



DIVISION OF REAL ESTATE NEWSLETTER

May/June 1986

RICHARD F. CELESTE
GOVERNOR, STATE OF OHIO

KENNETH R. COX
DIRECTOR OF COMMERCE

MARGARET J. RITENOUR
SUPERINTENDENT OF REAL ESTATE

Superintendent's Column

Compliance Audits: What To Expect

By Margaret J. Ritenour, Superintendent

In February the Division's Enforcement Section began to once again conduct routine audits of the business records of real estate brokers. Many brokers may recall being visited by a Division investigator for such an audit a few years ago. However, other brokers who have recently become licensed may never have been audited. The purpose of this article is to give those new brokers an idea of what to expect when they are audited and to also refresh the memories of those other brokers who may not have been audited for several years.

Under Ohio Revised Code Section 4735.04, the Division of Real Estate is required to maintain an audit section and to review and audit the business records of real estate licensees. The purpose of conducting an audit is to assure that a broker is conducting his or her business in accordance with the provisions of real estate license law. An audit also provides brokers with an opportunity to review license law requirements with a Division representative and to go over any questions they may have regarding trust accounts, advertising, or any other issues of concern.

Generally, audits are done on a random basis from the Division's computerized print out of brokers. Where possible, however, an effort is being made to visit the offices of those brokers who have become recently licensed. These brokers will be given priority because they probably have not been previously audited and they may have more questions regarding procedures and license law than more experienced brokers.

If you are chosen to be audited you will be contacted by an investigator from the Division's Enforcement Section. He or she will attempt to schedule the audit for a date that is convenient for both of you. Before the audit you should have the following items ready for the investigator's review: your trust account check book; your latest trust account bank statement; the cancelled checks reflected on that statement; deposit receipts;

samples of your business cards, yard signs, stationery and newspaper advertisements; your 1986 Certificate of Continuation; all licenses in your possession; and all current listings, and purchase contracts, as well as pending offers to purchase.

During the audit, the investigator will be checking to assure that the following license law requirements are being met:

- That a regular place of business is being maintained
- That there is a sign on the premises plainly identifying you as a real estate broker
- That all licenses are properly registered with the county Clerk of Court's Office
- That your broker's license is prominently displayed; a copy of any branch office license and the licenses of any sales associates should also be readily available for inspection
- That all forms of advertisements (including yard signs, business cards and stationery) properly identify the broker by the name that appears on his/her license; if use of a trade name or "dba" has been approved by the Division, advertisements must instead reflect only that name as approved.

(continued on page 2)

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)

Routine Audit (continued from page 1)

- That all advertisements adequately disclose that you are a duly licensed real estate broker
- That the name of a salesperson in an advertisement is not larger than that of the broker
- That an Equal Opportunity Housing Poster is displayed in the office
- That complete and accurate records of all transactions are maintained for a period of three years from the date of the transaction; such records must include listing and purchase contracts, earnest money receipts, closing statements, records of disbursement of funds, commission checks and other miscellaneous documents and correspondence that are incidental to a transaction
- That listing contracts include a definite expiration date and rate of commission, and that they have been properly executed
- That purchase contracts properly reflect the receipt of earnest monies, and that they have been otherwise properly executed
- That the broker is maintaining a non-interest bearing trust account at an Ohio depository and that this account is designated as either a "trust" or "special" account; this account must be in the broker's name or trade name as it appears on his/her license
- That all monies received in a fiduciary capacity are deposited in the broker's trust account, including earnest monies, security deposits, etc.

- That no personal funds of the broker (beyond a minimum amount necessary to cover any service fee charges) are being maintained in the trust account and that no trust monies are being improperly disbursed

During the course of the audit the investigator will complete a checklist verifying your compliance with these requirements. He or she will also actually compare your trust account statements with your earnest monies receipts to make sure all monies are properly maintained and that your trust account is balanced. At the conclusion of the audit, the investigator will review with you both the compliance check list and the trust account balance sheet. If any areas of non-compliance or trust account irregularities are found, the investigator will work with you to correct this situation.

