



DIVISION OF REAL ESTATE NEWSLETTER

July/August 1987

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Superintendent's Column

Real Estate Commission Amends Rules

By Margaret J. Ritenour, Superintendent

The Ohio Real Estate Commission has recently promulgated three new rules and several amendments to existing rules. These rules are contained in the Ohio Administrative Code.

Each of these rules is summarized below along with the rationale for the adoption of the new rule or amendment. Unless otherwise specified, these changes became effective on August 3, 1987.

1301:5-1-03 Regarding licenses.

This rule was amended to state that a corporation, partnership or association must have at least one individual associated with the entity who is licensed as a real estate broker.

Although this has long been the policy of the Division, it was not clearly stated in either the Ohio Revised Code or Administrative Rules that a minimum of one individual broker must be associated with a corporation, partnership or association.

1301:5-1-05 Examinations.

This rule was amended to clarify that an applicant must submit valid identification to the examiner prior to being seated for the examination.

The rule formerly required that identification be shown by applicants when they turn in their exam. This amendment was made so the rule would conform with the actual practice of checking the applicant's identification prior to admittance.

1301:5-1-06 Broker notification of intention not to renew license of salesperson; notification of cancellation.

This rule was amended to provide that a broker must send the Division a copy of the notice of cancellation that he/she sent to a sales associate whose license is being returned to the Division for cancellation. Failure to do so will constitute misconduct under Ohio Revised Code Section 4735.18(F).

Under this rule, brokers are required to notify sales associates whose license is being returned that they may apply for reinstatement of their license without examination if they apply within two years. By requiring that a copy of the notice be sent to the Division, the Division will have some verification that the sales associate was made aware that his license was returned and that he/she was notified of the time limit for reinstatement. (For your convenience, a sample letter that brokers may utilize to comply with this rule is printed on page 6.)

1301:5-1-07 Rule for escrowing broker licenses.

This rule was amended so that a broker may place his/her license on deposit for an indefinite period of time upon the showing of good cause.

In 1985, the Commission was given the power to promulgate a rule allowing brokers to keep their license on deposit beyond the two year period. This amended escrow rule provides this option.

1301:5-1-09 Fees by rules.

This rule was amended to establish two new fees for the following services performed by the Division:

- a) Certification of a license — \$10.00
- b) Reservation of a name — \$5.00 (this is described further below)

(continued on page 2)

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)

Rules Reviewed (continued from page 1)

1301:5-1-13 Failure to comply with a Division Subpoena as evidence of misconduct.

This new rule was established to provide that failure to obey a subpoena issued by the Division will constitute misconduct in violation of Ohio Revised Code Section 4735.18(F).

This amendment was made to give the Division more leverage when licensees fail to cooperate with an investigation, even when subpoenaed.

1301:5-3-02 Recommendation and appointment of ancillary trustee.

This rule was amended to clarify that the authority of an ancillary trustee for a deceased, suspended or revoked broker is limited to the supervision and completion of existing contracts and obligations of the broker for whom the ancillary trustee is named.

Currently, this rule allows the Commission to permit an ancillary trustee to engage in new business for a deceased broker. The language of the new rule goes beyond the scope of the pertinent statute, which clearly limits an ancillary's duties to only concluding *existing* business. This amendment was made to bring the rule into conformity with the statute.

1301:5-3-07 Educational loans to individuals.

This rule was amended to specify that funds advanced from the Education and Research Fund for personal education loans may only be used to satisfy the pre-licensure requirements of real estate practice and real estate law.

The current language states that loans may be made from the E & R Fund to defray the costs of meeting the educational requirements of Section 4735.09. Because such loans were only intended to cover the

costs associated with *obtaining* a license (not *maintaining* it), such language was included.

1301:5-3-13 Reservation of name.

This new rule was established to allow an applicant for a broker's license or an existing broker to reserve the use of an approved name for a period of 60 days prior to applying for licensure in the reserved name.

This new rule was adopted to protect a licensee's prospective name during the incorporation process or during other legal steps involved with starting a new business.

1301:5-5-05 Disclosure of Agency Relationship; Dual Agency.

This new rule was established to require licensees to disclose to the parties in a real estate transaction whether they are representing the purchaser, the seller, or both. This disclosure must be made on a form prescribed by the Ohio Real Estate Commission. The effective date of this rule was delayed until January 1, 1989 to allow for the education and training of licensees on this new requirement.

This new rule was passed to alleviate the confusion and misunderstanding of prospective purchasers, sellers, and licensees as to whom the licensee is representing in a real estate transaction. For example, many prospective purchasers mistakenly believe that a licensee who shows them property is their agent, while the licensee is in fact the sub-agent of the listing broker, and thus the sub-agent of the seller. This rule would require disclosure by the licensee of whom they represent.

1301:5-7-02 Continuing education requirements.

