



AUG-NOV 1991

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Governor, State of Ohio

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Director

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Superintendent

CONTINUING EDUCATION DEADLINE DRAWING CLOSER

More than 16,000 real estate licensees still have not submitted proof to the Division of Real Estate that they have completed their continuing education requirements. Because of this high number, brokers are being asked to encourage their salespersons to submit proof of completing their continuing education requirements.

The continuing education deadline for real estate professionals licensed before January 2, 1980 is January 31, 1992. The due date of individuals licensed after January 2, 1980 is three years from the date they completed and submitted their post-licensure requirements and every three years thereafter.

It is the licensee's responsibility to know their continuing education due date and submit their proof of education to the Division of Real Estate. An easy way to check your continuing education due date is by reviewing your broker's 1991 Certifi-

cate of Continuation. Brokers should review their Certificates of Continuation and notify all salespersons of their continuing education due dates. The Division of Real Estate has mailed a printout to all brokers listing all licensees under their brokerage who have yet to submit proof to the Division of satisfying his or her continuing education requirements.

Licensees must successfully complete the following courses to meet the continuing education requirements:

- A three-hour continuing education course devoted exclusively to civil rights and fair housing.
- A three-hour continuing education "core" course devoted to instruction in recently enacted state and federal legislation affecting the real estate industry.
- 24 hours of approved continuing education electives of the licensee's choice.

To meet the continuing education requirements, a licensee must complete these courses, submit a certificate of completion for each course, and a compliance form before the due date. Please note that the real estate licensee - **not the school or broker** - is required to forward the licensee's documents to the Division.

Licensees who fail to submit proof of completing their continuing education by their due date will have their licenses **automatically suspended**. To become licensed again, these individuals must complete their education and apply to reinstate their license. The reinstatement fee is \$39 for salespersons and \$59 for brokers.

If you have any questions regarding continuing education due dates or for information about approved courses, contact the Division's Education Section at (614) 466-4100.

AGENCY DISCLOSURE ISSUES CLARIFIED

Over the past several months, the Division has seen an increasing number of transactions in which licensees have either failed to timely use the agency disclosure form or have failed to utilize the form. There

also seems to be some confusion as to how to properly complete the disclosure form.

As licensees can note from reviewing the disciplinary actions listed in the Division's past newsletters, the

Ohio Real Estate Commission looks very seriously at agency disclosure violations and many individuals have had their licenses suspended for failing to comply with the agency disclosure requirement.

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REAL ESTATE QUESTIONS & ANSWERS

1. Whose responsibility is it to submit continuing education?
 - A. Brokers
 - B. School
 - C. Offering Entity
 - D. Individual Licensee
2. A real estate license has been suspended. What functions can the licensee perform?
 - A. Give out information on properties
 - B. Show properties
 - C. Direct telephone calls to active licensees
 - D. None of the above
3. How long does a licensee have to apply for reinstatement of a suspended license?
 - A. 1 year
 - B. 2 years
 - C. 3 years
 - D. Forever
4. When may a licensee begin conducting real estate activity?
 - A. When the broker receives the license.
 - B. When the application has been received by the Division of Real Estate
 - C. When the license has been issued by the Division of Real Estate
 - D. When the license has been recorded at the Clerk of Court's Office
5. When must a broker notify an agent of his intent not to renew that agent's license for the coming year?
 - A. by December 31st
 - B. by November 1st
 - C. no later than January 15th
 - D. of the new year
6. When a broker returns an agent's license to the Ohio Division of Real Estate for cancellation, he must:
 - A. give the agent prior notification
 - B. notify the agent at the same time the broker sends the license in to the Division of Real Estate
 - C. notify the agent within 10 days after the license has been returned to the Division
 - D. notify the agent by certified mail
 - E. both c and d
7. An Ohio agency disclosure form must be completed by a licensee and given to a prospective purchaser:
 - A. at the time the property is listed
 - B. at the time initial contact is made with the purchaser
 - C. no later than the preparation or submission of the offer to purchase
 - D. no later than the closing of the transaction
8. A real estate salesperson is transferring from one broker to a different broker. The salesperson may start working in his/her capacity as a salesperson for the new broker in the sense of procuring listings, showing properties, negotiating sales, etc. . . only when:
 - A. a new license has been issued by the Division of Real Estate for that salesperson showing the new broker
 - B. the transfer application has been received by the Division
 - C. the transfer application has been placed in the mail by the salesperson
 - D. the salesperson has terminated employment with the former broker
9. If a transaction does not close for any reason, earnest money should only be disbursed from the trust account:
 - A. when the buyer and seller agree to a release of the money or a court orders the funds disbursed.
 - B. when the buyer and seller agree to release each other from all liability under the purchase contract.
 - C. when the broker decides the buyer could not obtain financing and he made a good faith effort to obtain it.
 - D. when the property is sold to another buyer.
10. A real estate agent does not have to disclose hidden defects with a property:
 - A. if the buyer has asked for a whole house inspection.
 - B. if the seller prohibits the agent from making such a disclosure.
 - C. if the property is advertised "as is."
 - D. none of the above. Hidden defects must always be disclosed.

