



# NEWSLETTER REAL ESTATE

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## Division Instrumental in Returning Funds to Cemeteries

An investigation initiated by the Ohio Department of Commerce's Division of Real Estate and the Ohio Cemetery Dispute Resolution Committee helped lead to the presentation of a \$118,000 check to the court-appointed receiver for Resthaven Memory Gardens in St. Marys and Mercer Memory Gardens in Celina.

The Federal Bureau of Investigation, at the urging of Assistant Auglaize County Prosecutor Amy Otley Fox, returned the \$118,000 on January 16. The check covered a civil forfeiture penalty the FBI and four Ohio law enforcement agencies received from Michael Shaffer, a former operator of the two cemeteries. Shaffer had signed a federal court agreement in 1992 stipulating that he would return \$118,000 as partial compensation in connection with his pleading guilty to one count of conspiracy to distribute marijuana. To raise the money, he had improperly removed \$118,000 from the endowment care accounts of the cemeteries to pay fines imposed by a federal court.

Shaffer returned the money in 1993 and the money was divided among the law enforcement agencies responsible for his drug arrest. The agencies were the Auglaize County Sheriff's Office, Hamilton County Sheriff's Office, Clermont County Sheriff's Office, and the Cincinnati Police Division.

In May, 1995, Assistant Pro-

secutor Fox sent a letter to the FBI's asset forfeiture unit in Washington, D.C. She informed them that the money Shaffer used to replace the \$118,000 was "fraudulently obtained" from the cemetery trust funds. She informed them that the cemetery was in disrepair and that the remains of some of the cemetery occupants may have to be disinterred and buried elsewhere so the property could be sold to pay off cemetery debts. Ms. Fox requested that the FBI return the money.

Director of Commerce Donna Owens represented the Department of Commerce's Division of Real Estate and the Ohio Cemetery Dispute Resolution Committee at the check

presentation. The division and the committee have worked closely with the Auglaize County and Mercer County Prosecutor's Offices in addressing the more than 100 complaints filed against both cemeteries. On May 1, 1995, the committee held a special hearing at the Wright State University campus in Celina so the committee could hear directly from the complainants against both cemeteries. The committee made numerous criminal referrals to the respective prosecutor's offices.

Shaffer and four members of his family have been convicted or have plead guilty to various felony counts related to their operations of the cemeteries.



FBI Agent Ed Boldt presents a check for \$118,000 to one of two cemetery receivers as (left to right) Auglaize County Assistant Prosecutor Amy Otley Fox, Commerce Director Donna Owens, and Mercer County Prosecutor's Office Special Investigator Kip Wright look on.



# Representing Relatives, Friends Reviewed

The common law of agency, as it relates to real estate transactions, is alive and well in Ohio. Many violations of the real estate license laws arise out of the failure to understand or apply these agency principles.

The standard seller representation usually does not cause a brokerage difficulty. This is the way most brokerages, which take listings, operate. The fiduciary duties of the agent/broker are clearly to his principal, the seller. Problems occur when the loyalty to the seller is impaired by other factors unknown at the time of listing. This typically happens when a relative, friend or co-worker of any of the agents within the listing brokerage becomes a prospective buyer.

Under current Ohio law, all agents of the listing brokerage represent the seller! The only other option for the listing brokerage is to become a dual agent. That type of representation, however, creates the same impediments to properly carrying out fiduciary duties when dealing with relatives, friends and co-workers. Differences between subagency in familial transactions and dual agency in these transactions will be discussed below.

The most illogical position for an agent to take is that he/she will ignore the family or friendship ties and exclusively represent the seller's best interest, regardless of how adverse that might be to the familial buyer. Agents claim that they are representing the seller whose

interests are significantly adverse to those of their child, in-laws, parents, siblings, friends or co-workers. It involves raising the expectations of the seller to a level where virtually any act by the agent, which could be construed as being in favor of the buyer, could result in a dissatisfied seller. Depending on the level of dissatisfaction, claims of improper representation of the sellers' interest are the basis of numerous complaints filed with the division.

Dual agency, when representing family or friends, is another area fertile for complaints. In a dual agency, the brokerage seeks to represent equally both parties to a

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transaction even though the parties' interests are essentially adverse. The seller wants to sell for the highest price and best terms, while the buyer wants to buy at the lowest price at his/her best terms. The dual agency representation begins with both parties' expectations being set at unreasonable levels. While a buyer or seller can understand their interests over those of the other party, virtually any act by the agent which appears to benefit the other party may result in a dissatisfied client. This dissatisfaction is increased exponentially when the complaining party knows that the other party is related to, or friends or a co-worker with, the agent. No amount of assurance from the agent

or the broker will ease the concerns of a buyer or seller who believes their interests were not protected to the same degree as the other party.

