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APPRAISER BOARD NEARS COMPLETION OF REGULATIONS

The Ohio Real Estate Appraiser Board is nearing completion of the regulations it will use to govern the voluntary appraiser certification process.

The Appraiser Board has forwarded draft copies of its rules to numerous entities including real estate appraisal organizations, real estate trade associations, and financial institution groups for their review and comment. The Board and Superintendent McCurdy are enjoying excellent cooperation from all of these organizations.

At the same time, the Ohio Board is closely reviewing the exposure drafts from the Appraisal Standards Board of the Appraisal Foundation and the Appraisal Qualifications Board of the Appraisal Foundation. These two federal boards were created under Title XI — Real Estate Appraisal Reform Amendments — of the Financial Institution Reform, Recovery and Enforcement Act of 1989 to establish the federal qualifications and standards for appraiser certification. Section 1101 of the title states, "The purpose of this title is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision."

Under Ohio's law, the Division of Real Estate will begin accepting applications for certification by September 1, 1990 and begin administering examinations no later than January 1, 1991. To become certified, all applicants for appraiser certification must pass an examination. Additionally, at least 20 hours of continuing education must be completed every two years for renewal.

Ohio Senate Bill 202 created two classifications of certified appraisers. State-certified residential real estate appraisers can appraise residential properties up to and including 12 units where a net income capitalization analysis is not required under the appraisal assignment's terms. State-certified general real estate appraisers can appraise all types of real property.

To be eligible to take the certification exam, applicants for residential and general certification will need to have at least two years experience within the five years immediately preceding the filing of the application in real estate appraising or equivalent experience as defined by the Appraiser Board. Applicants for these two types of certifications will also need to complete 15 classroom hours relating to the standards of professional practice. Additionally, the following requirements must be met:

- Residential certification will require completion of a bachelor's degree from an institution of higher education or completion of at least 60 classroom hours of

courses in subjects related to real estate appraisal taught by a nationally recognized appraisal organization or an institution of higher education plus 15 classroom hours related to standards of professional practice and the provisions of the Ohio law.

- General certification will require completion of a bachelor's degree from an institution of higher education or completion of at least 150 classroom hours of courses in subjects related to real estate appraisal taught by a nationally recognized appraisal organization or an institution of higher education plus 15 classroom hours related to standards of professional practice and the provisions of the Ohio law.

These pre-certification educational requirements can be waived for the initial two-year term of certification for persons applying for an initial appraiser certification within one year after September 1, 1990. However, in order to renew, these applicants must prove that they have completed the pre-certification educational requirements.

The *Division of Real Estate Newsletter* will highlight the appraiser certification rules when they are adopted.

ATTENTION BROKERS!
Are you forwarding
copies of this newsletter
to your salespersons?



REAL ESTATE COMMISSION ADOPTS NEW RULES

The Ohio Real Estate Commission has recently promulgated nine new rules and one amendment to an existing rule. Each of these rules is summarized below along with the rationale for the adoption of the new rule or amendment. Unless otherwise noted, these changes become effective on May 1, 1990.

1. 1301:5-5-05 Disclosure of agency relationship; dual agency.

This rule was amended to provide that any licensee who fails to comply with the agency disclosure requirement will be considered to be engaging in "misconduct" in violation of Section 4735.18(A)(6).

The rule previously specified that any licensee who fails to properly use the agency disclosure form shall be deemed to be in violation of Section 4735.18(A)(4). Although this section addresses agency relationships, the rule was amended because the proper penalty provision for this regulation is provided in Section 4735.18(A)(6).

2. 1301:5-1-14 Use of name or license for benefit of others.

This new rule was established to prohibit a real estate licensee from lending his or her license to someone else in order to circumvent the real estate licensing laws and regulations.

This rule was created to help assure that licensees personally oversee and direct the operations of their brokerage. In addition, the public will be protected by preventing unqualified individuals from circumventing the real estate licensing requirements through arrangements in which broker's licenses are "rented" to salespersons or unlicensed individuals.

3. 1301:5-1-15 Education requirements for brokers and salespersons.

This new rule was established to provide that an instructor who teaches the educational coursework for a real estate license will be considered to have successfully completed each required course which he/she instructs. The previous licensing requirements specify

that all applicants for a real estate license must successfully complete certain educational coursework. This new rule is needed as it is somewhat redundant to require an instructor of one of the required courses to also sit as a student in the same course to be considered to have successfully completed the course.

4. 1301:5-1-16 Effective date of licensure.

