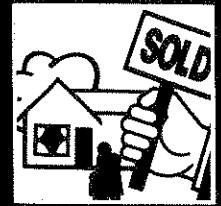


O·H·I·O
DEPARTMENT OF
COMMERCE

Division of
REAL ESTATE
NEWSLETTER



MARCH/APRIL 1990

Richard F. Celeste
Governor, State of Ohio

Nappy M. Hetzler
Acting Director

G. Lynn McCurdy
Superintendent

SUPREME COURT REINSTATES COMMISSION DECISION

The Ohio Supreme Court recently rendered a decision affecting the regulation of Ohio real estate brokers and salespersons in the case of Richard T. Kiko Agency, Inc., et. al. vs. Ohio Department of Commerce, 48 Ohio St.3d 74 (1990).

In this case, the Ohio Real Estate Commission ordered in January, 1987 the suspension of the corporate real estate broker's license of Richard T. Kiko Agency, Inc., and the broker's license of Richard T. Kiko (Kiko) for a period of 30 days with fifteen (15) days of the suspension being waived. The Ohio Real Estate Commission found that Kiko engaged in misconduct in violation of Section 4735.18(A)(6) of the Ohio Revised Code. The grounds for the Commission's decision was that Mr. Kiko improperly withdrew from the brokerage's trust account funds received by the brokerage in connection with a real estate transaction. After he withdrew these monies, they were deposited in an interest bearing account. They were later withdrawn and were paid to one of the parties. This action was taken without the consent of all of the parties to the transaction.

Kiko appealed the Ohio Real Estate Commission's decision to the Stark County Court of Common Pleas. The court found that Mr. Kiko's good faith acts were not willful and did not

amount to a violation of Ohio Revised Code Section 4735.18. Thus, the court reversed the Commission's suspension order. This decision was appealed by the Ohio Real Estate Commission to the Court of Appeals and was upheld.

Because of the significance of the Kiko case, the Ohio Supreme Court agreed to hear this matter. In a unanimous decision, the Ohio Supreme Court reversed both the decisions of the Court of Appeals and Court of Common Pleas and reinstated the decision of the Ohio Real Estate Commission suspending Kiko's license.

In upholding the determination of the Ohio Real Estate Commission, the Ohio Supreme Court found that Mr. Kiko's failure to inform or obtain consent from the parties before placing the escrowed funds in an interest bearing account constituted a breach of both the direct language of Ohio Revised Code Section 4735.18(A)(26) and his fiduciary duty to the parties. The Ohio Supreme Court noted that the Superintendent of Real Estate may investigate the conduct of any real estate licensee and that the Ohio Real Estate Commission is empowered to determine whether the acts of a broker constitute misconduct. The Ohio Supreme Court found that the Ohio Real Estate Commission acted properly in finding the acts of Mr. Kiko to have constituted

misconduct in violation of Ohio Revised Code Section 4735.18(A)(6).

In addition to upholding the Ohio Real Estate Commission's finding that it is misconduct in violation of real estate license law for a broker to disburse fiduciary funds from his trust account without the consent of both parties to the real estate transaction, the Ohio Supreme Court also provided some insight and guidance as to what may constitute misconduct. Chief Justice Moyer wrote that misconduct may include unprofessional conduct or conduct involving any breach of duty which is prohibited under professional codes of ethics, or conduct which is contrary to law. The Court stated that willfulness, good intentions, or actual harm to a party are not necessarily controlling factors.

This decision should reinforce to all real estate licensees that they are held to a high standard of professionalism. This is especially so when handling earnest money deposits and other monies received in a fiduciary capacity. As the Commission has advised for many years, in the event a transaction does not close and a dispute arises, these funds should not be released to either party without the signed consent of both parties or a court order directing that they be disbursed.

G. LYNN McCURDY NAMED SUPERINTENDENT

G. Lynn McCurdy assumed her duties as Superintendent of the Ohio Division of Real Estate on March 26.

Prior to joining the Division, Ms. McCurdy practiced law at Baker & Hostetler in Columbus where she shared responsibility for the Ohio Association of REALTORS' Legal Assistance

Hotline. In addition, she was instrumental in drafting Ohio's appraisal certification laws.

Ms. McCurdy earned her law degree from Capital University Law School in 1988 and received an M.A. in Public Administration from The Ohio State University in 1980.

