

George V. Voinovich
Governor

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Director

Ronald J. Rotaru
Superintendent

Points to Ponder

1 If you are selling real estate at an auction, you must have both an auctioneer license and a real estate license. The sale must then be handled through your licensed broker.

2 Inquiries regarding cemeteries and appraisers are handled through our Cleveland office at (216) 787-3100, or you may call us at (614) 466-4100, and we'll forward your call.

3 Do not panic when you receive a call requesting an appointment for a routine compliance audit. The information needed for the audit will be reviewed in advance so that we take as little of your time as possible. We try to make audits a pleasant and informative encounter. Feel free to call if you want information before the audit.

4 Take the time to put changes/modifications/extensions of listing and sales contracts in writing.

5 Remember that a person must receive a copy of a document the person signs when it is signed by that person. Have extra copies available to meet this requirement.

6 Documents of all transactions-related matters are to be retained by the broker for three years. This includes, but is not limited to, such things as rejected offers and notes for deposits.

7 If you want to do real estate business in any name other than the name that appears on your real estate license, you must secure a license in that name. This is done by filing a multiple change application that allows for an individual name change. Feel free to contact the Division's licensing section with any question on the name change process.

Real Estate Sales People Cannot Conduct Business as a Corporation

Although individuals who become licensed as real estate brokers in Ohio have a number of ways they can transact business in Ohio — as a sole proprietor, partnership, association, or corporation — real estate sales people do not have these same options. Real estate sales agents must do business only through the brokerage that holds their license.

However, some sales agents try to do business as a corporation, which is a separate legal entity. They go through the Secretary of State's office and form a corporation, but the Division of Real

Estate and Professional Licensing has no authority to grant a corporation a sales license.

"We will only license the corporation as a broker if there is already an individual who holds a broker license and is willing to associate his or her license with that corporation," says Paul Stickel, Deputy Superintendent and Chief Legal Counsel. "Let's say John Smith is already a broker and forms a corporation at the Secretary of State's office called Zodiac Real Estate. We will license Zodiac Real Estate, provided John Smith places his individual license with that corporation."

The issue the division faces with regards to corporations is that sometimes a successful

salesperson will want to incorporate for any number of reasons. But the division does not issue sales agent licenses to anyone others than to individuals, and a corporation is not an individual. On top of that, brokers cannot pay the sales agent's earned share of a commission to a sales agent's unlicensed corporation. Such

conduct may be perceived as unlawfully dividing a fee with an entity not properly licensed.

If the salesperson incorporates with the Secretary of State's office and tries to license the corporation with the department, he will be asked for the name

of the individual broker. "This cannot be done," explains Stickel. "There must be an individual broker who attaches his license to the corporation."

This is where things get interesting. Problems arise when non-brokers own the corporation or are significant share holders or officers. Brokers who try to delegate day-to-day operations for their brokerages are in dangerous waters because they are still responsible for the brokerage's activities.

For example, if a sales agent approaches someone who has a broker's license and arranges a business agreement where the broker places his

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Cease and Desist Orders Issued

Occasionally, the Division of Real Estate and Professional Licensing finds evidence that certain individuals have engaged in conduct requiring a real estate license when they were not so licensed. The division generally will issue a cease and desist order to the individual in such matters. If these individuals or businesses continue to engage in conduct requiring a real estate license, the division may contact the appropriate local prosecutor and ask the prosecutor to consider initiating criminal action. Under 4735.99 of The Ohio Revised Code, acting as a real estate agent without a real estate license is a first degree misdemeanor.

Since 1998 the following individuals' companies in these cities have received cease and desist orders:

Cleveland, Ohio

Brenda Burroughs

Dayton, Ohio

Gary Whitaker

Macedonia, Ohio

Patricia Neilsen

Reno, Nevada

Deane Harlow and National Affordable

Housing Coalition

The Super's Comments

By Ronald J. Rotaru, Superintendent

We've received some great comments from you about the "new and improved newsletter."

Thanks for dropping us a line. Best of all, we also have received almost a hundred requests for additional copies. Please keep up the good work of sharing the newsletter with your staff.

I want to offer some important information that will save us all time and money. Please remember that all forms must be typed and all fees must be paid by check or money order. We cannot accept credit cards yet, but we're looking at that option.

You may photocopy our current forms to have extra copies, but make sure you discard forms that list out-of-date information such as old fees, names of past governors, and other obsolete material.

Also, we request that you have a 1-800 number ready when calling with education and licensing questions. This information handy will expedite your call.

