



DIVISION OF REAL ESTATE NEWSLETTER

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RICHARD F. CELESTE
GOVERNOR, STATE OF OHIO

LINDA K. PAGE
DIRECTOR OF COMMERCE

MARGARET J. RITENOUR
SUPERINTENDENT OF REAL ESTATE

Superintendent's Column

Payment Of Real Estate Commissions Clarified

By Margaret J. Ritenour, Superintendent

The Division of Real Estate receives numerous complaints and inquiries about payment of real estate commissions. Many of the questions involve disputes between brokers and salespersons, while others concern disputes between brokerages. This article addresses the most frequently asked questions that the Division receives and clarifies real estate license law on these points.

PAYMENT OF COMMISSIONS TO SALESPERSONS

Ohio Revised Code Section 4735.18(A) (30) requires brokers to promptly pay salespersons their earned share of a commission. Failure to do so within a reasonable time is grounds for suspension or revocation of the broker's license. The definition of a reasonable time depends upon the circumstances of each case. However, generally speaking, payment should be made promptly upon receipt of the commission by the broker.

EARNED SHARE DISPUTES

The earned share that the salesperson is entitled to receive is not governed by license law. Rather, it is a matter of negotiation between a broker and salesperson. The amount of commission a salesperson receives should be established at the time the agent associates with the broker. This should be set forth in a written independent contractor agreement between the broker and agent. It is also advisable to have the company's commission policy placed in a policy manual that all agents initial. Any later changes to the policy should also be put in writing and be initialed by salespersons. By doing so, brokers can avoid disputes concerning the amount a salesperson is entitled to receive.

SET OFFS

Brokers often want to deduct from a commission any charges the salesperson owes the firm for advertisements, board dues, business cards, cash advancements or legal fees. The written contract between the broker and salesperson should address what deductions will be made from a salesperson's commission. Unless specified in such a written agreement, set offs should be limited to actual expenses incurred with respect to that transaction

(i.e., advertising costs). Brokers may not set off expenses incurred in one transaction from a commission owed in another unless this is agreed to by the salesperson. Brokers who have done so without the salesperson's consent have been found by the Ohio Real Estate Commission to have violated Ohio Revised Code Section 4735.18(A) (30).

PAYMENT AFTER A SALESPERSON'S TERMINATION

When a salesperson leaves a brokerage, it is not unusual for there to be outstanding commissions owed to that salesperson. In this situation, many brokers are concerned with how and if they must pay such salespersons. If their former agent is no longer licensed, brokers question whether they would be violating license law by paying an unlicensed person. If the agent has transferred to another broker, they wonder whether the commission check should be made payable to the agent's new broker.

Ohio Revised Code Section 4735.18(A) (11) prohibits a broker from paying or dividing commissions with an unlicensed person. However, as long as the person was a licensed agent or broker at the time the commission was earned, the Division does not consider this section to be violated. With respect to this issue, the Division considers the commission to be earned at the time the contract to purchase or lease was entered into. Likewise, brokers may directly pay a former salesperson a commission after he/she has transferred to another brokerage. The check does not need to be made payable to the agent's new brokerage since that company has no legal entitlement to a portion of the commission. *continued on page 2*

ATTENTION BROKERS!

**Are you forwarding
copies of this newsletter
to your salespersons?**

1990 Renewal Deadline Set For December 31

The deadline to file your 1990 Certificate of Continuation is December 31, 1989. The renewal forms were mailed to each licensed broker, corporation, partnership, or association in Ohio in late October. These certificates must be filed annually by all brokers in order to legally continue to practice real estate in Ohio.

If you have not received your certificate, call the Division's Licensing Section immediately at 1-800-344-4100.

Ohio law provides a 15-day grace period to file the renewal by January 15, 1990. However, an additional 50% of the renewal fee is charged as a late filing penalty for continuations postmarked during the grace period.

If the Certificate of Continuation is not postmarked by January 15, 1990, your license will be **revoked**. As a result, the licenses of all salespersons affiliated with you will be cancelled.

In order to be relicensed, you and your salespersons will need to apply for reinstatement of your licenses. Since the cost of being re-licensed would be greater than the standard renewal fee or the late filing fee, the Division encourages all brokers to make sure that their Certificates of Continuation are filed on or before December 31, 1989. By law, no extension of the filing date or waiver of the penalty fees can be granted.

When filing your Certificate of Continuation, please remember the important points listed below:

- Answer all questions on your Certificate of Continuation including the name and account number of your

trust or special account. (This account should not be designated as an escrow account.)

- Sign your Certificate of Continuation at the bottom
- Enclose your check, certified check, or money order made payable to the "Ohio Division of Real Estate"
- Include any late filing fee with your payment if filing after December 31, 1989, but before January 15, 1990
- Enclose all licenses for persons who are not being renewed, *if* they have been properly notified
- Proof of completion of education must be sent separately from the Certificate of Continuation

Additionally, please note that no sales license can be *transferred* during December. Cancelled licenses can, however, be *reinstated* during December. Many licensees confuse these two and miss their reinstatement deadline under the mistaken belief that they cannot reinstate their license during December. Again, it is only the *transfer* of licenses that is prohibited in December.