ATTENTION BROKERS!
Are you forwarding
copies of this newsletter
to your salespersons?



NAPPY HETZLER NAMED ACTING DIRECTOR

Governor Richard F. Celeste has named Nappy M. Hetzler as Acting Director of the Ohio Department of Commerce for a term ending at the discretion of the Governor. She succeeds Linda K. Page who resigned to enter the private sector.

Ms. Hetzler has served as Assistant Director in the Department of Commerce since October, 1989. Prior to that she was Deputy Director and Administrator of State Purchasing.

CENSUS PARTICIPATION HELPS ALL OF US



The U.S. Census is the full count of every man, woman and child living in the United States.

This count determines how billions of federal and state dollars are distributed to communities each year for a variety of local programs. These funds are usually allocated based on Census population, age, housing, income, poverty level, and other statistics.

In addition, local government planners and economic developers depend on accurate Census statistics to plan for the future. Many public and private development projects—such as schools, health clinics, factories and shopping centers—are linked to the study of Census population and housing totals.

If the count is not complete, the success of these developments—which could involve millions of dollars, hundred of jobs, and years of effort—could be put in jeopardy from decisions based on inaccurate information.

Census questionnaires were mailed by the U.S. Census Bureau in late March. English-speaking individuals who have not received a questionnaire should call 1-800-999-1990. Spanish-speaking individuals who do not receive a questionnaire should call 1-800-283-6826.

Encourage Census participation; it helps all of us.

SALES EXAM REVISED: NEW BROKER EXAM TO FOLLOW

In April, the Division of Real Estate offered the first real estate sales exam using a new bank of test questions. The brokers exam will be offered with new questions in May.

In 1989, the Division purchased a bank of test questions from the Educational Testing Service of Princeton, New Jersey. The questions will be periodically scrambled to produce different exams on a regular basis.

The new tests contain general real estate questions as well as questions specific to practices and laws applicable to Ohio. All questions are multiple choice. The format for the sales and broker exams follows:

SALES EXAM

General portion: 90 questions
(20-25 will require math computations)
State specific portion: 30 questions
Total number of questions: 120

BROKER'S EXAM

General portion: 100 questions
(25-30 will require math computations)
State specific portion: 40
Total number of questions: 140

The sales exam will continue to be given once a month in Cleveland and once a month in Columbus. The broker's exam will be offered at least once a month in Columbus. Extra test dates will be added as needed.

APPRAISER BOARD CREATING CERTIFICATION REGULATIONS

The Real Estate Appraiser Board is establishing regulations to govern the appraiser certification process. The Board was created under Ohio's recently enacted appraiser certification law.

The Board will establish regulations covering:

- pre- and post-certification requirements
- education requirements
- experience requirements
- examination process
- application fees

- Real Estate Appraiser Recovery Fund

The Board hopes to formalize many of the regulations by early summer. The Division of Real Estate will begin accepting applications for certification by September 1, 1990 and begin administering examinations by January 1, 1991. Appraisers will be required to renew their certification every two years.

Upcoming issues of the *Division of Real Estate Newsletter* will highlight the appraiser certification process.

\$50,000 REAL ESTATE RESEARCH PROGRAM CREATED

The Ohio Real Estate Commission recently approved the creation of a research budget of up to \$50,000 funded from the Education & Research Fund.

This program, which was recommended by the Education & Research Fund Advisory Committee, will be administered by The Ohio State University's Center for Real Estate Education & Research.

The Center has already begun soliciting requests for research project proposals. Ohio researchers will be given preference for projects. However, if no Ohio researchers are interested or qualified, the Center will then consider out-of-state researchers.

The advisory committee will consider all proposal ideas and recommend

possible projects. The Center will then evaluate these projects as to quality, ability to complete, cost, etc. After receiving the evaluations, the committee will select the primary projects to be recommended to the Ohio Real Estate Commission for that year.

In administering the program, the Education & Research Center will assign the projects and oversee the quality and timing of the research.

One of the primary considerations in choosing projects will be whether the research will have practical implications for real estate professionals and consumers. To this end, proposals must contain plans to report on the research in either the Division's newsletter, industry publications, or through industry group presentations.



