



# DIVISION OF REAL ESTATE NEWSLETTER

July/August 1988

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GOVERNOR, STATE OF OHIO

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SUPERINTENDENT OF REAL ESTATE

## Superintendent's Column

# *Answers Provided To Dual Agency Questions*

By Margaret J. Ritenour, Superintendent

In the last two issues of the Division of Real Estate Newsletter, I have discussed the problems surrounding dual agency and why an agency disclosure law was necessary. These articles also explained the rule requiring an Agency Disclosure Form and outlined the procedures for presenting this form.

Beginning January 1, 1989, all agents will be required to use this form to disclose to prospective purchasers who they are representing in a given transaction. Earlier this year, an agency disclosure form was approved by the Ohio Real Estate Commission and made available to licensees. This was done for two reasons. The first was to allow licensees time to become familiar with the agency disclosure form before the law goes into effect. The second was to allow for comments on the form, so that any problems or ambiguities could be corrected.

Since the form's release, many individual licensees, attorneys, educators and Ohio's real estate trade associations have made comments and suggestions. As a result, the Commission has revised the language on the Agency Disclosure Form.

A copy of this newly approved Agency Disclosure Form is now available and will be mailed to all brokers next month.

During the past few months, the subject of dual agency has been the focus of the many meetings where I have spoken around the state. Through these events and from the telephone calls coming into the Division, some commonly asked questions have surfaced relating to dual agency. These questions and their answers are provided below:

1. Q.) If I include language in my company's purchase contract disclosing who I represent, do I still have to use the Division's disclosure form?

A.) Yes. Under Ohio Administrative Code, Section 1301:5-5-05, the form approved by the Ohio Real Estate Commission must be used in all transactions.

2. Q.) When do I have to present the agency disclosure form to the buyer/tenant?

A.) Under the disclosure rule you must present the form to the buyer as soon as practicable, but no later than the preparation or submission of an offer to purchase or lease. Although you have until this time, it is strongly recommended that you disclose to the buyer who you represent in the transaction as soon as possible. By doing so early, you avoid any misunderstanding on the part of the buyer and the possibility that he or she will tell you confidential information.

3. Q.) Do I have to give a disclosure form to each person who attends an open house?

A.) No. Although it is recommended that written disclosure be made early in your discussions with a prospective purchaser, it is not required that a disclosure form be given to each person who attends an open house.

4. Q.) As a listing agent, what are my disclosure duties?

A.) Under Ohio Administrative Code, Section 1301:5-5-05, the listing agent must present the disclosure form signed by the prospective buyer to the seller as soon as practicable, but no later than the presentation of the purchase offer. After it is signed by the seller, a copy should be given to the buyer and seller, and the form should be maintained in the broker's files for three years along with the other records from the transaction.

(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)

## Dual Agency Questions Answered (continued from page 1)

5. Q.) What if the property is not listed with a broker?

A.) In that situation, a copy of the disclosure form signed by the prospective purchaser must be given directly to the seller. Again, this must be done no later than the presentation of the purchase offer to the seller.

6. Q.) As a listing agent, if a purchase offer is given to me without a signed agency disclosure statement, should I present the offer to the seller or give it back to the agent who wrote the offer?

A.) In this case, if time permits, the listing agent should contact the agent who prepared the offer to obtain a signed agency disclosure statement to be given to the seller along with the offer. If time does not permit, or the agent who prepared the offer cannot or will not obtain the disclosure statement, the listing agent should present the offer to the seller along with his own agency disclosure form. The fact that the selling agent did not provide the disclosure form should be disclosed to the seller and noted on the file.

7. Q.) If I am a listing agent in a transaction, is it permissible for me to prepare an offer to purchase or a comparative analysis for the buyer?

A.) Yes. Although as a listing agent your fiduciary duties of loyalty and good faith are owed to the seller, you can provide a prospective purchaser with a variety of market information and assistance. For example, you can provide a prospective purchaser with information about available properties and sources of financing. You can also show available properties and can describe their attributes and amenities. With respect to a comparative analysis, as long as the information given to a prospective buyer does not conflict with the interest of the owner, a licensee would not breach the duties

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he/she owes to the seller by preparing such information for a prospective purchaser.

