



DIVISION OF REAL ESTATE NEWSLETTER

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SUPERINTENDENT OF REAL ESTATE

Superintendent's Column

Agency Disclosure Law And Procedures Outlined

By Margaret J. Ritenour, Superintendent

As I discussed in the last issue of the *Division of Real Estate Newsletter*, the new agency disclosure law takes effect on January 1, 1989. Under this law, every licensee will be required to disclose to a prospective purchaser or tenant who it is the licensee represents in a transaction.

This agency disclosure law was developed in response to the increasing scope of the "dual agency" problem. The Ohio Real Estate Commission took two steps to solve the confusion that exists and to clarify the agency relationships. The first step was amending the section that prohibits dual agency. Language was added to Ohio Revised Code Section 4735.18 (A)(4) to specify that licensees are presumed to represent the seller, unless there is an agreement to the contrary and it is disclosed to all of the parties. This amendment codifies the prevailing position that cooperating agents are the subagent of the seller.

It is important to note that the new language in this section does not prohibit a licensee from representing a buyer. Instead, it provides that an agency relationship between an agent and a buyer has to be established through a **specific** agreement, not through implication. The Division strongly recommends that agents and buyers enter a written contract to meet the criteria of a specific agreement.

The second action the Ohio Real Estate Commission took to deal with the problem of dual agency was to adopt a new rule requiring agents to disclose to a prospective purchaser who it is they represent. Under this new rule (Section 1301:5-5-05 of the Ohio Administrative Code), this disclosure has to be made on a disclosure form approved by the Commission.

The first paragraph of this new rule spells out how the agency disclosure form is to be presented. It specifies that the licensee must provide the disclosure form to the prospective purchaser as soon as possible, but no later than the preparation or submission of the offer to purchase or lease real estate on behalf of the prospective purchaser or renter. After the form is signed by the prospective purchaser, a copy of the disclosure form must be given to the listing agent. This has to be done before or at the same time as the presentation of the offer.

The listing agent must then provide a copy of the disclosure form to the seller before presenting him with the offer to purchase. If the property is not listed with a broker, the licensee who prepares or submits the offer must provide a copy of the disclosure form directly to the seller before presenting the seller with an offer to purchase.

The key to making agency disclosure work is for agents to become comfortable discussing agency relationships with buyers and sellers.

The second paragraph of Section 1301:5-5-05 deals with the situation of dual agency. It states that no broker or salesperson (or one of his/her associates), who has entered into an agreement to act as the exclusive agent of the seller, can also act as the exclusive agent of any prospective purchaser of that property. The only exception allowed under this rule is where each party consents in writing to this dual representation on the Agency Disclosure Form. Again, the licensee must provide the disclosure form to both parties as soon as possible, but no later than the preparation of an offer for a prospective purchaser.

The final paragraph of the disclosure rule provides that a licensee who fails to comply with the agency disclosure procedure may have his/her license suspended or revoked by the Ohio Real Estate Commission.

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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)

Disclosure Law (continued from page 1)

This new disclosure law does not take effect until January 1, 1989. The reason for delaying the effective date was to give licensees time to become familiar with agency disclosure through additional education and training.

The key to making agency disclosure work is for agents to become comfortable discussing agency relationships with buyers and sellers. Licensees can only do this if they receive the proper training and education to understand agency relationships and the new law. For this reason, I urge all licensees to take advantage of upcoming seminars offered by their local boards and local schools or colleges.

Brokers also need to begin to consider what their office policy will be with respect to dual agency. They need to determine who their firm will represent in a transaction — sellers, buyers, or both. It is also recommended that brokers consider developing a training program for

their salespersons so they are prepared to make the mandatory disclosure next year.

In closing, I want to stress that the new law and form are only a beginning to the development that needs to take place to solve the problems associated with creating an undisclosed dual agency. It would be a mistake for a licensee to believe that having a potential buyer sign a disclosure form will eliminate this problem. Although it is a beginning, agents also need to realize that they have to also change their language and behavior in order to avoid creating an unintended agency relationship through implication. It is only through such a change of behavior that the risk of becoming an undisclosed dual agency can be truly eliminated. For this reason, I urge licensees to spend the remaining months of 1988 obtaining the necessary training and education relating to agency relationships and the agency disclosure law.

Ohio Celebrates Fair Housing's 20th Anniversary

Ohio marked the 20th Anniversary of the 1968 Civil Rights Act during the Fair Housing Month of April.

