



The Ohio
Department
of Commerce

Fall 2004

Division of

Real Estate and Professional Licensing

◆ N E W S L E T T E R ◆

Bob Taft
GOVERNOR

Lt. Governor Jennette Bradley
DIRECTOR

Anne Moorhead Petit
SUPERINTENDENT

◆ Division Offers New Agency Training

The New Year may seem too far away to think about right now, but before we know it, 2005 will be here and 2004 will be a blur in the rearview mirror. On January 1, 2005, changes to Ohio's agency disclosure law, part of SB 106 signed into law by Governor Taft on August 5, 2004, will become effective. A host of other administrative provisions sought by the Division during the legislative process were successfully amended into SB 106 and must be followed beginning November 22, 2004.

While the new agency rules and forms offer a much anticipated remedy to the confusing, contractual looking agency disclosures currently used, there is a great deal of significant information that brokers and salespersons need to know and understand in order to be in compliance. One of the most critical issues for brokers is the responsibility for having the new agency forms ready for use beginning January 1, 2005.

The Division and Ohio Real Estate Commission are pleased to offer regional training classes to assist you in preparing for and meeting the challenges SB 106 presents. Each session will preview the new *Consumer Guide to Agency Relationships* (a brokerage-specific, consumer- and real estate agent-friendly brochure), explain the revised Agency Disclosure Form, regulations for using the forms, and complete information on the licensing and education changes included in SB 106. The new agency documents will soon be available on the Division's web site at www.com.state.oh.us/real under the "***NEW*** **Agency Disclosure**" icon. In addition, on November 1, 2004, all revised forms and applications will be available at our web site under the "Forms" area.

And the BEST news? You will earn three (3) hours of **FREE** Core Law continuing education credit! **Register today for any one of the classes shown below using the Division's on-line registration form accessible from the Division's website.**

List of Classes

All Classes are from 8:30 a.m. to 12 p.m.

November 4, 2004

Northern Ohio University College of Medicine
4209 St. Rt. 44, Rootstown

November 9, 2004

Fawcett Center
2400 Olentangy River Road, Columbus

November 10, 2004

Ohio Northern University McIntosh Center
525 S. Main Street, Ada

November 16, 2004

Vineyard Resource Center (Chapel Entrance)
11340 Century Circle East, Cincinnati

November 17, 2004

Ohio University
Athens

November 18, 2004

Sinclair University
444 E. 3rd Street, Dayton

NOTICE



Updated Applications & Forms Available in November

On November 1st, the Division of Real Estate & Professional Licensing will make available 21 updated applications and forms.

Outdated forms and applications **received** by the Division after November 30, 2004, **WILL NOT BE ACCEPTED**. After that date all requests to the Division using outdated forms will not be processed until the appropriate properly completed current form is submitted.

Please go to www.com.state.oh.us/real to access the most current applications and forms used by the Division.

From the Superintendent's Desk...

After two years serving as Ohio's Superintendent of Real Estate and Professional Licensing, I was very pleased to speak to attendees at the Association of Appraiser Regulatory Officials' annual gathering earlier this year to put the conference's theme "sharing our concerns and mining for solutions" into practice. I believe that this theme captured the essence of what this organization is all about and opened the door to a frank discussion of the regulations governing the real estate appraiser industry. The following is an excerpt of my keynote comments to the membership of AARO in April of this year:

(AARO) works to foster open communication and facilitates the sharing of ideas and concerns on a variety of issues. This cooperative spirit helps each of us to do our jobs better by allowing the incorporation of ideas and innovations of our counterparts in other states into our own regulatory operations. Because at the end of the day, we are all in the business of achieving results: results in ensuring that the rights of the consumer are protected in every real estate transaction, results in effectively enforcing the laws, and results in making it easier for our customers - the appraisers - to transact business with us.

While we come from different states and administer somewhat different laws governing the appraisal industry, we are all united in working to provide fair, consistent regulations that balance maximum benefit to consumers with minimal intrusion on business. If there is one thing that each of us learns at these conferences, it is that the regulatory structure from one state to the next is unique. Some of us are only involved in regulating appraisers, while many of us are responsible for regulating additional industries.

I know that every one of us in this room is deeply concerned about the devastation that predatory lending and property flipping is having on individual consumers and entire communities. And we all know that an inflated appraisal is a critical component of how these schemes work. Within the Ohio

Department of Commerce, we have developed two complementary consumer education programs to help educate consumers on how to avoid becoming victimized by abusive home buying practices: the "Borrow Smart" and "Buy Smart" campaigns.

The "Borrow Smart" campaign encourages Ohioans to be aware of abusive lending practices by only signing mortgage loan documents whose terms they agree with, understand, and can confidently repay. The "Borrow Smart" campaign is coordinated by the Office of Consumer Affairs within the Department of Commerce's Division of Financial Institutions -- which is responsible for regulating mortgage brokers in Ohio. The Ohio General Assembly created this office in May 2002 as part of a concerted educational initiative to reduce the growing number of consumers falling victim to abusive lending practices.

To complement the "Borrow Smart" campaign, the Division of Real Estate and Professional Licensing has developed our "Buy Smart" campaign to educate Ohioans on the basics of the home buying process. In developing the program, Assistant Superintendent Mary Petro made contacts with Better Business Bureaus, advocacy groups, legal aid societies as well as local, state and federal government agencies. From her discussions, she identified the resources that currently existed and also identified some needs that were not being met. If there is a homeownership workshop or community event that we can attend, Mary will be there with our PowerPoint presentation to help consumers obtain a clearer picture of the home buying process. Through our "Buy Smart" campaign, our goal is to help consumers learn as much as they can about the home buying process and to encourage them to ask informed questions along the way.

