



DECEMBER 1990/JANUARY 1991/FEBRUARY 1991

George V. Voinovich  
Governor, State of Ohio

Nancy S. Chiles  
Director

G. Lynn McCurdy  
Superintendent

## NANCY S. CHILES NAMED DIRECTOR BY GOVERNOR VOINOVICH



Nancy S. Chiles

Governor George V. Voinovich appointed Nancy S. Chiles as Director of the Ohio Department of Commerce on January 22, 1991.

Ms. Chiles had been serving as owner and president of the W.E. Shrider Co. in Newark, Ohio for the past 17 years. W.E. Shrider Co. is a gas and oil drilling company which owns and operates 300 wells throughout Ohio.

Ms. Chiles holds a bachelor's degree in education from Drake University in Des Moines, Iowa.

In making the appointment, Governor Voinovich said, "Nancy brings a unique and diversified business background to the Department of Commerce. She not only has an excellent grasp on the world of business but also has the kind of dedication, drive and motivation to run a major cabinet post and get things done."

Shortly after being appointed, Ms. Chiles commented, "I look forward to getting to know and working with the many real estate brokers and salespersons throughout Ohio."

## DUAL AGENCY PROHIBITIONS HAVE LONG HISTORY

Prohibitions against undisclosed dual agency have existed in Ohio law for more than a century.

In the 1881 case of *Bell v. McConnell*, 37 Ohio St. 396, it was determined that the double agency of a real estate broker who assumes to act for both parties to an exchange of lands involves *prima facie* inconsistent duties; and he cannot recover compensation from either party until it is clearly shown that each principal has full knowledge of all the circumstances connected with his employment by the other, and had assented to the double employment.

Ohio Revised Code Section 4735.18(A)(4) provides that a licensee is prohibited from acting for more than one party in a transaction without the knowledge and consent of all parties to the transaction. For purposes of this division, in a transaction a licensee is considered to be the agent of the

owner of real estate, unless there is an agreement to the contrary and that agreement is disclosed to all parties to the transaction. The Ohio Real Estate Commission recently adopted the agency disclosure rule which became effective January 1, 1989. Under this rule, every licensee is required to use an agency disclosure form to make written disclosure to a prospective purchaser or tenant as to whom the licensee represents in a transaction.

Dual agency exists when an agent represents both the buyer and the seller to a transaction. Because the dual agent owes the same fiduciary duties to both principals, the dual agent stands in the precarious position of trying to avoid situations where the agent may unintentionally compromise one principal in favor of the other. Ohio law prohibits this arrangement unless both parties to the transaction have knowledge of and con-

sent in writing to a dual agency relationship. A copy of the written dual agency agreement signed by the parties to the transaction acknowledging their consent to such dual representation must be attached to the "Agency Disclosure Statement."

As each situation is so different, the Division does not have a blanket-approved dual agency agreement that can be used in every transaction. However, the written consent should state that the licensee has made a full disclosure of the type of representation the licensee will provide; i.e. will the agent negotiate for both sides, or will the agent merely act as a facilitator and require the parties to negotiate for themselves. The written agency agreement should also address whether the agent will maintain or reveal confidential information he or she receives such as price, terms, personal motivation

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# SUGGESTIONS PROVIDED FOR REMITTING EARNEST MONEY

Remitting earnest money without a release consented to by all the parties to the purchase contract is one of the most common violations of real estate license law.

In the recent court case of Richard T. Kiko Agency, Inc., et al vs. Ohio Department of Commerce, the Ohio Supreme Court upheld the Ohio Real Estate Commission's decision to suspend a license when a licensee improperly withdrew trust account funds received by the brokerage in a real estate transaction.

To help licensees avoid this situation, the Division provides these suggestions to follow when remitting earnest money:

**Before** accepting earnest money, a licensee should clarify with the buyer and seller the conditions under which the licensee will act as a trustee of earnest money and how and when the earnest money will be disbursed. Except at the closing of a transaction, a broker should only disburse earnest money from his or her trust account when authorized by the parties to the purchase contract or when directed to disburse funds pursuant to a court order. This should be done even in simple cases where the broker may feel that one party is in breach of the contract. It is

highly recommended that this consent to release trust funds be in *writing* to avoid later claims that permission was not given.

Problems can develop when earnest money is released without the authorization of the buyer and seller or pursuant to a court order. When a licensee releases without authorization, he or she is unilaterally deciding which party to the contract is entitled to the earnest money. This decision may require an interpretation of the terms of the contract or a legal determination as to whether a party breached the contract. Clearly, this is not a decision a licensee is qualified to make even in good faith. In the Kiko decision, the court held that good faith was not necessarily a controlling factor in a license proceeding. Thus, the good faith of a licensee who makes a disbursement without the consent of all the parties to a purchase contract may not protect the licensee from being found to be in violation of license law.