SEE ANSWER BOX ON PAGE 5.

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF REAL ESTATE
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AGENCY DISCLOSURE ISSUES CLARIFIED ... Continued from page 1

To assist licensees, the following is provided to answer some of the commonly asked questions relating to the disclosure forms and the issues which licensees must address pertaining to agency relationships:

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.

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.

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 agency 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 agency 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.

Q. When do I inform listing agent that I am representing the buyer and am not acting as the subagent 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.

Q. Can I represent the buyer, but have my fee paid by the typical practice of "cooperation" with the listing buyer?

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 subagency and is representing only the buyer. Representation of the seller must be expressly disclaimed to avoid an unintended dual agency situation. Again, both the seller and the buyer have to agree to this arrangement.

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 sales-

persons associated with the brokerage are considered to be agents of the seller. As such, if one of the brokers' salespersons enter 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.

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.

Q. How do I fill out the form if I am a selling agent?

A. The selling broker is the broker or the firm assisting the buyer in the transaction. The selling agent is the specific salesperson with that broker who is working with the buyer. Under Ohio law, the selling broker and agent are presumed to be the agent of the owner unless there is a separate agreement to represent the buyer.

Fill in the name of the company with whom you are licensed in the blank for "selling broker." Your name goes in the blank marked "selling agent." Check whether you represent the buyer/tenant or the owner in the appropriate blank. Remember, if you represent the buyer you must have a specific agreement with the buyer. Otherwise, you are presumed to be the subagent of the seller.

Q. What if I am representing both the buyer and the seller?

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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

GWENDOLYN BOGGAN, broker, South Euclid, Ohio, had her broker's license revoked for violating Sections 4735.18(A)(4), (A)(6), (A)(15) and (A)(24) of the Ohio Revised Code. This revocation became effective July 30, 1991. Ms. Boggan failed to keep complete and accurate records relating to the subject property for a period of three years. Furthermore, Ms. Boggan submitted an offer to purchase the subject property indicating the purchaser to be an individual by the name of Gwen Gordon. However, she failed to disclose that she (Gwen Boggan) was the purchaser in the transaction as well as the real estate broker. Ms. Boggan also represented the purchaser (herself) in the transaction without the knowledge and consent of the owners, for whom Ms. Boggan was the listing broker.

WILLIAM R. CALLERY, broker, Dayton, Ohio, had his broker's license revoked for violating Sections 4735.18(A)(6) and (A)(26) of the Ohio Revised Code. This revocation became effective July 30, 1991. Mr. Callery collected money in a fiduciary capacity in connection with two separate purchase contracts. Mr. Callery failed to deposit and/or maintain these funds in his real estate brokerage trust or special account.

JACK L. SPENCE, broker, Zanesville, Ohio, had his broker's license revoked for violating Section 4735.18(A) of the Ohio Revised Code. This revocation became effective May 10, 1991. Mr. Spence was convicted

on felony charges in the Muskingum County Court of Common Pleas - receiving stolen property and two counts of selling unregistered securities.

FRANK J. TURNER, broker, Cleveland, Ohio, had his broker's license revoked for violating Ohio Revised Code Sections 4735.18(A)(6), (A)(28) and (A)(9) as it incorporates Ohio Revised Code Section 4735.21. This revocation became effective June 19, 1991. Mr. Turner collected an earnest money deposit from a buyer in connection with the buyer's offer to purchase real estate. However, Mr. Turner failed to submit the funds to the real estate broker with whom he was associated. Also, Mr. Turner collected this earnest money deposit in his own name and not in the name of, and not with the consent of, his real estate broker.