Beyond educational initiatives, each of us has been working to combat predatory lending and property flipping through our enforcement efforts. While these enforcement efforts are time consuming, it is vital to our communities across the country that those appraisers

who engage in preparing faulty appraisals for such purposes are put out of business!

A recent example of our efforts occurred when the Ohio Real Estate Appraiser Board revoked a Dayton-area residential real estate appraiser's license. The Board found that the appraiser had violated 29 counts of Ohio real estate appraiser law relating to her supervision of the preparation of appraisal reports for four single-family properties in Dayton. One property sold for \$14,000 only to be sold eight days later for \$65,000. Another sold for \$28,000 and was appraised two weeks later for \$70,000.

In signing off on the reports prepared by an unlicensed apprentice, this licensed residential real estate appraiser accepted responsibility for the contents of the reports and the metho-

Continued on Page 3...

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From the Superintendent's Desk continued...

dology used in their preparation. For each of the properties, the reports did not include information on the prior sales of each property within the preceding year.

In Ohio, we are pleased that the appraisers, mortgage brokers and others who engage in property flipping and predatory lending scams are beginning to face the music. They are being indicted and prosecuted thanks to the dedicated work of federal prosecutors, in many instances, with information and assistance from our staff.

Beyond our education and enforcement efforts, we all know the importance of our licensing and administrative work. As regulators, first and foremost, it is our job to assure a minimum level of professional conduct, to inform our licensees of any law changes, and to provide excellent customer service to help our licensees do their jobs. To ensure that our licensees are well informed of recent developments, Division staff members are frequently invited to serve as speakers at industry group and trade association events. We believe that by sharing information at these events it helps our licensees to know what we expect of them and it hopefully helps to reduce the number of enforcement cases we receive.

In addition to exchanging and sharing information, you and I know that our licensees rightfully expect us to use the latest technology to make it simpler, faster and easier to conduct business with their regulator. They understandably want to apply, get tested, become licensed and have their license renewed in the shortest time possible. For our licensees, it comes down to a few simple facts of life: Time is money and sooner is far better than later.

As we all know, technological change has had sweeping effects in the public and private sectors, and the appraisal industry has been no stranger to it. The tools of the trade have significantly changed over time. While a telephone and typewriter may have helped appraisers do their job a generation ago, appraisers - like many of us -- now use computers, palm pilots, e-mail, cell phones, voice mail, faxes and web sites to perform their duties. The technology has changed and in order to compete in today's marketplace, the appraisal industry has changed along with it.

Appraisers are affected by a changing economy and changing rules and regulations. And each change brings its own set of challenges. In order to survive and to succeed, the industry is in a constant state of innovation in order to meet the challenges of tomorrow.

And we as regulators have changed as well. We have dramatically increased our use of the Internet for purposes of providing information and communicating with our licensees by e-mail, online newsletters and Web updates. We have also added our current and past newsletters to the web site to serve as reference material for licensees, but also because many of the articles can be beneficial to consumers.

In these changing times, we are taking advantage of technological innovations to make our processes more efficient. We enhanced the efficiency of our customer service by taking a comprehensive review of the Division's forms in order to make them more user-friendly. Each of these improvements is beneficial to our licensees as well as a time-saving step for our staff.

In Ohio, we have added to our web site an online lookup feature that permits licensees and consumers to view licensing information. This is particularly beneficial to consumers so they can check to see if an appraiser is licensed and/or if any disciplinary actions have been taken against them.

Appraisers continue to enjoy the ability to take appraiser exams close to home at testing centers located throughout the state and at times that are convenient to the applicant. As the Division begins exploring new, web-based licensing options, we are anxious to offer further convenience to licensees through on-line application and license renewal options.

If there is one thing we can be certain of it is that everything will continue to change. Together, I believe that we will navigate the challenges that we currently face and those that we will encounter in the future. I am confident that our commitment - as an organization and as individual states committed to efficiently and effectively regulating the appraiser industry - will lead us to find better ways to improve our consumer education, enforcement efforts, and administrative processes. Through information sharing and positive exchanges I believe that we will lead our organizations to even greater successes in the future.

"Blockbusting" Defined

The definition of "blockbusting", first published in the Division's Spring 1998 Newsletter, is *exactly* as follows: "It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes." In accord with Ohio Revised Code Section 4735.55(A), each agency agreement must contain this statement.

The Appraiser: “Independent & Unbiased”

To keep Ohio appraiser licensees, certificate holders, and appraiser trainees advised to the importance of the appraiser’s impartial role in the development, analysis, and communication of an appraisal report, it is necessary for the Division to reflect on the standards and codes that regulate these processes.

This topic is covered quite extensively in the Ohio Revised Code (ORC) and within USPAP. Section 4763.01(E) of the ORC defines an “Appraisal Assignment” as an engagement for which a person licensed or certified under this chapter is employed or retained to act, or would be perceived by third parties or the public as acting, as a *disinterested* third party in rendering an unbiased real estate appraisal. Webster’s Dictionary II, Revised Addition defines disinterested as unbiased or impartial.

O.R.C. 4763.11(G)(5) gives the Appraisal Board authority to take any disciplinary action against a certificate holder, registrant, or licensee who is found to have committed any violations of the standards for the development or communication of real estate appraisals. Also, a violation against O.R.C. 4763.11(G)(9) which could bring disciplinary action by the Appraisal board states that: ‘accepting an appraisal assignment where the employment is contingent upon the appraiser preparing or reporting a predetermined estimate, analysis, or opinion, or where the fee to be paid for the appraisal is contingent upon the opinion, conclusion or valuation attained or upon the consequences resulting from the appraisal assignment.’