The division has not had a 1-800 number since 1991, yet calls are still made to the old number. That number belongs to an auto parts company and the parts man still calls us to tell us that he is still receiving calls for which he has to pay for them. He is not in Florida...well, some of you will call the 800 number.

We look forward to your comments and suggestions about this new issue. Thanks!



Cannot Conduct Business as a Corporation

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or her license with the corporation, the broker is still ultimately responsible for complying with certain real estate licensing law requirements. The division will not let sales agents assume responsibility from the broker and let the broker escape liability if something goes wrong.

A particular example might be the trust account that every brokerage must maintain. Under the law, the regular trust account must be noninterest-bearing. If the sales agent arranges for the account to be interest-bearing, the division will discipline the broker, not the salesperson. "It is no defense for brokers telling us that it's not their company; it's the sales agent's company," emphasizes Stickel. "The point is that the corporation received a license because of that broker, and we will hold that broker responsible for any infraction of the law."

Another scenario that ties into the problem is what the division refers to as a "rent-a-broker,"

which is specifically prohibited by administrative rules. A "rent-a-broker" results from a broker lending his or her name for the benefit of another. A good example is a broker who lends his name to a salesperson for incorporation purposes and fails to personally oversee the day-to-day operation. Real estate law specifically prohibits such an arrangement.

"If the broker doesn't come into the office and has no idea who is operating the trust account who has access to all the files, we would consider this a 'rent-a-broker' situation, and we would charge that broker with a license law violation," Stickel notes.

"There is no law to prohibit the broker from delegating responsibility of the brokerage, but the broker is ultimately liable if the person they delegate responsibility to makes a misstep. If you want to be a professional, then you must accept professional responsibility," Stickel concludes.

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Name Identification Issues Clarified

Many licensees mistakenly believe that a franchise designation attached to their real estate broker's licensed name is, in fact, the name of their broker. These licensees refer to their broker solely by that designation and even complete forms, such as the agency disclosure form, with only that designation. How many times have you heard an agent say her broker is "RE/MAX" or "Century 21"? We have no real estate broker licensed solely under these names, and such claims or references by licensees are incorrect and inaccurate.

A licensee may be with the ABC Real Estate Company. This broker may belong to the Century 21 franchise system and may be permitted under its franchise agreement to use the Century 21 logo. However, it is improper for the licensee to refer to his or her broker as only "Century 21." In such a situation, the correct designation would be ABC Real Estate Company or Century 21 ABC Real Estate Company. To only say, "I am with Century 21" is confusing and has the potential to be misleading; therefore such references should be avoided. While Century 21 is being used here for illustration purposes, the

same guidelines apply to RE/MAX franchises, Coldwell Banker franchisees, and others.

Telephones should not be answered identifying the broker by only the franchise name such as "Century 21." They should be answered "XYZ Realty" or "Century 21 XYZ Realty."

The name of the broker as it appears on the real estate license must be used in all forms of advertising as the name identification. It is up to the broker whether he or she wants to add the franchise name to the advertising.

A real estate broker may add the franchise name to advertising without changing the real estate license. So a broker licensed as The ABC Real Estate Company may advertise as "Century 21 ABC Real Estate Company" without having to change his licensed name to include the franchise designation. The franchise name is not a part of the broker's name and is not considered when evaluating advertising for equal prominence compliance.

Another area of confusion relates to a misconception among some real estate licensees that they may work for and on behalf of any broker who is a member of the same franchise as

the licensee's broker. This is incorrect, and it can be the basis for disciplinary action. Real estate agents may act only in the name of the broker with whom they are licensed. As an example: Ms. Jones is licensed as a salesperson with broker Century 21 ABC Real Estate Company. She is not permitted to manage property or engage in real estate conduct on behalf of Century 21 DEF Real Estate Company. These are two separate licensed entities that only happen to belong to the same franchise system. Ms. Jones may act only as a real estate agent for her broker, the ABC Real Estate Company.

Although your specific franchise name might not have been referred to in this article, it is expected you will examine your advertising practices. If you see that you or your office have only been referring to your brokerage by the franchise name, corrective action is in order. Any questions you may have on this matter may be referred to the Division's Enforcement Section at (614) 466-4100.

Team Advertising by Real Estate Sales People Questionable

To the Division of Real Estate and Professional Licensing, the term "team advertising" is really nothing more than a slogan. But as more and more licensees continue to engage in self-promotion by forming teams, the division is becoming concerned that the public may be misled by the advertising. The biggest concern is that the public will believe that the team is a licensed entity. The division does not license teams, such as Team Smith, for real estate sales people.