It is hoped that this article will help to relieve some of the natural anxieties that are experienced by brokers when they are contacted by an investigator to schedule an audit. I would like to emphasize that the Division is required by law to conduct routine audits and that no "witch-hunt" is being done to try to find license law violations where none exist. Moreover, if problems are found efforts will be made to help educate the broker and to assist him in establishing compliance with license law. With this in mind, it is hoped that brokers will look upon their audit as a positive opportunity to receive personalized, helpful advice and reassurance from the Division that their business is being run in compliance with all of the various rules and regulations enforced by the Division.

Director Cox Appoints Ritenour Superintendent

Margaret J. Ritenour has been appointed Superintendent of the Division of Real Estate by Department of Commerce Director Kenneth R. Cox.

Ms. Ritenour, who has been serving as Acting Superintendent since March 1, has worked for the Division for over five years. She originally began her career with the Division in Cincinnati in 1980 as a Hearing Officer after graduating from the University of Cincinnati's College of Law. In 1983, Ms. Ritenour began serving as counsel to the Division's Enforcement Section in Columbus. At that time she also assumed responsibility for the administration of the Real Estate Recovery Fund. In 1985, Ms. Ritenour was appointed Deputy Superintendent and Chief Legal Counsel by former Superintendent Charles Santer.

In making the appointment Director Cox remarked, "With Margaret Ritenour's understanding of the Ohio real estate industry, I am confident that she will serve with distinction in this position."

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The Ohio Real Estate Commission

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EDWARD J. KIZER
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

WILLARD BURSON, broker, Worthington, Ohio had his broker's license suspended for 60 days for violating one count of Section 4735.18(A), three counts of subsection (F) and two counts of subsection (I) as it incorporates 4735.01 and 4735.02. Imposition of 30 days of this suspension was waived by the Commission. Burson began serving the 30 day balance of his suspension on April 7, 1986. These violations were the result of conduct by Mr. Burson in continuing to advertise and offer three properties for sale while his license was under an earlier suspension ordered by the Commission. He also was found to have allowed a former sales associate to offer and advertise property under his name during this suspension. Furthermore, Mr. Burson failed to notify the owners of two of the properties that his license had been suspended and continued to market and show those properties.

ROSA KEMPER, broker, Wapakoneta, Ohio, had her broker's license suspended for 10 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspen-

sion commenced April 25, 1986. Ms. Kemper was found to have failed to exercise reasonable care to assure that accurate information regarding the size of the lot of property was provided to the purchasers and/or their agent when she knew, or should have known, that previously circulated information regarding this lot size was incorrect. Ms. Kemper's conduct in this matter was found to constitute gross negligence.

THOMAS P. GRGICH, sales associate, Columbus, Ohio, had his sales license suspended for 180 days for violating Section 4735.18(A) and (F) of the Ohio Revised Code. This suspension commenced April 25, 1986. Mr. Grgich was found to have represented to a title agency that he was authorized to receive a check representing the proceeds from the sale of the complainant's property, when he knew that the sellers had ordered the title agency to forward the check directly to them by certified mail.

C. MICHAEL ROYCE, sales associate, Dayton, Ohio, had his sales license and broker's license on deposit suspended for 30 days. However, the Real Estate Commission ordered that this 30 day suspension be waived. This violation was the result of Mr. Royce's conduct in failing, within a reasonable time, to account for and/or remit to the complainant the earnest money he had received in connection with a purchase contract.

Real Estate Recovery Fund: A Review and Update

Since 1981 several amendments have been made to the statute governing the Real Estate Recovery Fund (Ohio Revised Code Section 4735.12). As many of you recall, this fund was created in 1975 to replace the private bonding of real estate licensees. Its purpose is to compensate consumers who obtain a civil judgment against a real estate broker or salesperson as a result of misconduct in a real estate transaction. Consumers who obtain such a judgment, but who are unable to collect payment because the real estate licensee is insolvent or cannot be located, may apply to a court of common pleas for an order directing payment from the Recovery Fund.

The money to establish this Fund in 1975 was originally generated by a one time \$20 charge to each broker and salesperson licensed at that time. From 1975 to 1982, a \$20 fee was assessed to new brokers and a \$10 contribution to new salespersons. In 1982, all assessments were discontinued. The Fund is now sustained by the interest it earns.