Fair Housing Month was observed at a luncheon hosted by the Mortgage Bankers Association on April 11 in Columbus. At the luncheon, Lt. Governor Paul Leonard signed a proclamation on behalf of Governor Celeste proclaiming April as Fair Housing Month in Ohio. Additionally, several elementary school children were honored for their award-winning posters in the Fair Housing Poster Contest.

This event was planned by the "Fair Housing 20th An-

niversary Planning Committee" appointed by the U.S. Department of Housing and Urban Development. Organizations represented on the committee are: Ohio Division of Real Estate, Ohio Civil Rights Commission, Ohio Department of Development, Ohio Fair Housing Congress, Ohio Homebuilders Association, Columbus Mortgage Bankers Association, Columbus Apartment Association, and Columbus Board of Realtors.

In recognition of the 20th anniversary of fair housing, the Division of Real Estate is developing a fair housing pamphlet to be completed before the end of 1988.

Sandra J. Taylor Resigns From Ohio Real Estate Commission

Sandra J. Taylor recently resigned her seat on the Ohio Real Estate Commission when she accepted a position with Prudential Real Estate Affiliates, Inc. in Boston, Massachusetts. She will be the Support Ser-

vices Director for Prudential's Northeast Region.

Ms. Taylor has served as a member of the Ohio Real Estate Commission since being appointed by Governor Richard F. Celeste on November 8, 1985.

Ms. Taylor is a co-owner and broker with Marks & Taylor Realtors of Canton and Louisville. Prior to accepting her new position, Ms. Taylor was serving as the president of the Canton Area Board of Realtors. She previously was a District Vice President of the Ohio Association of Realtors.

"Sandra Taylor will be deeply missed on the Ohio Real Estate Commission. The contributions she has made will have a lasting effect on the real estate profession in Ohio," said Superintendent of Real Estate Margaret J. Ritenour.

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The Ohio Real Estate Commission

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MARCELLUS H. SMITH

REMINDER

The Division is once again reminding individuals who were licensed prior to January 1, 1980 that their next 30 hours of continuing education is due on January 31, 1989.

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:

REVOCATIONS

DEBRA J. BUSH, broker, Mansfield, Ohio, had her broker's license revoked for violating Section 4735.18(F) and (I) as it incorporates Section 4735.13(C) of the Ohio Revised Code. This revocation became effective January 6, 1988. Bush was convicted of a felony in violation of Section 2909.03(4) of the Ohio Revised Code in the Court of Common Pleas in Richland County. Bush failed to notify the Superintendent of the Ohio Division of Real Estate of this conviction within the 15 days required by law.

MARK WITTENMYER, sales associate, Holland, Ohio, had his sales license revoked for violating Section 4735.18(F) & (I) as it incorporates Section 4735.21 of the Ohio Revised Code. This revocation became effective January 6, 1988. Wittenmyer collected money from the buyers of a property without the consent of and in a name other than that of his broker. Wittenmyer also failed within a reasonable time to provide the buyers with a deed to the subject property after they paid the purchase price and after Wittenmyer promised to provide them with the deed.

SUSPENSIONS

CHARLES GLASTER, broker, Cleveland, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18(A) of the Ohio Revised Code. However, due to mitigating circumstances, 20 days of the suspension were waived. The 10 day balance of this suspension began on January 8, 1988. Glaster indicated in a letter to a mortgage company that he had received a larger deposit from the buyers of a property than in fact he actually had.

ROBERT L. GRIFFIS, broker, Dayton, Ohio, had his broker's license suspended for 60 days for violating Section 4735.18(E); two counts of (F) and (I) as it incorporates Section 4735.021 of the Ohio Revised Code. This suspension began on January 8, 1988. Griffis failed, within a reasonable time and without good or reasonable cause, to remit a refund of a fee to six persons who had paid him for rental location services. Also, Griffis permitted a non-licensed person to prepare, secure the signature of, and accept a fee from an individual in connection with a contract for rental location services.

In a separate case, Griffis had his broker's license suspended for 60 days for violating Section 4735.18(F) and (I) as it incorporates Section 4735.021 of the Ohio Revised Code. This suspension shall run consecutive to Griffis' previous suspension. Griffis referred the complainant to an agent who had previously notified Griffis that rental property was non-existent in that locale.