8. Q.) Because the new law creates a presumption that all agents represent the seller, does that mean I am prohibited from representing a buyer if I want?

A.) No. A real estate broker can represent a buyer if he/she chooses. The amendment to Ohio Revised Code Section 4735.18(A)(4) merely provides that in order to overcome the presumption that you represent the seller, you must have a specific agreement with the buyer and that agreement must be disclosed to all of the parties. The Division recommends that any agreement to represent the buyer be in writing and that it specify what your duties will be as the buyer's agent and how you will be compensated.

9. Q.) Does the buyer pay you if you are the buyer's agent?

A.) Yes, as the buyer's agent you should be compensated by the buyer.

10. Q.) What is the typical fee arrangement for representation of a buyer?

A.) No one can set or recommend fees because this could be construed as price fixing. You may negotiate a flat fee or percentage of the purchase price as you so desire.

11. Q.) When do I inform a listing agent that I am representing the buyer and am not acting as the sub-agent of the seller?

A.) If you are solely representing a buyer in a transaction, you should notify the listing agent of this fact as soon as possible. At the time you are preparing an offer for the buyer, the fact that you are the buyer's agent must be noted on the agency disclosure form. You are required to provide this form to the listing agent as soon as practicable but in no event later than the presentation of the offer to the seller.

12. Q.) If a seller agrees to pay the listing broker a 7% commission, but the buyer has his own broker, does the seller still pay the full 7% agreed upon or is the commission renegotiated?

A.) When a seller enters into a listing agreement with a broker, he agrees to pay a specified commission to that broker if the property is sold during the term of the listing. Unless the listing agreement provides otherwise, the seller is required to pay the listing agent the full commission, regardless of whether a sub-agent or buyer's agent is involved in the transaction. Of course, it should be remembered that a seller and listing agent can always renegotiate the amount of the commission if they choose.

13. Q.) Can I represent the buyer, but have my fee paid

(continued on page 3)

# Disciplinary Actions

Here is a summary of 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 licensees:

## SUSPENSIONS

**ROBERT R. BONNER**, sales associate, Akron, Ohio, had his sales license suspended for 20 days for violating Section 4735.18(F) of the Ohio Revised Code. Due to mitigating circumstances, however, imposition of the suspension was waived. Bonner signed the sellers' names on an addendum to a purchase agreement relating to the sale of a property they owned. The addendum contained terms which the sellers had not agreed to or authorized.

**RAYMOND B. CASTO**, broker, Columbus, Ohio, had his broker's license suspended for 120 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. This suspension shall commence upon reinstatement of his broker's license. Casto failed to assure that money collected by Casto Property Mgt., Inc., in connection with its management of a property, was remitted to the owner of the property. Also, Casto failed to assure that Casto Property Mgt. provided the owner of the subject property with an accounting of the funds it had received within a reasonable time.

**CASTO PROPERTY MANAGEMENT, INC.**, corporate real estate broker, Columbus, Ohio, had its broker's license suspended for 180 days for violating Sections 4735.18(A)(5) and (A)(6) of the Ohio Revised Code. This suspension shall commence upon reinstatement of its corporate broker license. In connection with a property

management agreement with the owner of a property, Casto Property Management collected rental payments from the tenants of the subject property. However, after Casto was no longer the property management company for the property, it failed within a reasonable time to account for and remit money which it had collected on behalf of the property owner.

**CARL E. DUFFNER**, sales associate, Mansfield, Ohio, had his sales license suspended for 60 days for violating Sections 4735.18(F) & (S) of the Ohio Revised Code. This suspension began on April 25, 1988. Duffner negotiated the sale of a property with the owners, when he knew or should have known that they had a written outstanding contract granting exclusive agency to another real estate company.

**CRAIG EMERY**, sales associate, Dayton, Ohio, had his sales license suspended for 60 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspension shall commence upon reinstatement of his sales license. Emery accepted an earnest money check from prospective purchasers when he knew they did not have sufficient funds to cover the amount of the check. Emery failed to disclose this information to the sellers or the listing agent when he submitted the offer to purchase.

