



# DIVISION OF REAL ESTATE NEWSLETTER

March/April 1987

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SUPERINTENDENT OF REAL ESTATE

## Superintendent's Column

# Handling Of Earnest Money Deposits Discussed

By Margaret J. Ritenour, Superintendent

In each issue of the Division of Real Estate Newsletter, the disciplinary actions levied against licensees by the Ohio Real Estate Commission are reported. The purpose of doing so is not only to comply with the Commission's statutory obligation to report its decisions, but also to educate our licensees as to the types of conduct that constitute violations of Ohio's license law. Through these examples it is hoped that licensees may avoid engaging in similar conduct.

A review of the Commission's decisions reveals that a large percentage involve the handling of earnest money deposits. Discussed below are the most common violations committed with respect to earnest money and recommended practices to avoid problems in these areas:

### 1) **Misrepresenting the receipt of earnest money.**

On most purchase contracts, an earnest money deposit is recited in the body of the contract as part of the purchase price. At the bottom of the contract there is usually a line for the licensee to sign acknowledging the receipt of such earnest money. Frequently, licensees sign this acknowledgement when they do not have the earnest money in their possession at that time. Such a knowing misrepresentation of the receipt of earnest money constitutes a violation of Ohio Revised Code Section 4735.18(A).

To avoid problems in this area, licensees should be careful to indicate the amount of the earnest money they have received and whether they have received cash, a check, or a note from the prospective buyer. If a note is accepted, a specific date for redemption should be included in the note. If the buyer does not give the licensee an earnest money deposit at the time the offer is made, the acknowledgement section of the contract should clearly not be signed. Further, to avoid confusion, if the licensee has not received the earnest money but his/her name is typed below the signature line acknowledging receipt, his/her name should be crossed out. In such cases it is always recommended that upon presenta-

tion of the offer the fact that no earnest money has been received should be pointed out to the listing agent, or if there is none, directly to the seller.

### 2) **Failing to deposit earnest money into the broker's trust account.**

It should go without saying that earnest money must be deposited in the broker's trust account as soon as possible after receipt. What will be considered a reasonable time will be determined from the circumstances involved (e.g., whether the check is received on a weekend, or holiday.) However, it is generally recommended that earnest money be deposited within 24-48 hours of receipt unless such a deposit is not possible.

Licensees often clip earnest money checks to their copy of an offer and only deposit it if the offer is accepted. This practice is acceptable if the delay in depositing the earnest money is provided for in the purchase contract. For example, if the contract states "Earnest money to be deposited in broker's trust account upon acceptance of offer", such a practice would be in accord with the purchase contract and would not violate license law. But, if the contract merely states that the earnest money is to be deposited "upon receipt", the broker is required to deposit the money as soon as possible after it is given to him/her. The important point to remember here is that the contractual language controls whether the earnest money is to be deposited when it is received by the broker or when the offer is ac-

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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)

## **Earnest Money** (continued from page 1)

cepted. It is suggested that brokers review this language in their contracts to remove any ambiguity that may exist regarding when the earnest money will actually be deposited.

### **3) Failing to keep the seller apprised of problems that arise concerning an earnest money deposit.**

Recently, the Commission has heard many cases in which licensees have failed to notify sellers of the fact that the prospective buyer has stopped payment on an earnest money check or that the check has "bounced." Such a failure to notify the sellers of this type of development has been found to constitute misconduct in violation of Ohio Revised Code Section 4735.18(F). Similar violations could occur where the licensee fails to notify the seller that the buyer has failed to pay a note that was tendered for an earnest money deposit. These are material facts and should be immediately conveyed to the seller or his agent. As always, to cover one's self it is recommended that the licensee give this notice in writing as soon as possible.

### **4) Remitting earnest money without a release signed by the parties.**

Except at the closing of a transaction, a broker should only disburse earnest money from his/her trust account when authorized in writing by the parties to the purchase contract or when ordered by a court of law. Disbursing earnest money without such a signed release or court order has been found to constitute misconduct in violation of Ohio Revised Code Section 4735.18(F).