During the renewal period, the Division asks that licensees do not "walk-in" any continuation, reinstatement, or other applications. Because of the heavy workload at this time, the Division cannot guarantee that such applications can be processed while you wait. Therefore, to avoid an unnecessary trip to Columbus, please *mail* these forms to the Division.

Brokers who have any questions about the renewal process should call the Division at 1-800-344-4100.

Superintendent's Column (continued from page 1)

Another common question brokers ask is whether they must pay a salesperson a commission (either listing or selling) if they are no longer with the company when the transaction closes, or whether they can reduce the amount owed. These are both issues that are a matter of contract between the broker and salesperson. The independent contractor agreement between the broker and agent and the broker's policy manual should address these issues. Any forfeiture or reduction in the amount of commission should be clearly set forth and initialed by the agent.

STATE OF OHIO
DIVISION OF REAL ESTATE
DEPARTMENT OF COMMERCE
77 S. HIGH STREET, COLUMBUS, OHIO
43266-0547
614/466-4100
800/344-4100

The Ohio Real Estate Commission

PAUL J. EVERSON, President
JOHN C. KEALY
EDWARD J. KIZER
MARCELLUS H. SMITH
LOIS YEAGER

Dennis Ginty, Newsletter Editor

CO-OP DISPUTES

The Division of Real Estate receives calls daily from brokers with questions involving disputes with other brokers over commissions. As most brokers should know, Ohio license law does not require brokers to cooperate in the sharing of commissions with one another. While this is a common practice that has evolved in the industry, it is not mandatory or governed in any way by the laws this Division enforces. Therefore, our office cannot investigate or give its legal opinion as to the right to a commission in a "procuring cause" or other type of dispute. Such advice should not be sought from our office and brokers should make sure their salespersons bring questions of this nature to them.

CONCLUSION

This article has attempted to address the situations licensees commonly face when handling real estate commissions. Most commission problems with salespersons can be avoided by having a clear and concise written agreement with each salesperson and a policy manual. Both of these should include provisions covering the amount of commission salespersons will be paid, set offs, and how outstanding commissions owed will be handled if the salesperson is no longer licensed with the brokerage. By having a specific contract with agents and a written policy that is followed by the company, brokers can avoid disputes with their salespersons that can result in disciplinary action by the Real Estate Commission and civil lawsuits.

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

LEON GANT, broker, Toledo, Ohio, had his broker's license revoked for violating Section 4735.18 (A) (28) of the Ohio Revised Code. This revocation became effective July 18, 1989. Mr. Gant, in his capacity as a licensed real estate broker, had a judgment entered against him in the Toledo Municipal Court. This is a final judgment in the amount of \$3,711.19 which Mr. Gant has not satisfied.

RICHARD D. HALL, broker, Millersport, Ohio, had his broker's license revoked for violating Section 4735.18 (A) (28) of the Ohio Revised Code. This revocation became effective August 28, 1989. Mr. Hall, in his capacity as a licensed real estate broker, had a judgment entered against him in the municipal court of Lancaster, Ohio. This is a final judgment in the amount of \$3,500 which has not been fully satisfied.

WAYNE JOYCE, sales associate, Midland, Ohio, had his sales license revoked for violating Sections 4735.18 (A) (6), (A) (28) and (A) (9) as it incorporates Section 4735.21 of the Ohio Revised Code. This revocation became effective July 18, 1989. Mr. Joyce received an earnest money deposit in connection with a buyer's offer to purchase a property and then failed to remit this earnest money to his broker for deposit into the real estate trust account. In addition, Mr. Joyce collected the earnest money in his own name and without the consent of his broker. Finally, Mr. Joyce had a judgment entered against him in Wilmington Municipal Court in the amount of \$2,885 plus interest and costs. This final judgment arose out of Mr. Joyce's conduct as a real estate licensee, and has not been satisfied.

SUSPENSIONS

RICKEY ADAMS, sales associate, Proctorville, Ohio, had his sales license suspended for 60 days for violating Sections 4735.18 (A) (6) and (A) (4) as it incorporates Ohio Administrative Code Section 1301:5-5-05. This suspension began on September 28, 1989. Mr. Adams incorrectly prepared a purchase offer for the buyers of a property which was owned by the Veterans Administration. Mr. Adams noted on the offer that the VA would be financing the purchase, when he knew that the buyers were not seeking VA financing. Also, Mr. Adams failed to provide to the buyers an agency disclosure statement reflecting who he was representing in the transaction.

ROBERT DEIS, broker, Columbus, Ohio, had his broker's license suspended for 15 days for violating Section 4735.18 (A) (34) of the Ohio Revised Code. This suspension began on October 1, 1989. Mr. Deis permitted two unlicensed individuals to act in the capacity of real estate sales associates with respect to the management of a property. He allowed one to sign property management agreements and leases and he permitted the other unlicensed individual to show the property to prospective tenants.