Recognizing that there is a problem when representing family, friends or co-workers as buyers in anything other than an exclusive agency with that person is only the first step. Just as important is how to avoid license law violations under these circumstances. While it is conceptually possible to be a subagent in familial buyer transactions, it is the least sensible approach.

To avoid violating or being accused of violating the license laws, the agent should avoid the possible conflict. Simply put, this means releasing the buyer or the seller from the listing or representative agreement and permitting them to seek representation from another agent *not associated with your brokerage*. The economic impact of this decision is obvious. But hopefully, the conscientious broker or salesperson understands the level of professionalism required to place the interests of the parties over those of the brokerage.

Meeting the expectations of the buyer and the seller is the foundation of a successful, professional brokerage. Short-term losses can, if properly exploited, result in long-term gains. Dissatisfied clients, and all those they come in contact with, do not reflect well on the real estate profession.

# Appraisal Update

## Statistical Data

In 1994, the division developed and published a brochure outlining the requirements to become an Ohio certified or licensed real estate appraiser.

During 1995, a total of 274 people were tested by the division for certification/licensure. Of those tested, 149 (68%) passed the residential exam and 38 (68%) passed the general exam. The total number of regulated appraisers by year-end was 2,420 with 218 approved through reciprocity. Temporary practice permits issued during the year totaled 66. Additionally, 26 real estate appraiser-related complaints were investigated. In 1995, 17 persons appeared before the Commission for disciplinary and licensing cases.

## House Bill 304

House Bill 304 becomes effective March 5, 1996. This Bill provides for the certification of residential real estate appraisers and registered real estate appraiser assistants. Please contact the Appraiser Section at (216) 787-3100 for details and applications.

## Appraiser Renewals & Continuing Education

Personnel in the Appraiser Section have noticed some confusion in the appraiser renewals and continuing education areas. It should be noted that all state licensed and certified appraisers must renew their licenses or certification on an annual basis. The Appraiser Section mails the annual appraiser renewal application approximately six to eight weeks prior to the expiration date. In order for the renewal to be processed in a timely manner, it is recommended that the renewal application and fee be re-

turned to the Ohio Division of Real Estate 30 days prior to the expiration date. This will ensure that the new identification card is received prior to the expiration date. Any renewal application postmarked after the expiration date will be required to pay a 50% late filing penalty prior to acceptance and issuance of the card.

Continuing education hours are required of all licensed and certified appraisers. Every two years individuals are required to submit to the Ohio Division of Real Estate proof of completing 20 classroom hours of continuing education. The courses selected must be pre-approved or certified by the division's Education Section. To verify completion and appropriateness of the unapproved offering, there will be an administrative fee of \$25 per course. Those unsure if a course has been approved can contact the Education Section at (614) 466-4100 for assistance.

## USPAP Compliance

All appraisals or specialized appraisal service performed by a state licensed or certified real estate appraiser require compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).

In 1995, the Appraisal Standards Board (ASB) of the Appraisal Foundation made several revisions to the standards. It recommended that all licensees become familiar with the changes to ensure appraisal compliance. The 1996 edition of USPAP is available by contacting the Foundation's Publications Department at (202) 347-7722.

## ADDRESS CHANGE

All state licensed and certified real estate appraisers are required to report any change of their business or residence address to the Division of Real Estate within 30 days of the change. This can be done by contacting the Appraiser Section at (216) 787-3100 for an Appraiser Multiple Change Form.

## COMMERCE UPDATE

On October 29, 1995, the Ohio Department of Commerce added the *Division of Industrial Compliance*. The division was created by the merging of the former Department of Industrial Relations' divisions of Boilers, Bedding, Elevators, Steam Engineers, Pressure Piping, Administration, Factory & Building and the Boards of Building Standards and Building Appeals. It also includes some personnel and duties from the Health Department, Division of Plumbing Inspection.

As part of Governor George V.

Voinovich's continued efforts to streamline government and better serve the citizens of Ohio, the division will work with the Division of State Fire Marshal to create a customer service center. This cooperative effort will act as a "one stop shop" for industrial construction and operating compliance issues, as well as testing. Under this new organization, regulated industries, as well as local governmental entities, will have easier accessibility to state government and will receive more efficient services.



