



# DIVISION OF REAL ESTATE NEWSLETTER

January/February 1989

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GOVERNOR, STATE OF OHIO

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SUPERINTENDENT OF REAL ESTATE

## Superintendent's Column

# *Broker Liabilities And Responsibilities Outlined*

By Margaret J. Ritenour, Superintendent

With increasing frequency, the Division is learning of cases in which brokers are failing to carry out their duties under license law. Instead, they are delegating these responsibilities to salespersons or to unlicensed persons.

This usually happens in one of two situations. In some cases, the broker decides to retire and no longer wants to be involved in the day-to-day operations of the business. Responsibility for the management of the business is delegated to an office manager or salesperson, but the broker remains the company's "licensed broker."

In other cases, salespersons, or even unlicensed persons, form a real estate company and merely "rent" the broker's license of someone who is no longer active. In this situation, the broker is usually paid a fee or small percentage of the profits in exchange for placing his or her license with the company. The broker, however, has little or no involvement in overseeing the operation of the business.

In these situations, it is the salesperson or unlicensed person who controls almost all aspects of the company, including the trust account, advertisements, recordkeeping, hiring and supervision of personnel and payment of commissions to salespersons. Brokers who allow their licenses to be rented, or who delegate the operation of their business to others, usually have no idea of the potential risks this type of situation creates. Besides the possible civil liability, these individuals may be exposed to disciplinary action as well. Under Ohio license law, certain responsibilities are specifically imposed upon a broker. In the event these duties are neglected or handled improperly, the Division and the Ohio Real Estate Commission will look to the broker. This is true regardless of whether it was a salesperson, a bookkeeper, or an office manager who actually made the mistake or failed to carry out the statutorily imposed duty.

Here are some areas of responsibility that lie with a broker and for which he/she can be held accountable under Ohio license law:

- Trust or Special Account. Each real estate brokerage in Ohio must maintain a separate, non-interest bearing trust or special account. The broker is not only responsible for making sure that such an account is established, but also that all funds received in a fiduciary

capacity are properly deposited and disbursed. Whether actual entries are made by the broker, a bookkeeper or someone else, the sole responsibility for monies held in trust lies with the broker. Therefore, it is crucial that brokers review all trust account ledgers and records on a regular basis to discover and remedy any discrepancies.

- Accounting. Brokers are also responsible for assuring that accurate accountings of monies belonging to others are provided and that all funds owed to others are paid in a timely fashion. Problems in this area often arise in property management. It is important for brokers to realize that designating responsibility for property management to a salesperson will not release the broker of the responsibility to provide complete and timely accountings, or to promptly remit proceeds or return security deposits.
- Hiring Licensed Personnel. Brokers are responsible for making sure that only properly licensed persons act on behalf of their company in transactions which require a real estate license. If unlicensed persons perform such acts, the broker may be charged with a violation of license law for permitting this to occur, either actively or through neglect of their duty as a broker to supervise and oversee their business.
- Paying Salespersons. Ohio Revised Code Section 4735.18(A) (30) requires a broker to pay salespersons their share of an earned commission within a reasonable time. An absentee broker who delegates this responsibility to another can be held responsible for any failure to promptly pay a salesperson his/her earned commission.
- Maintaining, Renewing, and Returning Licenses. Under Ohio license laws, the broker is responsible for

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## **ATTENTION BROKERS!**

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to your salespersons?**

assuming that his/her own license is displayed and that all sales licenses are readily available for inspection. The broker is also responsible for registering and renewing licenses. When salespersons leave the company, the broker is required to give them proper notification of the return of their license and to promptly return these licenses to the Division of Real Estate.