The Division of Real Estate & Professional Licensing receives numerous telephone calls from licensees and certificate holders who ask how they should handle an assignment when being pressured from outside entities that have an interest in the subject property. Our collected and consistent questions to the inquirer are typically: a) Who **is** the appraiser? b) Who spent an enormous amount of time and money to gain the experience and education required to attain the license and/or certificate? c) Why would you want to do business with an entity that doesn’t respect your knowledge, expertise, and the legal requirements of an industry for which they themselves are not qualified or trained? d) Why would you risk your business and its future for one or more reports that could eventually end that future? and, e) Why would you choose to cause harm to an innocent party by favoring the other party involved?

Dishonest and biased appraisals often cause long term financial losses that are inflicted upon the innocent and could last a borrower’s lifetime. If you believe a client is soliciting your business by applying pressure of an unethical nature, speak with his/her review appraiser, manager or other authority to share your concerns. Many times the home offices are not aware of unethical practices employed in satellite offices.

Remember, as the third party in a legal transaction, your expertise is relied upon by the public to establish and maintain stability within your own community and state. Independent, impartial, and unbiased appraisals are the foundation of financial solvency of our nation and retention of the public’s trust in the industry.

It is right for the industry’s standards (USPAP) to advocate the role of the appraiser found in the Conduct and Management Sections of the Ethics Rules, and soundly order the statements found in Standards 2-3, that must accompany every appraisal report submitted by a licensee or certificate holder. Fittingly, these sections of the Ethics Rules coincide with the Ohio Revised Code Section 4763.12 (C)(4).

2005 Commission Meeting Schedule

The Ohio Real Estate Commission (OREC) meetings for next year have been scheduled and will be held in the Division’s Columbus office at 77 S. High Street, 20th Floor Hearing Room, Columbus, OH 43215-6133. All OREC meetings are open to the public but are subject to change. If you wish to address the Real Estate Commission, you must formally request an appearance in writing. Please contact the Division if you have questions.

Jan. 5
Feb. 9
March 16
April 20
May 25
June 29
Aug. 3
Sept. 7
Oct. 19
November 30

One Stop Shop - Real Estate, Title and Mortgage Brokerage Services

Questions often arise when a company attempts to offer their clients real estate, title and mortgage brokerage services, sometimes called a “one-stop shop”. Although real estate license law does not prohibit a real estate brokerage from being affiliated with a title company or mortgage brokerage, there are regulations that must be followed.

Real Estate license law sets forth strict standards for the payment of commissions, the proper payment of referral fees and inducements. Depending on the circumstances of a transaction, real estate brokerages with close affiliations to a title company or mortgage brokerage should be aware of the restrictions set forth in O.R.C. 4735.18(A)(11), (13) and (14).

Real estate licensees who refer their clients to an affiliated title company, settlement service provider or mortgage brokerage must ensure that doing so is not a breach of fiduciary duties as set forth in O.R.C. 4735.62. For example, a licensee that encourages a client to use an affiliated title company or mortgage brokerage when it may be in the client’s best interest to use a different company has breached their fiduciary duty to that client.

In addition to real estate license law, the Superintendent has the authority to enforce O.R.C. 1349.11, which provides regulations for real estate brokerages that are associated with lending institutions. Generally, the law provides the following guidelines:

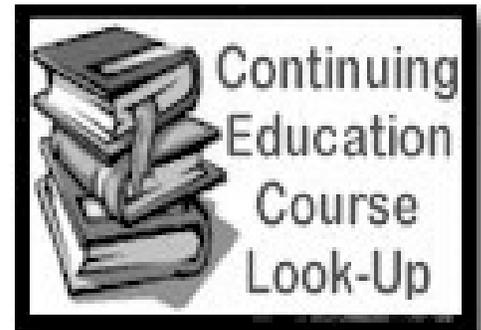
- A real estate brokerage may not represent to a client that a lending institution will provide more favorable or different loan terms to those using the real estate brokerage from those who do not use the brokerage.
- A real estate brokerage must be identified at all times and “hold itself out” as separate and distinct from any affiliated lending institution.
- A real estate brokerage must provide full and complete disclosure in writing of its relationship with the affiliated lending institution to clients.
- A real estate brokerage must separately identify any office space it uses in any building also used by the affiliated lending institution.
- A mortgage brokerage must also comply with the regulations enforced by the Department of Financial Institutions. More information about mortgage brokerage licensure and regulation may be found at <http://www.com.state.oh.us/dfi/default.htm>.

Failure to comply with any of the above restrictions as they apply to real estate licensees may constitute misconduct.

Finally, a real estate brokerage affiliated with a title company or company that provides settlement services should be aware of Real Estate Settlement Procedures Act (RESPA) requirements.

Continuing Education Course Look-Up

Approved real estate and appraiser continuing education classes are now available in a searchable format on the Division’s website. You may search by Date Range, Region, and Course Type.



The division has also created a new consumer specific area on the website. In this area, consumers may find the Homebuyer’s Guide, the new Home Seller’s Guide, and information on the roles of the different individuals involved in a real estate transaction. When matched with the Division of Financial Institution’s Borrow Smart and the Division of Securities’ Buy Smart campaigns, the Department of Commerce has provided consumers some very useful educational materials.



Visit our home page at www.com.state.oh.us/real to access these new features.

