



**George V. Voinovich**  
Governor

**Donna Owens**  
Director

**Ronald J. Rotaru**  
Superintendent

## **DONNA OWENS APPOINTED DIRECTOR OF COMMERCE**

Donna Owens began serving as the new Director of the Ohio Department of Commerce on February 9. Governor George V. Voinovich made the appointment on January 21, 1994.

"Donna Owens will be an outstanding addition to my Cabinet," Governor Voinovich said. "Her strong record as mayor of Toledo, chairperson of SERB, businesswoman and community leader will enable her to effectively lead the Department of Commerce."

Prior to her appointment, Ms. Owens served as chairperson of the State Employee Relations Board, a position she held since February, 1991. SERB acts as a neutral, independent agency that administers a systematic collective bargaining



process for public sector employment.

As chairperson, Ms. Owens reorganized SERB and improved efficiency and productivity, result-

ing in a \$600,000 cost savings. She established computerization of certain SERB functions, reduced case backlogs and established a solid relationship with the Federal Labor Relations Authority and the Federal Mediation and Conciliation Service.

From 1983 to 1989, Ms. Owens served as mayor of the City of Toledo. She utilized public-private partnerships to assess the city's economic development issues and to create plans to foster growth.

Ms. Owens also served on the Toledo City Council, the Lucas County Board of Education, and as Director of Business Development for The Perz Group, Inc.

## **RONALD ROTARU NAMED SUPERINTENDENT OF REAL ESTATE**

Ronald J. Rotaru has begun serving as Superintendent of Real Estate. He was appointed by Interim Commerce Director James J. McNamee in early February.

The Division of Real Estate regulates Ohio's real estate industry. The Division regulates more than 46,000 real estate brokers and salespersons as well as approximately 2,300 real estate appraisers.

Mr. Rotaru most recently served as Director of the Columbus Department of Administrative Services. Prior to this appointment, he

served as Executive Assistant to former Columbus Mayor Dana Rinehart from October 1990 to January 1992. In addition, he has served as Deputy Director of the Department of Public Utilities and Aviation as well as serving in the following capacities with the City of Columbus: Personnel Administrator, Deputy Service Director, Labor and Employee Relations Administrator, Industrial Relations Officer and Public Relations Liaison.

Additionally, Mr. Rotaru has served in positions with the Ohio

Supreme Court, Columbus Convention and Visitors Bureau, Columbus City Attorney's Office, and WBNS-TV.

He earned a bachelor of science degree in journalism from Ohio University in 1963.

Upon making the appointment, Interim Director McNamee said, "Ronald Rotaru possesses excellent management skills which will assist the Division of Real Estate in providing efficient and effective service to Ohio's real estate professionals and the consumers they serve."



# APPRAISERS ARE NOT INSPECTORS

Some prospective buyers believe that they don't need a home inspection if they have an appraisal.

However, real estate appraisals and home inspections are two entirely different services, and neither of them takes the place of the other.

It is in the broker's best interest to ensure that buyers and sellers understand that an appraiser's report is completely different from that of a property engineer or inspector.

The federal government requires that properties be inspected by an FHA- or VA-approved appraiser when the buyer's loan is to be guaranteed by the Federal Housing Administration or the Veterans Administration. Other lenders frequently require appraisals for the same reason – to ensure that the property is worth the money the lender is investing.

An appraiser's role in a real estate transaction is to provide a documented opinion of a property's value, marketability, usefulness, and suitability for a particular purpose.

The appraisal process involves steps that include a brief inspection of the interior and exterior of the property, during which the appraiser looks for conditions that can be readily seen when walking through and around it.

The appraiser does not perform a complete mechanical or structural inspection of the property, but simply notes more obvious defects. In determining his or her "opinion of value," the appraiser assumes that there are no hidden defects or other unapparent conditions that might affect the property's value.