• **Office and Recordkeeping Requirements.** The duties to maintain a definite place of business and to maintain a sign are ones that a broker must satisfy under Ohio

## Steps Outlined To Reinstate Suspended Licenses

Was your broker's license or that of one of your salespersons suspended for failure to submit the required 30 hours of continuing education by January 31, 1989? If so, you must take the following steps immediately:

- If your broker's license was suspended, you must return it to this Division immediately. You must also return the licenses of your salespersons and any branch office licenses you may have. If you are licensed with a corporation, partnership, or association and there is at least one other affiliated broker whose license was not suspended, only the corporation, partnership or association's license must be returned for removal of your name. Upon receipt, a new license will be issued to that entity. In this situation, it is not necessary to return the sales or branch office licenses.
- If one or more of your salespersons' licenses were suspended, you must immediately return their licenses to this office. If you do not, or if you permit your salesperson to do business on your behalf following this suspension, this can be grounds for suspension or revocation of your broker's license.

An individual whose license has been suspended has a two-year grace period (or until January 31, 1991) in which

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to complete the education. To qualify for reinstatement, the following documents must be submitted by the licensee:

- Proof of completion of the required 30 hours of continuing education (including a separate three-hour course on fair housing and civil rights)
- A completed R-109 compliance form
- A completed reinstatement application
- A reinstatement fee (this fee is \$39.00 for salespersons and \$59.00 for brokers)

No waiver of the required reinstatement fee can be made for any reason. No license will be reinstated until the suspended license has been received by our office. Reinstatement can also be refused if it is determined that the applicant practiced real estate while they were suspended.

## Agency: How To Service Buyers

With the advent of the new agency disclosure law, licensees are discussing with buyers their role in a transaction and the services they provide. Many agents have expressed concern that buyers will question why they should work through an agent when they learn that agent represents the seller. Agents should be aware that there are many services an agent can provide to a buyer without becoming that buyer's agent. The following are some of those services:

- Provide ready access to inventory, including the MLS
- Collect pertinent data on real estate values, taxes, utility costs.
- Provide neighborhood information on municipal services, schools, churches, etc.
- Discuss financing alternatives
- Discuss loan qualification and processing
- Show properties
- Make appointments and conferences
- Check applicable zoning, building permits
- Estimate closing costs and monthly payments
- Explain standard forms
- Explain escrow or settlement procedures
- Transmit offer and act as liaison between buyer and seller
- Monitor closing and time deadlines

(Printed with permission from John Reilly, author of *Agency Relationships in Real Estate*, Longman Publishing Co.)

# Disciplinary Actions

## REVOCATIONS

WILLARD BURSON, broker, Worthington, Ohio, had his broker's license revoked for violating Ohio Revised Code Sections 4735.18(A) (26) and (A) (6) as it incorporates Ohio Administrative Code Section 1301:5-1-13. This revocation became effective November 2, 1988. Burson received an earnest money deposit in connection with a buyer's offer to purchase, which he failed to deposit into his real estate trust account. Furthermore, Burson failed to obey a subpoena that the Ohio Division of Real Estate issued requiring him to produce all of his trust account records from December, 1987 through March, 1988.

HOMERITE REALTY, corporate broker, Worthington, Ohio, had its corporate broker's license revoked for violating Sections 4735.18(A) (6) and (A) (26) of the Ohio Revised Code. This revocation became effective November 2, 1988. Homerite Realty received an earnest money deposit which it failed to deposit into its brokerage trust account.

DONALD WALKER, sales associate, Maple Heights, Ohio, had his sales license revoked for violating Section 4735.18(A) of the Ohio Revised Code. This revocation

became effective November 2, 1988. Walker was convicted of making false statements and aiding and abetting in violating of Title 18 U.S.C. Sections 1001 and 2 in the United States District Court for the Northern District of Ohio. His conduct constitutes a conviction of a felony or a crime of moral turpitude.

## SUSPENSIONS

ISABELLA JONES, broker, Cleveland, Ohio, had her broker's license suspended for 90 days for violating Ohio Revised Code Section 4735.18(A) (6) as it incorporates Section 4735.13(D). This suspension shall commence upon reinstatement of her broker's license. Jones changed her business location without giving notice in writing to the Superintendent.