In a third case, Griffis had his broker's license suspended for 60 days for violating Section 4735.18(E) and (F) of the Ohio Revised Code. This suspension shall run consecutive to Griffis' two previous suspensions. Griffis entered into an agreement to provide the complainant with listings of rental properties in exchange for a fee. Griffis failed to provide any listings which met the complainant's specifications. The complainant continually demanded a refund of the fee, but Griffis failed to remit the money within a reasonable time.

FRED E. HAUGHT, broker, Wilmington, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18(F) of the Ohio Revised Code. However, due to mitigating circumstances, 15 days of the suspension were waived. The 15 day balance of the suspension began on March 9, 1988. At the closing, Haught represented to the buyers of a property that the seller would need an additional sum of money to close on the transaction. Haught further indicated that the buyers were not permitted to pay this amount, when he knew or should have known that the buyers would be permitted to pay the amount needed.

BONNIE L. KNAGGS, sales associate, Bowling Green, Ohio, had her sales license suspended for 30 days for violating Section 4735.18(A) and (F) of the Ohio Revised Code. Due to mitigating circumstances, however, 20 days of the suspension were waived. The 10 day balance of the suspension began on February 5, 1988. Knaggs drafted a purchase agreement which stated that the sellers were to furnish a certificate from the health department stating that the well water was safe to drink. As the seller's agent, Knaggs assumed the responsibility to obtain this test from the health department. However, Knaggs failed to obtain the test as required by the purchase agreement. She also represented to the sellers and the purchasers that a test of the water had been done, when in fact, no test was performed prior to the closing.

DOUG LAMEY, sales associate, Cincinnati, 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. LaMey submitted a check made payable to the Ohio Real Estate Commission for the transfer of his real estate license. Payment of the check was refused by the bank upon which it was drawn.

LEHMAN-JOHNSON CORPORATION, a corporate real estate broker, Elyria, Ohio, had its broker's license suspended for 15 days for violating Section 4735.18(F) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived. The corporation received an earnest money deposit from the buyers of a property which it later

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Disciplinary Actions (continued from page 3)

released to itself as its commission from the sale of the property. Lehman-Johnson did this without obtaining releases from either the seller or the buyers.

NAWAL PANDEY, broker, Columbus, Ohio, had his broker's license suspended for 90 days for violating Section 4735.18(E), (F) and (Z) of the Ohio Revised Code. This suspension began on January 8, 1988. Pandey failed to remit money to a buyer based on a transaction which was contingent on the acquisition of the deed to the property. The deed was never acquired and time for performance passed. Also, Pandey failed to maintain a non-interest bearing special or trust account. Furthermore, Pandey included information on his 1987 Certificate of Continuation regarding his trust account, when in fact, the account was closed on or about November 1, 1984.

MAURICE B. SMITH, sales associate, New London, Ohio, had his sales license suspended for 60 days for violating Section 4735.18(I) as it incorporates Section 4735.21 of the Ohio Revised Code. This suspension began on March 11, 1988. Smith collected money for assisting in the negotiation of the purchase of a property in his own name, rather than in the name of his broker.

BEN E. STROBEL, broker, Pepper Pike, Ohio, had his broker's license suspended for 60 days for violating Section 4735.18(A), (D) and (F) of the Ohio Revised Code. Due to mitigating circumstances, however, 30 days of the suspension were waived. The 30 day balance of the suspension began on March 11, 1988. Strobel prepared an offer to purchase a property on behalf of the buyers. Strobel knew at the time that he prepared this offer that the buyers were not to be the actual purchasers. Rather, a third party was the ultimate purchaser, and Strobel failed to disclose this fact to the sellers. Strobel prearranged for the first buyers to make an offer which was accepted by the sellers and then assigned to the ultimate purchaser. Strobel acted for this second purchaser without disclosing this fact to the sellers, from whom he received a commission and to whom he owed his fiduciary duty.

RECOVERY FUND ACTIONS

The following licensees had their real estate licenses automatically suspended pursuant to Section 4735.12(E) of the Ohio Revised Code. These suspensions were a result of payments made from the Real Estate Recovery Fund:

Faruq Husamadeen	\$ 9,891.15	Paid on 1/15/88
Dale Jones	\$ 7,000.00	Paid on 1/15/88
George Rife	\$20,000.00	Paid on 1/25/88
David Dubberly	\$ 2,050.43	Paid on 2/29/88
Frank Carozzi	\$30,760.74	Paid on 3/25/88

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
June	1	16	6
July	6	21	11
August	3	18	15

(Additional exams may be added if warranted)

FOREIGN REAL ESTATE SALES

June	7, 21
July	5, 19
August	2, 16, 30

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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