This new rule was established to clarify the time when an individual can begin acting as a licensee on behalf of a brokerage. Although it has been the position of the Division that the effective date of licensure for an applicant is when the individual's license is issued by the Division, this rule clarifies this position in writing and eliminates any misconception which may exist in the industry.

5. 1301:5-3-14 Settlement agreements.

This new rule was created to clarify the authority of the Superintendent to enter into settlement agreements with licensees charged with violating license laws. The rule also established the content of such agreements.

Occasionally, licensees charged by the Superintendent with violating one or more of the license laws will want to admit to the alleged violation(s) and alleviate the expense of hiring an attorney to represent them in a formal hearing. This rule provides the Superintendent with the authority to enter into settlement agreements which can be a cost-effective and timely method of handling disciplinary actions.

6. 1301:5-5-06 Referral fees paid to persons licensed in other states.

This new rule was established to clarify when referral fees can be paid by Ohio licensees to out-of-state brokers. The rule does not provide that simply because an out-of-state broker may be paid a referral fee that he or she is authorized to act as a broker in Ohio. The Ohio licensee may perform the activ-

ities articulated under Ohio Revised Code Section 4735.01 in Ohio and the out-of-state broker may perform any activity in his own state which is allowable by his license in that state but not in Ohio.

The statutory language which addressed the payment of commissions to out-of-state licensees was vague as it related to situations in which an Ohio broker may pay or divide a commission with a broker licensed in another state. This rule clarifies this issue.

7. 1301:5-5-07 Licensure exemption; residential rental property.

This new rule was established to exempt from the licensure requirement those individuals employed by brokers who only show and/or supply leases to prospective tenants for residential rental properties. In creating the rule, the Commission, Division and various trade associations agreed that an exemption from completing the licensing requirements was needed for individuals performing these limited activities. The rule does not, however, permit unlicensed individuals to negotiate leases, approve leases, interpret terms of leases or vary from the rental terms or conditions established by the broker or owner.

8. 1301:5-5-08 Handling of trust account funds.

This new rule was established to clarify the circumstances under which a broker may maintain his own funds in the trust account.

9. 1301:5-5-09 Trust account records to be maintained.

This new rule was established to clarify in detail the record keeping requirements for all licensees. The rule informs every broker of their responsibility to maintain ledgers which detail all of their actions involving funds received and disbursed in their capacity as licensees.

10. 1301:5-5-11 Separate property management trust account required.

This new rule was established to specify that a brokerage must maintain a separate trust

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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

RICHARD A. LONG, sales associate, Beavercreek, Ohio, had his sales license revoked for violating Sections 4735.18(A), (A)(1), (A)(5) and (A)(6) of the Ohio Revised Code. This revocation became effective March 28, 1990. Mr. Long was convicted in the Montgomery County Court of Common Pleas of forgery and passing bad checks. Also, Mr. Long represented to a prospective buyer that the owner of a property had agreed to sell the subject property to the prospective buyer and Mr. Long when he (Long) knew this representation was false. Furthermore, Richard Long collected money from this prospective buyer in connection with an agreement to purchase the subject property. However, when the transaction was not completed, Mr. Long failed to remit the money to the prospective buyer.

JACK W. NEMECEK, broker, Euclid, Ohio, had his broker's license revoked for violating Section 4735.18(A) of the Ohio Revised Code. This revocation became effective February 21, 1990. Mr. Nemecek was convicted of conspiracy to commit bank fraud, to embezzle, to make false bank entry, and to make a false statement in the United States District Court of the Northern District of Ohio.

SUSPENSIONS

TOMMY ACCORD, sales asso-

ciate, Parma, Ohio, had his sales license suspended for five days for violating Ohio Revised Code Section 4735.18(A)(6) and Ohio Administrative Code Section 1301:5-5-05. Due to mitigating circumstances, however, imposition of the suspension was waived by the Ohio Real Estate Commission. Mr. Accord prepared an offer to purchase on behalf of a prospective buyer. He submitted this offer to the seller and the seller's agent without providing an agency disclosure form to the buyer.

CAROLYN F. FARMER, sales associate, Cincinnati, Ohio, had her sales license suspended for 60 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. Ms. Farmer allowed the sellers of a property to enter into a purchase agreement when she knew, or should have known, that there existed an outstanding contract for the sale of the subject property. In obtaining this second agreement, Ms. Farmer failed to designate it as a back-up contract or contingent upon the first contract being void.