DISCIPLINARY ACTIONS

REVOCATIONS

ISABELLA JONES, broker, Cleveland, Ohio, had her broker's license revoked for violating Section 4735.18(A)(28) of the Ohio Revised Code. This revocation became effective December 11, 1989. Ms. Jones had a judgment entered against her in the Shaker Heights Municipal Court in the amount of \$640.55 plus interest and costs. This is an unsatisfied final judgment which arose out of Ms. Jones' conduct as a licensed real estate broker.

RICHARD A. LONG, sales associate, Beavercreek, Ohio, had his sales license revoked for violating Section 4735.18(A), (A)(1), (A)(5) and (A)(6) of the Ohio Revised Code. This revocation became effective January 24, 1990. Mr. Long represented to potential buyers of a property that he had purchased the subject property when he did not have any ownership interest in the property. Mr. Long received a down payment from potential buyers of the subject property in connection with their agreement to purchase the property from Mr. Long. However, Mr. Long failed to purchase the property and did not remit the down payment to the potential buyers. Richard Long was also convicted of grand theft in violation of Section 2913.02(A)(2) of the Ohio Revised Code in the Warren County Common Pleas Court. His conviction of a felony and/or crime involving moral turpitude constitutes a violation of Ohio Revised Code Section 4735.18(A).

HAROLD J. RAMEY, sales associate, Bexley, Ohio, had his sales license revoked for violating 19 counts of Ohio Revised Code Section 4735.18(A)(6), two counts of Section 4735.18(A)(9) as it incorporates Sections 4735.01 and 4735.02, and five counts of Section 4735.18(A)(4) as it incorporates Ohio Administrative Code Section 1301:5-5-05. This revocation became effective January 24, 1990. Mr. Ramey collected earnest money deposits with regard to nine (9) properties but failed to submit

these funds to his real estate brokerage for deposit into its trust account. Mr. Ramey then falsely certified to HUD that earnest money was being held in his brokerage's trust account with regard to five (5) of these real estate transactions. Also, on six separate occasions, Mr. Ramey failed to complete and provide prospective purchasers with agency disclosure statements prior to submission of their offers to purchase. In addition, while Mr. Ramey's real estate license was suspended, he engaged in conduct for which a real estate license is required. On two separate occasions, Mr. Ramey prepared a purchase agreement on behalf of a potential buyer of a property. Furthermore, on two occasions, Mr. Ramey collected earnest money deposits in his own name and not in the name of and with the consent of his broker. Finally, Mr. Ramey failed to assure that an offer made by a prospective buyer of a property was submitted to the Veterans Administration, the owner of the property.

SUSPENSIONS

EDWARD AMICK, broker, Mt. Gilead, Ohio, had his broker's license suspended for 30 days for violating Ohio Revised Code Section 4735.18(A)(6) and (A)(4) as it incorporates Ohio Administrative Code Section 1301:5-5-05. Due to mitigating circumstances, however, 15 days of the suspension were waived by the Commission. The 15 day balance shall commence upon reinstatement of Mr. Amick's real estate license. Mr. Amick prepared an offer on behalf of the prospective buyers of a property. He submitted this purchase offer to the seller without providing an agency disclosure form to the prospective buyers.

CARL J. BARTALDO, sales associate, Sylvania, Ohio, had his sales license suspended for 60 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, 15 days of the suspension were waived by the Commission. Mr. Bartaldo began serving the 45-day balance of the suspension on February 28, 1990. Mr. Bartaldo entered into a contract to purchase a property from the sellers. The contract provided for Mr. Bartaldo to submit an earnest money deposit along with his offer and an additional deposit upon acceptance. Mr. Bartaldo failed to submit these deposits to his brokerage in accordance with the terms of the purchase contract.

SHARON E. BROWNLEE, sales associate, Troy, Ohio, had her sales license

suspended for 60 days for violating two counts of Section 4735.18(A)(6) of the Ohio Revised Code. This suspension shall commence upon reinstatement of Ms. Brownlee's real estate license. Ms. Brownlee prepared an offer on behalf of the prospective buyers of a property. She failed to include in the offer language making the buyers' performance contingent upon their ability to obtain financing when she knew or should have known that the buyers would need to obtain financing. In addition, Ms. Brownlee assured the buyers that their earnest money deposit would be returned to them if the transaction was not completed. However, the purchase offer provided that the seller could retain the earnest money if the purchasers failed to perform.