Continuing Education through Distance Education

The Ohio Real Estate Commission has approved the completion of all thirty (30) hours of continuing education through Distance Education. The use of Distance Education will allow you to complete all required continuing education at your convenience, including the three mandatory courses. Completing courses on line is different than in a classroom setting. The following information is good advice to consider if you wish to use the latest technology to complete your continuing education. Dr. Meyer is a noted educator who has developed ten rules to facilitate the learning process when utilizing distance education.

A Guide For Distance Learners - By Robert A. Meyer, Ph.D.

Quite often ARELLO is asked what advice we can offer to distance learner students. In response to those questions we offer these tips you may want to include with your distance education materials.

Ten Rules for Distance Learners

- ✓ Read the course introduction materials thoroughly. Distance education courses are often unique in their delivery formats. The introductory material will explain how the course operates and how to proceed through the course in the most efficient manner. Do not skip this material. Understand the course requirements.
- ✓ Read the learning objectives for each unit. These help outline the material that is presented in each unit and presents the “roadmap” for your study.
- ✓ Taking notes while you go through the course can help you retain important points and serve as a review for courses that require a final exam. Summarize the main points you have learned and make notes on those items you missed or had difficulty mastering. It is often helpful to go back over the unit and formulate questions based on items you have identified as important.
- ✓ Asking yourself questions during distance education studies helps your study to be active learning. Turning the unit objectives into questions before you start the unit often helps stimulate active learning.
- ✓ Set time aside on a planned basis for your study. Distance education in many ways requires more personal discipline than classroom study. Make sure you have certain “times for class” each week. Ensure that your study time is in a quiet environment where you will not be disturbed. It is easy to procrastinate in distance education.
- ✓ Reward yourself with short breaks. In general, after you have studied for an hour it is wise to take a break. Suggestions range from taking a coffee or tea break to some physical activity to keep you alert and stimulated.
- ✓ When you encounter technical difficulties with course operation, make sure you use the specific telephone number for technical assistance. Contacting your instructor will often result in delays in resolving technical problems. Remember, in most distance education courses there is a separate contact for technical help.
- ✓ When you do not understand the material, contact the instructor. When the contact is made via email, you should expect a reply within a reasonable time frame. In rare cases where an instructor does not reply, you should contact the provider and explain you have contacted the instructor and have not received a reply.
- ✓ Know how long you have to complete the course. The time will be stated in the course introduction.
- ✓ Do your own work.

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Rootstown Seminar Discussed Home Buying, Selling

“Unlocking the Problems in Real Estate”, a seminar on home buying and selling offered by the office of Lt. Governor and Commerce Director Jennette Bradley in Rootstown on October 13, 2004, was designed to help individuals interested in buying or selling a home gain a better understanding of the transaction process.

Prospective home buyers and sellers were invited to bring their questions. The event, developed by Assistant Superintendent Petro in conjunction with local real estate professionals, gave an overview of the seven key areas in a real estate process, interlaced with specific audience questions.

The Forum, held at the Northeast Ohio Universities College of Medicine Conference Center, was free to the public and included real estate professionals from five counties who donated their time and expertise to the effort by sharing their professional experience and knowledge with participants. The format of the seminar specifically excluded the mention of brokerage names and marketing of individual agents’ services to allow attendees to focus on the subject matter and issues that concern them as potential home buyers and sellers.

The Division wishes to extend thanks to the following industry professionals for their assistance with this program: Penny Triplett, Patti Campbell, Karen Ament, Meg Hudson, Sharyn Braunstein, Patti Hicks, Tom LaRoche and Lenny Lawrence.

The Division Previews Home Seller’s Guide at OAR Convention

Division staff fielded licensees’ questions on licensing and education issues, passed out our new Homeseller’s Guide, and assisted those wishing to renew their license online at the 2004 OAR Convention held September 12-15 in Cincinnati. The interaction between licensees and our staff is always a benefit to both. Again this year we had an outstanding response to our survey indicating that even more licensees are becoming comfortable with the computer and renewing on-line.

During our time at the convention, Tom Fortener of Dayton was the first to renew on-line and Kathleen Hudok from Boardman was the final licensee to try out on-line license renewal. We wish to thank the OAR for once again including the Division in this education and networking-packed event!



RE&PL staff participating at this year’s OAR Convention booth, from left to right: Dana Smith, Assistant Supt. Mary Petro, Jodi Phillips and Rocco Vallera.

Governor Taft Makes Appointments to Commission, Board

Gov. Bob Taft recently announced new appointments to the Ohio Real Estate Commission and the Ohio Real Estate Appraiser Board. John M. Kennedy, Columbus, was appointed to the Commission’s public member position for a five year term expiring June 30, 2009. He replaces George M. Sarap whose term expired.

Lytle T. Davis of Cleveland, a Certified General Appraiser, will serve a term of three years ending June 30, 2007, on the Appraiser Board. Joining Mr. Davis on the Board as the new public member is Michael J. Koren, Columbus, whose term also runs to June 30, 2007. They replace Richard Hoffman and Cheryl Love whose terms expired.

Appraiser Disciplinary Actions

REVOCATION

Jerry Alan Roff – State licensed residential real estate appraiser – License No. 446937 – Groveport, OH. Mr. Roff's license was revoked for failing to employ recognized methods necessary to produce a reliable report when he misrepresented his role in preparing the appraisal to benefit another, stated he personally, independently and impartially prepared the appraisal report when he had not, incorrectly stated the distance between the subject property and a comparable property in the appraisal report, and used an incorrect prior sale for a comparable property when performing a sales comparison analysis. Further, Mr. Roff incorrectly reported comparable properties as being two-story dwellings when in fact they were one and one-half story structures, and incorrectly identified the ages of comparable properties. Mr. Roff's revocation resulted from the multiple violations of Ohio Revised Code (ORC) 4763.11(G)(5), as it incorporates USPAP rules 1-1 (a), 1-1(c), 2-1(a), 2-3, ORC 4763.11(G)(4), ORC 4763.11(G)(6), ORC 4763.11(G)(7), ORC 4763.11(G)(8), and the Conduct, Management and Competency and Ethical Rules and Guidelines. Finally, Mr. Roff was found on a separate count to have violated ORC 4763.11(G)(7).

