



Ohio Real Estate News

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Superintendent's Column

Property Management Duties Clarified

By Charles R. Santer

In the last several months the Division has received an unusually high number of complaints and inquiries regarding the management of real estate. These inquiries have concerned whether a real estate license is necessary to manage property for others. The majority of the cases that have been investigated by our staff have involved salespersons who are performing such management duties, but who are doing so in their own name rather than that of their brokers. These cases have also raised questions as to the proper method of handling monies that are received when managing other people's property. The purpose of this article is to address these questions and to clarify the duties of a licensee in managing property.

Chapter 4735. of the Ohio Revised Code includes the necessity for a salesperson to perform these management services in the name of the broker with whom he is affiliated.

The first point that must be stressed is the fact that one must be licensed as a real estate broker or salesperson to legally manage or lease real estate for others. Subsection five of Ohio Revised Code Section 4735.01 specifically states that such a license is required of anyone, who for a fee, "operates, manages, rents, or offers or attempts to operate, manage, or rent, other than as custodian, caretaker, or janitor, any building or portions of buildings to the public as tenants". Also included in this statute as acts for which a license is required are any attempt to lease property, any acts directed toward

procuring potential tenants for a property, the negotiation of leases, or the mere act of advertising that one is engaged in the business of property management. In Ohio performing these acts without being properly licensed constitutes a first degree misdemeanor.

Licensure as a real estate salesperson or broker is not the sole requirement imposed upon persons who manage real estate for others. Once a person becomes so licensed he must conduct all acts in connection with this management in compliance with the provisions of Chapter 4735. of the Ohio Revised Code. This includes the necessity for a salesperson to perform these management services in the name of the broker with whom he is affiliated. As stated above, there have been several recent cases before the Ohio Real Estate Commission in which salespersons were managing property in their own name or in the name of a separate management company they had formed. In most of these cases the broker was unaware of the salesperson's management activities. In other cases, however, the broker knew his salesperson was managing property in his own name but consented to this arrangement.

In either case, such independent management of real estate by a salesperson is not permitted under Ohio license law. Rather, all acts for which a license is required by Section 4735.01 must be performed by salespersons in the name of their broker. This includes

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(THIS IS MAILED TO BROKERS AND BRANCH OFFICES ONLY).

SUPERINTENDENT'S COLUMN

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the management and leasing of property. Brokers should note that just as they cannot consent to their salespersons listing or selling property in their own name, they cannot permit their salespersons to independently manage property. Knowingly allowing a salesperson to do so could be grounds for suspension or revocation of the broker's license as well as that of the salesperson.

Another major area in which there appears to be some confusion is how monies received in the course of managing property should be handled. Under Ohio Revised Code Section 4735.21 all such monies must be collected in the name of the broker. This includes rent payments, security deposits, and management fees. As in residential sales, these monies cannot be made payable directly to a salesperson.

Furthermore, under Ohio Revised Code Section 4735.18(Z) all monies received by a broker or salesperson in a fiduciary capacity must be deposited in the broker's trust account. This section specifically includes security deposits among those that must be so deposited. Although not mentioned in Section 4735.18 any rental payments that are collected on behalf of the owner should also be placed in the broker's trust account. The only exception to this requirement would be if, pursuant to the terms of the management agreement and lease, the rent checks were to be directly made payable to the owner.

Many brokers who engage in property management have also questioned whether they may set up a property management account that is separate from their regular operating and trust accounts. This can be done, but the account must be a trust account conforming to all of the requirements imposed by Ohio Revised Code

Section 4735.18(Z). Those include the following: (1) the account must be designated as a trust or special account, (2) it must be non-interest bearing, (3) it must be kept separate and distinct from any of the broker's personal accounts, (4) the bank or savings and loan at which this account is opened must be located in Ohio, and (5) the name, account number and location of the account must be submitted to the Superintendent in writing.

This article is an example of our continuing effort to protect the public and enhance the image of the real estate industry by trying to prevent violations from occurring in the first place.