*An appraisal  
is an opinion  
of value.*

If an appraiser considers a visible condition significant enough to affect the property's value, the appraiser will adjust the opinion of value accordingly or will present an opinion contingent upon the completion of certain repairs. In most cases, the lender involved in the transaction will require that the repair be made prior to closing.

While the appraiser offers an opinion of value, the engineer or home inspector determines the property's actual condition.

The inspector makes his determination after performing a very thorough examination of the property, in

contrast to the appraiser's more cursory visual inspection.

The inspector's examination covers the structural components (foundation, flooring, walls, roof), mechanical components (heating/cooling system, built-in appliances), electrical system, plumbing, environmental conditions which affect moisture drainage, gutters, fireplaces, chimneys and possibly the well and septic systems. Unlike an appraiser, the inspector often uses a variety of equipment to test the operation of various systems.

This inspection is designed to detect not only obvious defects, but also hidden conditions that a prospective buyer, an appraiser, or even a real estate broker may not notice.

Real estate agents should help to dispel the myth that buyers who seek financing for which an appraisal is required do not need the services of engineers or home inspectors.

For your own protection, explain to your clients and customers that appraisers are hired only to provide an opinion of value and will not perform the comprehensive inspection that is necessary to determine a property's actual condition.

*(Reprinted with the permission of the Alaska Real Estate Commission.)*

## PROCESS OF DISCLOSING INDUCEMENTS REVIEWED

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, the license laws do not prohibit a licensee from giving a buyer or seller a free home warranty, weekend get-a-way, coupons, etc. as long as this fact is disclosed in the purchase contract as part of the consideration to enter into the contract.

It should be noted that the license laws do not prohibit a licensee from paying cash to

*(Continued on page 3)*

# DISCLOSING INDUCEMENTS

*(Continued from page 2)*

owners who list property for sale or from paying cash to a customer or client to get them to buy a home, assuming there is proper disclosure. However, the license laws do prohibit the giving of money or other items of value to an individual who is not a party to the transaction as a referral fee for assisting in procuring the buyer/lessee or for otherwise performing an act that would require a real estate license.

It is also 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 where receipt of the item is not contingent upon a purchase agreement being entered into. 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 in order 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.

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

# SAMPLE LETTER PROVIDED FOR BROKERS RETURNING LICENSES

When a broker returns the license of any salesperson associated with him for cancellation (note: a sales license cannot be escrowed), the broker is required to notify the salesperson in writing by certified mail. This must be done within 10 days after returning the license to the Division (see Ohio Administrative Code 1301:5-1-06).

Unfortunately, the Division of Real Estate frequently receives complaints from salespersons indicating that they were not aware that their license was returned or they have no documentation as to when their license was returned. To help brokers comply with the requirements of Rule 1301:5-1-06, the sample letter below is provided. This sample contains all of the information that broker's must give to a salesperson whose license is being returned to the Division.

Dear \_\_\_\_\_:

This letter is to notify you that on \_\_\_\_\_ (date) \_\_\_\_\_, your real estate sales license was returned to the Ohio Division of Real Estate for cancellation.

Please be aware that pursuant to Section 4735.09 of the Ohio Revised Code, the Superintendent may reinstate your license without examination if you file an application within two years from the end of the last year in which your license was renewed.

Your license was renewed for year 19\_\_\_. Thus, you have two years from the end of this year, or until December 31, 19\_\_\_, to apply for reinstatement of your license. If you do not do so by that date, you will have to be re-examined. (Note: Your ability to reinstate your license may be affected if you have not complied with your real estate education due date.)

If you wish to become relicensed during this calendar year with another broker, a transfer application must be submitted to the Division of Real Estate.

If you have any questions concerning the status of your license or your education requirements, you should contact the Ohio Division of Real Estate at (614) 466-4100.

Sincerely,

\_\_\_\_\_  
(broker's name)

CERTIFIED MAIL #

It is important for brokers to utilize the sample letter (notice) since the failure to notify the salesperson can result in disciplinary action being initiated against the broker.



