



# Ohio Real Estate News

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## Superintendent's Column

# Prohibited Inducements: An Update

By Charles R. Santer

Over the last few years there has been considerable confusion as to what inducements, if any, are prohibited by Ohio real estate license law. The statute in question, Ohio Revised Code Section 4735.18(N), has been the subject of recent litigation. This article will hopefully explain the history of the dispute and update licensees on the Division's current position on inducements.

Ohio Revised Code Section 4735.18(N) provides that the license of a real estate broker or salesperson may be suspended or revoked for offering anything of value, **other than the consideration recited in a sales contract**, to a party to induce them to enter into a contract for the purchase or sale of real estate. Interpretation of this statute was originally challenged by a wholly owned subsidiary of Coldwell Banker located in Cincinnati. This subsidiary was giving books containing discount coupons for various Sears products to persons who purchased homes through Coldwell Banker. This fact was recited in the purchase contract as part of the consideration. Coldwell Banker adopted the position that as long as the fact that the Sears coupons were being given to the buyer was included as part of the consideration in the purchase contract that the requirements of Ohio Revised Code Section 4735.18(N) were satisfied.

The Commission, however, did not agree with this interpretation. Instead, it construed Ohio Revised Code Section 4735.18(N) to mean that nothing of value could be offered to buyers or sellers to entice them to enter into a purchase contract. This position was based upon a strict interpretation of consideration to be that which flows between the parties to the contract, i.e. the purchase price. Because Coldwell Banker was not a party to the transaction, the Commission adopted the position that these coupons were not a part of the consideration between the buyer and seller. Therefore merely stating on the face of the contract that the buyer was receiving these coupons was not sufficient to avoid a violation of Section 4735.18(N). Based upon this interpretation, the Division notified Coldwell Banker that its Sears Savings

Coupon Program violated Section 4735.18(N). For this reason Coldwell Banker was ordered to cease offering these coupons.

Coldwell Banker responded by filing an action in Hamilton County Common Pleas Court challenging the Division's interpretation of Section 4735.18(N) and its constitutionality. It also sought an injunction against the Division of Real Estate from enforcing this statute against its Cincinnati subsidiary. The trial court agreed with the Division's interpretation that Ohio Revised Code Section 4735.18(N) prohibited inducements per se and that the disclosure made by Coldwell Banker in its contracts did not remove this program from the purview of this statute. However, the Court ruled that given this interpretation, the statute was unconstitutional because it restricted Coldwell Banker's right to commercial speech. Thus, it granted Coldwell Banker's motion for an injunction and this agency was prohibited from taking any action against Coldwell Banker in Hamilton County.

This decision was appealed by the Ohio Real Estate Commission. While this appeal was pending, five Coldwell Banker franchisees from around the state brought an action in Franklin County seeking a similar injunction. Ohio Savings Realty in Cleveland likewise filed a lawsuit seeking an injunction so it could offer a "Club One" membership to its clients. In both these cases, the courts granted the Coldwell Banker franchisees and Ohio Savings Realty preliminary injunctions prohibiting

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### Attention!!!

PLEASE SHARE THIS NEWSLETTER WITH ALL OF YOUR SALES ASSOCIATES. FEEL FREE TO MAKE COPIES.

(THIS IS MAILED TO BROKERS AND BRANCH OFFICES ONLY)

# Governor Celeste Names Two Commission Members

As you are aware, the Ohio Real Estate Commission is made up of five persons appointed by the Governor. This summer the terms of two of the members of the Commission expired. In October Governor Celeste re-appointed Paul J. Everson of Euclid, Ohio to the Commission. Mr. Everson has served on the Commission for fourteen years and has been elected President of the Commission for an unprecedented ten years.

In November, Governor Celeste appointed a new member to fill the remaining vacancy on the Commission. This new Commissioner is Sandra J. Taylor of Canton, Ohio. Ms. Taylor is a broker with the company Marks and Taylor, and has been licensed as a broker for twelve years.

By statute, the Ohio Real Estate Commission is required to select a president annually. At its December 5, 1985 meeting President Paul Everson nominated commissioner Arthur C. Church for this position. Mr. Church was unanimously elected by his co-commissioners and will begin serving as President at the Commission's January meeting. Mr. Church is an attorney practicing in Cincinnati and is the public's representative on the Commission.

We hereby acknowledge Ann Bolte's hard work, dedication, and delightful presence during the course of her term on the Ohio Real Estate Commission.

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## SUPERINTENDENT'S COLUMN — *Prohibited Inducements: An Update*

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the Division of Real Estate from enforcing Section 4735.18(N).