REPRIMANDS

Timothy D. Richardson – State licensed residential real estate appraiser – License No. 416611 – Hilliard, OH. Mr. Richardson failed to describe in detail the extent of the repairs being made to the subject property in the appraisal report, failed to indicate in the market analysis section of the appraisal report the value adjustment to the comparable property, and failed to state the reporting option used in the appraisal report. Mr. Richardson was found to have violated ORC 4763.11(G)(5), as it incorporates Uniform Standards of Professional Appraisal Practice, Standards Rules 1-1(b), 2-1(a), 2-1(b), 2-1(c) and ORC 4763.11(G)(6). He also was found to have violated ORC 4763.11(G)(6) and ORC 4763.11(G)(5) as it incorporates USPAP rule 2-2 and ORC 4763.11(G)(6). Finally, the above-cited violations are deemed to also have been a violation of ORC 4763.11(G)(7). The Appraiser Board issued Mr. Richardson a written reprimand. As to the last violation, Mr. Richardson is ordered to complete a fifteen (15) hour course in Sales Comparison Approach to Value and a fifteen (15) hour course in Cost Approach and successfully pass the course examinations within one hundred and twenty (120) days of the date of this order.

John W. Uttley III – State-certified general real estate appraiser – License No.

379629 – Hilliard, OH. Mr. Uttley failed to describe in detail the extent of the repairs being made to the subject property in the appraisal report, failed to indicate in the market analysis section of the appraisal report the value adjustment to the comparable property, failed to state the reporting option used in the appraisal report. Mr. Uttley was found to have violated ORC 4763.11(G)(5), as it incorporates USPAP rules 1-1(b), 2-1(a), 2-1(b), 2-1(c), and ORC 4763.11(G)(6). Mr. Uttley was also found to have violated ORC 4763.11(G)(5) as it incorporates USPAP rules 1-1(b), 1-1(c), and ORC 4763.11(G)(6). He was found to have violated ORC 4763.11(G)(5) as it incorporates USPAP rule 2-2. In addition, the above cited violations are deemed to also be a violation of ORC 4763.11(G)(7). The Appraiser Board issued Mr. Uttley a written reprimand. As to the last violation, Mr. Uttley was ordered to complete a fifteen (15) hour course in Sales Comparison and Income Approach and a fifteen (15) hour course in the Cost Approach to Value and successfully pass the course examinations within one hundred and twenty (120) days of the date of this order.

Carl Dwayne Overholser – State licensed residential real estate appraiser – License No. 441743 – Bellbrook, OH. Mr. Overholser incorrectly indicated that the comparable sales prices for comparable properties had been verified with the multiple listing service records, provided no explanation in the appraisal why there were no adjustments to the comparable properties, failed to discuss the effect of comparable properties being located on higher traffic streets than that of the subject property. Mr. Overholser was found to have violated ORC 4763.11(G)(5) as it incorporates USPAP rules 1-1(b), 1-1(c), 1-2(e)(i), 1-2(e)(ii), 2-1(a), and ORC 4763.11(G)(6). In addition, Mr. Overholser was found to have violated ORC 4763.11(G)(7). The Appraiser Board issued Mr. Overholser a written reprimand. As to the last violation, Mr. Overholser is ordered to complete a fifteen (15) hour course in Sales Comparison Approach to Value and successfully pass the course examination within one hundred and twenty (120) days of the date of this order, except that the Superintendent may grant an extension upon the showing of good cause.

Howard L. Allgood – State licensed residential real estate appraiser – license No. 379627 – Tallmadge, OH. Mr. Allgood failed in the narrative explanatory information of the appraisal to report the effect and influence of the amusement park, which was in view of and in close proximity to the subject property. He also failed to

denote in the appraisal report an appropriate neighborhood description to provide definition to the market area and characteristics affecting the property. Mr. Allgood was found to have violated ORC 4763.11(G)(5) as it incorporates USPAP rule 1-1(c) and ORC 4763.11(G)(6). Mr. Allgood was also found to have violated ORC 4763.11(G)(5) as it incorporates USPAP rule 1-1(c) and ORC 4763.11(G)(6). For these violations, the Board issued a written reprimand. Additionally he is ordered to complete a fifteen (15) hour course in Sales Comparison Approach to Value and a fifteen (15) hour course in USPAP and successfully pass the course examinations. Both courses must be completed within one hundred and twenty (120) days of the date of this order, except that the Superintendent may grant an extension upon the showing of good cause.

Robert J. Woutila – State-certified residential real estate appraiser – License No. 429196 – Sylvania, OH. Mr. Woutila failed to state in the appraisal report that the kitchen of the subject property had been updated with new cabinetry although he observed that construction materials were still on the site and the project was still in progress. Mr. Woutila was found to have violated ORC 4763.11(G)(6) and 4763.11(G)(5) as it incorporates USPAP rules 1-1(b), 1-2 (e)(i), 1-4(h)(ii), and 2-2(b)(viii). For these violations, the Board issued Mr. Woutila a written reprimand. Additionally he is ordered to complete a fifteen (15) hour course in Sales Comparison Approach to Value and successfully pass the course examination within one hundred and twenty (120) days of the date of this order, except the Superintendent may grant an extension upon the showing of good cause.