When earnest money is released without the authorization of the buyer and seller or a court order, a licensee is unilaterally determining which party to the contract is entitled to the earnest money. Such a decision requires either an interpretation of the terms of the contract or a legal determination as to whether a party breached the contract. Clearly, this is not a decision a licensee is qualified to make. To avoid a

violation of license law in this area, a licensee should not release earnest money to a party unless the other party to the transaction has provided him/her with a release or authorization to do so. This should be done even in simple cases where it appears clear that the prospective buyer was unable to get the necessary financing. Again, it is highly recommended that this authorization be in the form of a *written* release so as to avoid later claims that permission was not given.

In the event that one of the parties refuses to sign a release, the earnest money must remain in the broker's trust account until the parties resolve their dispute and instruct the broker of the fact in writing. The only other alternative is for the parties to take their dispute to court. In the event the court orders the licensee to disburse the funds, such a disbursement pursuant to the court's order is required.

### **5) Failure to remit earnest money within a reasonable time.**

Brokers have been found to violate Ohio Revised Code Section 4735.18(E) for failing to remit earnest money to a party within a reasonable time, where such a disbursement is clearly appropriate. Examples of situations requiring a timely remittance would be where a party's offer was not accepted, where the parties have provided the broker with a signed release, or where a court has ordered that a disbursement be made. In these instances, the earnest money should be returned to the appropriate party within a reasonable time. Again, what is reasonable must be determined from all of the circumstances.

It is hoped that this article has served as an overview of how to properly handle earnest money deposits, so licensees can comply with Ohio's licensing laws. As always, it is urged that brokers share the information in this article with their salespersons so they too can avoid violations of these laws and the risk of a suspension or revocation of their license. Any questions regarding the matters discussed herein can be directed to our Legal or Enforcement Section.

## ***Forward All Correspondence To Division's Regular Address***

When mailing correspondence to the Ohio Division of Real Estate, please use the Division's regular mailing address.

During the recent renewal period, licensees were asked to forward their renewal forms to the Division's Post Office Box Number in Columbus. Since the renewal period has been completed, all correspondence should be forwarded to: The Ohio Department of Commerce, Division of Real Estate, Two Nationwide Plaza, Columbus, OH 43266-0547.

By sending all your letters and forms to this address, all correspondence will be received and acted upon promptly.

STATE OF OHIO  
DIVISION OF REAL ESTATE  
DEPARTMENT OF COMMERCE  
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The Ohio Real Estate Commission

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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

LUCILLE CAPELLE, broker, Dayton, Ohio had her broker's license suspended for 10 days for violating Sections 4735.18(F) and (HH) of the Ohio Revised Code and Section 1301:5-1-06(B) of the Ohio Administrative Code. This suspension began on September 29, 1986. Capelle failed, within ten days of the return of the real estate license of a former salesperson to the Ohio Division of Real Estate, to notify the salesperson of this fact in writing. After this license was returned, Capelle authorized or permitted this former salesperson to act as a real estate salesperson with respect to a particular property when she knew he was not licensed to perform these acts.

DIXIE L. GRAVES, sales associate, Mt. Vernon, Ohio, had her sales license suspended for 30 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspension commenced on January 8, 1987. Graves entered into a land contract for the sale of her property to the complainants. Although the complainants did make the monthly payments to Graves, she failed to apply these payments to the existing mortgage. Graves' conduct resulted in foreclosure proceedings being initiated and in the complainants' interest in the property being jeopardized.

MAX HOLZER, broker, and HOLZER-WOLLAM AND ASSOCIATES INC., Columbus, Ohio, each had their broker's license suspended for 30 days for violating Section 4735.18(DD) of the Ohio Revised Code. However, imposition of this suspension was waived by the Commission due to mitigating circumstances. Holzer failed to pay a former salesperson his earned share of a commission on the sale of several properties.

ROSE HOWARD, sales associate, Columbus, Ohio, had her sales license and broker on deposit license suspended for 60 days for violating Sections 4735.18(F) and (T) of the Ohio Revised Code. This suspension commenced on January 7, 1987. Howard reduced the monthly rent of her clients' property without their knowledge, consent or authorization. Howard also failed to provide the owners of the subject property with a copy of an addendum to the lease which altered the terms of the lease by reducing the monthly rent.