# Disciplinary Actions

## REVOCATIONS

**EDWARD C. GUILFOYLE, JR.**, broker, Cincinnati, Ohio, had his broker's license revoked for violating Sections 4735.18(A)(1) & (A)(6) of the Ohio Revised Code. This revocation became effective June 13, 1995. Mr. Guilfoyle offered real estate continuing education courses to individuals with the Division and filed rosters representing their attendance at the courses for a specific amount of time. However, not all of the individuals attended the courses for the specific amount of time represented on the rosters. Mr. Guilfoyle submitted rosters that contained false and inaccurate information.

**ROBERT A. HAVANAS**, sales associate, Amherst, Ohio, had his sales license revoked for violating Section 4735.18(A) of the Ohio Revised Code. This revocation became effective June 13, 1995. Mr. Havanas was convicted of a felony in violation of Ohio Revised Code Section 2907.05(A)(4) in the Common Pleas Court of Erie County.

## SUSPENSIONS

**JILL R. EAKIN**, sales associate, Dublin, Ohio, had her sales license suspended for 45 days for violating Sections 4735.18(A)(6), (A)(20) and (A)(21) of the Ohio Revised Code. Ms. Eakin began serving her suspension on July 6, 1995. Ms. Eakin caused to be published the advertisement of homes for sale, none of which were listed with her or her brokerage. They were listed for sale with other real estate brokers. She also offered the homes for sale without the consent or knowledge of the owners or their agents.

**THEODORE H. HANKINS**, sales associate, London, Ohio, had his broker's license suspended for 60 days for violating Sections 4735.18(A)(6) and (A)(12) of the Ohio Revised Code. Mr. Hankins began serving his suspension on July 6, 1995. Mr. Hankins listed a property for sale with his brokerage using a listing agreement which

implied that he was a member of a Board of REALTORS, when in fact he was not. The listing agreement also provided that he would submit the property to the Multiple Listing Service of the Board for publication. Thereafter, he utilized a purchase contract, which implied that he was a member of the Board of REALTORS, and indicated to home owners he would advertise the listed property through the M.L.S., when he was not a member of any board or M.L.S.

**MARTIN E. CUMMINS**, broker, Cincinnati, Ohio, had his broker's license suspended for 60 days for violating Sections 4735.18(A)(5), (A)(6) and (A)(26) of the Ohio Revised Code. Mr. Cummins began serving his suspension on July 6, 1995. Mr. Cummins managed property in connection with a property management agreement, collected rental payments and a security deposit from a tenant. Mr. Cummins failed, within a reasonable time, to provide an accounting for the funds and remit the funds to the owner. He also maintained a rental management account which earned interest on the fiduciary funds deposited therein.

**MARTHA B. MOORE**, sales associate, Columbus, Ohio, had her sales license suspended for 15 days for violating Sections 4735.18(A)(6) and (A)(25) of the Ohio Revised Code. Ms. Moore began serving her suspension on July 6, 1995. Ms. Moore entered into a listing agreement on a property. The document was signed by the seller, but Ms. Moore did not provide the seller with a copy. Subsequently, a residential property disclosure form was completed and signed, which also was not copied and given to the seller.

**LAURALYN F.K. GRAHAM**, broker, Centerville, Ohio, had her broker's license suspended for 90 days for violating Sections 4735.18(A)(6) and (A)(30) of the Ohio Revised Code. This suspension began on August 8, 1995. Ms. Graham failed, within a reasonable time, to pay a salesperson their

earned share of commissions.

**BENET ROSENTHAL**, sales associate, Cleveland, Ohio, had his sales license suspended for 45 days for violating Sections 4735.18(A)(6) and (A)(9) as it incorporates 4735.21 of the Ohio Revised Code. Mr. Rosenthal will serve this suspension upon reinstatement of his license. Mr. Rosenthal managed and engaged in property management activities for the owner of a rental property. In connection with the management of this property, he collected funds not in the name of or with the consent of the broker with whom he was associated. Mr. Rosenthal also managed this property through a company other than the company with whom he was licensed.

**BRUCE E. TRAMMELL**, broker, Middleburg Heights, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code as it incorporates Ohio Administrative Code Section 1301:5-5-05. However, due to mitigating circumstances, 20 days of the suspension were waived by the Ohio Real Estate Commission. Mr. Trammell began serving the 10-day balance of his suspension on August 21, 1995. Mr. Trammell prepared and submitted an offer on his behalf for the purchase of property listed for sale with his brokerage. A dual agency relationship existed between Mr. Trammell and the seller of the property. Mr. Trammell failed to have a separate written agreement signed by the purchaser (himself) and the seller acknowledging consent to such dual representation.