Although there is nothing in the licensing law that prevents team advertising, the division has taken the position that these four requirements of advertising have to be met:

- 1 The name of the real estate broker must be included;
- 2 The advertisement has to state that the company is a real estate broker;

- 3 The advertising has to meet the standards of equal prominence, meaning a salesperson's name can't be more prominent than that of the broker; and

- 4 The advertising cannot be confusing or misleading to the public.

Again, the advertising cannot be confusing or misleading to the public. So the division is concerned when it sees an ad that says Team USA because people may think there is an entity that is actually licensed as Team USA. Therefore, the division objects to a team name being used that does not utilize the licensee's name.

Finally, teams typically do not include non-licensees. However, some teams do include mortgage bankers, insurance agents, and others who are not licensed to transact real estate business. As long as they don't do anything that requires a real estate license, it becomes immaterial to the division whether or not they are on the team.

Continuing Education News

Upon request, the Division of Real Estate and Professional Licensing will be pleased to send you a complete roster of approved continuing education classes for licensees and appraisers. Contact the division's continuing education section at (614) 466-4100.

News from the Ohio Real Estate Appraiser Board

Appraiser Complaint Procedure Outlined

When filing a complaint against a licensed or certified appraiser, it is necessary to provide the Division of Real Estate and Professional Licensing with a letter, supporting documentation identifying the individual, and an outline of issues that allegedly violate appraiser license law and/or the Uniform Standards of the Professional Appraisal Practice (U.S.P.A.P.).

After receipt of a complaint, the Division sends letters to the appraiser and complainant notifying them that an investigation will take place, and the parties have an opportunity to discuss the complaint at an informal meeting. Informal meetings are only conducted if both parties agree to attend.

As part of the complaint investigation process, the appraiser is asked to provide the investigator with a written response to the complaint and to include a copy of the appraisal and corresponding file memoranda. Investigators then will submit their findings in a written report to the Superintendent.

If it is determined that a violation of the U.S.P.A.P. and/or appraisal license law occurred, charges may be filed against the appraiser and a formal hearing will be scheduled. If it is determined that there is not sufficient evidence to prove a violation of the Ohio Revised Code and/or U.S.P.A.P., then no further action will be taken, and the case will be closed.

Parties to a complaint may file a written request for the Ohio Appraisal Board to review the Superintendent's final determination. Complaints should be directed to Ronald J. Rotari, Superintendent, Ohio Division of Real Estate and Professional Licensing, Appraiser Section, 615 Superior Avenue, NW, Rm. 525, Cleveland, Ohio 44113.

U.S.P.A.P. Available on CD-ROM

A new edition of the Uniform Standards of Professional Appraisal Practice (U.S.P.A.P.) is available on CD-ROM at a cost of \$39. It contains all of the U.S.P.A.P. in an indexed

format. As a helpful resource, the 1997 editions of U.S.P.A.P. also are available on CD-ROM. To place an order, contact the Appraisal Foundation at (202) 295-6000.

U.S.P.A.P. Correction

The Comment to Standard Rule 2-2(a) was printed incorrectly in the 1997 edition of the Uniform Standards of Professional Appraisal Practice (U.S.P.A.P.). The correct Standard Rule 2-2(a)(1)(c) should read as follows:

Comment: This requirement does not require a report to contain the appraiser's opinion as to the highest and best use of the property, unless an opinion as to the highest and best use is unnecessary, e.g., when the property is in use appraisals. If an opinion as to the highest and best use is required, the reasoning in support of the opinion should be described in depth and detail, and its significance to the appraisal should be stated.

Long-Time Division Employees Retire

After nearly 19 years of service, Nelson Snider, Supervisor of Education and Testing, retired in June from the

Division of Real Estate and Professional Licensing. In addition to spending more time with his family, Nelson has some home remodeling and landscaping projects planned.

In the position he held for the past 13 years, Nelson reviewed continuing education applications to make sure the proposed courses were in compliance with the guidelines of the Ohio Administrative Code. He reviewed more than 2,200 continuing education applications each year. He also supervised the testing process for sales agents. He started with the division as an investigator.

During his years at the division, Nelson fielded innumerable phone calls each day from

the public about testing and continuing education requirements. "I spent 60 percent of the time with individual licensees answering questions," says Nelson.

"I will terribly miss talking to the public and licensees every day, answering their questions to improve the quality of our continuing education programs. Leaving will be very difficult because I have a lot of feeling for the people I work with every day," concludes Nelson.

Also recently retired from the division is Joyce Kady, Supervisor of Enforcement, who began working for the State of Ohio in December of 1973. She moved to the Division of Real

Estate and Professional Licensing in June, 1976 as an investigator, and was promoted three years later to supervisor.