HELEN MARTIN, broker, Dublin, Ohio, had her broker's license suspended for 60 days for violating Sections 4735.18 (A) (5), (A) (6), (A) (12) and (A) (26) of the Ohio Revised Code. However, due to mitigating circumstances, 30 days of the suspension were waived by the Commission. Ms. Martin began serving the 30 day balance of this suspension on September 28, 1989. In a fiduciary capacity, Ms. Martin received a down payment from the buyers of a property which she failed to deposit and/or maintain in her real estate trust account. Ms. Martin prepared a purchase agreement for the buyers of the subject property on a form which utilized the term "Realtor" and the insignia for the Board of Realtors. However, at the time Ms. Martin prepared the purchase agreement, she was not a member of this real estate professional association. In addition, Ms. Martin left Ohio for nearly two months during which time she neglected her obligations as a real estate broker by failing to make arrangements for the transaction to be handled, and failing to stay apprised of the status of the buyers' loan application. Ms. Martin's conduct caused unreasonable delay in the buyers receiving the return of their downpayment.

PATRICK MOLLICA, broker, Columbus, Ohio, had his broker's license suspended for 30 days for violating Sections 4735.18 (A) (6) and (A) (10) of the Ohio Revised Code. Due to mitigating circumstances, however, 20 days of this suspension were waived by the Commission. The ten-day balance of this suspension began on September 28, 1989. Mr. Mollica demanded, without reasonable cause and by way of a lawsuit, a fee for real estate professional services to which he was not entitled regarding the sale of his own property.

WILLIAM PIERCE, sales associate, Hillsboro, Ohio, had his sales license suspended for ten days for violating Section 4735.18 (A) (6) and (A) (21) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of this suspension was waived by the Commission. Mr. Pierce advertised that a property was in a particular school district when in fact the property was not in that school district. The advertisement was determined to be misleading and/or inaccurate in a material particular.

BERNARD REISMAN, broker, Westlake, Ohio, had his broker's license suspended for 60 days for violating Section 4735.18 (A) of the Ohio Revised Code. Due to mitigating circumstances, however, 30 days of the suspension were waived by the Commission. The 30 day balance of this suspension shall commence upon reinstatement of Mr. Reisman's real estate license. Mr. Reisman was convicted in the United States District Court, Northern District of Ohio, of attempting to evade federal income tax in violation of Title 26 U.S.C. Section 7201 of the United States Code. His conduct in this regard constitutes being convicted of a felony and/or a crime of moral turpitude.

JUDIE A. RIZZO, sales associate, Columbus, Ohio, had her sales license suspended for 180 days for violating Section 4735.18 (A) of the Ohio Revised Code. The Ohio Real Estate Commission modified this suspension by waiving 90 days. The 90 day balance of the suspension began on September 28, 1989. Ms. Rizzo was convicted of income tax evasion in violation of Title 26 U.S.C. Section 7201 in the United States District Court for the Southern District of Ohio.

New Licensure Requirements Effective On January 1

Several changes in the licensure requirements for sales associates and brokers will occur January 1, 1990. To be considered under the old requirements, an application must be postmarked on or before January 1, 1990. Applications postmarked after this date will fall under the new requirements.

This year the Division is taking the unusual step of scheduling several exams in December. This is being done to help meet the extra demand to be seated for the exams. Applicants will be notified within 10 days after taking the exam whether they have passed or failed. Please do not call the Division to ask whether you have passed the exam.

Due to the renewal process, applicants tested in December will not be issued licenses until January 2, 1990. Therefore, they will not be able to conduct business before this date.

Applicants who are tested in December, but who fail the exam, must reapply before January 1, 1990 in order to fall under the "old" educational requirements. If they reapply after that date, they will have to meet the new requirements that become effective January 1, 1990.

Among the new 1990 requirements is an amendment to the definition of institutions of higher education. This will be changed to specify that the institution must **actually award**, (rather than intend to award), degrees for fulfilling requirements of academic work beyond high school.

Therefore, any pre-licensing courses taken after January 1, 1990 must be taken through actual degree-granting institutions of higher education. Pre- or post-licensing courses required to be completed at institutions of higher education will no longer be accepted from non-degree granting proprietary schools unless they were taken prior to January 1, 1990.

If you have any questions about the new licensure requirements, please call the Division's Education Section at 1-800-344-4100 or (614) 466-4100.

Supt. Ritenour Elected To NARELLO Board

Superintendent Margaret J. Ritenour was elected to the Board of Directors of the National Association of Real Estate License Law Officers (NARELLO) at its national conference in San Diego in October.

NARELLO promotes cooperation between the states in the regulation of the real estate industry. Through the organization, the states share information on their procedures and recommend solutions to common problems.

Real Estate Commission President Paul J. Everson, Commissioner Edward J. Kizer, and Assistant Superintendent Thomas A. Goodman attended the conference.

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		BROKERS
	COLUMBUS/CLEVELAND		COLUMBUS
January	10	18	8
February	7	15	12
March	7	22	12

(Additional exams will be added if warranted)

FOREIGN REAL ESTATE SALES

January	9, 23
February	6, 20
March	6, 20

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.

State of Ohio
Department of Commerce
Division of Real Estate
77 S. High Street
Columbus, Ohio 43266-0547

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