

O·H·I·O
DEPARTMENT OF
COMMERCE

Division of
**REAL ESTATE
NEWSLETTER**



George V. Voinovich
Governor

Nancy Chiles Dix
Director

SUMMER 1993
Julia M. Benton
Acting Superintendent

JULIA M. BENTON SERVING AS ACTING SUPERINTENDENT

Julia McNeil Benton is serving as Acting Superintendent of the Ohio Division of Real Estate. She assumed her new duties on June 1, 1993. In addition, Ms. Benton continues to serve as Chief Legal Counsel for the Department of Commerce.

"I am enjoying this opportunity to work with Ohio's real estate brokers and salespersons and focusing on issues of concern to them," Ms. Benton said.

Ms. Benton earned a Bachelors of Business Administration Degree in Marketing from Howard University in Washington, D.C. Upon graduation, she was hired by Coca-Cola, U.S.A. as a Territory Sales Manager for the greater Dayton area.



Later, Ms. Benton attended The Ohio State University's College of Law where she received her juris doctor degree. While at OSU, she served as Chief Justice of the Moot Court Governing Board, and partici-

pated in the Student Bar Association Senate. She was an OSU College of Law Merit Scholar, and a recipient of the John J. Adams and George B. Benerman Memorial Awards.

After graduating from OSU, Ms. Benton became associated with the Columbus law firm of Schottenstein, Zox and Dunn, L.P.A. She later went on to serve as Assistant Deputy Legal Counsel for Governor George V. Voinovich in the Office of Chief Legal Counsel. In September 1992, Ms. Benton was appointed Chief Legal Counsel for the Ohio Department of Commerce by Director Nancy Chiles Dix.

Former Superintendent Dennis Tatum is currently working on special projects for the Director of Commerce.

HANDLING MULTIPLE OFFER SITUATIONS CLARIFIED

While most licensees recognize their responsibility to present all offers, confusion often arises as to when and how to present more than one offer. Because each situation is different, it is difficult to give hard and fast rules for dealing with the multiple offer dilemma. However, there are certain fundamental principles that, if kept in mind, will help licensees avoid the potential problems that can occur. The purpose of this article is to review these basic

guidelines and hopefully assist licensees avoid license law violations.

The first principle a listing agent must remember when placed in a multiple offer situation is that he is the seller's agent. As the seller's agent, his job is to procure the best price possible on the most favorable terms. Although the listing agent must, of course, deal fairly with any potential buyers, the listing agent's primary duty is to find the best buyer for the seller's property.

In carrying out this responsibility the listing agent must recognize that there are certain limitations on his authority. Typically, his duties as the seller's agent do not extend to making judgments as to the merits of an offer.

Rather, the decision to either accept, reject, or "counter" an offer is one solely within the discretion of the seller. As the seller's agent, it is the licensee's duty to present any and all

(Continued on page 2)



COMMON INDUSTRY QUESTIONS ANSWERED

The following is a series of commonly asked questions received by the Division of Real Estate. While our answers are not legal opinions, hopefully the responses will be of assistance in your brokerage practice.

Q: When I apply for a new brokerage license with the Division of Real Estate, should I include the term "REALTOR" as part of my corporation and/or trade name?

A: No. While the term "REALTOR" or "R" designation may be used by members of the Board adjacent to their brokerage name in advertising, the term is not included as part of the licensed brokerage name. Accordingly, licensees should not incorporate under a name which includes the "REALTOR" name or "R" designation or register a trade name or fictitious name which

includes this trademark.

Q: As the selling broker, can I accept an incentive from the seller in addition to my commission?

A: Yes, it is permissible to accept an incentive provided you adhere to certain guidelines. A seller can offer an incentive to the selling broker in addition to the commission, and the broker may accept the incentive, provided that the payment goes through the licensee's associated broker. Disbursement of incentive payments to a selling broker should be handled in the same manner that commission payments are handled.

Q: May I pay my friend a "finder's fee" for information he gave me that led to a sale?

