. The executive director is appointed by the secretary of DLLR.
- Continuing education (CE) hours for renewal are 15. Mandatory topics for continuing education include fair housing, agency, legislative update, and ethics with predatory lending. Brokers, branch managers, and team leaders will also need a supervision class for each license renewal.
- Prelicensing and CE classes must be approved by MREC. Agency and supervision are taught by instructors certified by MREC.
- License status includes active, inactive, expired, suspended, and revoked. Referral isn’t a status; it is an active license. Only active licensees may accept any portion of a commission and only from their broker.
- A license can be placed on **inactive status**. An inactive license can be reactivated within a three-year period. Inactive status does not allow for any brokerage services or acceptance of any portion of commission because the individual is technically not affiliated with a broker.
- Licenses are renewed every two years from the date of issue. Renewal notices are emailed 30 days before the expiration date. Expired licenses can be reinstated within three years of expiration.
- **Summary actions** are when steps are taken, such as a summary suspension, before the MREC holds a hearing, due to the need for an immediate action to protect the public.
- A licensee being investigated gets at least 10 days’ notice before a hearing. Time to respond in writing to the Commission concerning a written inquiry is 20 days and concerning a claim against the guaranty fund is 10 days.
- The maximum amount that can ever be recovered from the **guaranty fund** is \$50,000. Each licensee pays an initial fee of \$20 into the guaranty fund. It is required that the guaranty fund be maintained at a minimum level of \$250,000 at all times.



- Other fees collected by the Commission are placed in the State Real Estate Commission Fund.
- A claim to recover money from the guaranty fund must be submitted within three years. Claims against the guaranty fund must be for actual cash loss due to the actions of a licensee and cannot be against your spouse.
- If the claim to the guaranty fund is \$5,000 or less, the Commission may issue a proposed order to pay the claim.
- Classroom hours required to sit for salespersons' exam is 60 and to sit for brokers' exam is 135. Both of the preclicensing courses must include three hours of ethics.
- **Salespersons** and associate brokers have the same level of authority and are both general agents of a broker. Associate brokers have three years' experience and have passed the broker exam but don't wish to apply for brokers' license.
- A waiver of requirements may be given to a licensee who is already holding a license in another state—this is called **reciprocity**.
- If a licensee does not live in the State of Maryland but wants to hold a real estate license in Maryland, they would need to submit an **irrevocable consent**.
- Images of the license and **pocket card** are issued to the broker. The broker then gives a copy of the pocket card to licensees to sign and carry on their person. Brokers would retain a copy of the license for all individuals who currently represent them in brokerage.