**SAMUEL SIMONETTE**, sales associate, Reynoldsburg, Ohio, had his sales license suspended for 10 days for violating Section 4735.18(F) of the Ohio Revised Code. Due to mitigating circumstances, however, imposition of the suspension was waived. Simonette disclosed the results of a satisfactory wood destroying insect inspection report to the buyers of the subject property, but failed to disclose the results of an unsatisfactory report which he previously obtained.

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## Dual Agency Questions Answered (continued from page 2)

by the typical practice of "cooperation" with the listing broker?

A.) This can be done only if both the buyer and seller know of and agree to this arrangement. It should be noted, however, that such an arrangement could create the appearance that the buyer's agent is representing the seller as well. Therefore, it is extremely important for the buyer's agent to clearly inform the listing agent that he is rejecting sub-agency and is representing *only* the buyer. Representation of the seller must be expressly disclaimed to avoid an unintended dual agency situation. Moreover, both the seller and the buyer have to agree to this arrangement.

14. Q.) If an owner lists his/her property with a broker, can another salesperson associated with that broker represent the buyer of that property?

A.) When an owner lists his or her property with a

brokerage, all salespersons associated with the brokerage are considered to be agents of the seller. As such, if one of the brokers' salespersons enters into a separate agreement to represent the buyer of that property, that brokerage would be a dual agent representing both the buyer and seller. Under Ohio Revised Code Section 4735.18 and Ohio Administrative Code Section 1301:5-5-05, such dual agency is prohibited, unless it was disclosed to both the buyer and seller and they consented to this arrangement.

I hope that the answers to these questions will assist Ohio's real estate licensees in complying with the new agency disclosure law. If you have any additional questions, please contact the Division by writing to: Ohio Division of Real Estate, Two Nationwide Plaza, Fifth Floor, Columbus, Ohio 43266-0547 or by calling our legal staff at 1-800-344-4100.

# Continuing Education Deadline Draws Closer

More than 29,000 real estate licensees still have not submitted proof that they have completed their continuing education requirements. This represents approximately 60% of the individuals licensed by the Division of Real Estate. Because of this high number, brokers are asked to urge their salespersons to complete continuing education.

The continuing education deadline for real estate professionals licensed before January 2, 1980 is January 31, 1989. Licensees who fail to provide proof of taking 30 hours of education by this due date will have their licenses **automatically suspended**.

To meet the continuing education requirements, a licensee must complete 30 hours of education and sub-

mit a certificate of completion and a compliance form before January 31, 1989. It is important to note that the licensee — not the school — is required to forward these documents to the Division.

Please note that licensees are now required to complete a separate three hour course on civil rights and fair housing as part of the 30 hours of continuing education. Unless this separate three-hour course is included, none of the other continuing education hours will be accepted.

To receive a copy of approved continuing education courses or to receive additional information on the requirements, please contact the Education Section of the Division of Real Estate at 1-800-344-4100.

## Lois Yeager Becomes Newest Real Estate Commissioner

Governor Richard F. Celeste appointed Lois Yeager of Cincinnati to the Ohio Real Estate Commission on June 1. She fills the seat vacated by Sandra J. Taylor who resigned to pursue business opportunities in Boston, Massachusetts.

Ms. Yeager is a broker with Sibcy Cline Real Estate in Cincinnati where she concentrates her efforts on residential sales. She is the former Vice President of Cline Real Estate in Cincinnati before it merged with Sibcy Real Estate in 1980.

Ms. Yeager began her career as a real estate salesperson in 1960 and became a real estate broker in 1972. She is past President of the Cincinnati Board of Realtors and is a member of the Ohio Association of Realtors.

"I am sure that Ms. Yeager's diverse and extensive background will enable her to serve the industry well as a Real Estate Commissioner," commented Superintendent of Real Estate Margaret J. Ritenour.

### UPCOMING TEST DATES

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

	SALES COLUMBUS/CLEVELAND		BROKERS COLUMBUS
Aug.	3	18	1, 15
Sept.	7	22	19
Oct.	5	20	17

(Additional exams may be added if warranted)

### FOREIGN REAL ESTATE SALES

Aug.	2, 16, 30
Sept.	13, 27
Oct.	11, 25

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.

4

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Bulk Rate  
U.S. Postage  
PAID  
Columbus, Ohio  
Permit No. 542

Total copies printed: 13,000  
Unit cost: \$.04615  
Publication date: 7/88