MARLENE VONDEHAAR, sales associate, Cincinnati, Ohio, had her sales license suspended for 60 days for violating Sections 4735.18(A) and (F) of the Ohio Revised Code. However, imposition of 30 days of this

suspension was waived by the Commission. Vondehaar shall begin serving the 30 day balance of this suspension upon reinstatement of her license. Vondehaar entered into an agreement for the sale of her own property to the complainant without disclosing to him that there was a prior contract to sell this property to another party which was still pending at that time. Vondehaar also failed to promptly turn over an earnest money deposit that the complainant had made to her broker for deposit into his trust account per the terms of the contract. Vondehaar prepared documents which indicated that the sale of the subject property was being handled by her broker, when she knew her broker was not involved in any way with the sale of the subject property. Also, Vondehaar failed to inform her broker as to the nature of the agreements with the complainant and of the fact that the broker's name was included in such agreements.

FRANK A. WELLS, broker, and FRANK WELLS REALTY CO., Cuyahoga Falls, Ohio, each had their broker's license suspended for 180 days for violating Sections 4735.18(E), (F) & (Z) of the Ohio Revised Code. Frank Wells also violated Section 4735.18(BB). These suspensions shall commence upon reinstatement of both licenses. On two separate occasions, Wells failed to deposit and/or maintain in his real estate trust account money received by him in a fiduciary capacity from the complainant in connection with a contract for the purchase of a property. Wells failed to remit this money to the complainant within a reasonable time. Also, Wells failed to satisfy a final judgment obtained against him in Common Pleas Court by the complainant for the return of this earnest money deposit.

GEORGE D. YOUNG, broker, Columbus, Ohio had his broker's license suspended for 60 days for violating Sections 4735.18(E), (F) and (X) of the Ohio Revised Code. However, the Ohio Real Estate Commission ordered that imposition of 39 days of this suspension be waived. Young began serving the 21 day balance of this suspension on October 20, 1986. Young failed within a reasonable time to account for and/or remit to the complainant receipts and monies he received in connection with a management agreement. Young also failed to keep complete and accurate records in connection with a contract to manage the subject property. The account contained inaccurate receipts and failed to properly account for monies deposited and expenditures made in connection with the subject property.

## RECOVERY FUND ACTIONS

DAN A. BELLINO, broker, Middletown, 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 October 17, 1986 of an

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## Disciplinary Actions (continued from page 3)

unsatisfied judgment in the amount of \$10,410.87. This judgment was the result of Bellino's misrepresentation to the sellers of a property that the purchaser of their property would soon sell his property and be able to quickly pay off the purchase money mortgage being held by the sellers.

HERITAGE HOUSE REAL ESTATE, INC., broker, Cincinnati, Ohio, had its corporate 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 March 9, 1987, of an unsatisfied judgment in the amount of \$10,200. Heritage failed to pay a real estate commission to one of its salespersons. (Note: ORC Section 4735.12 has since been amended to no longer permit recovery for judgments that arise as a result of non-payment of a commission.)

ROBERT MORGAN, 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 a payment made from the Real Estate Recovery Fund on September 11, 1986, of an unsatisfied judgment in the amount of \$9,217.64. Morgan induced the owner of a property to sell him her property, but then refused to pay the money he owed her from the transaction after title had transferred.

EDWARD L. OLAH, broker, Lakeview, 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 January 6, 1987 of an unsatisfied judgment in the amount of \$20,000. The complainants paid money to Olah, but contrary to his representations, Olah failed to pay off a mortgage he had placed on the property and failed to notify the complainants of his inaction. As a result of Olah's failure to pay the mortgage, foreclosure was commenced against the complainants.

DAVID VOTAW, broker, Brookfield, 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 February 17, 1987, of an unsatisfied judgment in the amount of \$5,000. Votaw received an earnest money deposit from the complainants with respect to an offer to purchase a property. The offer was never accepted, but Votaw failed to return the earnest money to the complainants.

### 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 of 1987:

	SALES		BROKERS
	COLUMBUS/CLEVELAND	COLUMBUS	COLUMBUS
June	3	18	8
July	1	23	13
August	5	20	10

NOTE: Additional examinations may be added in the months to come to accommodate applicants.

### FOREIGN REAL ESTATE SALES

	COLUMBUS	
	May	12
June	9	23
July	7	21
August	4	18

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.

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