In the event that one of the parties refuses to consent to a release and the terms of the trust relationship are unclear or silent, the earnest money must remain in the broker's trust account until the parties resolve their dispute and instruct the broker to release the earnest money. The only

other alternative is for the parties to take their dispute to court. If the court orders the licensee to disburse the funds, the licensee is then obligated to comply with the order.

On occasion, a broker will be unable to locate the individual in order to return an earnest money deposit which is not in dispute. When these funds go unclaimed for five years, the broker must report the funds to the Division of Unclaimed Funds as required by Section 169.03 of the Ohio Revised Code. Reports must be filed with the Division of Unclaimed Funds by November 1 of each year. The Division of Unclaimed Funds will then maintain these funds while attempting to locate the rightful owner.

If a broker has reason to believe that he or she cannot locate an owner entitled to the deposit before five years have passed, he or she may report the funds earlier in accordance with Section 169.11 of the Ohio Revised Code. If you have special or trust funds to be reported or are in need of information concerning the procedures for reporting unclaimed funds, please write:

Ohio Department of Commerce  
Division of Unclaimed Funds  
77 S. High St., 20th Floor  
Columbus, OH 43266-0545

## DUAL AGENCY PROHIBITIONS

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and financial matters.

Even though it is still possible to act as a dual agent after disclosure and consent, the process of making the disclosure in the written agreement, of all the circumstances connected with the agent's employment by each party and of obtaining knowing consent of all the principals to the transaction is full of pitfalls. Was the disclosure adequate? Was some material fact overlooked? Will the attorney for an unhappy buyer or seller be able to think of some additional disclosure that the agent should have made, but didn't? Was the consent freely given after full disclosure of all circumstances connected with the employment by each party?

The disclosures and consents necessary to proceed as a dual agent are so comprehensive and so unique to each transaction that it is recommended that dual-agent

consents be obtained by special agreement rather than by a boilerplate form. The broker and private counsel should be consulted in every case in which a dual agency consent is sought.

Thus, the requirement in the 1881 case of *Bell v. McConnell*—that an agent clearly show that each principal has full knowledge of all the circumstances connected with his employment by the other, and has assented to the double employment—is still a requirement of the law.

That same 1881 case also clearly states that it is each principal who must assent to the double employment. Thus, the consent to dual agency representation rests with the parties to the transaction, the principals, not with the licensee.

Some listing agreements address the possibility of dual representation in a preliminary fashion. Nevertheless, failure to disclose dual agency through a written agreement disclosing all the circumstances of the dual employment

which is attached to the agency disclosure statement as required by license law can result in the suspension or revocation of the agent's license. Failure to disclose dual agency may also expose the agent, buyer or seller to civil liability. Additionally, the transaction may be rescinded, compensatory damages may be awarded, and forfeiture of commission may result.

Civil liability of the agent can be easily shown in a recent high profile case out of Texas. In a judgment signed September 5, 1988, a judge from the 165th District Court of Harris County, Texas, found a real estate company liable to the tune of \$15 million for fraud and deceptive trade practices. \$7 million of the award was for punitive damages.

The listing brokerage had failed to disclose to the plaintiff-sellers that the brokerage also represented the buyers. The brokerage had also failed to disclose to the seller the fact that the seller's property, which was listed for \$1.2 million

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# PLAYING THE ROLE OF AN APPRAISER CAN BE COSTLY

All real estate agents are held to a minimum standard of competence. But an agent who claims to have expertise in a particular area—property management or appraisal for example—is held to an even higher standard. You should never take on any special tasks beyond your ability and never claim expertise in areas where you have no special training or skills, because as you'll realize from the following case, your actions could result in a lawsuit.

In March 1979, Michael and Judith Duhl contacted Ms. Riegel of Nash Realty about purchasing a new home and selling their old one. Riegel agreed to act as their agent. The Duhs advised her that the price they could pay for a new home depended on the price at which their present home could be sold.

Riegel assured the Duhs that she had the professional skill and competence to determine the market value of their present home. After inspecting the home, Riegel told the Duhs that it should be listed for \$168,000, and they could expect to sell it very quickly for between \$162,000 and \$163,000. When they

expressed some doubts about the price, Riegel assured them that she had performed many appraisals and that her representations as to market value and speed of the sale were correct. To back up her opinion, Riegel said she would have her broker, Richard Nash, take a look at the home.

After being told that Nash estimated the value at \$158,000, the seller entered into an agreement to buy another home at about the same price. They listed their existing home for \$167,500. Unfortunately, the home failed to sell during the three-month listing period. In fact, only five prospects saw the home and no offers were made, even though the price was reduced to \$164,900. At the end of the listing term, they listed with another broker for \$144,000. This was later reduced to \$137,000, but at the time of trial the home had still not sold.

