



DIVISION OF REAL ESTATE NEWSLETTER

March/April 1989

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Superintendent's Column

Fair Housing Amendments Protect Handicapped, Families

By Margaret J. Ritenour, Superintendent

People with handicaps and families with children are now protected from housing discrimination as of March 12, 1989. Under the Fair Housing Amendments Act of 1988, these two new protected classes were added to the Civil Rights Act of 1968. The Civil Rights Act prohibits discrimination in the sale, rental or financing of housing based on color, religion, sex or national origin.

The Act defines a handicapped individual as one with a physical or mental impairment which substantially limits one or more major life activities. It also defines family status as individuals under 18 years of age living with a parent or legal guardian.

It is now unlawful to refuse to permit, at the expense of the occupying handicapped person, reasonable modifications to property if the changes are necessary to provide for full enjoyment of the property. Additionally, property owners must make reasonable accommodations in their policies and practices to give the person equal opportunity to use the property.

Under the new amendments, it is now also unlawful to discriminate against families with children in the sale, financing or rental of property. In addition, it is illegal to advertise or inform any person that a unit is not available because he or she has children in the household.

The 1988 Amendments clearly eliminate all adult-only apartment complexes, except for some housing for the elderly. Since all property must be made available to families with children on the same basis as they are made available to other individuals, a family with a child cannot be excluded. Similarly, this also prohibits age requirements for residents.

An apartment complex, however, can establish reasonable occupancy requirements based on the number and size of the sleeping areas. For example, a one bedroom unit (depending on the size) could be restricted to two individuals as long as all property is made available on the same basis—such as two adults or one parent and one child. Therefore, if you would rent to two adults you would have to rent to an adult and child. Local ordinances may limit the maximum number of individuals that may occupy certain property.

The 1988 Amendments provide ways for administrative and judicial enforcement in handling cases that cannot be resolved informally. It also establishes financial penalties in cases where housing discrimination is found.

Under the law, the Department of Housing and Urban Development (HUD) has the authority to investigate complaints alleging discrimination. If a violation is found, an administrative law judge can impose a civil penalty of up to \$10,000 if the respondent has not committed any prior housing offense. The fine increases up to \$25,000 for a second discriminatory practice in the past five years and up to \$50,000 for three or more discriminatory practices within seven years.

Single individuals—rather than a real estate corporation—engaging in more than one discriminatory practice can receive a \$25,000 or \$50,000 fine without regard to the time limits.

The Division of Real Estate provides this information to keep you informed of recent changes in federal civil rights law that affect you as licensees. Violations of this law can lead to the suspension or revocation of your real estate license.

For more specific information on the Fair Housing Amendments Act of 1988, contact the Department of Housing and Urban Development office nearest you:

Cincinnati (513) 684-2884
Cleveland (216) 522-4065
Columbus (614) 469-5737

ATTENTION BROKERS!

**Are you forwarding
copies of this newsletter
to your salespersons?**

2,900 Licenses Suspended; Lacked Continuing Education

Approximately 2,900 brokers and salespersons have had their licenses suspended for failing to submit their continuing education requirements. In comparison, 10,000 licenses were suspended in 1983 and 4,300 in 1986 for failing to complete these requirements.

Brokers whose salespersons have been suspended were notified and instructed to return the licenses to the Division immediately. Failure to return this license immediately can be grounds for suspension or revocation of the broker's license.

Brokers and salespersons who have had their license suspended have until January 31, 1991 to reinstate them. To qualify, the necessary continuing education must be completed. In addition, the certificates of completion, an

R-109 compliance form, a reinstatement application, and the reinstatement fee of \$39 for salespersons and \$59 for brokers must be submitted to the Division by January 31, 1991. No waivers of the fee will be granted. Additionally, no new license will be issued until an applicant's old license has been returned.

The Division will be conducting spot checks to assure that suspended brokers and their salespersons are not practicing real estate while they are suspended. Evidence that a broker or salesperson practices real estate while they were not licensed can result in criminal charges for a first-degree misdemeanor. This evidence will also be grounds for denial of any future reinstatement of their licenses.