This rule was amended to provide that three hours of the required continuing education must consist of a class devoted exclusively to recently enacted state and federal legislation affecting the real estate industry. The instruction must include real estate licensing laws and regulations, court decisions, ethics and related reports. For persons licensed on or before January 1, 1980, this new three hour requirement will be effective February 1, 1989. For those licensed on or after January 2, 1980, it will be required for any continuing education reporting period that begins after August 3, 1987.

This rule was also amended to provide that one clock hour consists of sixty minutes, not fifty minutes as the rule currently specifies.

1301:5-7-03 Criteria for course approval.

This rule was amended to include the following:
a) All applications for continuing education courses must be submitted to the Division at least 30 days prior to the proposed initial date of the offering.

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The Ohio Real Estate Commission

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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:

REVOCATION

ROBERT CLAWSON, broker, Harpster, Ohio, had his broker's license revoked for violating Section 4735.18(E), (F), (X) and (Z) of the Ohio Revised Code. This revocation became effective June 29, 1987. Clawson failed to include a financing contingency in a purchase agreement when he knew that the buyers needed to obtain financing in order to purchase the property. Clawson also failed to account for an earnest money deposit given to him by the buyers in connection with the purchase agreement on the subject property. When the buyers and sellers agreed to a lease agreement on the subject property, Clawson failed to reduce the terms of the agreement to writing. Clawson also failed to maintain a non-interest bearing special or trust account that was separate and distinct from any personal or other account. Finally, Clawson failed to keep complete and accurate records of the real estate transaction involving the subject property.

SUSPENSIONS

SIGG REALTY, brokerage, Defiance, Ohio, had its broker's license suspended for 20 days for violating Section 4735.18(A) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of this suspension was waived. Sigg Realty, by and through its authorized partners, knowingly represented on a contract to purchase property that a deposit had been received from the purchasers. Sigg Realty verified that such funds were being held in its account when it knew, or should have known that no such monies had been received or deposited.

ELIZABETH SIGG, broker, Defiance, Ohio, had her broker's license suspended for 20 days for violating Section 4735.18(A) and (F) of the Ohio Revised Code. However, due to mitigating circumstances imposition of this suspension was waived. Ms. Sigg knowingly represented in a memorandum that a deposit was being held in the brokerage trust account in connection with a contract to purchase property, when she knew or should have known that no such monies were deposited.

WILLIAM SIGG, broker, Defiance, Ohio, had his broker's license suspended for 20 days for violating Section 4735.18(F) of the Ohio Revised Code. Due to mitigating circumstances, however, imposition of this suspension

was waived. Mr. Sigg knowingly represented on a contract to purchase property that he had received a deposit from the purchaser, when he knew that he had received no such monies.

WHITESTEAD REALTY, INC., brokerage, Columbus, Ohio, had its broker's license suspended for 180 days for violating Sections 4735.18(F), (T) and (Y) of the Ohio Revised Code. This suspension shall commence upon reinstatement of Whitestead Realty's license. Whitestead Realty failed to fully and timely respond to letters from the owner regarding the management of property. Whitestead also provided the owner with a letter and accounting of its management of the subject property which was inaccurate, incomplete, and misleading. Whitestead agreed to reduce the monthly rent paid by a tenant without the knowledge of the owner, and then failed to provide the owner with a copy of the addendum which so altered the terms of the lease. Whitestead Realty offered the subject property for lease for one year when the owner only authorized the property to be rented for six months. Whitestead then failed to furnish the owner with a copy of the one year lease agreement.

JOHN J. STEAD, broker, Columbus, Ohio, had his broker's license suspended for 30 days for violating Sections 4735.18(E) and (F) of the Ohio Revised Code. This suspension shall commence upon reinstatement of his real estate license. Stead received a security deposit from the tenant of a property he owned. After Stead sold the property and no longer had any interest in the subject property or the security deposit, he failed to account for or remit the security deposit to the tenant or the new owners.

KENNETH J. STEAD, sales associate, Columbus, Ohio, had his sales license suspended for 90 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspension shall commence upon reinstatement of his real estate license. Stead failed to fully and timely respond to numerous letters from an owner of property regarding the management of the subject property. Stead also provided the owner with a letter and accounting of the management of the subject property which was inaccurate, incomplete, and misleading.

VANESSA B. SUTTON, sales associate, Columbus, Ohio, had her sales license suspended for 30 days for violating Section 4735.18(F) of the Ohio Revised Code. Due to mitigating circumstances, however, 15 days of the suspension were waived. The 15 day balance commenced on April 23, 1987. Sutton allowed the sellers of property to enter into a purchase agreement with a buyer when she knew or should have known that there was an outstanding contract for the sale of the property between the sellers and another buyer. Sutton failed to designate the second agreement as a back-up contract.

