



DIVISION OF REAL ESTATE NEWSLETTER

September/October 1986

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GOVERNOR, STATE OF OHIO

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DIRECTOR OF COMMERCE

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SUPERINTENDENT OF REAL ESTATE

Superintendent's Column

The Multiple Offer Dilemma: Some Guidelines

By Margaret J. Ritenour, Superintendent

Due to the low interest rates that have prevailed since last spring, the real estate industry is currently enjoying a boom that has not been seen for many years. Here in Ohio, home sales are outpacing even the national average. Thus, more Ohioans than ever are able to achieve the dream of owning a home.

While the current recovery in the real estate industry has been certainly welcomed by licensees and consumers alike, it has not been without its problems. One of these is how listing agents should handle the situation in which they receive more than one offer to purchase the same property. As enviable as this may seem, it is a situation that is riddled with potential problems for licensees. Because each situation is different, it is difficult to give hard and fast rules for dealing with the multiple offer dilemma. However, there are certain fundamental principles that, if kept in mind, will help licensees avoid the potential problems that can occur. The purpose of this article is to review these basic guidelines and hopefully assist licensees to avoid license law violations.

The first principle a listing agent must remember when placed in a multiple offer situation is that he is the seller's agent. As the seller's agent, his job is to procure the best price possible on the most favorable terms. Although the listing agent must, of course, deal fairly with any potential buyers, the listing agent's primary duty is to find the best buyer for the seller's property.

In carrying out this responsibility the listing agent must recognize that there are certain limitations on his authority. Typically, his duties as the seller's agent do not extend to making judgments as to the merits of an offer. Rather, the decision to either accept, reject, or "counter" an offer is one solely within the discretion of the seller. As the seller's agent, it is the licensee's duty to present any and all offers that he receives to the seller. This is true regardless of a licensee's personal belief that the offered price is too low or that the seller will find some other terms of the offer to be unacceptable. Therefore, unless the seller specifically instructs the listing agent not to present offers that include certain terms or

that are below a stated price, he must present all offers. It is then the seller's decision as to whether he wishes to entertain that offer.

While most licensees recognize their responsibility to present all offers, confusion arises as to when and how to present more than one offer. As stated above, it is difficult to give specific rules because of the various circumstances that can effect an answer. However, the general rule of thumb is that all offers should be presented as soon as possible. What is a reasonable length of time can only be determined by the surrounding circumstances.

In some instances, before the listing agent can present an offer to purchase that he has received, he learns that another offer is forthcoming. In this situation the listing agent is confronted with a dilemma: should he present the offer in hand or wait until the second offer is received? In analyzing this situation, the licensee must keep in mind the principles discussed above: (1) his primary obligation is to find the best offer for his seller, (2) he must deal fairly with all potential buyers and (3) the decision as to whether to wait for this other offer is that of the seller. With these principles in mind, the recommended course of action in this situation is to present the offer already received, but to advise the seller that another offer may be forthcoming. Again, it is then the seller's decision as to whether he wants to act on the offer in hand or wait to review any forthcoming offer.

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Attention!!!

PLEASE SHARE THIS NEWSLETTER WITH ALL
OF YOUR SALES ASSOCIATES. FEEL FREE TO
MAKE COPIES.

(THIS IS MAILED TO BROKERS AND BRANCH OFFICES ONLY)

Division Of Real Estate Gearing Up For License Renewals

As the end of 1986 approaches, the Division is gearing up for the annual renewal of approximately 50,000 real estate licenses for 1987. As in previous years, the Certificates of Continuation will be mailed to brokers at the end of October. Enclosed with the Certificate will be directions for completing this form.

One major change in the renewal process this year is that the Certificates of Continuation are to be returned directly to the Division of Real Estate, rather than to the State Treasurer's Office. This change will hopefully expedite the renewal process greatly and enable us to return your approved copy to you in a more timely manner.

As renewal time approaches, it is also important for brokers to remember the following:

1.) If you do not intend to renew a salesperson's license for 1987, you must notify that salesperson on or before November 1, 1986. This must be done in writing and must be sent by certified mail. A copy of this letter must be sent to the Division within 10 days after it is mailed to the salesperson.

2.) No sales license can be *transferred* during the month of December. Cancelled licenses can, however, be *reinstated* during December. Many licensees confuse these two and miss their reinstatement deadline under the mistaken belief that they cannot reinstate their license during December. Again, it is only the *transfer* of licenses that is prohibited in December.

3.) No examinations are given in December.

4.) During the renewal period, the Division asks that licensees do not "walk-in" any continuation, reinstatement, or other applications. Because of our heavy work-load at this time, we cannot guarantee that such applications can be processed while you wait. Therefore, to avoid an unnecessary trip to Columbus, please *mail* these forms to the Division.