A: The payment of so-called "finder's fees" is one of the most often asked questions. If a non-licensed person offers

information that results in a real estate sale, the licensee may not pay a part of his commission or otherwise compensate for such information. Non-licensed persons may not be compensated for performing any acts for which a real estate license is required.

Q: Can telephone numbers, other than those of the brokers, be used in advertising?

A: There is no violation of the real estate license laws or rules if a real estate licensee includes his/her home, car or voice mail phone number along with their licensed name in advertising. While use of both the broker's and salesperson's phone number is recommended, there is no statute or rule which addresses the use of licensee's personal phone numbers.

MULTIPLE OFFER SITUATIONS *(Continued from page 1)*

offers that he receives to the seller. This is true regardless of a licensee's personal belief that the offered price is too low or that the seller will find some other terms of the offer to be unacceptable. Therefore, unless the seller specifically instructs the listing agent not to present offers that include certain terms or that are below a stated price, he must present all offers. It is then the seller's decision as to whether he wishes to entertain that offer.

The general rule of thumb is that all offers should be presented as soon as possible. What is a reasonable length of time can only be determined by the surrounding circumstances, however, the time frame set forth in the offer should be adhered to at a minimum.

In some instances, before the listing agent can present an offer to purchase that he has received, he learns that another offer may be forthcoming. In this situation, the listing agent is confronted with a dilemma: should he

present the offer in hand or wait until the second offer is received? In analyzing this situation, the licensee must keep in mind the principles discussed above:

- 1) his primary obligation is to find the best offer for his seller,
- 2) he must deal fairly with all potential buyers and
- 3) the decision as to whether to wait for this other offer is that of the seller.

With these principles in mind, an acceptable course of action in this situation is to present the offer already received, but to advise the seller that another offer may be forthcoming. Again, it is then the seller's decision as to whether he wants to act on the offer in hand or wait to review any forthcoming offer.

Another frequent dilemma that occurs is when a listing agent actually receives a subsequent offer(s) before he has had a chance to present the first offer received. In that situation, of course, all of the offers must be presented. As stated above, it is the seller's decision as to

which offer, if any, he wishes to accept, reject, or "counter".

In reviewing multiple offers with sellers, the licensee must also exercise care to assure that the seller is not placed in a position of being bound by more than one offer. For example, if a seller wishes to "counter" two offers, one of the "counters" should be designated as a "back-up" or "contingent on the other counter not being accepted". Failure to include this type of language could place the seller in the position of being bound to sell his property to two different buyers, in the event both buyers accept the counter offers submitted.

Please remember, however, that each situation is different. For this reason, salespersons facing this situation should always seek the advice of their brokers. Inquiries regarding license law responsibilities in this area can also be directed to the Division's Enforcement Section or legal staff.

CERTIFICATES OF CONTINUATION TO BE MAILED SOON

In order to legally continue to practice real estate in Ohio, all brokers must annually file Certificates of Continuation. The deadline to file your 1994 Certificate of Continuation is December 31, 1993. Accordingly, to be considered timely filed, the Continuation must be postmarked or received by the Division of Real Estate by December 31, 1993. A meter date on an envelope is not sufficient to establish the timely filing of a Continuation.

The renewal forms will be mailed to each Ohio licensed broker, partnership, association or corporation in late October. If you do not receive your renewal form by the second week of November, call the Division's licensing section at (614) 466-4100.

Ohio law provides a 15-day grace period to file the renewal by January 15, 1994. However, an additional 50% of the renewal fee is charged as a late filing penalty for continuations postmarked during the grace period. If the Certificate of Continuation is not postmarked by January 15, 1994, the broker's license will be revoked. As a result, the licenses of all salespersons affiliated with the broker will be cancelled.

When filing the certificate, please remember the following points:

- Answer all questions on your Certificate of Continuation including the name and account number of your trust or special account. (This account should not be designated as an escrow account.)
- Enclose your check, certified check or money order made payable to the "Ohio Division of Real Estate".
- Include any late filing fee with your payment if filing after December 31, 1993, but before January 15, 1994.
- Enclose all licenses for persons who are not being renewed, if they have been properly notified.