Disciplinary Actions (continued from page 3)

Sutton also failed to inform the second buyer or his agent of the existence of the first purchase contract.

B. LEMAAR WILSON, broker, Cleveland, Ohio, had his broker's license suspended for 60 days for violating Sections 4735.18(F) and (BB) of the Ohio Revised Code. This suspension commenced on April 23, 1987. Wilson failed to satisfy a final judgment entered against him in the Cuyahoga County Common Pleas Court which arose out of his conduct as a licensed broker.

PATRICIA GELSINGER, sales associate, Parma Heights, Ohio, had her sales license suspended for 30 days for violating Sections 4735.18(F) and (S) of the Ohio Revised Code. This suspension commenced on May 20, 1987. Gelsinger negotiated the sale of a property through her broker who had the exclusive right to sell the subject property. Thereafter, Gelsinger transferred to another broker. When the purchase contract and listing contract with her former broker expired, she re-listed the property and had the parties sign a new purchase contract that provided for a commission to her new broker. Because of a six month extension clause in the original listing contract, Gelsinger's conduct placed the sellers in the position of being potentially responsible for paying two commissions on the sale of their home.

FRANK CARLOZZI, sales associate, North Olmsted, Ohio, had his sales license suspended for 30 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspension shall commence upon reinstatement of his license. Carozzi accepted title to a property as trustee when he knew, or should have known that there was in fact no such trust. Also, Carozzi failed to disclose this information to the seller of the subject property at the closing.

EDITH COX ISOM, sales associate, Columbus, Ohio, had her sales license suspended for 180 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspension shall commence upon reinstatement of her license. Isom was convicted of a felony as a result of her conduct in making false statements to the Federal Housing Administration that were intended to influence it to guarantee a loan.

RALPH FOX, broker, Grafton, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18(I) as it incorporates Section 4735.13(C) of the Ohio Revised Code. This suspension shall commence upon reinstatement of his license. Fox was convicted of theft, a felony of the fourth degree in violation of Section 2913.02 of the Ohio Revised Code. Fox then failed to

notify the Superintendent of the Ohio Division of Real Estate of his conviction within 15 days of the conviction.

CAROL A. EVANS, sales associate, Cincinnati, Ohio, had her sales license suspended for 30 days for violating Section 4735.18(F) of the Ohio Revised Code. However, imposition of 20 days of the suspension was waived by the Ohio Real Estate Commission. The 10 day balance of this suspension commenced on June 29, 1987. Evans represented in a purchase agreement that earnest money she had received would be placed in her broker's trust account upon acceptance of the offer. However, after the offer was accepted, Evans failed to give the earnest money to her broker for deposit into his trust account. Later, Evans returned the earnest money to the buyer before the purchase agreement was terminated and without obtaining a release from the seller.

ARTHUR DAVIES, sales associate, Kettering, Ohio, had his sales license suspended for 30 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspension commenced on June 29, 1987. Davies improperly instructed a sales associate under his supervision that an offer from a buyer for the purchase of a property was non-contingent even though it was contingent on the sale of their existing home. Davies further incorrectly instructed the salesperson that because this second offer was non-contingent, it superseded an existing contract on the subject property between the seller and another buyer.

LEDENE MILLS, sales associate, Kettering, Ohio, had her sales license suspended for 15 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspension commenced on June 29, 1987. Mills allowed the seller of a property to enter into a purchase agreement with a buyer when Mills knew, or should have known that there was an existing outstanding contract on the subject property. Mills failed to designate the second contract as a back-up contract.

FARUQ HUSAM'ADEEN, broker, Cleveland, Ohio had his broker's license suspended for 90 days for violating Sections 4735.18(F) and (Z) of the Ohio Revised Code. This suspension commenced on June 29, 1987. Husam 'Adeen failed to maintain in his trust account an earnest money deposit he received in connection with a purchase agreement. Also, Husam'Adeen used his trust account as his personal account by depositing and withdrawing funds for his personal use, thus not maintaining his trust account as separate and distinct from any personal or other account.

Disciplinary Actions (continued from page 4)

COLLEEN CRISP, sales associate, Beavercreek, Ohio, had her sales license suspended for 30 days for violating Sections 4735.18(A) and (F) of the Ohio Revised Code. This suspension commenced on June 29, 1987. Crisp received an earnest money deposit from a buyer in connection with an offer to purchase property. Crisp represented on the purchase agreement that the earnest money would be held by her broker; however, she failed to remit the earnest money to her broker for deposit into his trust account.

MARGARET B. THAYER, broker, Conneaut, Ohio, had her broker's license suspended for 30 days for violating Sections 4735.18(F) and (Z) of the Ohio Revised Code. Due to mitigating circumstances, however, imposition of this suspension was waived by the Commission. Thayer temporarily maintained an interest-bearing real estate trust account into which she deposited monies she received in her fiduciary capacity as a real estate broker.