Any brokers who have questions regarding the renewal procedures, or who do not receive their Certificates of Continuation by November 15, 1986, should contact the Division immediately.

Church Re-elected President

Arthur C. Church was recently re-elected President of the Ohio Real Estate Commission for another one-year term. In addition, Governor Richard F. Celeste recently re-appointed Edward J. Kizer to another five-year term on the Commission.

Mr. Church, who was appointed to the Commission as the public's representative in 1984, was elected President of the Commission in 1985. He is a graduate of the University of Cincinnati College of Law and has been practicing law since 1967 in Cincinnati. Since 1975, Mr. Church has managed his own law firm.

Mr. Kizer has served on the Commission since 1972 and has been a licensed broker for more than 25 years in Portsmouth.

Reciprocal Agreement

With Pennsylvania Renewed

The last issue of this newsletter listed the states with whom Ohio has reciprocity. Excluded from that list was Pennsylvania.

Although Ohio had a valid reciprocity agreement with Pennsylvania at that time, cancellation of that agreement was being considered. This was the result of Pennsylvania's decision to impose a new requirement upon Ohio licensees seeking to secure a real estate license by means of reciprocity. This new requirement is that Ohio licensees now must take the section of the Pennsylvania real estate examination covering Pennsylvania real estate law. Because the Ohio real estate exam does not have a specific section covering only Ohio law, we could not impose the same requirement upon Pennsylvania licensees seeking an Ohio license through reciprocity.

Since our last newsletter, the Ohio Real Estate Commission has reviewed this matter and has voted to accept Pennsylvania's new requirements and to renew our reciprocity agreement with Pennsylvania. This decision was based upon the belief that it is still more advantageous for Ohio licensees to only take this one portion of Pennsylvania's test, rather than to cancel our entire reciprocal agreement. If that were done, Ohio's licensees would have to take the entire Pennsylvania test, which clearly is not either states' goal.

For further information on the requirements for obtaining a reciprocal license from Pennsylvania, interested parties should contact our Division or the Pennsylvania Real Estate Commission by writing P.O. Box 2649, Harrisburg, PA 17105-2679 or by calling (717) 783-3658.

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The Ohio Real Estate Commission

ARTHUR C. CHURCH, President
PAUL J. EVERSON
EDWARD J. KIZER
SELMER E. PREWITT
SANDRA J. TAYLOR

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

CHRISTINE BECKMAN, sales associate, Strongsville, Ohio, had her sales license suspended for 90 days for violating Section 4735.18(F) & (I) of the Ohio Revised Code. This suspension shall commence upon reinstatement of her license, which is currently cancelled. Beckman collected money in connection with a real estate transaction without the consent of her broker and in a name other than that of the real estate broker with whom she was licensed at that time.

FRANK S. BUCK, broker, Columbus, Ohio, had his broker's license suspended for 180 days for violating Section 4735.18(F) & (N) of the Ohio Revised Code. This suspension shall be considered to have run concurrently with a previous suspension served by Buck on similar charges. Buck offered and did pay money to the complainant to induce him to purchase a property on his behalf, utilizing the complainant's Veteran's Administration entitlement. Buck instructed the complainant to certify on an application for a VA home loan guarantee that he occupied the property as his home, or intended to so occupy the premises within a reasonable period of time, when Buck knew that the complainant neither occupied the property at that time, nor intended to do so.

GENE P. JOHNSON, broker, Columbus, Ohio, was found on April 30, 1986, to have violated Section 4735.18(F) of the Ohio Revised Code. Johnson honestly, but erroneously, remitted the purchasers' earnest money deposit to the seller without first obtaining the written authorization of the purchasers. The Ohio Real Estate Commission deemed this to be misconduct, and ordered Johnson's license be suspended for 10 days. Due to mitigating evidence, however, the Commission waived imposition of this suspension.

SIG J. RIPPE, sales associate, Mason, Ohio, had his sales license suspended for 90 days for violating Section 4735.18(F) and (I) of the Ohio Revised Code. This suspension shall commence upon reinstatement of his license. Rippe received a commission check in connection with the sale of a property in his own name and without the knowledge or consent of his broker.

KATHLEEN RUOFF, sales associate, Columbus, Ohio, had her sales license suspended for 30 days for violating two (2) counts of Section 4735.18(F) of the Ohio Revised Code. This suspension commenced July 31, 1986. Ruoff prepared a purchase contract for the complainants' purchase of a new home in which she failed to include language making performance contingent upon the successful closing of their existing home. Ruoff

failed to disclose to the seller or his agent, that the downpayment required of the buyers under this offer to purchase was contingent upon the successful closing of their property.