Disciplinary Actions Revocations

JOSEPH H. M. BOVE, broker, Cincinnati, Ohio, had his broker's license revoked for violating Section 4735.18(A) of the Ohio Revised Code. This revocation will become effective should he seek to reinstate his license. Mr. Bove was convicted of interstate transportation of stolen property obtained by fraud, in violation of Title 18 U.S.C. Section 2314 in the U.S. District Court for the Eastern District of Kentucky.

CHERRY L. BALL, sales associate, Buckeye Lake, Ohio, had her license revoked for violating three counts of Ohio Revised Code Section 4735.18(A)(6), one as it incorporates Ohio Administrative Code Section 1301:5-1-13 and Ohio Revised Code Section 4735.18(A)(5). This revocation will become effective should she seek to reinstate her license. Ms. Ball issued checks from the brokerage's trust account in which there were insufficient funds to cover the checks. She also failed, within a reasonable time, to account

for or remit to a seller money due the seller, which was received by the brokerage. Finally, she failed to obey a subpoena issued by the Division pertaining to the investigation of these matters.

JAMES F. BALLARD, broker, Buckeye, Ohio, had his broker's license revoked for violating Ohio Revised Code Section 4735.18(A)(5), three counts of violating Ohio Revised code Section 4735.18(A)(6), one as it incorporates Ohio Administrative Code Section 1301:5-1-13 and for violating Section 4735.18(A)(26) of the Ohio Revised Code. Mr. Ballard, as supervisory broker for the brokerage, received funds which he neglected to place and continuously maintain in the brokerage's trust account. He failed, within a reasonable time, to account for or to remit these funds to a seller. Finally, he failed to obey a subpoena issued by the Division pertaining to the investigation of these matters.

LOUISE R. FORRER, broker, Northfield, Ohio, had her broker's license revoked and was fined \$2,500.00 for violating Section 4735.18(A)(6) of the Ohio Revised Code. This revocation became effective October, 1997. Over a period of time, Ms. Forrer collected monies in connection with an agreement to sell property, most of which money was deposited into the brokerage's trust account. However, the transaction never closed. Ms. Forrer failed to continuously maintain the funds in the trust account, but instead made disbursements to herself, as seller, without the written authority of the purchasers and was unable to account for or return the money to the purchasers.

ANDREW R. MORBITZER, sales associate, Columbus, Ohio, had his sales license revoked for violating Section 4735.18(A)(6) of the Ohio Revised Code. This revocation was effective immediately. Mr. Morbitzer collected an earnest money deposit which he failed to remit to his broker for deposit in the brokerage's trust account. Instead, the funds were misappropriated for personal use. Only after the transaction closed and the misappropriation was discovered did he repay the money to the broker.

MARK A. APPEL, sales associate, Dayton, Ohio, had his sales license revoked for violating Section 4735.18(A) of the Ohio Revised Code. This revocation became effective, immediately (Dec, 1997). Mr. Appel was convicted of conducting an illegal gambling business and gambling and abetting in violation of 18 U.S.C. 2255 and 18 U.S.C. 2. He was further convicted of tax evasion, in violation of 26 U.S.C. 7201. These convictions occurred in the U.S. District Court for the Southern District of Ohio.

Suspensions

OLIVER STALLWORTH, broker, Youngstown, Ohio, had disciplinary action taken against his broker's license for violating Ohio Revised Code Section 4735.18(A)(6) as it incorporated Ohio Administrative Code Section 1301:5-5-05. Mr. Stallworth's license was suspended for 15 days, commencing on May 19, 1997, he was fined \$500.00 and he was required to complete and submit proof of the 10-hour post-licensure brokerage course. Mr. Stallworth prepared and submitted an offer to the sellers without providing an agency disclosure form to both parties of the transaction.

WAYNE A. LUOMA, sales associate, Ashtabula, Ohio, was fined \$500.00 for violating Section 4735.18(A)(6) of the Ohio Revised Code. In connection with an offer to purchase property, Mr. Luoma was given an earnest money deposit. However, Mr. Luoma failed to remit the funds, received by him in a fiduciary capacity, to his broker to be held in the brokerage's trust account during the pendency of the sale.

CAROLYN R. MENDRALLA, sales associate, Mentor, Ohio, had her sales license suspended for 15 days for violating section 4735.18(A)(6) of the Ohio Revised Code. Ms. Mendralla began serving this suspension on June 20, 1997. Ms. Mendralla, as the listing agent for a property, permitted a potential buyer access to and possession of the property. However, this was without written authority, either by way of a purchase agreement, lease agreement or otherwise, signed by her client, the seller. She failed to verify with her client that he authorized delivery of the key to the potential buyer.