Furthermore, Mr. Turner had a judgment entered against him in the Cuyahoga County Common Pleas Court. This final judgment arose out of Mr. Turner's conduct as a licensed real estate salesperson and had not been satisfied.

SUSPENSIONS

PAMELA J. BROWN, sales associate, Grove City, Ohio, had her sales license suspended for 30 days for violating Ohio Revised Code Section 4735.18(A)(6) and (A)(9) as it incorporates Section 4735.21. However, due to mitigating circumstances, 15 days of the suspension were waived by the Ohio Real Estate Commission. Ms. Brown began serving the 15 day balance of the suspension on June 10, 1991. Ms. Brown prepared a lease on a property on behalf of the property owners. Subsequently, she collected a security deposit and monthly rental payments from the tenants for the benefit of the property owners. Ms. Brown col-

lected these funds in her own name and not in the name of, or with the consent of, her broker.

JOSEPH M. DUNN, broker, Cincinnati, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. Due to mitigating circumstances, however, 15 days of the suspension were waived by the Commission. Mr. Dunn began serving the 15 day balance of the suspension on June 10, 1991. Mr. Dunn received a check from a buyer in connection with a purchase agreement. However, Mr. Dunn failed to deposit this money into his real estate trust account in a timely manner.

GEOFFREY GORDON, sales associate, Dublin, Ohio, had his sales license suspended for 90 days for violating Ohio Revised Code Section 4735.18(A)(6) as it incorporates Ohio Administrative Code Section 1301.5-1-10. This suspension shall commence upon the reinstatement of Mr. Gordon's sales license. Mr. Gordon submitted a check to the Ohio Division of Real Estate which was refused by the bank upon which it was drawn.

DORRLYN HARRIS, sales associate, Cleveland, Ohio, had her sales license suspended for 20 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. This suspension began on August 30, 1991. Ms. Harris failed to disclose to the owner of a property that real estate licensee, Gwen Boggan, signed a purchase agreement as purchaser, Gwen Gordon. Ms. Harris failed to disclose this material information to the owner.

WAYNE A. JONES, sales associate, Columbus, Ohio, had his sales license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. This suspension

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DISCIPLINARY ACTIONS . . . Continued from page 4

shall begin upon reinstatement of Mr. Jones' license. Mr. Jones entered into an agreement with a property owner to manage his real estate. Thereafter, Mr. Jones proceeded to manage the subject property by procuring tenants and collecting rents. Mr. Jones engaged in this conduct in his own name and in the name of Area Property Services, rather than in the name of, or with the consent of, his broker.

HOWARD J. PORSHINSKY, sales associate, Columbus, Ohio, had his sales license suspended for 180 days for violating Ohio Revised Code Section 4735.18(A)(6) and (A)(9) as it incorporates Section 4735.21. This suspension began on August 19, 1991. Mr. Porshinsky entered into agreements to manage six properties not through the broker with whom his license was associated. Mr. Porshinsky proceeded to collect rental payments with regard to the six properties, but failed to submit the funds to his real estate brokerage. In addition, he collected these funds not in the name of, or with the consent of, his broker.

CARLASS V. ROKER, broker, Cleveland Heights, Ohio, had her broker's license suspended for 120 days for violating Section 4735.18(A) of the Ohio Revised Code. However, due to mitigating circumstances, 30 days of the suspension were waived by the Commission. Ms. Roker began

servicing the 90-day balance of the suspension on July 15, 1991. Ms. Roker was convicted of making a false statement on an application for HUD/FHA Mortgage Loan Insurance. This is a felony conviction in violation of Title 18 of the United States Code Section 1010 and 2.

JAMES R. SCHMITT, sales associate, Toledo, Ohio, had his sales license suspended for 30 days for violating Ohio Revised Code Section 4735.18(A)(6) as it incorporates Ohio Administrative Code Section 1301:5-5-05. Due to mitigating circumstances, however, 10 days of the suspension were waived by the Commission. Mr. Schmitt began serving the 20-day balance of this suspension on July 15, 1991. Mr. Schmitt prepared a purchase offer on behalf of the purchasers of a property. He submitted this offer to the sellers without submitting an agency disclosure form to the sellers. Also, Mr. Schmitt failed to include in the offer a date as to when performance would be expected of the parties.