Additionally, please note that sales licenses cannot be transferred during

December, unless an undue hardship can be shown. Cancelled licenses can, however, be reinstated during December. Many licensees confuse these two and miss their reinstatement deadline under the mistaken belief that they

cannot reinstate their license during December. Again, it is only the transfer of licenses that is limited in December.

Brokers who have any questions about the renewal process should call the Division at (614) 466-4100.

TEST RESULTS

Below are the examination statistics for the first half of 1993:

BROKERS

Test Date	Total Tested	Total Passed	Pass Rate
January	26	19	73%
February	18	12	67%
March	22	16	73%
April	26	14	54%
May	30	23	77%
June	28	19	68%

SALES

Test Date	Total Tested	Total Passed	Pass Rate
January	560	309	55%
February	535	329	62%
March	546	348	64%
April	620	354	57%
May	610	368	59%
June	529	372	71%

FOREIGN REAL ESTATE SALES

Test Date	Total Tested	Total Passed	Pass Rate
January	1	1	100%
February	9	6	67%
March	4	3	75%
April	5	3	60%
May	1	1	100%
June	5	3	60%

APPRAISER (GENERAL)

Test Date	Total Tested	Total Passed	Pass Rate
January	7	6	86%
February	5	4	80%
March	7	6	86%
April	13	12	92%
May	7	6	86%
June	11	10	91%

APPRAISER (RESIDENTIAL)

Test Date	Total Tested	Total Passed	Pass Rate
January	20	12	60%
February	53	35	66%
March	34	21	62%
April	56	41	73%
May	31	19	61%
June	25	16	64%

DISCIPLINARY ACTIONS

SUSPENSIONS

JANET BOWLING, sales associate, Cincinnati, Ohio, had her sales license suspended for 15 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. This suspension began on June 25, 1993. Ms. Bowling prepared a purchase agreement for the buyer of a property. On the accompanying agency disclosure form, Ms. Bowling indicated that she represented the owner of the subject property. However, prior to a contract being entered into, Ms. Bowling failed to disclose to the owner that the buyer was her (Bowling's) daughter. Ms. Bowling failed to disclose this material information to her client, the property owner.

SHARON DEHN, broker, Sandusky, Ohio, had her broker's license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. This suspension began on May 17, 1993. Ms. Dehn prepared a purchase offer on behalf of a prospective buyer of a property. Ms. Dehn submitted this offer to the sellers without providing an agency disclosure form to the buyer.

THOMAS EARLY, broker, Westerville, Ohio, had his broker's license suspended for 30 days for violating Sections 4735.18 (A)(6) and (A)(21) of the Ohio Revised Code. This suspension began on August 2, 1993. Throughout 1992, Mr. Early advertised in a name other than that which appeared on his license issued by the Division of Real Estate.

ORISON I. FIELDS, sales associate, Westlake, Ohio, had his sales license suspended for 60 days for violating Section 4735.18 (A) of the Ohio Revised Code. However, due to

mitigating circumstances, 30 days of this suspension were waived by the Ohio Real Estate Commission. The 30 day balance began on May 17, 1993. Mr. Fields was convicted of a fourth degree felony in case number 91CR039777 in the Lorain County Common Pleas Court.

THOMAS FORTIN, broker, Columbus, Ohio, had his broker's license suspended for 30 days for violating Ohio Revised Code Section 4735.18 (A)(6) as it incorporates Ohio Administrative Code Section 1301:5-5-05. This suspension began on August 9, 1993. Mr. Fortin prepared a purchase offer on behalf of a prospective buyer of a property. Mr. Fortin submitted this offer to the seller without providing an agency disclosure form to the buyer.