ZEDDIE E. ADAMS, broker, Warrensville Heights, Ohio, had his broker's license suspended for 30 days for violating Sections 4735.18(A)(6) of the Ohio Revised Code. Mr. Adams began serving his suspension on June 20, 1997. In connection with a purchase contract, Mr. Adams failed to prepare and submit an agency disclosure form to the parties of the contract.

JOHN E. DEAN, JR., broker, Cincinnati, Ohio, had his broker's license suspended for 90 days and was fined \$2,500.00 for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Dean began serving his suspension on July 7, 1997. Mr. Dean managed several properties throughout Cincinnati, Ohio, with duties of collecting rents, procuring tenants and negotiating leases. This conduct required an Ohio real estate license, however, he engaged in this conduct in the name of a corporation that did not

have an Ohio real estate license.

KATHLEEN E. CREEDON, sales associate, Dublin, Ohio, had her sales license suspended for 6 months and she was required to complete and to submit proof of completion of the 10 hour post-licensure sales course for violating Section 4735.18(A)(6) of the Ohio Revised Code. Ms. Creedon began serving her suspension on June 20, 1997. Ms. Creedon collected a referral fee without the knowledge or consent of her broker. Although the check was made payable to her broker, she failed to remit the funds to her broker within a reasonable time after receipt.

JOE W. MARINO, JR., broker, Canton, Ohio, had disciplinary action and a fine levied against his broker's license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Marino's license was suspended for 60 days commencing on June 20, 1997, and ordered to pay a fine of \$1,500.00. In connection with a purchase agreement for property that was sold by auction, the buyer executed a promissory note representing an earnest money deposit. The note was to be redeemed within one day, however, Mr. Marino neglected to have this accomplished and further failed to inform his clients that the note had not been redeemed. Also, in connection with the same sale, Mr. Marino failed to prepare and submit to the parties an agreement acknowledging consent to a dual agency representation until after the property was sold.

THOMAS A. MARINO, broker, Canton, Ohio, had disciplinary action and a fine levied against his broker's license for violating Sections 4735.18(A)(4) and (A)(6) of the Ohio Revised Code. Mr. Marino's license was suspended for 120 days commencing on June 20, 1997 and ordered to pay a fine of \$2,500.00. Property listed for sale by auction with Mr. Marino's brokerage was sold. Mr. Marino's individual bid was the successful bid, however, he was acting for another, and did this without the knowledge or consent of his client, the sellers. Mr. Marino acted for more than one party in the transaction without the parties' knowledge or consent.

WHIPPLE AUCTION & REALTY, INC., corporation, Canton, Ohio, had its corporate broker's license fined \$2,500.00 for violating Section 4735.18(A)(6) of the Ohio Revised Code. Property listed with the corporation was sold by auction. In connection with the sales agreement a note was to be redeemed within one day, however, this was not done nor was the client informed that the note had not been redeemed.

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Disciplinary Actions

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MATTHEW D. YEAGER, sales associate, Perrysburg, Ohio, had disciplinary action and a fine levied against his license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Yeager was required to complete a 3 hour course on agency and to pay a fine of \$500.00. In connection with a purchase agreement, in which Mr. Yeager was acting as the buyer's agent, the agreement called for the buyers to take possession of all furniture in the property at closing. However, Mr. Yeager permitted the buyers to enter and remove furniture, prior to closing, without a written agreement from the seller. Mr. Yeager also allowed the buyers to have the lock box combination to the property without the permission of the sellers.

EMMA FLEMMER, sales associate, Akron, Ohio, had disciplinary action and a fine levied against her license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Ms. Flemmer was required to complete 3 hours of approved continuing education in real estate contract law and to pay a fine of \$500.00. In a transaction involving a land contract, Ms. Flemmer should have known that the person trying to sell only had an equitable interest in the property because there was a prior land contract with this property in which the brokerage represented the seller. Ms. Flemmer knew or should have known that an equitable interest in real estate may not be sold by a land contract. In the original sales contract agreement there was a provision that the seller give written consent to any sale or conveyance by the buyer, but Ms. Flemmer did not attempt to obtain or verify the original seller's consent to such an arrangement.

DARLENE S. LOUGHBOROUGH, broker, Akron, Ohio, had disciplinary action and a fine levied against her real estate broker's license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Ms. Loughborough was required to complete 3 hours of approved continuing education in real estate contract law and to pay a fine of \$500.00. In a transaction involving a land contract, Ms. Loughborough should have known that the person trying to sell only had an equitable interest in the property because there was a prior land contract with this property, in which the brokerage represented the seller. Ms. Loughborough knew or should have known that an equitable interest in real estate may not be sold by a land contract. In the original sales contract agreement there was a provision that the seller

give written consent to any sale or conveyance by the buyer, but Ms. Loughborough did not attempt to obtain or verify the original seller's consent to such an arrangement.