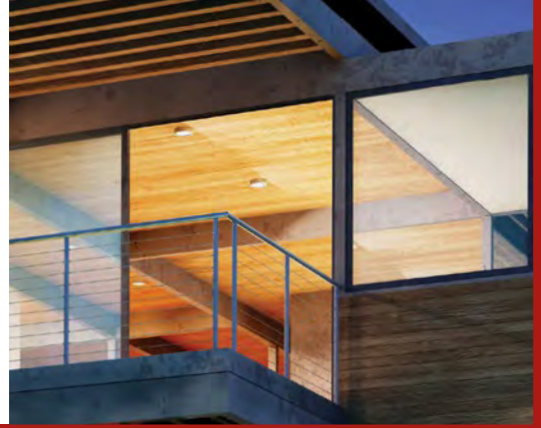
# UNIT 1 QUIZ

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- Whom may a licensed salesperson represent?
  - Any broker who is duly licensed
  - No more than one seller at one time
  - Only brokers under whom they are licensed
  - No more than one broker at one time
- License certificates issued for salespersons must be
  - carried by them while performing acts of brokerage.
  - retained by their broker in their company office.
  - retained by the Commission.
  - retained by them in their home office.
- Brokers need not notify the Commission when
  - salespersons resign.
  - changes occur in the office location.
  - changes occur in the names of their firms.
  - changes occur in commission splits.
- As a licensed salesperson, you receive a lead from a friend who is not a real estate licensee. As previously agreed upon, you split the commission with your friend.
  - This is a violation of the license law.
  - This is not a violation of the license law.
  - This is a violation of the license law only if the seller is not informed.
  - This is not a violation of the license law with broker's written permission.
- Which of the following do licensees *NOT* need to do to be qualified real estate agents and file as self-employed on their federal tax returns?
  - Have a written employment contract with their broker stating this status
  - Be free from their broker's control of how their work is done
  - Earn all their income as commissions from their brokerage firms
  - Hold an active real estate license
- Which of the following is paid biennially?
  - Initial guaranty fund fee
  - Salespersons' original license fee
  - Salespersons' license renewal fee
  - Guaranty fund reassessment
- The act of blockbusting is regarded by Maryland statute as
  - unethical but not prohibited by law.
  - a felony.
  - a misdemeanor.
  - a legitimate listing technique.
- Who may fine individuals found guilty of operating in the real estate business without a license?
  - The General Assembly
  - The Real Estate Commission
  - The state association of REALTORS®
  - The attorney general
- What is an unlicensed person improperly collecting a real estate commission guilty of?
  - Duress
  - A felony
  - A misdemeanor
  - Fraud
- Which of the following could result in discipline by the Commission?
  - Slandering competitors
  - Charging an unreasonable brokerage fee
  - Bad faith
  - Not following unlawful client instructions
- What is the maximum penalty possible for filing false statements with the Commission in reference to a guaranty fund claim?
  - \$5,000
  - \$10,000
  - \$15,000 and imprisonment for two years
  - \$25,000 and imprisonment for three years
- Who may hold licenses to provide Maryland residential real estate brokerage services?
  - Corporations
  - Limited liability companies (LLCs)
  - Partnerships
  - Individuals
- Who appoints members to the Maryland Real Estate Commission?
  - The State Senate
  - The governor of Maryland
  - The House of Delegates
  - The executive director of the Commission

14. When will a salesperson license issued by the Commission on November 1 expire?
  1. One year from the date of issue
  2. Two years from the date of issue
  3. December 1 of odd-numbered years
  4. October 1 of next even-numbered years
15. What is the primary purpose of the Brokers Act?
  1. To raise revenue
  2. To protect the public interest
  3. To control salespersons
  4. To restrict competition
16. Who appoints the executive director of the Commission?
  1. The nine Commission members
  2. The governor, for a term of four years
  3. The secretary of Labor, Licensing, and Regulation
  4. The five licensed Commission members
17. What must ads include when placed by licensees for a property listed in their firm?
  1. Address of the listed property
  2. Designated name of the listing salesperson
  3. Designated name of the listing broker
  4. Agreed-upon listing price of property
18. What is the minimum level for the guaranty fund to be maintained?
  1. \$250,000
  2. \$25,000
  3. \$50,000
  4. \$500,000
19. What is the membership composition of the Maryland Real Estate Commission?
  1. The executive director and investigation team
  2. Four members that are not licensed and five that are licensed
  3. Four professional members and five consumer members
  4. Representative brokers from real estate associations throughout Maryland
20. The Commission may refuse to issue a broker license to a Maryland resident who has filed a proper application and met the legal requirements
  1. if it then offers the applicant a hearing on the matter.
  2. if the applicant has been convicted of a traffic violation within the past year.
  3. without offering to hold a hearing on the matter.
  4. if the applicant has not reached the age of 21 years.
21. Which of the following has authority to set license fees?
  1. The Commission
  2. Associations and local boards
  3. The governor
  4. The General Assembly
22. Licenses of salespersons who are released by their brokers are to be
  1. returned to the Commission by the brokers.
  2. returned to the Commission by the salespersons.
  3. removed from display but retained by the brokers.
  4. returned to the salespersons.
23. What is the upper limit, if any, of a financial loss protected by the guaranty fund?
  1. \$50,000
  2. \$25,000
  3. \$5,000
  4. \$15,000
24. Which statement about licenses issued for Maryland real estate brokerage services is *NOT* correct?
  1. Licensees are regulated by Title 17 of the Maryland Annotated Code.
  2. They are issued and administered by the Maryland Real Estate Commission.
  3. They are not issued to corporations or associations, only individuals.
  4. They are required for every person who sells real estate for consideration.
25. What is a requirement for licensed real estate salespersons to deliver real estate brokerage services?
  1. Affiliation with properly licensed real estate associate brokers
  2. Performance of real estate acts only on behalf of brokers under whom they are licensed
  3. Membership in the local board or association of REALTORS®
  4. Operation of a real estate business under their own name or designated name

# Maryland REAL ESTATE Practice & Law



## FIFTEENTH EDITION

This text is your premier source for current and detailed information about Maryland real estate license laws and regulations. Its valuable features enable you to pass licensing examinations and provide guidance for performing your ongoing duties.

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*Maryland Real Estate Practice & Law* reflects the author's concern for protection of the public, success of the licensee, and the dignity of the profession.

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