On a final note, it should be pointed out that many of the complaints received by our office involving property management stem from the fact that the agreement between the owner and the broker was not reduced to a formal written management agreement. Such agreements should, among other things, specify the amount and method of compensation to the broker, the party to whom the security deposits and rents will be made payable, what the amount of the security deposit and rents will be, the party who will be responsible for such decisions as the basis for the return of the security deposit, the frequency and specificity of accountings that the broker will provide to the owner, the method for payment of any mortgages, utilities, and other bills, the party who will be responsible for making any repairs to the property, the party who will make the determination as to whether such repairs are necessary and the amount that will be paid for these repairs. Please note that this list should not be considered to be all inclusive. It is recommended that legal assistance be obtained to prepare such an agreement. Likewise, it should go without saying that a written agreement for the lease of any property is also always recommended. Without such written contracts, the terms of the agreement to either manage property or to lease it are often left to the uncorroborated statements of the parties. As you should all be aware, such oral agreements are usually difficult, if not impossible, to prove in a court of law.

This article was intended to serve as an overview of the major issues arising from the management of property. This article is an example of our continuing effort to protect the public and enhance the image of the real estate industry by trying to prevent violations from occurring in the first place. If any brokers or salespersons have any questions regarding the management or the lease of property that were not addressed in this article, they should feel free to contact our office.

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Disciplinary Actions

The purpose of this article is to disseminate to licensees information concerning recent Commission activities and decisions, pursuant to Section 4735.03(E) of the Ohio Revised Code.

The Commission has taken the following action with regard to these real estate licensees:

SUSPENSIONS

NICHOLAS BAUER, broker, and D. BRUCE JACKSON, broker, of Mason and Miamisburg, Ohio, respectively, each had their broker's license suspended for one year for violating Sections 4735.18(D), (F) and (O) of the Ohio Revised Code. These suspensions commenced November 30, 1985. In one transaction Bauer and Jackson acted for more than one party in a transaction without the knowledge or consent of all of the parties. On two separate occasions, they acted in the dual capacity of a broker and an undisclosed principal in transactions.

ROBERT FERGUSON, sales associate, Sidney, Ohio, had his license suspended for 30 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspension shall be served by Ferguson, who is currently unlicensed, upon the reinstatement of his license. On behalf of his broker, Rentron Inc., Ferguson procured the signature of a woman to a statement acknowledging her receipt of any listings of available rental properties before she actually had received such listings. In this statement the woman also agreed to waive her statutory right to a refund of the fee she had paid Rentron Inc. for its services.

BETTY J. HARRIS, sales associate, Columbus, Ohio had her sales license suspended for 30 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspension commenced on November 30, 1985. Harris indicated on an exclusive listing contract that the subject property had aluminum siding when she knew or should have known that the home did not have aluminum siding.

GERALD RIGOT, JR., broker, Huber Heights, Ohio, had his broker's license suspended for 90 days for violating Section 4735.18(F) of the Ohio Revised Code. Upon a motion for reconsideration, the Real Estate Commission ordered that imposition of 60 days of this suspension be waived. Rigot began serving the 30 day balance of this suspension on November 30, 1985. Rigot purchased a property from the sellers by means of a land contract. He later entered into another land contract conveying the subject property to the buyers (complainants). This land contract was entered into by Rigot without the knowledge and/or consent of the sellers. Rigot also obtained a mortgage on the subject property as security for a loan to himself. Said mortgage was placed on the property without the knowledge and/or consent of either the sellers or the buyers. Later, in consideration for a loan, Rigot assigned his interest in the land contract with the buyers to a bank without the knowledge and/or consent of the buyers or the sellers.

KENNETH A. WILLISON, sales associate, Oberlin, Ohio, had his sales license suspended for 30 days for violating Sections 4735.18(F), (I) and (U), 4735.16(B) and 4735.21 of the Ohio Revised Code. However, due to mitigating circumstances, imposition of this suspension was suspended by the Ohio Real Estate Commission. Willison managed properties in a name other than that of the broker with whom he was licensed and without the knowledge and/or consent of that broker. Willison also collected monies in connection with the management of the subject properties in a name other than that of his broker and without the knowledge and/or consent of his broker. Willison advertised properties in a name other than that of his broker and without noting the fact that his broker is a real estate broker. Said advertising was misleading or inaccurate and misrepresented the terms, values, policies or services of the business conducted.