GARRY L. KENNARD, broker, Newark, Ohio, had disciplinary action and a fine levied against his real estate broker's license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Kennard was required to complete and submit proof of the 10-hour post-licensure sales course and to pay a fine of \$500.00. Mr. Kennard communicated to the purchasers of property that a particular elementary school would service the subject property. After the closing of the sale, the buyers discovered that the advertising referenced the wrong school. Mr. Kennard relied on previously correct information, which had changed prior to this sale.

CLYDE G. MEREDITH, broker, Holland, Ohio, had his broker's license suspended for 180-days for violating Ohio Revised Code Section 4735.18(A)(9) as it incorporates Ohio Revised Code Section 4735.13(F) and for violating Ohio Revised Code Section 4735.18(A)(6). Mr. Meredith began this suspension on July 28, 1997. Mr. Meredith collected funds, as a commission, with respect to the sale of various Ohio real estate properties sold by way of auction. He collected the commission in the name of a company, which at the time, was not licensed as a real estate brokerage.

EDWARD P. FERNANDEZ, broker, Canton, Ohio, had disciplinary action taken against his real estate broker's license for violating Ohio Revised Code Section 4735.18(A)(6) as that Section incorporated Ohio Administrative Code Section 1301:5-5-05. Mr. Fernandez's license was suspended for 30 days, however, due to mitigating circumstances, 20 days of the suspension were waived by the Ohio Real Estate Commission. Mr. Fernandez began serving the 10-day balance of the suspension on July 28, 1997. In addition, he was fined \$250.00 and ordered to complete and to submit proof of the 10-hour post-licensure brokerage course. Mr. Fernandez prepared an agreement between parties for the purchase of property. He prepared this agreement without completing and providing an Ohio agency disclosure form to the parties.

RAYMOND J. YOUNGBLOOD, broker, Cincinnati, Ohio, was fined \$500.00 for violating Sections 4735.18(A)(6) and (A)(26) of the Ohio Revised Code. Mr. Youngblood failed to, over a period of time, maintain a trust or special bank account designated as such, which was non-interest bearing and within an Ohio depository.

JOHN S. LOYD, sales associate, Sandusky, Ohio, had his license suspended for 3 years for violating Section 4735.18(A) of the Ohio Revised Code. Mr. Loyd began serving this suspension on September 2, 1997 and his license can only be reinstated if he has no violation of the court imposed probation. Mr. Loyd was convicted of five counts of theft by deception in violation of Ohio Revised Code Section 2913.02 in the Ottawa County Common Pleas Court.

PEGGY L. KING, broker, Lucasville, Ohio, had disciplinary action taken against her license for violating Sections 4735.18(A)(6) and (A)(26) of the Ohio Revised Code. Ms. King's license was suspended for 15 days, however, imposition of the suspension was waived by the Ohio Real Estate Commission. She was fined \$300.00 and required to complete and to submit proof of completion of 6 hours of continuing education involving property management issues. Ms. King in her duties as a property manager, collected rent payments, but failed to deposit these funds, received in her fiduciary capacity, into the designated noninterest-bearing property management trust account. Also, as the property manager she engaged in this conduct in a name other than the name in which she was licensed.

ERICK W. HAHN, broker, Lancaster, Ohio, had disciplinary action taken against his broker's license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Hahn's license was suspended for 30 days and he began serving this suspension on September 2, 1997. Mr. Hahn was also fined \$2,000.00 and required to complete and to submit proof of completion of the 10-hour post-licensure brokerage course. In connection with a land contract document, Mr. Hahn allowed a notary public, who was acting in an official capacity and as a witness, and another witness, to notarize and witness him signing the name of the seller to a document, which he stated he would correct later. However, this was not done and Mr. Hahn submitted the document to a title company and it was recorded as a valid land contract.

CONDO REALTY, INC., corporation, Lakewood, Ohio, had its corporate brokerage license suspended for 30-days for violating Sections 4735.18(A)(6) and (A)(26) of the Ohio Revised Code. This suspension began on September 18, 1997. The brokerage provided property management services, which included collecting rental payments, which it failed to deposit into a separate property management trust account and some of the funds were deposited into the brokerage's trust account.