**DENNIS L. EBERHARDT**, sales associate, Port Clinton, Ohio, had his sales license suspended for 90 days for violating Ohio Revised Code Sections 4735.18(A)(27) and two counts of 4735.18(A)(6), one as that section incorporates Ohio Administrative Code Section 1301:5-1-02(B). Mr.

See "Disciplinary Actions" on pg. 5



**"Disciplinary Actions" continued**  
Eberhardt will serve this suspension upon reinstatement of his license. Mr. Eberhardt negotiated a resale listing agreement which did not contain a definite expiration date. He also did business in a name other than the name in which he was licensed.

PRISCILLA R. CHAPMAN, broker, Port Clinton, Ohio, had her broker's license suspended for 90 days for violating Ohio Revised Code Sections 4735.18(A)(27) and two counts of 4735.18(A)(6), one as that section incorporates Ohio Administrative Code Section 1301:5-1-02(B). Ms. Chapman began serving her suspension on August 21, 1995. Ms. Chapman permitted the use of resale listing agreements which did not contain definite expiration dates. Ms. Chapman also engaged in and permitted real estate business in a name other than the name in which she was licensed.

P & R CHAPMAN REALTY, INC., dba LEISURE PROPERTIES, corporation, Port Clinton, Ohio, had its corporate license suspended for 90 days for violating Ohio Revised Code Sections 4735.18(A)(27) and two counts of 4735.18(A)(6), one as that section incorporates Ohio Administrative Code Section 1301:5-1-02(B). The corporation began serving this suspension on August 21, 1995. A resale listing agreement was negotiated on behalf of the company. This agreement did not contain a definite expiration date. P & R Chapman Realty, Inc. also engaged in and permitted real estate business in a name other than its dba of Leisure Properties.

JULIUS R. PRIMUS, broker, Cleveland, Ohio, had his broker's license suspended for 120 days for violating Sections 4735.18(A)(6) and (A)(26) of the Ohio Revised Code. Mr. Primus began his suspension on August 21, 1995. In connection with an offer to purchase property, Mr. Primus received funds in a fiduciary capacity. However, he failed to deposit or continuously maintain these funds in his real estate trust or special account. Mr. Primus failed to maintain proper

records for his brokerage's trust/special account and failed to keep the account separate and distinct from any personal or operating account.

EVELYN E. FRAZIER, sales associate, Wooster, Ohio, had her sales license suspended for 20 days for violating Sections 4735.18(A)(6) and (A)(21) of the Ohio Revised Code. Ms. Frazier began serving this suspension on September 25, 1995. Ms. Frazier published advertising that was misleading or inaccurate in material information. She did not disclose the limiting conditions associated with the basement of the property. The basement would be dry if only the owner properly maintained the gutters on the house.

SYLVIA KADEN, sales associate, Chesterland, Ohio, had her sales license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. Ms. Kaden began her suspension on September 25, 1995. In connection with the purchase of property, Ms. Kaden permitted a friend of the buyer to sign the offer without any indication on the document that the

buyer's name was signed by another. This offer was presented to the sellers and Ms. Kaden did not disclose that another individual had signed the buyer's name.

DANIEL P. KAPUDJIJA, broker, Port Clinton, Ohio, had his broker's license suspended for 30 days for violating Sections 4735.18(A)(6) and (A)(27) of the Ohio Revised Code. Mr. Kapudjija began his suspension on September 25, 1995. Mr. Kapudjija entered in resale listing agreements which did not contain definite expiration dates.

PATRICK S. PHILLIPS, broker, Columbus, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18(A)(26) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived by the Commission. Mr. Phillips permitted a salesperson of his brokerage to establish a branch office and have control of a management trust account in the name of the brokerage. This account was found to be an interest bearing account.

## 1996 Upcoming Test Dates

The following are the *tentatively* scheduled dates for the real estate sales and broker's examinations for the upcoming months and information on the foreign real estate and real estate appraiser examinations:

| BROKERS<br>COLUMBUS | SALES<br>COLS./CLEVE. | APPRAISERS<br>COLS./CLEVE. |
|---------------------|-----------------------|----------------------------|
| March 4             | March 6 / 14          | March 7 / 14               |
| April 1             | April 3 / 18          | April 4 / 18               |
| May 6               | May 8, 16 / 23        | May 16 / 23                |
| June 3              | June 5 / 20           | June 13 / 20               |

The foreign real estate examination is 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.

The real estate appraiser examinations are given in Cleveland and Columbus, approximately once a month per location. Appraiser exams are scheduled as the applications are received, and additional exams may be added if warranted.