Independent appraisals showed that the house had originally been grossly overpriced—the price should have been at least \$20,000 less than Riegel had said. The sellers' inability to obtain cash from the sale of their old home forced them to sell their new home at a

substantial loss.

Nash and Riegel had repeatedly claimed to have the expertise necessary to give the Duhs an accurate opinion of value. They had also given the Duhs a pamphlet listing reasons why they should employ a real estate agent. One of the reasons listed was that professional real estate agents knew market value and could price the property to sell quickly for full value.

Ruling that Riegel and Nash were negligent, the court stated that anyone undertaking to perform a task such as giving professional opinion of value was to perform that task with reasonable skill and competence.

The lesson to be learned is this: Never, never perform actions for which you are not trained. Let a lawyer give the legal advice, and let the appraiser make the appraisals. *Duhl v. Nash, 102 Ill. App. 3d 429 NE2d 1267 (1981)*

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## FHA'S ESCAPE CLAUSE HAS BEEN CHANGED

Licensees should be aware that the Federal Housing Administration has changed the required escape clause which must be signed by the purchaser and seller at least 10 days prior to closing on new FHA insured loans. (4155.1 REV-3, 1-22) The escape clause, which was amended in February 1990, must be included in the contract or in a separate document.

The escape clause must contain the following language:

"It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the pur-

chase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the mortgagee has delivered to the purchaser a written statement issued by the Federal Housing Commissioner or a Direct Endorsement lender setting forth the appraised value of the property (excluding closing costs) of not less than \$\_\_\_\_\_ which statement the mortgagee hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the mortgagee. The purchaser shall, however, have the privilege and option of proceeding with

consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable."

NOTE: The dollar amount to be inserted in the amendatory clause is the sales price as stated on the contract. This amount plus closing costs must be sufficient to support the requested mortgage.

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

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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

**ROBERT GRIFFIS**, broker, Dayton, Ohio, had his broker's license revoked for violating Section 4735.18(A) of the Ohio Revised Code. This revocation became effective November 5, 1990. Mr. Griffis was convicted of possession of counterfeit obligations in violation of Title 18 U.S.C. Sections 472 and 2 in the United States District Court for The Southern District of Ohio.

**ALLAN RICHLAND**, sales associate, Painesville, Ohio, had his sales license revoked for violating Sections 4735.18(A)(1), (A)(5) and (A)(6) of the Ohio Revised Code. This revocation became effective November 5, 1990. Mr. Richland represented to a prospective buyer that he (Richland) was the owner of the subject property, when in fact he did not have title to the property. In addition, Mr. Richland collected an earnest money deposit from the prospective buyer in connection with his agreement to purchase the property. Mr. Richland failed to remit back to the prospective buyer the entire amount of this earnest money deposit. Mr. Richland also represented to another prospective buyer of the subject property that he (Richland) was the owner, when in fact he did not have title to the subject property.

In a separate case, Mr. Richland's sales license was revoked for violating Sections 4735.18(A)(5) and (A)(6) of the Ohio Revised Code. Mr. Richland entered into an agreement to sell a property to a prospective buyer. In connection with this agreement, the prospective buyer gave Mr. Richland an earnest money deposit, but he (the buyer) did not proceed with purchasing the property. He later obtained a court judgment against Mr. Richland for the earnest money. However, Mr. Richland failed to remit the money to the prospective buyer as ordered by the Court.

In a separate case, Allan Richland had his sales license revoked for violating Sections 4735.18(A)(1), (A)(5) and (A)(6) of the Ohio

Revised Code. Mr. Richland entered into an agreement to sell a property to a prospective buyer wherein he represented that he (Richland) was the owner of the subject property. However, Mr. Richland knew that he did not have legal title to this property. Also, Mr. Richland collected an earnest money deposit from the prospective buyer in connection with his agreement to purchase the property. However, Mr. Richland failed to remit this money back to the prospective buyer.

**ROBIN RENEE WARNER**, sales associate, Columbus, Ohio, had her sales license revoked for violating Ohio Revised Code Sections 4735.18(A) and (A)(9) as it incorporates Section 4735.13(C). This revocation became effective October 4, 1990. Ms. Warner was convicted of one count of conspiracy, one count of continuing criminal enterprise, 15 counts of distribution of cocaine, four counts of use of a communication facility, seven counts of unlawfully traveling interstate commerce with intent to further promote, manage and carry on an unlawful activity, and four counts of tax evasion. These 32 separate felony convictions arose out of case no. CR-2-90-012 in the U.S. District Court for the Southern District of Ohio. In addition, Ms. Warner failed to notify the Superintendent of the Ohio Division of Real Estate of these convictions within 15 days of such convictions.