REVOCATIONS

WILLIAM BEARD, JR., broker, Cleveland, Ohio, had his broker's license revoked for violating Sections 4735.18(E), (F) and (Z) of the Ohio Revised Code. Revocation became effective on December 5, 1985. Beard failed within a reasonable time to account for and/or to remit to the complainant the earnest money he received in connection with a contract to purchase the subject property. Beard also failed within a reasonable time to deposit and/or maintain this earnest money in his real estate trust account.

ROGER G. COVERT, sales associate, Sciotoville, Ohio, had his sales license revoked for violating Sections 4735.18(E) and (F) of the Ohio Revised Code. Revocation became effective on October 30, 1985. Covert failed within a reasonable time to deposit into a real estate trust account, a security deposit and rental monies he received in a fiduciary capacity in the course of managing property. Covert also failed within a reasonable time to account for and/or remit this security deposit and rental monies to the landlord.

RICHARD DELANEY, sales associate, Cleveland Heights, Ohio, had his sales license revoked for violating Sections 4735.18(F), (I) & (U), 4735.16(B), and 4735.21 of the Ohio Revised Code. Revocation became effective on October 30, 1985. Delaney procured a tenant for the subject property on behalf of the owners, and agreed to manage the property on their behalf in his own name rather than that of the broker with whom he was licensed. Delaney also collected monies in connection with the rental of this property from the tenant in his own name rather than that of his broker and without his knowledge and/or consent. In addition, Delaney failed to deposit these monies in his broker's trust account, or to submit them to his broker for such deposit. In connection with his leasing of the subject property, Delaney advertised it for rent in a name other than that of his broker and without noting the fact that his broker is a duly licensed real estate broker.

REVOICATIONS (continued from page 3)

WILLIAM McSHEPARD, broker, Cleveland, Ohio, had his broker's license revoked in two separate cases for violating Sections 4735.18(E), (F), and (BB) of the Ohio Revised Code. Revocation became effective on December 5, 1985. McShepard received an earnest money deposit from a buyer in connection with a contract for the purchase of a property. Later, the purchase agreement for the subject property was declared null and void and a mutual release was signed by the buyer and seller. Following the execution of this release, McShepard failed within a reasonable time to remit the earnest money deposit to the buyer. In a separate case, McShepard failed to satisfy a judgment obtained against him as a result of his conduct as a licensed real estate broker.

Continuing Education Rule Changed

As a reminder, Ohio Administrative Code Section 1301:5-7-02(A)(2) was amended on April 8, 1985 as follows:

Licenseses originally licensed on or after January 2, 1980, must complete the thirty hours of continuing education three years from the date that proof is submitted that they have completed the two licensing required courses of real estate finance and real estate appraisal, and every three years thereafter. For every such three-year reporting period beginning after the effective date of this rule, three classroom hours of the required thirty hours of continuing education shall be taken in a course devoted exclusively to instruction in recently enacted municipal, state and federal civil rights laws; civil rights case law; desegregation issues; and methods for eliminating the effects of prior discrimination.

This amendment means that any real estate licensee whose next thirty hours of continuing education is due after April 8, 1988 or thereafter must take one separate three hour course in Civil Rights instruction to meet his/her continuing education requirements. This three hour course is not in addition to the thirty hour require-

ment, but rather, must be included in the total thirty hours of education that is due every three years. Licensees can contact the Continuing Education Section at the Division for a list of approved civil rights courses in their area. Remember, only courses that are first approved by this agency can be accepted.

UPCOMING TEST DATES

The following are the tentatively scheduled dates for the real estate sales and brokers examinations for the remainder of 1986:

(These dates are subject to addition or revision)

	SALES COLUMBUS/CLEVELAND		BROKERS COLUMBUS
February	12	26	18
March	12	26	18
April	2	23	15
May	7	28	20
June	4	24	17
July	2	23	15
August	13	27	19
Sept.	10	24	16
Oct.	8	22	14
Nov.	12	19	18

Applicants for the sales exam from the following counties will be scheduled for the Cleveland examination: Ashland, Ashtabula, Carroll, Columbiana, Cuyahoga, Defiance, Erie, Fulton, Geauga, Harrison, Henry, Huron, Jefferson, Lake, Lorain, Mahoning, Medina, Ottawa, Portage, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Wayne, Williams and Wood. Applicants from all other counties will be tested in Columbus.

In an effort to accommodate the industry, additional dates may be added to both sales and broker examinations as necessary.

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