Do You Need To Disclose An Undisclosed Principal?

Licensees who specialize in commercial or industrial real estate are occasionally confronted with a situation in which a prospective tenant or purchaser does not want their identity disclosed. Several commercial licensees have asked what their disclosure responsibilities are in this scenario.

The answer to this question depends upon whom the agent represents in the transaction. If the agent has agreed to represent the buyer as the buyer's agent, then he would owe the seller no fiduciary duties. In this situation the agent should notify the listing agent (if there is one) or the seller, that he is representing a buyer who wishes to remain anonymous.

Then the seller must decide if he wishes to negotiate with an unknown purchaser. A trustee, or someone legally authorized to sign documents for the undisclosed principal, should sign the disclosure statement.

If the agent represents the seller either directly or as a sub-agent, he owes his fiduciary duties to the seller. This includes the duties of loyalty and full disclosure of all material information to the seller. The identity of the party offering to buy the seller's property would be considered to be material information because it could effect the seller's decision to accept the offer or his negotiating strategy.

As the seller's representative, the real estate agent would be required to disclose the name of the prospective purchaser if he knows the identity. Accordingly, if the purchaser requests anonymity, the agent would have to inform the purchaser that he could not honor this request. For this reason, it is important for the agent to disclose to the prospective purchaser early on that he represents the seller or landlord. In this way, the purchaser/tenant will not have any expectations that his identity will remain confidential.

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Inducements Must Be Disclosed In The Purchase Contract

The Division of Real Estate receives many letters and telephone calls from licensees asking whether they can legally offer a variety of free items or services to sellers or buyers. Some of these proposed "give-a-ways" include home warranty plans, carpet cleaning service, trips, gift certificates and cash rebates. The concern these licensees have is whether giving a gift to a buyer or seller will constitute an inducement that is prohibited by license law.

Under Ohio Revised Code Section 4735.18(A)(14), offering anything of value to a party that is designed to entice or motivate them to enter into a purchase or sales contract is considered to be an inducement. Such inducements are prohibited UNLESS they are disclosed in the purchase contract as part of the consideration.

Therefore, it is legal to give a buyer or seller a free home warranty, weekend get-a-way, coupons, etc., as long as

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Disciplinary Actions

Here is a summary of 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 licensees:

REVOCATIONS

EMIL J. PAPA, sales associate, Garfield Heights, Ohio, had his sales license revoked for violating Ohio Revised Code Sections 4735.18(A) and (A)(9) as it incorporates Section 4735.13(C). This revocation became effective January 12, 1989. Papa was convicted of theft in violation of Ohio Revised Code Section 2913.02 in the Cuyahoga County Court of Common Pleas. Furthermore, Papa failed to notify the Superintendent of the Ohio Division of Real Estate of this conviction within 15 days of the conviction.

ANNETTE M. WAGNER, sales associate, Dayton, Ohio, had her sales license revoked for violating Section 4735.18(A)(8) of the Ohio Revised Code. This revocation became effective January 12, 1989. Wagner indicated on a real estate sales application that she had never been convicted of any unlawful conduct, and under oath she swore that this statement was true. However, at the time Wagner applied for a sales license, she had been convicted of theft in violation of Ohio Revised Code Section 2913.02 and of passing bad checks in violation of Ohio Revised Code Section 2913.11 in the Franklin County Common Pleas Court.

MARY ZARISKE, broker, Howard, Ohio, had her broker's license revoked for violating Section 4735.18(F) of the Ohio Revised Code. This revocation became effective January 27, 1989. Zariske permitted her husband to act as a licensed real estate agent while his sales and broker's license on deposit were suspended.

SUSPENSIONS

JEROLD L. HALL, broker, St. Marys, Ohio, had his broker's license suspended for 120 days for violating Section 4735.18(A) of the Ohio Revised Code. This suspension began on February 13, 1989. Hall was convicted of attempted gross sexual imposition in violation of Ohio Revised Code Sections 2923.02(A) and 2907(A)(3) in the Common Pleas Court of Auglaize County.