JERRY GROVER, broker, Worthington, Ohio, had her broker's license suspended for 30 days for violating Sections 4735.18 (A)(6) and (A)(27) of the Ohio Revised Code. This suspension began on August 9, 1993. Ms. Grover had the seller of a property sign a listing agreement form which did not include or identify a definite expiration date. Ms. Grover added specific terms to the listing agreement after the property owner had signed the listing form. The terms added included a selling price, a commission rate, and an expiration date for the listing. Ms. Grover made these additions without reviewing and discussing them with the property owner. Ms. Grover failed to timely provide a copy of the agency disclosure form, with the additions, to the property owner.

WILBERT JOHNSON, JR., broker, Warren, Ohio, had his broker's license suspended for 30

days for violating Sections 4735.18 (A)(6) and (A)(26) of the Ohio Revised Code. This suspension began on May 17, 1993. In connection with a purchase agreement, Mr. Johnson received an earnest money deposit from the buyer of a property. Mr. Johnson received these funds in a fiduciary capacity, but failed to deposit and/or continuously maintain them in his trust account.

KENNETH KINGSTON, sales associate, Dayton, Ohio, had his sales license suspended for six months for violating Section 4735.18 (A)(6) of the Ohio Revised Code. This suspension became effective on October 28, 1992. Mr. Kingston submitted an application for a sales license to the Ohio Division of Real Estate. Subsequently, he was issued a real estate license based in part on answers he provided in the application. Mr. Kingston represented on the application that he had never been convicted of any unlawful conduct excluding minor traffic violations. However, Mr. Kingston had been convicted of a misdemeanor and a fourth degree felony.

FRANK LATHAM, sales associate, Reynoldsburg, Ohio, had his sales license suspended for one year for violating Sections 4735.18 (A)(6) and (A)(12) of the Ohio Revised Code. This suspension began on August 9, 1993. Mr. Latham prepared a purchase agreement for a property wherein he acknowledged receipt of an earnest money deposit. However, these funds were never placed in the broker's trust account as Mr. Latham represented they would be. Also, the purchase agreement form for the subject property included the insignia of the BOARD OF REALTORS, a private real estate professional

(Continued on page 5)



DISCIPLINARY ACTIONS *(Continued from page 4)*

organization. However, at the time, Mr. Latham was not a member of the BOARD OF REALTORS. Furthermore, Mr. Latham issued a check to the buyer in connection with the buyer's purchase of the subject property. However, this check was not honored by the depository on which it was drawn due to insufficient funds.

E.G. LEWIS, broker, Dayton, Ohio, had his broker's license suspended for 15 days in two separate cases for violating Section 4735.18 (A)(6) of the Ohio Revised Code. These suspensions began on June 21, 1993 and ran concurrently. In both cases, Mr. Lewis acknowledged receipt of earnest money funds which were to be deposited in his trust account. However, Mr. Lewis had not received earnest money in either case.

KENNETH MCMILLAN, sales associate, Upper Sandusky, Ohio, had his sales license suspended for 15 days for violating Section 4735.18 (A)(24) of the Ohio Revised Code. This suspension began on May 17, 1993. Mr. McMillan prepared a purchase contract for the sale of a property. He retained a copy of the executed contract for his brokerage's records as is required by Ohio real estate license law. However, Mr. McMillan altered a word in the brokerage's copy of the purchase contract.

VICKI MINNIFIELD, broker, and MINNIFIELD & ASSOC., INC., corporate broker, Cincinnati, Ohio, each had their broker's license suspended for 60 days for violating Sections 4735.18 (A)(6) and (A)(30) of the Ohio Revised Code. These suspensions shall commence upon

reinstatement of their real estate licenses. Ms. Minnifield and Minnifield & Associates failed, within a reasonable time, to pay a sales associate his earned share of a real estate commission.

TERRANCE R. O'NEILL, sales associate, North Royalton, Ohio, had his sales license suspended for 30 days for violating Sections 4735.18 (A)(6) and (A)(21) of the Ohio Revised Code. Due to mitigating circumstances, however, 20 days of this suspension were waived by the Ohio Real Estate Commission. Mr. O'Neill began serving the 10 day balance of the suspension on August 9, 1993. Throughout 1992, Mr. O'Neill advertised real property for sale using signs which did not include the name of the brokerage with whom his license was associated. Also, Mr. O'Neill assisted in the procuring of a prospect for the purchase of a property. He engaged in such conduct independently of, and not through the broker with whom his license was associated.