If you require assistance or special accommodations, please call (614) 466-4100 at least two weeks prior to your scheduled exam date.





# SPECIAL INSERT REAL ESTATE

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## List of Real Estate Publications Available

The Ohio State University's Center for Real Estate Education & Research publishes a variety of literature on real estate-related research projects. The center is partially funded by the Real Estate Education & Research Fund. This fund, administered by the Ohio Real Estate Commission, is designed to enhance information on real estate issues for the benefit of real estate licensees and the public.

A list of the center's publications is provided below along with information on obtaining copies:

- 1 *"The Selection of Personnel Selection Systems in Real Estate,"* by Richard Klimoski and Paul Sackett, 1978. 39 pp. (\$1.50).
- 2 *"A Longlinear Probability Model of Neighborhood Choice: A Case Study of Cleveland,"* by David Segal, 1979. 66 pp. (\$1.50).
- 3 *"Community Attitudes and Perceptions of Selected Manufacturers in Ohio,"* by Henry L. Hunker, 1979. 70 pp. (\$1.50).
- 4 *"Ohio Condominium Law Reform: A Comparative Critique,"* by John Blackburn and Nancy J. Melia, 1979. 82 pp. (\$1.50).
- 5 *"Real Property Taxation in Ohio,"* by Robert Carbone and Ronald L. Racster, 1979. 26 pp. (\$1.50).
- 6 *"Computer Assisted Investment Analysis and Valuation of Income Property,"* by Jeffrey D. Fisher, 1979. 26 pp. (\$1.50).
- 7 *"International Investment in Real Estate: A Comparative Analysis,"* by David A. Ricks and Ronald L. Racster, 1979. 41 pp. (\$1.50).
- 8 *"Mortgage Values and Real-Estate Markets: A Contingent Claims Analysis,"* by Stephen A. Buser, 1979. 20 pp. (\$1.50).
- 9 *"A Comparison of Computer Assisted Mass Appraisal Methods,"* by Robert Carbone, Richard L. Longini, and Edward L. Ivory, 1980. 12 pp. (\$1.50).
- 10 *"Neighborhood Activism: Contexts, Interests and Communication,"* by Kevin R. Cox and Jeffery J. McCarthy, 1980. 126 pp. (\$1.50).
- 11 *"The Ohio Real Property Tax: Its Role and Possible Alternatives,"* by Frederick D. Stocker, 1980. 38 pp. (\$1.50).
- 12 *"Alternatives to the Real Property Tax and Local Governmental and Real Property,"* by Douglas O. Stewart, 1980. 49 pp. (\$1.50).
- 13 *"Rent Control: A Current Perspective,"* by James R. Webb, 1980. 16 pp. (\$1.50).
- 14 *"Toward Predicting Entry and Initial Success in the Pursuit of Real Estate Careers: The Longitudinal Validation of a Life History Inventory,"* by Richard Klimoski and Terry W. Mitchell, 1980. 20 pp. (\$2.50).
- 15 *"Factors Leading to Enactment of Rent Control,"* by David A. Lindsley, 1980. 29 pp. (\$2.50).
- 16 *"Consumer's Housing Satisfaction, Improvement Priorities, and Needs,"* by George C. Galster, 1980. 43 pp. (\$2.50).
- 17 *"Valuing the Tax Deductions from Depreciations,"* by Anthony B. Sanders, 1980. 16 pp. (\$2.50).
- 18 *"Task Development and Field Test of a Management Behavior Feedback Questionnaire for the Real Estate Profession,"* by Richard Klimoski and Daniel H. Averbeck, 1981. 80 pp. (\$2.50).
- 19 *"An Examination of the Likelihood of Rent Control,"* by James R. Webb, 1981. 25 pp. (\$2.50).
- 20 *"Urban Investment and Redevelopment - Criteria and Procedure Employed by Developers for Project Selection,"* by Alan B. Flaschner, 1981. 35 pp. (\$2.50).
- 21 *"An Analysis of the For Sale by Owner Market in Ohio,"* by Norman C. Miller and Edward Atzenhoefer, 1981. 79 pp. (\$2.50).
- 22 *"Predicting Career Success in Real Estate,"* by Richard Klimoski and Auralee Childs, 1981. 70 pp. (\$2.50).
- 23 *"Buying and Selling Real Estate: Consumer Opinions About Services and Financing,"* by Waldemar M. Goulet, Janet C. Goulet and David A. Karns, 1981. 141 pp. (\$2.50).