LAWRENCE E. HEFT, broker, Lancaster, Ohio, had his broker's license suspended for 60 days for violating Section 4735.18(A)(6), (A)(19) and (A)(4) as it incorporates Ohio Administrative Code Section 1301:5-5-05. Mr. Heft began serving this suspension on January 15, 1990. Mr. Heft negotiated for the sale of a property with the owner when he knew the owner had a written outstanding contract granting exclusive agency to another broker. Mr. Heft prepared an offer on behalf of himself for the purchase of the subject property. In this transaction, Mr. Heft was also acting in the capacity of a real estate broker. He submitted his offer to the seller without providing an agency disclosure form stating who he was representing in the transaction.

RUTHE HICKS, sales associate, Akron, Ohio, had her sales license suspended for 60 days for violating Section 4735.18(A)(6) and (A)(19) of the Ohio Revised Code. This suspension began on January 15, 1990. Ms. Hicks negotiated the sale of a property directly with the owners when she knew that the owners had a written outstanding contract granting exclusive agency to another brokerage.

RUBY J. JAMES, sales associate, Dayton, Ohio, had her sales license suspended for 60 days for violating Section 4735.18(A)(6) and (A)(27) of the Ohio Revised Code. This suspension shall commence upon reinstatement of Ms. James' real estate license. Ms. James prepared a listing agreement which failed to provide for a definite expiration date.

RICHARD T. KIKO, broker, and RICHARD T. KIKO AGENCY, INC., Canton, Ohio, each had their broker's license suspended for 30 days for violating two counts of Section 4735.18(F) of the

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STATE OF OHIO
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The Ohio Real Estate Commission
PAUL J. EVERSON, President
JOHN C. KEALY
EDWARD J. KIZER
MARCELLUS H. SMITH
LOIS YEAGER

Dennis Ginty, Newsletter Editor

Disciplinary Actions *continued from page 3*

Ohio Revised Code. However, due to mitigating circumstances, 15 days of the suspension were waived by the Real Estate Commission. Kiko began serving the 15-day balance of this suspension on January 31, 1990. Richard Kiko received an earnest money deposit from prospective buyers of a property in connection with a purchase agreement. He failed to maintain this money in his real estate trust account. Without the consent of both the buyers and the seller, Mr. Kiko withdrew the earnest money from his trust account and placed it in an interest bearing account. Thereafter, Mr. Kiko disbursed the earnest money to the seller, to Richard T. Kiko Agency, Inc., and to an exterminating company. Mr. Kiko did this without the knowledge of the buyers and without obtaining a release from them.

F. RUTH McFADDEN, Circleville, Ohio, had her broker's license suspended for ten (10) days for violating Section 4735.18(A)(27) of the Ohio Revised Code. Due to mitigating circumstances, however, imposition of the suspension was waived by the Commission. Ms. McFadden entered into a listing agreement with the seller of a property. However, Ms. McFadden failed to insert a definite expiration date into the listing contract.

CHESTER PARTYKA, broker, Parma, Ohio, had his broker's license suspended for 60 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, 30 days of the suspension were waived by the Commission. Mr. Partyka began serving the 30-day balance of the suspension on February

28, 1990. Mr. Partyka was informed by a real estate sales associate with another broker that she had written an offer on a property. However, Mr. Partyka failed to afford this sales associate with the opportunity to have the offer presented to the sellers for their consideration.

CANDACE TILLS, sales associate, Dayton, Ohio, had her sales license suspended for 30 days for violating Section 4735.18(A) of the Ohio Revised Code. However, the 30-day suspension was waived contingent upon Ms. Tills' broker acknowledging her responsibility to oversee Ms. Tills' activities in the prac-

tice of real estate. Ms. Tills was convicted of bank fraud in violation of Title 18 of the United States Code Sections 1344 and 2 in the U.S. District Court for the Southern District of Ohio. Her conduct in this regard constitutes a conviction of a felony and/or a crime involving moral turpitude.

Recovery Fund Actions

Samual L. Johnson	\$5,395.87
January 3, 1990	
Gerald Zariske	\$18,579.45
February 8, 1990	

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
April	4	19	9
May	2	17	7
June	6	21	11

(Additional exams may be added if warranted)

FOREIGN REAL ESTATE SALES

April	3, 17
May	1, 15, 29
June	12, 26

The foreign real estate sales examination is given only in *Columbus*. Because of the small number of applicants for the foreign real estate delaeer examination, these exams are scheduled on an individual basis as the applications are received.



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