Ronald A. Hillier – State-certified general real estate appraiser – License No. 434772 – Cortland, OH. Mr. Hillier misrepresented the distance between the subject Property and each of the comps used in the appraisal report, failed to correctly report property data for comparable properties utilized in the appraisal report by furnishing conflicting information with regard to the size, and age, and failed to state the reporting option used in the appraisal report. Mr. Hillier was found to have violated ORC 4763.11(G)(5) as it incorporates Uniform USPAP rule 1-1(c), ORC 4763.11(G)(5) as it incorporates 2000

Continued on Page 12...

Real Estate Disciplinary Actions

REVOCATIONS

LISA CIOFANI BASHAM, salesperson, Willoughby Hills, Ohio, as the result of an investigation of a formal complaint, license was revoked for violating, in count 1, Ohio Revised Code (ORC) Sections 4735.18(A)(6) and 4735.18(A)(9) as it incorporates ORC 4735.62, when she failed to disclose to the buyer that funds would not be maintained in a trust account; in count 2, ORC 4735.18(A)(6) as it incorporates ORC 4735.02, when she accepted earnest money during a time when her license was suspended; in count 3, ORC Sections 4735.18(A)(4) and 4735.18(A)(6) as it incorporates the Canons of Ethics, Article 10, when she acted for more than one party in the transaction without the informed consent of both parties; in count 4, ORC 4735.18(A)(6) as it incorporates ORC 4735.62, when she improperly acted to further the interests of the seller, while representing the buyer; in count 6, ORC 4735.18(A)(6) as it incorporates ORC 4735.59, when she failed to obtain consent of the buyer to terminate the relationship and represent builder; and in count 7, ORC 4375.8(A)(6), when she failed to obtain the buyer's informed consent regarding a change in her agency relationship with the buyer.

JOHN D. CALDWELL, salesperson, Fairview Park, Ohio, as the result of an investigation of a formal complaint, license was revoked for violating, in count 1, ORC 4735.18(A)(6) as it incorporates Ohio Administrative Code (OAC) 1301:5-1-13, when he failed to cooperate with the Division's investigation by failing to obey a Division issued subpoena; in count 2, license was revoked for violating ORC 4735.18(A)(8), when he procured an Ohio Real Estate License by misrepresentation, when he indicated he had no prior suspensions, when in fact, he had; and in count 3, license was revoked for violating ORC 4375.18(A)(6), when he appropriated his broker's share of a commission.

SUSPENSIONS, FINES, EDUCATION

PATRICIA A. HOSEY, salesperson, Zanesville, Ohio, as the result of an investigation of a formal complaint, was fined \$200.00 and was required to complete and to submit proof of completion of a three (3) hour ethics course, for violating two counts of ORC 4735.18(A)(6), one as it incorporates Article 17 of the Canons of Ethics for the Real Estate Industry, when she acted as a salesperson for a brokerage with whom she was not licensed. Ms. Hosey also failed to give due respect to an active exclusive agency of another broker.

GAIL L. GARLAND, salesperson, Zanesville, Ohio, as the result of an investigation of a formal complaint, was fined

\$200.00 and was required to complete and to submit proof of completion of a three (3) hour ethics course, for violating two counts of ORC 4735.18(A)(6), one as it incorporates Article 17 of the Canons of Ethics for the Real Estate Industry, when she acted as a salesperson for a brokerage with whom she was not licensed. Ms. Garland also failed to give due respect to an active exclusive agency of another broker.

DOREEN L. DAVIS, salesperson, Beachwood, Ohio, as the result of an investigation of a formal complaint, was fined \$100.00 for violating ORC 4735.18(A)(9) as it incorporates ORC 4735.71(C)(3), when she failed to obtain the initials of all of the parties on the dual agency statement to reflect their consent to dual agency.

REBECCA NEVILLE, broker, Ada, Ohio, as the result of an investigation of a formal complaint, was fined \$250.00 and was required to complete and to submit proof of completion of a three (3) hour agency course, for violating; in count 2, ORC 4735.18(A)(9) as that section incorporates ORC 4735.58(C), when she failed to present disclosure of a buyer agency status to buyers; in count 3, was fined \$250.00, for violating ORC 4735.18(A)(9) as it incorporates ORC 4735.58(B), when she failed to provide the buyer with an agency disclosure form; and in count 4, was fined \$250.00, for violating ORC 4735.18(A)(9) as it incorporates ORC 4735.71(B), when she failed to provide the buyer with a dual agency disclosure form.

CAROLA GOFF, salesperson, Zanesville, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of the ten (10) hour sales post-licensure course, for violating ORC 4735.18(A)(20), when she offered property for sale without the knowledge and consent of one of the owners and when she failed to determine any special conditions applicable under a court order, and merely assumed she could list the property.

ROBERT G. BRYDEN, broker, Dublin, Ohio, as the result of an investigation of a formal complaint, was fined \$300.00 and was required to complete and to submit proof of completion of a three (3) hour agency course for violating ORC 4735.18(A)(6) as it incorporates ORC 4735.58(A), when he marketed and listed lots without securing an agency disclosure form signed by the seller. In addition, he was fined \$300.00, for violating ORC 4735.18(A)(6) as it incorporates ORC 4735.55(C), when he marketed and listed lots without verifying that his clients had signed the listing agreement he sent to them.

ANNE DELACROIX, broker, Poland, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 for violating ORC 4735.18(A)(6) as it incorporates ORC 4735.13(B), when she received a written request from one of her affiliates for return of their license to the Division; although Ms. Delacroix was on vacation during a period after the notice had been received, the two week period that she allowed to lapse before return of the license was inexcusable.