- 24 *"Inflation and Residential Real Estate Prices,"* by Anthony B. Sanders, 1981. 15 pp. (\$2.50).
- 25 *"An Analysis of the Condominium Market in Cleveland, Ohio,"* by Donald R. Haurin, Douglas Stewart and Edward Bell, 1981. 75 pp. (\$2.50).
- 26 *"Capitalization of Energy Efficiency in Housing Prices,"* by Molly Longstreth, Anne R. Coveney and Jean S. Bowers, 1982. 70 pp. (\$2.50).
- 27 *"Centrifugation and Urban Form,"* by Kevin R. Cox and Golden Jackson Mergler, 1982. 85 pp. (\$2.50).
- 28 *"The Political Economy of Urban Revitalization: The Case of Rehabilitation and Building Regulatory Policy,"* by Charles Ellison, 1982. 32 pp. (\$2.50).
- 29 *"Strategies for the Effective Recruiting of Real Estate Sales Associates,"* by Richard Klimoski, 1982. 40 pp. (\$2.50).
- 30 *"The Real Estate Broker's Guide to Selecting and Using Computer Service,"* by Norman G. Miller and Balasubramani Ramjee, 1982. 135 pp. (\$10.00).
- 31 *"Trading and the Tax Shelter Value of Depreciable Real Estate,"* by Patric H. Hendershott and David C. Ling, 1983. 24 pp. (\$2.50).
- 32 *"Real Estate Investment Decision Rules for Life Insurance Companies and Pension Funds,"* by James R. Webb, 1983. 52 pp. (\$2.50).
- 33 *"The Separation of Real Estate Operations By Spin-Off,"* by Gailen L. Hite, Ronald C. Rogers and James E. Owers, 1983. 35 pp. (\$2.50).
- 34 *"Geographic Mobility in an Urban Environment: Impact of Life-Style, Economic and Corporate/Organizational Policy Variables,"* by Bernard J. LaLonde and John J. Gottko, 1984. 89 pp. (\$2.50).
- 35 *"The Future of Real Estate Brokerage in Ohio: Changing Business Conditions and Consumer Needs,"* by John P. Blair, David A. Karns and Wldemar M. Goulet, 1984. 126 pp. (\$2.50).
- 36 *"Developing an Information Central for Real Estate Professionals in Ohio,"* by Richard Klimoski, E. Scott Wright and Leslie Bart, 1984. 70 pp. (\$2.50).
- 37 *"The Creative Financing of Residential Housing,"* by Donald R. Haurin, 1984. 25 pp. (\$2.50).
- 38 *"Prospective Change in Tax Law and the Value of Depreciable Real Estate,"* by Patric H. Hendershott and David C. Ling, 1984. 25 pp. (\$2.50).
- 39 *"Ohio Populations Projects, 1980-2000,"* by Wen Lang Li, 1984. 50 pp. (\$2.50).
- 40 *"Real Estate Education in Ohio, A Survey of Ohio Institutions of Higher Education,"* by Richard O. Nathan and Ronald L. Racster, 1985. 20 pp. (\$2.50).
- 41 *"Real Estate: Instructional and Research Audio/Visual Aids,"* by Raj Padmaraj, 1988. 109 pp. (\$2.50).
- 42 *"Continuing Education in Real Estate: A Survey,"* by James R. Webb, 1988. 40 pp. (\$2.50).
- 43 *"The Assimilation of New Services into the Real Estate Brokerage Firm,"* by James R. Webb, 1988. 30 pp. (\$2.50).
- 44 *"Economic Effects of Hazardous Waste Landfills On Surrounding Real Estate Values in Toledo, Ohio,"* by Gerald E. Smolen, Gary Moore and Lawrence V. Conway, 1991. 31 pp. (\$2.50).
- 45 *"The Impact of Landfills On Residential Property Values,"* by Alan K. Reichert, 1991. 80 pp. (\$2.50).
- 46 *"An Evaluation of the Desirability of Seller and Real Estate Agent Disclosures in Ohio,"* by Gary S. Moore, Gerald E. Smolen and Lawrence V. Conway, 1991. 58 pp. (\$2.50).
- 47 *"An Evaluation of the Effectiveness of Housing Revenue Bonds in Ohio,"* by Michael T. Bond, 1991. 36 pp. (\$2.50).
- 48 *"Toward Standardization of Private Home Inspections in Ohio,"* by Jack H. Rubens, 1991. 42 pp. (\$2.50).
- 49 *"Auctions in Real Estate: When Are They Desirable? A Review of the Issues,"* by Steve B. Wyatt, 1992. 50 pp. (\$2.50).
- 50 *"Housing for Low-Income People and People with Special Needs in Ohio,"* by Charles F. Adams, Jr., and Jing Shiang, 1993. 47 pp. (\$5.00).
- 51 *"Housing Options for the Elderly in Ohio: Availability and Cost,"* by Edward B. Bell, Douglas O. Stewart, and Allan J. Taub, 1993. 48 pp. (\$5.00).
- 52 *"The Effect of Underground Storage Tanks on Residential Property Values in Cuyahoga County, Ohio,"* by Robert Simons, William Bowen, Richard Cole, Arthur Sementelli, 1994. 20 pp. (\$5.00).
- 53 *"Mandatory Continuing Education for Ohio Real Estate Licensees: Overview and Analysis,"* by Karen E. Lahey, Norman G. Miller, Ronald L. Racster, Gerald E. Smolen, and James R. Webb, 1995. 116 pp. (\$5.00).