MARTING REALTY, INC., corporate broker, had its corporate broker's real estate license suspended for ten days for violating Section 4735.18(A) (6) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived. Marting Realty received an earnest money deposit from the prospective buyers of a property which was placed in its real estate trust account. Thereafter, Marting Realty disbursed this earnest money from its trust account to the buyers without the knowledge or consent of the sellers, and not in connection with the closing of the transaction. Marting Realty's failure to maintain this money in its trust account without obtaining a release from the sellers was found to constitute misconduct.

DOROTHY MCGARVEY, sales associate, Akron, Ohio, had her sales license suspended for ten days for violating Section 4735.18(A) (6) of the Ohio Revised Code. Due to mitigating circumstances, however, imposition of the suspension was waived by the Commission. McGarvey authorized that an earnest money deposit be returned to prospective buyers of a property without the knowledge or consent of the sellers.

OSTENDORF-MORRIS, CO., corporate broker, had its corporate broker's license suspended for 30 days for violating Section 4735.18(A) (34) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived by the Commission. Ostendorf-Morris, Co. authorized and/or permitted an unlicensed person to act in the capacity of a real estate licensee with respect to the leasing of a property.

JOHN RYNE, broker, Orient, Ohio, had his broker's license suspended for violating Section 4735.18(A) of the Ohio Revised Code. In the Clark County Common Pleas Court, Ryne was convicted of gross sexual imposition in violation of Ohio Revised Code Section 2907.05. Ryne's broker's license is suspended for the period of time during which he is incarcerated for his conviction, and will continue during any probation or parole period. His conduct constitutes a conviction of a felony and/or a crime involving moral turpitude.

JOHN R. WIELAND, broker, Dayton, Ohio, had his broker's license suspended for six months for violating Section 4735.18(A) (6) of the Ohio Revised Code. This

## Test Results

To keep you up to date on the number of new licensees joining the real estate profession, here are the statistics for the last half of 1988:

TEST DATE	BROKERS		
	TOTAL TESTED	TOTAL PASSED	PASS RATE
July, 1988	24	23	96%
August*	49	39	80%
September*	48	43	80%
October	24	24	100%
November*	47	37	79%
	<u>192</u>	<u>166</u>	<u>86%</u>

TEST DATE	SALES		
	TOTAL TESTED	TOTAL PASSED	PASS RATE
July, 1988	733	540	74%
August	657	479	72%
September*	1,011	703	70%
October	733	522	71%
November*	1,205	880	73%
	<u>4,339</u>	<u>3,124</u>	<u>72%</u>

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

## FOREIGN REAL ESTATE SALES

July, 1988	32	18	56%
August	30	19	63%
September	9	5	56%
October	16	13	81%
November	29	20	69%
	<u>116</u>	<u>75</u>	<u>65%</u>

No exams were given during the month of December, 1988.

**Disciplinary Actions** (continued from page 3)

suspension began on November 1, 1988. Wieland received an earnest money deposit from a prospective buyer in connection with an agreement to purchase a property. However, the prospective buyer was denied financing and therefore was unable to purchase the property. Even though the sellers made no demand for the earnest money, Wieland failed to remit this money to the prospective buyer in a timely fashion. Furthermore, Wieland failed to obey a subpoena that the Ohio Division of Real Estate issued requiring him to produce all his trust account records from December, 1987 through June, 1988. Wieland's conduct in this regard constitutes misconduct in violation of Section 4735.18(A) (6) of the Ohio Revised Code as it incorporates Ohio Administrative Code Section 1301:5-1-13.

**RECOVERY FUND ACTION**

PRESTON FENDERSON had his real estate license automatically suspended pursuant to Section 4735.12(E) of the Ohio Revised Code. This suspension was a result of a payment of \$1,000.00 made from the Real Estate Recovery Fund on his account.

**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:

	<b>SALES</b>		<b>BROKERS</b>
	<b>COLUMBUS/CLEVELAND</b>		<b>COLUMBUS</b>
February	8	2, 16	13
March	1	16	20
April	5	20	17
May	3	18	22

(Additional exams may be added if warranted)

**FOREIGN REAL ESTATE SALES**

February 7, 21	April 4, 18
March 7, 21	May 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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