CAROL A. GALLARDO, salesperson, Elyria, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour agency course, for violating ORC 4735.18(A)(6) as it incorporates ORC 4735.71(A), when she failed to obtain the buyer's written consent to a dual agency relationship on a dual agency disclosure statement.

COLLEEN SAUNDERS, salesperson, Toledo, Ohio, as the result of an investigation of a formal complaint, was fined \$300.00 and was required to complete and to submit proof of completion of a three (3) hour agency course, for violating ORC 4735.18(A)(9) as it incorporates ORC 4735.58(C), when she failed to present the agency disclosure statement to the buyer, request that the buyer sign and date the form, and then deliver the statement to the seller's agent.

J. PAUL BASINGER, broker, Boardman, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 for violating, in count 1, ORC Sections 4735.18(A)(6) and 4735.18(A)(10), when he demanded, without reasonable cause, and consent of the client, a fee for obtaining an inspection report; in count 2, he was fined \$500.00 and was required to complete and to submit proof of completion of the ten (10) hour brokerage post-licensure course, for violating ORC 4735.18(A)(6) as it incorporates ORC 4735.62(B), when he failed to abide by the terms of the agency agreement by obtaining a commission; and in count 3, was fined \$500.00, for violating ORC 4735.18(A)(6) as it incorporates ORC 4735.62(A), when he failed to reduce his commission agreement to writing and obtain the buyer's consent to this agreement.

JULIE A. CERNEKA, sales associate, Youngstown, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 for violating, in count 1, ORC Sections 4735.18(A)(6) and 4735.18(A)(10), when she demanded, without reasonable cause and consent of the client, a fee for obtaining an inspection report; in count 2,

Continued on Page 10...

Real Estate Disciplinary Actions Continued...

was fined \$500.00 and was required to complete and to submit proof of completion of the ten (10) hour sales post-licensure course, for violating ORC 4735.18(A)(6) as it incorporates ORC 4735.62(B), when she failed to abide by the terms of the agency agreement by obtaining a commission; and in count 3, was fined \$500.00 for violating ORC 4735.18(A)(6) as it incorporates ORC 4735.62(A), when she failed to reduce her commission agreement to writing and to obtain the buyer's consent to this agreement.

KEITH L. BOWMAN, broker, Bedford, Ohio, was fined \$1,000.00 and was required to complete and to submit proof of completion of the ten (10) hour brokerage post-licensure course, for violating ORC 4735.18(A)(6), as it incorporates Article 3 of the Canons of Ethics for the Real Estate Industry, when he failed to return the license of a salesperson upon the suspension of their license and after the Division requested the license to be remitted.

KEITH DENTON, salesperson, Cincinnati, Ohio, had his license suspended until he provides evidence from the court that a post release control is fulfilled. He was fined \$200.00, and was required to complete and to submit proof of completion of the ten (10) hour sales post-licensure course for violating ORC 4735.18(A)(6) as it incorporates ORC 4735.13(C) and ORC 4375.18(A)(8). Mr. Denton failed to report to the Division felony convictions which occurred in 2001. In addition, he failed to report a 1991 felony on a 2004 transfer application.

DUKE REALTY SERVICES Ltd. PARTNERSHIP, partnership, Independence, Ohio, was fined \$2,500.00 and the brokers who qualify the partnership for licensure were required to complete and to submit proof of completion of the ten (10) hour brokerage post-licensure course for violating ORC 4735.18(A)(6) as it incorporates Article 3 of the Canons of Ethics for the Real Estate Industry. The company received notice from the Division that the license of an affiliated salesperson needed to be returned. However, the company failed to promptly respond, in accordance with the directive on the notice. Also, a representative did not attend at the formal hearing to respond to the charge.

VICTORIA L. RICHARDSON, salesperson, Columbus, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour course on agency for violating ORC 4735.18(A)(9) as it incorporates ORC 4735.71(A), when she failed to obtain the seller's written consent to dual agency.

DAVID S. PRITCHARD, salesperson, Columbus, Ohio, as the result of an in-

vestigation of a formal complaint, in count 1, was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour course on agency for violating ORC 4735.18(A)(9) as it incorporates ORC 4735.58(A), when he failed to provide the seller with an agency disclosure form; in count 2, was fined \$500.00, for violating ORC 4735.18(A)(9) as it incorporates ORC 4735.58(B)(1)(e), when he failed to provide the buyer with an agency disclosure form; in count 3, was fined \$500.00, for violating ORC 4735.18(A)(9) as it incorporates ORC 4735.56, when he failed to provide the seller with the brokerage's agency policy; and in count 4, was fined \$300.00 and was required to complete and to submit proof of completion of a three (3) hour civil rights course, for violating ORC 4735.18(A)(9) as it incorporates ORC Sections 4735.55(A)(2) and (A)(3), when he failed to include the fair housing and blockbusting language on the agency agreement with the seller.

CAROLE A. HUPP, salesperson, Westerville, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour course on agency, for violating ORC 4735.18(A)(9) as it incorporates ORC 4735.62(G), when she failed to advise her client to obtain expert legal advice relating to their proposed creation of a partnership to purchase property.

JACK M. HULLS, broker, Westerville, Ohio, as the result of an investigation of a formal complaint, license was suspended for ninety (90) days and was required to complete and to submit proof of completion of the ten (10) hour brokerage post-licensure course, for violating ORC 4735.18(A)(6) as it incorporates OAC 1301:5-6-01(D), when he failed to oversee the operation of his brokerage with regard to the purchase of property.