To purchase any of these publications, please send a brief letter indicating the research papers you would like to purchase along with a check with the appropriate amount made payable to The Ohio State University and mail to:  
**Center for Real Estate Education and Research • The Ohio State University • 1775 College Road • Columbus, OH 43210**

# When Is A Branch Office License Required?

In this age of technology, both the brokerages and the division are constantly revising the way we do business. As brokers and brokerages become more competitive and technology based, the agency must adjust to reflect the realities of the marketplace.

Real estate licensing law permits a brokerage to have multiple offices, provided one office is the principle place of business and the other offices are properly licensed as branch offices of the brokerage. In order to operate a branch office, a branch office license is needed. Branch office licenses may be obtained from the division upon payment of a nominal (\$8.00) fee and the filing of a branch office application. The office itself must meet all of the same requirements as the principal office such as a brokerage sign, posted license, posted fair housing sign, etc. The branch does not have to have a licensed broker actually in the office, nor does it have to have a separate trust account.

However, the most prominent issue of the day is what constitutes a branch office? This definition, and consequently the need for licensure, changes with technology. Two new innovations which clearly are new branch office concepts are mall set ups and mobile offices. The division has required a broker who sets up a kiosk-type mall office to obtain a branch license. The factors going into that determination include: can the kiosk operate completely without the benefit of a licensed office? For example, telephones, computer modems, brochures and the proximity of salespeople available

to service customers make the mall project a branch office. Likewise, a licensee who operates out of a specially equipped van or motor home, and who is essentially independent of the brokerage office, would be required to have a branch office license. That license would reflect the address where the van or motor home was usually parked when not in use.

Growing in prevalence and of more concern to the division is the use of home offices or "unassigned space" by salespeople and brokers. The issue is when does a location's use rise to the level of a branch office? To illustrate the division's determination, we would review the following factors:

- 1) Is the location the principal place of business of one or more licensees? Thus, if a majority of a licensee's business was conducted out of his/her home through the use of telephones, computers, modems and meeting clients or prospective clients, then that home office would require a branch office license.
- 2) What level of business activity does a licensee transact at his/her main or branch office? A broker or salesperson who does not take floor time, or merely uses the main office as a mail drop, would probably need to obtain a branch office license for his/her principal place of business.
- 3) Is the salesperson acting as a de facto broker? Ohio Administrative Code 1301:5-1-

14 prohibits a broker from lending his/her name to another for the sole purpose of permitting that person to operate independently as a licensee. This is generally referred to as a "rent-a-broker" and reflects the general legal principle that you cannot do indirectly what the law prohibits directly. Thus, a broker who sells a "branch office" to salespeople for the purpose of circumventing the broker license requirements is possibly guilty of violating the license laws.

- 4) A corollary to this circumvention of the real estate law is the responsibility of a real estate broker for the acts of his agents. Ohio Revised Code Section 4735.18(B) makes it a violation for a broker to knowingly permit a salesperson to violate the license laws. A failure to properly supervise the activities of a salesperson by a broker could be in violation of this statute or ORC 4735.18(A)(6).

It is the responsibility of the division to ensure that all operations are properly licensed in accordance with the existing laws. It is immaterial to our determination whether additional franchise fees or board fees are generated by this branch office policy. The changing nature of the business dictates that all branch office locations meet the requirements of the law. Remember, the telephone booth of today, may be the branch office of tomorrow.

# Real Estate Recovery Fund Explained

The Ohio Division of Real Estate maintains and administers the Ohio Real Estate Recovery Fund. The fund was created by statute with the support of the real estate industry.

Section 4735.12 of the Ohio Revised Code explains the procedures an applicant must follow to apply for payment, and the elements that must be established in order to be entitled to payment.