# DISCIPLINARY ACTIONS

## REVOCATIONS

**DONALD DUBOSE**, sales associate, University Heights, Ohio, had his sales license revoked for violating Ohio Revised Code Sections 4735.18 (A), (A)(6) and (A)(9) as it incorporates Section 4735.13 (C). This revocation became effective December 15, 1993. Mr. Dubose was convicted of aiding in the preparation of false tax returns in the U.S. District Court for the Northern District of Ohio. Mr. Dubose also failed to notify the Superintendent of the Ohio Division of Real Estate of this felony conviction within 15 days of the conviction.

## SUSPENSIONS

**GARY BARTON**, broker, Marion, Ohio, had his broker's license suspended for 45 days for violating Sections 4735.18 (A)(6) and (A) (26) of the Ohio Revised Code. However, due to mitigating circumstances, 20 days of this suspension were waived by the Ohio Real Estate Commission. Mr. Barton began serving the 25-day balance of the suspension on January 7, 1994. In connection with three separate real estate transactions, Mr. Barton collected earnest money deposits from prospective purchasers. Mr. Barton collected these funds in his fiduciary capacity but he failed to continuously maintain them in his brokerage trust account.

**DAVID DUCAS**, sales associate, Aurora, Ohio, had his sales license suspended for 30 days for violating Ohio Revised Code Sections 4735.18 (A)(6) and (A)(9) as it incorporates Ohio Revised Code Section 4735.02. Due to mitigating circumstances, however, 15 days of this suspension were waived by the Ohio Real Estate Commission.

Mr. Ducas began serving the 15-day balance of the suspension on January 7, 1994. Mr. Ducas' real estate sales license was originally suspended for failing to complete his continuing education requirements. Prior to Mr. Ducas' license being reinstated, he engaged in various and numerous activities for which a real estate license was required.

**KAREN HIBBARD**, sales associate, Columbus, Ohio, had her sales 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 (B). This suspension began on January 7, 1994. Ms. Hibbard was the listing agent for a property listed with her brokerage. A real estate purchase offer was submitted by another agent associated with Ms. Hibbard's brokerage. The agency disclosure form submitted with the offer noted that Ms. Hibbard's brokerage and the selling agent also represented the purchaser. Thus, a dual agency relationship existed between Ms. Hibbard and the parties to the contract. However, Ms. Hibbard failed to attach to the agency disclosure form a written agreement signed by the purchaser and the seller acknowledging their consent to such dual representation.

**SUZAN PEJAK**, sales associate, Rocky River, Ohio, had her sales license suspended for 60 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 Ohio Real Estate Commission. Ms. Pejak was convicted of a felony in violation of Ohio Revised Code Section 2921.12 (A)(1) in the Lorain County Common Pleas Court.

**ELLA REANY**, broker, Middleburg Heights, Ohio, had her broker's license suspended for six months for violating Sections 4735.18 (A)(6) and (A)(26) of the Ohio Revised Code. This suspension began on January 7, 1994. A prospective purchaser of a property submitted an earnest money deposit to Ms. Reany. The prospective purchaser did not proceed with purchasing the subject property and requested that the earnest money deposit be refunded to her. However, without a court order or the consent of the prospective purchaser, Ms. Reany disbursed the earnest money deposit from her special account to the seller. In addition, Ms. Reany deposited the earnest money she received from the prospective purchaser into an interest bearing special account; Ms. Reany failed to deposit and maintain these funds in a non-interest bearing special or trust bank account.