RECOVERY FUND ACTION

BILL BEARD, broker, Cleveland, 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 eight separate payments made from the Real Estate Recovery Fund on May 4, 1987 totalling \$36,894.31. These payments were made as a result of Beard's failure to return money held by him in his capacity as a real estate broker.

UPCOMING TEST DATES

The following are the tentatively scheduled dates for the real estate sales, brokers and foreign real estate sales examinations for the coming months:

	SALES COLUMBUS/CLEVELAND		BROKERS COLUMBUS
Sept	9	17, 24	14, 21
Oct	7	22	5
Nov	4	19	9

FOREIGN REAL ESTATE SALES

Sept	1, 15, 29
Oct	13, 27
Nov	10, 24

The foreign real estate sales examination is given *only* in Columbus. Because of the small number of applicants for the foreign real estate dealer examination, these exams are scheduled on an individual basis as the applications are received.

Rules Reviewed (continued from page 2)

This time limit is being imposed to assure that the Ohio Real Estate Commission will have sufficient time to review a proposed course offering before it is held.

- b) No offering will be approved for continuing education in which classroom instruction exceeds more than eight clock hours in any one day.

This amendment was made because taking more than eight hours in a single day reduces the effectiveness of the information that is learned or retained by the licensee. When courses run ten or more hours a day, the student's attention span is progressively reduced and there is greater temptation on the part of the instructor to dismiss students early.

- c) An offering entity must furnish students with a record of attendance within 30 days after completion of the offering. The current language provides for the information to be provided within a reasonable time.

This change was made to give a definite time frame to the schools and to avoid the vagueness of the "reasonable time" standard.

- d) A specific list of the type of continuing education courses which will be approved by the Ohio Real Estate Commission.

Under Ohio Revised Code, Section 1301:5-7-03 (A)(1)(g), courses must "contribute to desired current knowledge for the purpose of protecting the consumer and improving service by real estate licensees." Because of the general nature of the above language, many courses fall within a gray area. In order to more clearly specify what type of courses are acceptable for continuing education purposes, the current broad language is replaced with a specific listing of acceptable course topics.

Copies of these new rules may be obtained from the Division of Real Estate. They will also be contained in a new edition of the Ohio Real Estate Law Manual which will be printed soon. This new edition will also include new legislative amendments to Ohio Revised Code Chapter 4735. that were passed this summer but not effective until January 1, 1988. These legislative changes will be summarized in the next issue of this newsletter.

Sample Letter Provided For Brokers Returning Licenses

To help brokers comply with recently amended Rule 1301:5-1-06, the sample letter below is provided. This sample contains all of the information that brokers must give to a salesperson whose license is being returned to the Division.

Dear _____:

This letter is to notify you that on _____ (date), your real estate sales license was returned to the Ohio Division of Real Estate for cancellation.

Please be aware that pursuant to Section 4735.09 of the Ohio Revised Code, the Superintendent may reinstate your license without examination if you file an application within two (2) years from the end of the last year in which your license was renewed.

Your license was renewed for the year 19____. Thus, you have two (2) years from the end of this year, or until December 31, 19____, to apply for reinstatement of your license. If you do not do so by that date, you will have to be re-examined.

If you wish to become re-licensed during this calendar year with another broker, a transfer application must be submitted to the Division of Real Estate. Please note that a license may not be *transferred* during the month of December; however, it may be *reinstated* during the month of December.

If you have any questions concerning the status of your license, you should contact the Ohio Division of Real Estate at 1-800-344-4100 or (614) 466-4100.

Sincerely,

(broker's name)

CERTIFIED MAIL #

TEST RESULTS

In an effort to keep you apprised of the number of new licensees joining the real estate profession, below are the statistics compiled for the first half of 1987:

TEST DATE	BROKERS		PASS RATE
	TOTAL TESTED	TOTAL PASSED	
January, 1987	26	22	85%
February	25	21	84%
March	26	22	85%
April*	47	41	87%
May*	51	48	94%
June*	47	46*	98%
	<u>222</u>	<u>200</u>	

TEST DATE	SALES		PASS RATE
	TOTAL TESTED	TOTAL PASSED	
January, 1987	657	483	74%
February	672	503	75%
March*	1006	734	73%
April*	1329	1015	76%
May	771	597	77%
June*	1205	881	73%
	<u>5640</u>	<u>4213</u>	

*NOTE: Additional examinations were given in these months due to an increased number of applicants.

TEST DATE	FOREIGN REAL ESTATE SALES		PASS RATE
	TOTAL TESTED	TOTAL PASSED	
January, 1987	65	38	60%
February*	62	43	69%
March	65	40	60%
April	58	41	71%
May	54	35	65%
June	41	27	71%
	<u>345</u>	<u>224</u>	

*NOTE: This includes 3 dealer examinations.

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