On September 4, 1985, the Ohio Court of Appeals in Hamilton County rendered its decision in the original Coldwell Banker case. The Court upheld the granting of an injunction to Coldwell Banker, but disagreed with the lower court's interpretation of Ohio Revised Code Section 4735.18(N) as prohibiting all inducements. Rather, the Court of Appeals ruled that Coldwell Banker's interpretation of this Section was correct, namely, that as long as the items being offered were recited in the pur-

chase contract as part of the consideration, that Section 4735.18(N) was not violated. The Court further held that under this interpretation, Section 4735.18(N) was merely a disclosure statute and as such, did not unconstitutionally restrict Coldwell Banker's right to commercial speech. It therefore upheld this Section as constitutional.

Because Coldwell Banker made the disclosure in its contracts that the Court of Appeals determined was necessary, the Court found that its offering of the Sears coupons did not violate Ohio Revised Code Section 4735.18(N). At its September meeting the Ohio Real Estate Commission voted unanimously not to appeal the decision of the Court of Appeals. Instead, it will accept this Court's interpretation of Section 4735.18(N) to merely require written disclosure in a purchase contract of anything of value that is offered to induce a party to enter into that contract.

To conclude, then, as long as any item of value that is being given to a buyer or seller to induce them to enter into a contract for the sale or purchase of real estate is recited as part of the consideration in the purchase contract, it is now not a prohibited inducement. Moreover, because Section 4735.18(N) only addresses purchase contracts, items of value may also legally be given by brokers to persons to induce them to list their home for sale or to attend open houses without violating this statute.

I hope this article helps to explain the litigation that has been pending on this issue. Any one with questions regarding inducements or who would like to initiate a similar program should feel free to contact the Division.

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SELMER E. PREWITT  
SANDRA J. TAYLOR

# Disciplinary Actions

The purpose of this article is to disseminate to licensees information concerning recent Commission activities and decisions, pursuant to Section 4735.03(E) of the Ohio Revised Code.

The Commission has taken the following action with regard to these real estate licensees:

## SUSPENSIONS

ELBERT STONOM, broker, Cincinnati, Ohio, had his broker's license suspended for 10 days for violating Section 4735.18(DD) of the Ohio Revised Code. This suspension commenced on August 30, 1985. Stonom failed within a reasonable time to render an accounting to and to pay a salesperson his earned share of a commission following Stonom's receipt of that commission.

JAMES L. KIRKPATRICK, sales associate, Columbus, Ohio, had his sales license suspended for 90 days for violating Section 4735.18(A) and (F) of the Ohio Revised Code. Upon a motion for reconsideration, the Real Estate Commission ordered that imposition of 60 days of this suspension be waived. Kirkpatrick began serving the 30 day balance of this suspension on October 30, 1985. In a certificate submitted to the Ohio Housing Finance Agency, Kirkpatrick certified that he had reviewed an Affidavit of Eligibility made by the purchaser of certain property, and certified that the information contained therein was true and accurate. In said affidavit the purchaser stated that he intended to reside in this property as his principle residence. He also stated that he had not previously obtained a commitment for a loan under any Ohio Housing Finance Agency program for securing mortgage loans. Kirkpatrick swore that the purchaser's statement was true and accurate when, in fact, he knew or should have known, that the purchaser had previously purchased property by a Series B, single family loan from the OHFA and that he had submitted an affidavit swearing that he would reside at that other location as his principle residence.

WILLIE BLOODWORTH, broker, Cleveland, Ohio, had her broker's license suspended for 30 days for violating Section 4735.18(F) of the Ohio Revised Code. Upon a motion for reconsideration, the Real Estate Commission ordered that imposition of 20 days of this suspension be waived. Bloodworth began serving the 10 day balance of this suspension on November 30, 1985. Bloodworth represented to the sellers of a property that her client had already sold her current residence and that she was a qualified purchaser. This statement was made by Bloodworth when she knew, or should have known, that her client had not sold her current property at that time and that she would not qualify for financing to purchase the subject property until she had done so.

AUL J. DODD, broker, Kettering, Ohio, had his broker's license suspended for two consecutive 180 day periods for violating Section 4735.18(A), (C), (F) and (Z) of the Ohio Revised Code. These suspensions shall be served

by Dodd, who is currently unlicensed, upon reinstatement of his license. Dodd failed to maintain the full amount of an earnest money deposit in a special or trust bank account. Dodd later issued a check representing the return of this earnest money deposit, which was dishonored for insufficient funds by his bank. Dodd then instructed the complainant to renegotiate the check at the bank when he knew that there were still not sufficient funds in the account. As a result of this conduct, Dodd was also found guilty of engaging in a continued course of misrepresentation and/or the making of false promises.