**DONALD E. SOMMERS**, broker, Beavercreek, 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, 15 days of this suspension were waived by the Ohio Real Estate Commission. Mr. Sommers began serving the 15-day balance of the suspension on January 7, 1994. In connection with a purchase contract, Mr. Sommers collected an earnest money deposit from the prospective purchasers of a property. Mr. Sommers placed this earnest money deposit in his brokerage trust account. When the prospective purchasers did not proceed with purchasing the subject property, Mr. Sommers remitted the

*(Continued on page 5)*



# CONTINUING ED REMINDER

If your next 30 classroom hours of continuing education is due to be received by the Division on or after January 31, 1995, you must submit proof of completion of the following:

1. A three classroom hour continuing education course devoted exclusively to civil rights and fair housing
2. A three classroom hour continuing education "core law" course devoted exclusively to recently enacted state and federal legislation affecting the real estate industry
3. A three classroom hour continuing education course devoted exclusively to the "Canons of Ethics" for the real estate industry as adopted by the Ohio Real Estate Commission
4. Twenty one classroom hours of approved continuing education electives of your choice

## DISCIPLINARY ACTIONS

*(Continued from page 4)*

earnest money to them. Mr. Sommers did this without the consent or knowledge of his client, the seller.

### RECOVERY FUND ACTIONS

The following person had his real estate license automatically suspended pursuant to Section 4735.12 (E) of the Ohio Revised Code. This suspension was a result of payments made from the Real Estate Recovery Fund:

Licensee	Amt. Pd.	Date Pd.
Joseph Daly	\$5,155	12-10-93

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

# TEST RESULTS

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

## BROKERS

Test Date	Total Tested	Total Passed	Pass Rate
July	25	18	72%
August	11	5	45%
September	21	14	67%
October	17	11	65%
November	26	21	81%

## SALES

Test Date	Total Tested	Total Passed	Pass Rate
July	717	431	60%
August	499	298	60%
September	497	283	57%
October	557	282	50%
November	567	352	62%

## FOREIGN REAL ESTATE SALES

Test Date	Total Tested	Total Passed	Pass Rate
July	2	1	50%
August	2	1	50%
September	0	0	0%
October	2	2	100%
November	0	0	0%
December	0	0	0%

## APPRAISER (GENERAL)

Test Date	Total Tested	Total Passed	Pass Rate
July	4	3	75%
August	4	3	75%
September	3	2	67%
October	2	2	100%
November	5	4	80%
December	3	3	100%

## APPRAISER (RESIDENTIAL)

Test Date	Total Tested	Total Passed	Pass Rate
July	28	19	68%
August	18	12	67%
September	26	15	58%
October	16	12	75%
November	24	15	62%
December	24	11	46%



## 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:

<b>SALES</b> COLUMBUS/CLEVELAND	<b>BROKERS</b> COLUMBUS
Feb. 2/17	Feb. 7
March 2/17	March 7
April 6/14	April 4
May 4/19	May 2

(Additional exams may be added if warranted)

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

### TENTATIVE REAL ESTATE APPRAISER EXAMS

<b>COLUMBUS</b>	<b>CLEVELAND</b>
Feb. 10, 24	Feb. 15
March 3	March 29
April 21	April 26
May 5	May 24

## EDINA UPDATE

A Minnesota district court judge hearing a \$75 million sellers' lawsuit against Edina Realty has issued a declaratory judgment in favor of the sellers, ruling their case was so clear that there was reason to bring it to trial.

Edina disagrees with the ruling and has promised an appeal.

The sellers in the case maintained that even though they were promised "loyalty and fiduciary duty" from Edina listing agents, those agents actually acted as undisclosed dual agents in selling the properties in in-house transactions. Edina also is fighting a \$200 million federal lawsuit involving buyers who essentially made the same claims -- that Edina agents acted as undisclosed dual agents in helping them purchase Edina's in-house listings.

Action on the federal lawsuit is not expected until the end of the year.

*(This article appeared in the South Dakota Commission Newsletter and is reprinted here because its subject matter is relevant to Ohio licensees.)*



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

Total copies printed: 15,000  
Unit cost: .242  
Publication date: 2/94

AN EQUAL OPPORTUNITY EMPLOYER

RECYCLABLE