WILLIAM H. JACKSON, broker, Dayton, Ohio, had his broker's license suspended for 60 days for violating Sections 4735.18(A)(6) and (26) of the Ohio Revised Code. This suspension began on February 6, 1989. Jackson received an earnest money deposit from a buyer in connection with his offer to purchase a property. Jackson failed to maintain this earnest money in his trust/special account.

J. PHILIP LEATHERMAN, broker, Cincinnati, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of this suspension was waived by the Commission. Leatherman disbursed part of an earnest money deposit given by the buyers of a property without their consent, without a court

order to do so, and in non-compliance with the terms of the purchase agreement.

STURGES & LEATHERMAN REALTY, INC., corporate broker, Cincinnati, Ohio, had its corporate broker's license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. Due to mitigating circumstances, however, imposition of the suspension was waived by the Commission. Sturges and Leatherman Realty, Inc. failed to maintain an earnest money deposit in its trust/special account. Part of this earnest money was disbursed without the buyer's consent, without a court order to do so, and in non-compliance with the terms of the purchase agreement.

JOHN H. MAHAFFEY, sales associate, Lyndhurst, Ohio, had his sales license suspended for 30 days for violating Section 4735.18(A) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived by the Commission. Mahaffey was convicted of sexual imposition, a misdemeanor, in violation of Ohio Revised Code Section 2907.06 in the Cuyahoga Falls Municipal Court.

JEFFREY MATHIAS, broker, Dover, Ohio, had his broker's license suspended for 10 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. Due to mitigating circumstances, however, imposition of the suspension was waived by the Commission. Mathias failed to assure that a purchase agreement between the buyers and sellers of a property was reduced to writing.

STEPHEN L. SNIDER, broker, Middletown, Ohio, had his broker's license suspended for 20 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived by the Commission. Snider entered into an agreement to purchase a property by way of loan assumption. Thereafter, Snider failed to make payments on the loan, even though he had rented the property and received rental payments from the tenants. Furthermore, Snider failed to inform the sellers of the property that he was not making the payments on the loan.

JAMES WASHINGTON, broker, Dayton, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18(F) of the Ohio Revised Code. Due to mitigating circumstances, however, 15 days of the suspension were waived by the Commission. Washington began serving the 15 day balance of this suspension on January 27, 1989. Washington permitted a non-licensed person to act as a real estate sales associate when he knew, or should have known, that this person was not licensed to sell real estate.

RECOVERY FUND ACTION

PRESTON FENDERSON, Cleveland, Ohio, has his real estate license automatically suspended pursuant to Section 4735.12(E) of the Ohio Revised Code. This suspension was a result of the payment of \$2,000 from the Real Estate Recovery Fund.

Inducements Must Be Disclosed

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this fact is disclosed in the purchase contract as part of the consideration to enter into the contract.

It is important to note that Section 4735.18(A)(14) does not address inducements to enter into listing contracts. Therefore, such gifts or give-a-ways can be given to a seller who lists his/her property with a brokerage. It is recommended, however, that such an agreement be noted on the listing contract to avoid any future misunderstandings or disputes.

In advertising an inducement, brokers must be careful that the terms and value of any item or service being offered are correctly described. Any restrictions or qualifications on participation, or any time limit on the offer should be included in any advertisement to avoid a violation of Section 4735.18(A)(21).

Questions concerning the issue of inducements can be directed to the Division's legal section.

UPCOMING TEST DATES

The following are the tentatively scheduled dates for the real estate sales, brokers and foreign real estate sales examinations for the upcoming months:

	SALES		BROKERS
	COLUMBUS/CLEVELAND		COLUMBUS
April	5	20	17
May	3	18	22
June	14	22	19
July	12	20	24

(Additional exams may be added if warranted)

FOREIGN REAL ESTATE SALES

April 4, 18	June 13, 27
May 2, 16, 30	July 11, 25

The foreign real estate sales examination is given only *in Columbus*. Because of the small number of applicants for the foreign real estate dealer examination, these exams are scheduled on an individual basis as the applications are received.

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