DOROTHY S. PARZYNSKI, sales associate, Sandusky, Ohio, had her sales license suspended for 30 days for violating Section 4735.18 (A) of the Ohio Revised Code. However, due to mitigating circumstances, 15 days of this suspension were waived by the Ohio Real Estate Commission. Ms. Parzynski began serving the 15 day balance of the suspension on June 25, 1993. Ms. Parzynski was convicted of a third degree felony in case number 88-CR-270 in the Erie County Common Pleas Court.

LARRY D. WEYANDT, broker, Carrollton, Ohio, had his broker's license suspended for 10 days for violating Section 4735.18 (A)(6) of the

Ohio Revised Code. This suspension began on June 25, 1993. Mr. Weyandt prepared a purchase offer on behalf of the buyers of a property. Mr. Weyandt submitted this offer to the seller without providing an agency disclosure form to the buyers.

YODERS REALTY, INC., corporate broker, Defiance, Ohio, had its 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 Ohio Real Estate Commission. Yoders Realty failed within a reasonable time to pay a sales associate her earned share of a real estate commission.

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:

	Amt.	Pd.	Date Pd.
Frank Lomicka	\$9,125.00		5-13-93
Locations, Inc.	\$1,500.00		6-4-93
Martin Vondrell	\$7,805.00		5-27-93
Anna F. Webb	\$12,579.38		6-16-93
Terry Williams	\$25,600.00		8-2-93
Joe Hostetler	\$22,302.00		8-11-93

ATTENTION BROKERS!

Are you forwarding
copies of this
newsletter to your
salespersons?



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	FOREIGN SALES COLUMBUS
Sept. 1/23	Sept. 13	Sept. 14
Oct. 6/21	Oct. 4	Oct. 5
Nov. 3/18	Nov. 1	Nov. 9

(No exams given in December)

(Additional exams may be added if warranted)

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.

APPRAISER CERTIFICATION EXAMS (GENERAL AND RESIDENTIAL)

COLUMBUS	CLEVELAND
Sept. 16	Sept. 21
Oct. 14, 28	Oct. 5
Nov. 18	Nov. 2, 30
Dec. 16	Dec. 14

REMINDERS

Recent audits and investigations conducted by the Division have indicated that some real estate brokerages and licensees are not consistently using the agency disclosure form as required by law. It is imperative that the form be used and timely provided in every transaction as required by the real estate license laws and rules. The failure to do so can result in the initiation of disciplinary action against the involved licensee(s).

Licensees should be aware that it is a federal criminal offense for a real estate agent to make or aid a buyer in providing false information in the loan application process to a federally insured lender. This could include making misstatements as to the purchase price, the amount of down payment, or the credit worthiness of the loan applicant. Licensees found to have engaged in such conduct may be charged with felonies punishable by up to five years in prison and a \$10,000 fine. (See U.S.C. Section 371)

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF REAL ESTATE
77 S. HIGH STREET
COLUMBUS, OH 43266-0547
(614) 466-4100 OR (216) 787-3100

REAL ESTATE APPRAISER BOARD
Donald B. Leach, Jr., Chairman
John R. Garvin
Lawrence A. Kell
John W. Peck
Robert Porter

REAL ESTATE COMMISSION
Lois L. Yeager, President
Norma L. Good
Owen V. Hall
John C. Kealy
Edward J. Kizer



State of Ohio
Department of Commerce
Division of Real Estate
77 South High Street, 20th Floor
Columbus, OH 43266-0547

BULK RATE
U.S. POSTAGE
PAID
Permit No. 3592
Columbus, Ohio

AN EQUAL OPPORTUNITY EMPLOYER

Total copies printed: 14000
Unit cost: .2398
Publication date: 10/93

RECYCLABLE