BENITA SHEA, sales associate, Beavercreek, Ohio, had her sales license suspended for 10 days for violating Section 4735.18(A)(21) of the Ohio Revised Code. Ms. Shea began serving this suspension on August 30, 1991. Ms. Shea entered into a listing agreement with respect to a property. She prepared a data sheet on the property and submitted

it to a local MLS service. On the data sheet, Ms. Shea noted that the subject property was built in 1976, when in fact it was built in 1960.

TERRY L. WILLIAMS, broker, New Albany, Ohio, had his broker's license suspended for 60 days for violating Ohio Revised Code Section 4735.18(A)(6) and (A)(9) as it incorporates Sections 4735.01 and 4735.02. Due to mitigating circumstances, however, 30 days of the suspension were waived by the Commission. Mr. Williams began serving the 30-day balance of this suspension on July 15, 1991. While his broker's license was suspended, Mr. Williams continued to hold himself out as a real estate licensee by advertising real estate in three issues of *Homes* magazine. Furthermore, Mr. Williams offered real estate for sale on behalf of another and assisted in the procuring of prospects which resulted in the sale of five properties.

RECOVERY FUND ACTIONS

The following persons 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:

	PAID:	ON:
Leah Whisman	\$5,600.00	5-30-91
Willie Bloodworth	\$4,000.00	5-30-91

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	FOREIGN SALES
COLUMBUS/CLEVELAND	COLUMBUS	COLUMBUS
Nov. 6/21	Nov. 4	Nov. 12
	(No testing in December)	
Jan. 8/16	Jan. 6	Jan. 14
Feb. 5/20	TBA	Feb. 11
APPRAISER CERTIFICATION EXAMS (GENERAL AND RESIDENTIAL)		
COLUMBUS/CLEVELAND	TOLEDO	CINCINNATI
Nov. 9/23	N/A	N/A
Dec. 14	N/A	N/A

ANSWER BOX

Here are the answers to the Real Estate Questions on page 2:

- | | |
|------|-------|
| 1. D | 6. E |
| 2. C | 7. C |
| 3. B | 8. A |
| 4. C | 9. A |
| 5. B | 10. D |

A. Fill in your broker's name and your name in the spaces provided for the selling broker and agent. Because you represent both the buyer and seller, you must attach a copy of a written agreement signed by them agreeing to this dual agency. The buyer and seller should acknowledge receipt of the disclosure form by signing in the spaces provided.

Q. What do I do if the buyer (or seller) refuses to sign the disclosure form?

A. Ask the buyer to sign a statement acknowledging that you presented the form. If the buyer refuses to do that, notify your broker immediately and place a memo in the file documenting what occurred. You may wish to also send a disclosure form to the buyer along with a cover letter confirming your earlier presentation of the form.

Q. Are there any problems associated with licensees buying property for their own account?

A. When you buy property on your own account, you are obviously representing yourself and looking out for your own best interests. In many

situations, licensees buy property and also collect a share of commission as the selling agent. If you do this, it is imperative that you not only disclose the fact that you are licensed, but that you also clearly reject the offer of subagency through the agency disclosure form. If you do not, you can be found to be the seller's agent, as well as your own. This unlawful, undisclosed dual agency could result in rescission, money damages, forfeiture of commission, and loss of license. Licensees need to be especially alert to this situation in buying a property listing in a multiple listing service or one from an unlisted owner ("for sale by owner").

Q. The sellers whose house I have listed want me to help them find a new home. Do I represent them as a buyer's agent in the purchase of their new house?

A. You do not automatically become their agent in the purchase of their new home. Unless you specifically agree to be their agent in the purchase of a new home, you are not considered to be their agent. Of

course, you could agree to represent them as their agent if you choose.

If you do not, remember you will be considered to represent the owners of any home they buy. To avoid a dual agency situation, you need to choose to either work with the buyer as a customer or as a buyers agent. It is important to understand that information you may have learned about your former seller could place you in a difficult ethical position. Therefore, it is very important to clearly explain and disclose early what your roles will be both in the sale of their home and in their purchase of a new one.

Q. As a licensee selling my own property, do I need to have this form completed?

A. If you are solely acting as a principal in a transaction, then you would not be considered a listing agent or a selling agent and do not have to use the form. However, if you are also acting in your capacity as a licensee, then the form would need to be completed to disclose to the other party who you are representing.



State of Ohio
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Division of Real Estate
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Bulk Rate
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