In the past few years, statutory amendments have been passed to limit the availability of the monies in the Real Estate Recovery Fund. This was necessary as a result of several court cases that opened the Fund up to payment of punitive damages and attorney fees. Because the intended use of the fund was only to cover

a consumer's actual and direct losses, the statute was amended to specifically exclude the payment of attorney fees, punitive damages, interest, and court costs from the Fund. Again, the purpose of these restrictions is to avoid depletion of the Recovery Fund and the necessity to reinstitute assessment to licensees.

Beginning this month, this newsletter will begin to publish the names of those persons whose licenses have been suspended as a result of such payment from the Recovery Fund, and the date and amount of such payment. From January 1, 1986, to April 30, 1986, the following persons' licenses have been so suspended:

PRESTON L. FENDERSON (Broker)	
(01-02-86)	\$ 1,566.13
(03-18-86)	\$ 5,564.38
PETER M. O'CONNELL (Broker)	
(03-13-86)	\$19,253.40
RAYMOND PITTOCK (Sales)	
(01-02-86)	\$ 800.00
SUSAN PLUMB (Broker)	
(03-18-86)	\$ 4,000.00

1986 PAYMENTS TO DATE: **TOTAL** \$31,183.91*

*This amount does not include cases presently on appeal.

Publications Available Through The Division Of Real Estate

The Division of Real Estate has recently printed a variety of publications to assist Ohio's licensees, potential salespersons, and consumers. They are:

How to Become a Real Estate

Sales Associate in Ohio

This pamphlet discusses the requirements to be seated for the sales examination, application procedures, and the testing format utilized. This sales brochure is available free of charge unless orders of over 50 brochures are requested. In that event, five cents per pamphlet will be charged to cover the printing and mailing costs.

Home Buyer's Guide

This 25-page booklet is a step-by-step guide to first time home buyers. It discusses the factors to weigh in deciding to purchase a home, how to choose a home, information on the various types of financing, the role of a real estate broker, and the steps involved in a real estate transaction. Again, no fee will be charged for the first 50 copies of this pamphlet that are requested. Anyone requesting over 50 copies will be charged twenty-five cents per pamphlet.

Equal Opportunity Housing sign and pamphlet

Ohio Revised Code Section 4735.16 requires all brokers to prominently display a sign stating that it is illegal to discriminate against any person because of race, color, religion, sex, or national origin in the sale or rental of housing or residential lots, in advertising the sale or rental of housing, in the financing of housing, and in providing real estate brokerage services. It must also state that blockbusting is illegal.

These posters have recently been reprinted by the Division to assist brokers in complying with this statute. This same information has been printed in "hand-out" form to be distributed by licensees to their clients. These signs and pamphlets are available free of charge as a service to both the industry and the public.

Ohio Real Estate Laws Annotated

Last fall the Division printed a new edition of the license law manual to reflect the 1985 amendments to

both Ohio Revised Code Chapter 4735. and to the rules promulgated by the Ohio Real Estate Commission. A \$4.00 fee is charged for this publication to cover the cost of printing and mailing.

To receive any of these publications, you can write "The Division of Real Estate, Two Nationwide Plaza, Columbus, Ohio 43266-0547" or call (614) 466-4100 or 1-800-344-4100. Payment must be received in advance and should be made payable to the Ohio Division of Real Estate.

UPCOMING TEST DATES

The following are the tentatively scheduled dates for the real estate sales and brokers examinations for the remainder of 1986:

	SALES COLUMBUS/CLEVELAND	BROKERS COLUMBUS
June	*4	24
July	2	23
Aug.	13	27
Sept.	10	24
Oct.	8	22
Nov.	12	26

*Note: Due to the large number of applicants to be seated for the sales examination, two examinations will be administered in Columbus on June 4, 1986. These examinations are scheduled for 9 a.m. and 1:15 p.m. and are open to all applicants regardless of their county of residence.

As of the date of mailing of this newsletter, however, it is anticipated that both of these June 4 tests will be filled. Additional examinations may also be added in the months to come as is necessary to accommodate potential licensees.

4

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