VIRGINIA FORGY, sales associate, Cincinnati, Ohio, had her sales license suspended for 10 days for violating Sections 4735.18(A)(6) and (A)(21) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived by the Commission. Ms. Forgy assisted in the procuring of two listings on behalf of real estate licensee West Shell, Inc. when she was not a licensed sales associate with the corporation. Furthermore, Ms. Forgy advertised and held herself out as a real estate agent with West Shell, Inc. when she was not properly licensed through the Ohio Division of Real Estate as a sales associate with West Shell, Inc.

JACK W. SCHRAND, sales associate, Cincinnati, Ohio, had his sales license suspended for 10 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. Mr. Schrand authorized and/or permitted Virginia Forgy to advertise and hold herself out as a real estate agent with West Shell, Inc. when she was not properly licensed through the Ohio Division of Real Estate as a salesperson with

West Shell, Inc.

WEST SHELL, INC., corporate broker, Cincinnati, Ohio had its broker's license suspended for 10 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. West Shell, Inc. authorized and/or permitted Virginia Forgy to advertise and hold herself out as a real estate agent with West Shell, Inc. when she was not properly licensed through the Ohio Division of Real Estate as a salesperson with the corporation.

DOROTHEA PHILPOTT, sales associate, Akron, Ohio, had her sales license suspended for 180 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. This suspension began on March 26, 1990. Ms. Philpott agreed to purchase a property and assume the seller's outstanding mortgage loan on the property. However, at the time the deed was conveyed, Ms. Philpott had yet to assume the mortgage as she had agreed to do. Ms. Philpott still failed to assume the loan when title to the property had been in her name for more than five months.

HANS RICHTER, broker, Mentor, Ohio, had his broker's license suspended for 10 days for violating Sections 4735.18(A)(6) and (A)(26) of the Ohio Revised Code. Due to mitigating circumstances, however, imposition of the suspension was waived by the Commission. Mr. Richter failed to deposit into his real estate trust account monies including rental payments collected by him in a fiduciary capacity and in connection with his management of a property.

KAREN LISA THOMAS, sales associate, Hamilton, Ohio, had her sales license suspended for 180 days for violating Ohio Revised Code Sections 4735.18(A)(6) and (A)(9) as it incorporates Sections 4735.01 and 4735.02. This suspension shall commence upon reinstatement of Ms. Thomas' license. While she was not licensed as a real estate sales associate, Ms. Thomas collected money in her own name from an individual in connection with that individual's interest in leasing a property. Ms. Thomas' assistance in finding a tenant for the subject property is conduct which required a real estate license.

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Dennis Ginty, Newsletter Editor



RECOVERY FUND ACTIONS

The following persons had their real estate licenses automatically suspended pursuant to Section 4735.12(E) of the Ohio Revised Code. These suspensions were a result of payments made from the Real Estate Recovery Fund:

PAID ON:

Albert Hollowell* \$ 1,413.00 4/6/90
 Robert J. Clawson 17,250.00 4/11/90
 Dixie L. Graves 14,540.00 4/12/90

*Albert Hollowell repaid the full sum of \$1,413.00 to the recovery fund on 4/24/90. His real estate sales license has been reinstated.

The Division of Real Estate would like to know if you are receiving duplicate copies of this newsletter or if it is being sent to the wrong address. If this is occurring, please call the Division at (614) 466-4100 or 1-800-344-4100 so we can correct any errors.

The staff at the Ohio Division of Real Estate is not authorized under Ohio Revised Code Chapters 4735 or 4763 to give personal legal advice. The staff may be able to refer an individual to a particular statutory provision applicable to licensing, but they cannot make ultimate conclusions or give advice in non-licensing matters.

Licensees having questions regarding the interpretation of contracts, rental agreements, or closing, should initially speak to their broker and if legal advice is needed, contact an attorney

The Ohio Division of Real Estate receives numerous telephone calls from licensees and the public requesting legal advice on real estate matters.

Real Estate Commission Adopts New Rules

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account for property management activity. The rule also clarifies the records licensees must maintain when engaging in property management as well as the handling of funds associated with property management activities. This rule becomes effective on September 1, 1990.

The Division of Real Estate has recently published its updated license law book. The recently adopted and amended rules are provided as a supplement at no cost.

To receive a copy of the law book, please forward a check or money order for \$8 made payable to the Ohio Division of Real Estate.

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 COLUMBUS/CLEVELAND		BROKERS COLUMBUS
July	11	19	9
August	1	16	13
September	5	13	10

(Additional exams may be added if warranted)

FOREIGN REAL ESTATE SALES

July	10, 24
August	7, 21
September	4, 18

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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