## REVOCATIONS

GEORGE A. RIFE, SR., broker, Weston, Ohio, had his broker's license revoked for violating three counts of (F) and one count of (A) of Section 4735.18 of the Ohio Revised Code. Revocation became effective June 27, 1985. Rife entered into a contract to trade his personal property with that of the complainant. Although possession of the two properties was transferred, the closings of these two transactions were not to take place until after Rife procured a purchaser for the complainant's property. Rife failed to exercise any reasonable care or to make a good faith effort to so procure a third party purchaser for the complainant's property. While Rife had possession of the subject property, and while title was still held by the complainant, Rife failed to exercise any reasonable care or good faith effort to maintain the subject property in the condition in which it existed at the time possession was transferred to him. Furthermore, Rife failed to inform the complainant, who was then residing in his property, that foreclosure proceedings had begun on this property, that he had filed bankruptcy, and that a sheriff's sale had been scheduled. At this sheriff's sale, Rife successfully bid on his property in the name of the complainant when he had not been authorized by the complainant to do so.

BERLIN COLE, broker, Cincinnati, Ohio, had his broker's license revoked in 6 separate cases for violating numerous sections of the Ohio Revised Code Chapter 4735. In total, Cole violated 5 counts of (E), 5 counts of (F), 4 counts of (Z), 1 count of (A), and 1 count of (I) of Section 4735.18. Cole also violated Section 4735.02 when he acted as a real estate broker by preparing an offer to purchase on behalf of a buyer after his license was cancelled. While he was licensed, he failed on 5 separate occasions to remit money to others (within a reasonable time). His conduct in failing to do so was also found to constitute 5 separate instances of dishonest or illegal dealing, gross negligence, incompetency, and/or misconduct. On 4 separate occasions Cole failed to deposit these monies in a special or trust bank account separate from his personal account. He was also found to have knowingly made false representations to parties in one transaction and to have willfully disregarded or violated provisions of Chapter 4735 of the Ohio Revised Code.

## Deadline Draws Near for Continuing Education

At this time there are approximately 19,000 licensees who still have not submitted proof that they have completed the required 30 hours of continuing education that is due by January 31, 1986. Unless these persons do so by that date their license will be automatically suspended. To regain their license after such a suspension these persons will not only have to submit proof of their completion of this education, but they will also have to apply for reinstatement of their license and pay a fee. For salespersons this fee is \$39.00; for brokers it is \$59.00.

If you are one of these persons it is crucial that you register for a continuing education course(s), complete this course(s), and submit a certification of completion from the school and a compliance form to this Division before January 31, 1986. Please note that the fact that you may have signed up for a course or may have completed it before January 31st is not sufficient to avoid the suspension of your license. Only by submitting the necessary form and proof of completion can you assure your status as a licensee. Furthermore, DO NOT include this proof of compliance with your certificate of continuation. That certificate should be mailed to the Treasurer's office. Proof of completion of continuing education should be mailed to this Division directly to assure immediate credit to you.

Remember, unless proof that you have completed this education is received by the Division by January 31, 1986, it must be assumed you have not met this requirement. Also, no exceptions or extensions can be granted to anyone, despite the sympathetic nature of their situation. Likewise, no waiver of the reinstatement fees will be granted.

If you have any questions regarding the date your education is due or the availability of classes, or are in need of a compliance form please contact our Continuing Education Section. Doing so may not only save you inconvenience and money, but also your livelihood.

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## Filing Your 1986 Certificate of Continuation

### IMPORTANT POINTS TO REMEMBER

1. Answer all questions on your Certificate of Continuation;
2. Sign your Certificate of Continuation at the bottom;
3. Payment must be made by check, certified check or money order made payable to the Treasurer, State of Ohio;
4. Include any late filing penalty fee with your payment if you are filing after December 31, 1985, but before January 15, 1986;
5. Enclose all licenses for persons who are not being renewed, if proper notification to them has been made;
6. Do not include any other applications or forms you wish to submit to the Division of Real Estate, including proof of your completion of continuing education, with your Certificate of Continuation. Such applications or other forms should be sent to this Division directly;
7. The deadline for filing your 1986 Certificate of Continuation to avoid penalty fees is December 31, 1985.

### UPCOMING TEST DATES

(These dates are subject to addition or revision)

	SALES		BROKERS
	COLUMBUS/CLEVELAND		COLUMBUS
January	8	22	14
February	12	26	18
March	12	26	18

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