LOUIS CHARLES FEHER, broker, Lakewood, 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. Mr. Feher began serving this suspension on September 18, 1997. Mr. Feher was the supervising broker for the brokerage that undertook some property management duties. In connection with these duties, rents and security deposit were received, but the company did not have a separate property management trust account into which to deposit the funds. Other funds were collected and these funds were also not deposited into the brokerage's trust account.

CARMEN N. MAZZA, broker, Warren, Ohio, had his license suspended for 30 days for violating Ohio Revised Code Section 4735.18(A)(6) and Section 4735.18(A)(9) as it incorporates Section 4735.21 of the Ohio Revised Code. Mr. Mazza began serving this suspension on August 12, 1997. Mr. Mazza collected a commission in his own name, and not in the name of the broker he was associated with at the time, and to which the broker had not consented.

JOE E. HUGHES, sales associate, Dayton, Ohio, had his sales license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code as it incorporated Ohio Administrative Code Section 1301:5-5-05. However, due to mitigating circumstances, 15 days of the suspension were waived by the Commission. Mr. Hughes began serving the 15-day balance of the suspension on October 6, 1997. In connection with an offer to purchase property, Mr. Hughes represented both buyer and seller creating a dual agency status. He completed a dual agency agreement but not the Ohio agency disclosure form which was required.

TRACI R. HILEMAN, sales associate, Akron, Ohio, had disciplinary action taken against her sales license for violating two counts of Section 4735.18(A)(6) of the Ohio Revised Code and Section 4735.18(A)(9) as it incorporates Section 4735.21 of the Ohio Revised Code. Ms. Hileman's license was suspended for 30 days to commence upon reinstatement of her license and she was required to complete and submit proof of completion of 6 hours of approved continuing education in property management. Ms. Hileman managed properties in the name of an unlicensed entity, and not in the name of the brokerage she was affiliated with at the time. Ms. Hileman further collected security deposits and rental payments without the consent of and not in the name of the broker she was licensed with at the time.

LEE JONES, broker, Boardman, Ohio, had disciplinary action taken against his broker's license for violating Section 4735.18(A)(6) and (A)(31) of the Ohio Revised Code. Mr. Jones' license was suspended for 30 days, to commence upon reinstatement of his license. He was fined \$4000.00 and required to complete and to submit proof of completion of a 3 hour continuing education course involving a review of agency relationships under the real estate license laws. Mr. Jones failed to pay or render an accounting, within a reasonable time, to a licensee their earned share of a commission received on two properties.

MICHAEL E. PUTNAM, broker, Chillicothe, Ohio, had disciplinary action taken against his broker's license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Putnam was ordered to complete the 10-hour post licensure brokerage course. Mr. Putnam prepared an agreement to purchase property, in which he represented the seller. The purchasers gave Mr. Putnam an earnest money deposit, which he placed in his trust account. However, the transaction did not close. A written release was signed by the purchaser, but the money was released without the knowledge or authorization of his client, the seller.

C. MORRIE HATCH, sales associate, Brunswick, Ohio, had his sales license suspended for 30 days for violating two counts of Ohio Revised Code Section 4735.18(A)(6), one as it incorporates Ohio Administrative Code Section 1301:5-5-08 and Section 4735.18(A)(14) of the Ohio Revised Code. Mr. Hatch began serving this suspension on October 6, 1997. Mr. Hatch prepared an offer to purchase property which provided for an earnest money deposit. He accepted a note for the deposit, but failed to make notation on the contract he had taken a note in lieu of cash and did this without the knowledge or the written consent of the owner. Mr. Hatch agreed, as part of a substitute contract, to forego that portion of his sales commission that equaled the deposit, but the offer he wrote for the buyers failed to include this pledge or inducement.

VIRGINIA L. SMITH, broker, Bidwell, Ohio, had disciplinary action taken against her broker's license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Her license was suspended for 30 days, however due to mitigating circumstances, imposition of the suspension was waived by the Ohio Real Estate Commission. She was fined \$500.00 and ordered to complete the 10-hour post-licensure brokerage course. With property Ms. Smith had listed for

sale, two different wood destroying insect infestation inspection reports were done, one being more detailed than the other. However, both reports were not provided to the buyer prior to closing. After closing, more serious hidden damage from wood destroying insects was discovered.

WILLIAM J. BROOKS, JR., broker, Lyndhurst, Ohio, had disciplinary action taken against his broker's license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Brooks' license was suspended for 30 days, commencing on November 10, 1997. He was fined \$1,000.00 and he was required to complete and to submit to the Division proof of completion of the 10 hour post-licensure brokerage course. In connection with a purchase agreement, Mr. Brooks' brokerage collected an earnest money deposit which was deposited into the company's trust account. However, the buyers did not proceed with purchasing the property and Mr. Brooks authorized the return of the earnest money. This was done without the knowledge or consent of his clients, the sellers.