SARA SIMS, sales associate, Zanesville, Ohio, had her sales license suspended for 180 days for violating two (2) counts of Section 4735.18(A), two counts of subsection (F), and one count of subsection (C) of the Ohio Revised Code. This suspension commenced July 31, 1986. Sims agreed to sell two properties she owned to the complainant by means of a loan assumption. Sims failed to inform the complainant that the loans on both of these properties were in default, when she knew, or should have known that the loans were in arrears. Following the closings of the complainant's purchase of the subject properties, Sims received monthly payments from the complainant which were intended to be applied towards the loans on these properties. Sims failed to use these monies for the purpose intended, and she failed to inform the complainant that her payments were not being applied towards the subject properties. Sims' conduct with respect to the handling of the sale of these two properties was found to evidence a continued course of misrepresentation.

DONALD WRIGHT, broker, Cleveland, Ohio, had his broker's license suspended for 60 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspension shall commence upon reinstatement of his license, and upon completion of the 180 day suspension imposed by the Commission in a previous case. Wright entered into an agreement to purchase a property from the complainant. He failed within the time provided for by the contractual agreement, or within a reasonable time, to deposit the total funds due into escrow, or to pay the complainant the purchase price as agreed.

RECOVERY FUND ACTIONS

LARRY ALBAN, broker, Columbus, Ohio had his broker's license automatically suspended pursuant to Section 4735.12(E) of the Ohio Revised Code. This suspension was the result of two payments made from the Real Estate Recovery Fund. One payment was in the amount of \$2,746.00. The other payment was in the amount of \$5,150.00. Alban, among other things, misrepresented to the sellers and the purchasers of the property material facts as to the non-assumability of a mortgage. Mr. Alban has repaid the full sum to the recovery fund.

BERLIN COLE, West Union, Ohio, had his broker's license automatically suspended pursuant to Section 4735.12(E) of the Ohio Revised Code. This suspension was a result of a payment made from the Real Estate Recovery Fund on August 8, 1986, in the amount of \$2,134.14. Cole failed to return an earnest money deposit to the buyers of a property after their offer was rejected by the seller.

Brokers Receive Reminder Of Unclaimed Funds Duties

Recent audits conducted of brokers' trust accounts reveal that many brokers are maintaining monies belonging to others in their trust accounts for several years. This is usually done because the broker cannot locate the rightful owner. Brokers in this situation should be reminded of their responsibilities in the area of unclaimed funds.

For real estate brokers, unclaimed funds are those which belong to another person whom the broker is unable to locate. Such monies include all escrow funds, security deposits and other money received in a fiduciary capacity. Where such funds have been unclaimed for five years, they must be reported to the Director of the Department of Commerce in care of the Chief of Unclaimed Funds. The reports must be filed with the Division of Unclaimed Funds on an annual basis by November 1st of each year. The Division of Unclaimed Funds is responsible for maintaining these funds while attempting to locate the rightful owner.

If a broker has reason to believe that he cannot locate an owner before the five years has elapsed, he may report the funds earlier in accordance with Section 169.11 of the Ohio Revised Code.

It should be noted that this information is directed only towards the handling of money where the rightful owner cannot be found. It is not intended to cover those situations where the ownership of money is in dispute.

If you have special or trust funds to be reported or are in need of information concerning the procedure for the reporting of unclaimed funds, please write the Division of Unclaimed Funds at Two Nationwide Plaza, Fourth Floor, Columbus, Ohio 43266-0545.

Multiple Offers (continued from page 1)

Another frequent dilemma that occurs is when a listing agent actually receives a subsequent offer(s) before he has had a chance to present the first offer received. In that situation, of course, all of the offers must be presented. As stated above, it is the seller's decision as to which offer, if any, he wishes to accept, reject, or "counter".

Although this article is general in nature, it is hoped that it will help licensees analyze multiple offer situations and avoid license law violations. Please remember, however, that each situation is different. For this reason, salespersons facing this situation should always seek the advice of their brokers. Inquiries regarding license law responsibilities in this area can also be directed to the Division's Enforcement Section or legal staff.

UPCOMING TEST DATES

The following are the tentatively scheduled dates for the real estate sales and brokers examination for the remainder of 1986 and the beginning of 1987:

	SALES		BROKERS
	COLUMBUS/CLEVELAND		COLUMBUS
Nov.	12	19	18
Dec.	—	—	—
Jan.	7	21	12
Feb.	4	18	9
March	11	25	16

No examinations are given in the month of December. Additional examinations may be added in the months to come to accommodate potential licensees.

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