A party must already have an unsatisfied judgment against a licensed real estate agent acting in their capacity as a real estate licensee and based on conduct that could be considered a violation of Chapter 4735. The party must be able to demonstrate that they have tried to satisfy their judgment from the real estate agent but were not successful. The party may then be entitled to payment from the fund.

## What the Fund Covers

The fund covers a wide variety of judgments that may be rendered against real estate agents but is not all encompassing. The judgment has to be against the real estate licensee based on their conduct as a real estate agent. Such conduct also has to be a violation of Chapter 4735.

## What the Fund Does Not Cover

The fund does not apply to judgments rendered against licensees

handling their own property unless they are also acting estate agent in the transaction. The fund also does not apply to judgments real estate agents may obtain against other real estate agents for commissions due. The fund was also not designed to cover judgments against licensees for debts not associated with a particular real estate transaction such as judgments for failing to pay utility bills or for failing to pay office expenses.

The fund was designed to primarily protect buyers and sellers from the misdeeds of unscrupulous real estate agents. The most common claim made against the fund involves judgments where a real estate agent has converted money, received by the agent in a fiduciary capacity from buyers or sellers, such as earnest money deposits, to the agent's personal use.

Real estate agents are not required under Ohio real estate license law to maintain errors and omissions insurance. However, the Real Estate Recovery Fund should not be considered by licensees as a substitute for such insurance. One of the reasons the fund is different from professional liability insurance is that the judgment creditor must first pursue collection remedies against the real estate licensees as a condition to

be eligible for payment from the fund. A second, and perhaps more important distinction, is that when there is a payment made from the recovery fund, the real estate agent on whose behalf the payment was made will have his or her real estate license automatically suspended.

The fund was created by an assessment levied against real estate licensees. Due in part through prudent management by the Division of Real Estate staff, real estate licensees have not been required to pay into the fund for more than 10 years. Since 1986, 128 claims have been paid totaling \$1.1 million. In the last few years, the Division of Real Estate has seen a significant increase in the amount of money being paid from the fund. If this trend continues, real estate licensees may once again be called upon, possibly through a fee increase or assessment, to contribute to the fund. As all licensees continuously strive for professionalism in the industry, claims against the fund should hopefully diminish.

This article is intended to provide general information about the Ohio Real Estate Recovery Fund. If you have any specific questions, please contact Sheldon Safko at the division, who is involved with the administration of the fund.

**STATE OF OHIO**  
**DEPARTMENT OF COMMERCE**  
**DIVISION OF REAL ESTATE**  
**77 S. HIGH STREET**  
**COLUMBUS, OHIO 43266-0547**

## REAL ESTATE APPRAISER BOARD

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**M. ROBERT GARFIELD**  
**JOHN W. PECK, CHAIRMAN**  
**ROBERT J. (JOE) PORTER**  
**PHILLIP W. STOTZ**

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**EDWARD J. KIZER**  
**DALE W. MARKS**  
**ARDETTE K. RILEY**  
**GEORGE M. SARAP, ATTY.**



# Commission and Appraiser Board Takes New Members

The Ohio Real Estate Commission and the Ohio Real Estate Appraiser Board have recently welcomed new members.

Below is a summary that lists the names of the outgoing members along with the names of the new members and the length of their terms.

## Real Estate Commission

Norma L. Good, whose term expired on 6/30/95, was replaced by Dale W. Marks, for a term beginning 9/6/95 and ending 6/30/00.

Lois L. Yeager, President, whose term expired 6/30/95, was replaced by Ardette K. Riley, for a term beginning

7/25/95 and ending 6/30/00.

The Commission recently selected Owen Hall as President.

## Real Estate Appraiser Board

Donald B. Leach, Jr., Chairman, whose second term expired on 6/30/95, was replaced by John K. Fitch, public member, for a term beginning 7/26/95 and ending 6/30/98.

Robert J. Porter was reappointed for a second term beginning 7/26/95 and ending 6/30/98.

John R. Garvin, who served two three-year terms from 3/19/91 to 6/30/94, was replaced by M. Robert Garfield, for a term beginning 9/14/94 and ending 6/30/97.

Lawrence A. Kell, whose term expired on 6/30/94, was replaced by Phillip W. Stotz, for a term beginning 9/14/94 and ending 6/30/97.

The Board recently selected John Peck as Chairman.

The Ohio Department of Commerce and the Division of Real Estate thank the former members of the Commission and the Board for their service to their respective industries.

For a complete list of all the current members of the Ohio Real Estate Commission and the Ohio Real Estate Appraiser Board, please see page 7 of this newsletter.



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