JOHN BOTA, sales associate, Middleburg Heights, Ohio, had disciplinary action taken against his license for violating Sections 4735.18(A)(6) and (A)(21) of the Ohio Revised Code. Mr. Bota's license was suspended for 30 days, he was fined \$500.00 and ordered to complete and to submit proof of completion of the 10 hour post licensure sales course. Mr. Bota advertised property for sale in his own name and not in the name of the real estate broker with whom he was licensed with at the time.

REYNOLDS MOORE, sales associate, Euclid, Ohio, had a 30 day license suspension, commencing on November 10, 1997, and a \$500.00 fine levied against his real estate license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Moore failed to reduce to writing, with the owners of a property, a verbal agreement and authorization to sell. This resulted in confusion regarding the terms of the verbal agreement.

TIM BAUR, broker, Euclid, Ohio, had a 30 day suspension, commencing on November 10, 1997, and a \$1000.00 fine levied against his real estate broker's license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Baur improperly placed a mechanics lien on property in an attempt to collect a real estate commission.

ARTHUR M. VOLPE, broker, Cleveland, Ohio, had a fine of \$500.00 levied against his

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Disciplinary Actions

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broker's license for violating Section 4735.18(A)(19) of the Ohio Revised Code. Mr. Volpe negotiated the sale of property directly with the owner, when he knew the owner had a written outstanding contract granting exclusive agency, regarding the property, with another real estate brokerage.

ROBERT J. GRUBER, broker, Cincinnati, Ohio, had disciplinary action taken against his license for violating three counts of Section 4735.18(A)(6) of the Ohio Revised Code, one as it incorporated Ohio Administrative Code Section 1301:5-5-05. Mr. Gruber prepared a purchase agreement which did not accurately reflect the intent of the parties and was misleading. A third party who was not interested in purchasing the property was acting on behalf of the purchaser, however, the purchase agreement showed the third party as the principal. In connection with this same transaction, Mr. Gruber acknowledged receipt of an earnest money deposit. However, he only collected half of the deposit and the seller was not informed of this deficiency. Finally, he prepared and submitted an offer to purchase to the seller without completing and submitting to the buyer an Ohio agency disclosure form.

LEON V. JOHNSON, sales associate, Cincinnati, Ohio, had disciplinary action taken against his license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Johnson's license was suspended for 30 days, however, due to mitigating circumstances, imposition of the suspension was waived by the Ohio Real Estate Commission. He was fined \$1,000.00 and required to complete and to submit proof of completion of the 10-hour post-licensure sales course. Mr. Johnson, while licensed with a real estate brokerage, obtained a listing on a property which later went into contract. It was agreed that any contracts executed prior to the transfer of Mr. Johnson's license would be processed for the benefit of this broker. Mr. Johnson subsequently transferred his license to another real estate brokerage and the purchase agreement on the property closed. As a result of a rewriting of the contract, a commission check was issued to the new broker. Mr. Johnson failed to promptly advise the seller and his previous broker of this error.

SANDRA J. CHRISTY, sales associate, Piqua, Ohio, had disciplinary action taken against her license for violating Section 4735.18(A)(6) of the Ohio Revised Code as it incorporated Ohio Administrative Code Section 1301:5-5-05. Ms. Christy's license was suspended for 30 days

commencing on December 22, 1997, she was fined \$500.00, and required to complete and to submit proof of completion of the 10-hour post-licensure sales course. Ms. Christy prepared and submitted an offer to purchase property to the sellers without preparing and submitting to the parties an Ohio agency disclosure form.

GENERAL B. BOBBITT, sales associate, Maumee, Ohio, had disciplinary action taken against his license for violating two counts of Section 4735.18(A)(6) of the Ohio Revised Code, one as it incorporated Ohio Administrative Code Section 1301:5-5-05(B). Mr. Bobbitt's license was suspended for 30 days, commencing on December 22, 1997, he was fined \$500.00 and he was required to complete and to submit proof of completion of the 10-hour post-licensure sales course. Mr. Bobbitt prepared an offer for the purchase of property that was listed with his brokerage, thereby, making him an agent of the owner. The agency disclosure form noted that he represented the purchaser, however, a dual agency relationship existed between him and the parties to the contract. Mr. Bobbitt failed to have a written dual agency agreement signed by the purchaser and the seller acknowledging their consent to such dual representation attached to the agency disclosure form. Also, on the agency disclosure form, Mr. Bobbitt incorrectly noted that he was representing only the purchaser.



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Department of Commerce
Division of Real Estate and Professional Licensing
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