LEWIS FLETCHER, broker, Cleveland, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour course on agency, for violating, in count 1, ORC 4735.18(A)(9) as it incorporates ORC 4735.58(B), when he failed to provide the purchaser with an agency disclosure form; in count 2, license was suspended for 5 days and was fined \$1,000.00, for violating ORC Sections 4735.18(A)(6) and (A)(24), as they incorporate OAC 1301:5-5-09(A), when he failed to keep accurate records of earnest monies; in count 3, license was suspended for fifteen (15) days, was fined \$1,000.00, and was required to complete and to submit proof of completion of the ten (10) hour brokerage post-licensure course, for violating ORC 4735.18(A)(6) as it incorporates ORC 4735.18(A)(26) and OAC

1301:5-5-08(C), when he failed to keep monies in a trust account separate and distinct from other financial dealings; and in count 4, was fined \$300.00 and was required to complete and to submit proof of completion of a three (3) hour fair housing course, for violating ORC 4735.18(A)(6) as it incorporates ORC Sections 4735.55(A)(2) and (A)(3), when he failed to include fair housing language and blockbusting language in the agency agreement with the seller.

MIKE HARIG, salesperson, Akron, Ohio, had his license suspended until he provides evidence that he is released from his court ordered probation, for violating ORC 4735.18(A), when he pled guilty to and was convicted of a third degree felony, a crime of moral turpitude.

VICTORIA D. JOHNSON, salesperson, Shaker Heights, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour agency course, to be taken within the 1st quarter of the year 2005, for violating, in count 1, ORC 4735.18(A)(9) as it incorporates ORC 4735.58(B), when she failed to present an agency disclosure statement to the buyers when she showed them a property; and in count 2, was fined \$500.00, and required to submit proof of completion of the ten (10) hour sales post-licensure course for violating ORC 4735.18(A)(6), as it incorporates ORC 4735.71, when she failed to present the dual agency disclosure form.

GARY G. HABEEB, broker, Parma, Ohio, as the result of an investigation of a formal complaint, license was suspended for fifteen (15) days, was fined \$300.00 and was required to complete and to submit proof of completion of a three (3) hour course on agency, for violating, ORC 4735.18(A)(6) as it incorporates ORC 4735.58(B), when he failed to present the appropriate agency disclosure form to the buyer before assisting with negotiations.

Frequently Asked Questions



Q. I'd like to utilize a licensed personal assistant. How can I go about doing so?

A. Licensees may elect to enhance their practice by hiring another real estate licensee to assist with real estate transactions. Salespeople are cautioned not to directly compensate these assistants for their work if the work performed requires a real estate license (showing property, taking a listing, etc.). Also, unlicensed entities such as a team, group or association may not compensate licensed assistants for engaging in licensed activity. All licensees engaging in licensed activity, whether working for a brokerage or as an assistant, must be compensated by and through a broker. If the asst. is engaging in activity for which a license is not required, an agent may compensate the asst. directly.

Q. Can a broker be the broker in charge for two separate companies?

A. No, it is not permissible for a broker to work for two brokerages at the same time, except in the unusual situation that the broker is appointed an ancillary trustee of one or more brokerages by a probate court.

Q. How does the Division determine the number of transactions needed to be seated for the Ohio real estate broker's examination?

A. The requirements are set forth in O.R.C. 4735.07(B)(5)(a), which states that each applicant must have completed at least twenty real estate transactions. A real estate transaction is defined in the O.A.C. 1301:5-3-04(A)(1-5) as:

One sale of real property owned by another in which you were the listing agent = ½ transaction

One sale of real property owned by another in which you were the selling agent = ½ transaction

One lease of commercial/industrial property for a term of at least one year for another in which you were the listing agent = ½ transaction

One lease of commercial/industrial property for a term of at least one year for another in which you were the selling agent = ½ transaction

One lease of residential property for a term of at least one year for another in which you were the listing and/or procuring agent = ¼ transaction

Q. May records be kept in electronic format?

A. Records referred to in O.R.C. 4735.18(A)(24) may be kept in electronic format, and the originals destroyed, so long as the electronic copies are true copies of all the original documents. Of course, the storage of the documents should be such that they can be made easily and readily available to this Division. Whether paper or electronic records, all records must be kept for a period of three years from the date of the transaction.

Q. Can a real estate broker pay a commission to a licensee's Sub-Chapter S corporation?

A. O.R.C. 4735.20(C) permits a licensed real estate broker to pay a commission to an affiliated licensee's Sub-Chapter S corporation that is not licensed as a real estate broker as long as the conditions set forth in that section are satisfied. According to O.R.C. 4735.51(D), an affiliated licensee means a licensed real estate broker or real estate salesperson.

◆ Appraiser Disciplinary Actions continued...

edition of USPAP rule 2-2 (a). For these violations the Board ordered Mr. Hillier to complete a fifteen (15) hour course in USPAP within ninety (90) days of the date of this order. Also, Mr. Hillier must complete a fifteen (15) hour course in Sales Comparison within One hundred twenty (120) days of the date of this order and successfully pass both course examinations.

APPEALS

Raymond Dayle Peters - State certified general real estate appraiser – License No. 398623 – Smithville, OH. Mr. Peters appealed the Board's order to the Wayne County Court of Common Pleas. The court stayed the Board's order pending the outcome of the appeal.

Note: The appraisal education taken to satisfy disciplinary orders can not be used for credit for the 14 hours of approved continuing education required annually.



**The Ohio
Department
of Commerce**

State of Ohio
Department of Commerce
Division of Real Estate and Professional Licensing
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