## SUSPENSIONS

**WILLIE BAZEN**, broker, Canton, Ohio, had his broker's license suspended for 10 days for violating Sections 4735.18(A)(6) and (A)(26) of the Ohio Revised Code. However, due to mitigating circumstances, five days of the suspension were waived by the Ohio Real Estate Commission. Mr. Bazen began serving the five-day balance of the suspension on October 5, 1990. A prospective buyer gave Mr. Bazen an earnest money deposit in connection with his agreement to purchase a property. Mr. Bazen failed to deposit the money into his real estate trust/special account. The transaction did not close, and Mr. Bazen remitted the earnest money to the prospective buyer without obtaining the seller's consent.

**BRIAN DONAHUE**, broker, Gahanna, Ohio, had his broker's

license suspended for 15 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. Due to mitigating circumstances, however, 10 days of the suspension were waived by the Commission. Mr. Donahue began serving the five-day balance of the suspension on December 7, 1990. Mr. Donahue entered into an agreement to lease his own property to a tenant who paid Mr. Donahue a security deposit. When the tenant vacated the subject property, Mr. Donahue failed to provide him with an accounting of his security deposit within 30 days after termination of the rental agreement.

**MICHAEL GLENN**, broker, Cleveland Heights, Ohio, had his broker's license suspended for 15 days for violating Section 4735.18(A)(26) of the Ohio Revised Code. However, due to mitigating circumstances, five days of the suspension were waived by the Commission. Mr. Glenn will begin serving the ten-day balance of the suspension upon reinstatement of his broker's license. Mr. Glenn received an earnest money deposit from a prospective buyer of a property. Mr. Glenn failed to deposit and maintain this money in his trust/special account.

**DARLA HUFFORD**, sales associate, Oregon, Ohio, had her sales license suspended for 15 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. This suspension began on November 5, 1990. Ms. Hufford listed a property for sale through her brokerage. However, in the listing agreement and advertisements for the property, Ms. Hufford identified the wrong elementary school. Therefore, the buyer purchased the subject property with the understanding a particular elementary school was in the district. Ms. Hufford failed to verify the accuracy of her representation to the buyer.

**CAROL JONES**, broker, Cincinnati, Ohio, had her broker's license suspended for 20 days for violating Sections 4735.18(A)(1) and (A)(6) of the Ohio Revised Code. This suspension began on December 7, 1990. Ms. Jones represented on a real estate purchase agreement that she had received an earnest money deposit from a prospective buyer of a property. Ms. Jones had not, in fact, received such a deposit. In addition, Ms. Jones' sales associate later prepared another

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## DISCIPLINARY ACTIONS

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purchase agreement on behalf of the prospective buyer of the subject property. Ms. Jones permitted her sales associate to misrepresent the purchase price on this agreement, while the parties to the transaction had agreed on a different purchase price.

PATRICK J. McCUEN, sales associate, Daylestown, Ohio, had his sales license suspended for 30 days for violating Sections 4735.18(A)(6) and (A)(8) of the Ohio Revised Code. Due to mitigating circumstances, however, 15 days of the suspension were waived by the Commission. Mr. McCuen began serving the 15-day balance of the suspension on November 5, 1990. Mr. McCuen submitted two certificates to the Ohio Division of Real Estate representing that he had completed 30 classroom hours of real estate continuing education. However, these certificates were not authentic; Mr. McCuen did not complete the instruction as indicated on the certificates.

MICHAEL MONDAY, sales associate, Dayton, Ohio, had his sales license suspended for 15 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, five days of the suspension were waived by the Commission. Mr. Monday began serving the ten-day balance of the suspension on November 5, 1990. Mr. Monday prepared an offer on behalf of a prospective buyer of a property. However, Mr. Monday submitted this offer to the seller without providing an agency disclosure form to the prospective buyer. Also, Mr. Monday failed to draft the offer in accordance with the length of time the buyer wanted to obtain loan approval. The buyer requested more time, but Mr. Monday refused to write such an offer.

SYLVIA J. NEFF, sales associate, Columbus, Ohio, had her sales license suspended for the term of a court imposed probation which she is currently serving. This suspension commenced on December 3, 1990. Ms. Neff was convicted of trafficking in marijuana in the Franklin County Common Pleas Court. Her felony conviction constitutes a violation of Ohio Revised Code Section 4735.18(A).

KAYE M. NICOL, sales associate, Marysville, Ohio, had her sales license suspended for 15 days for

violating Sections 4735.18(A)(6) and (A)(14) of the Ohio Revised Code. Due to mitigating circumstances, however, imposition of the suspension was waived by the Commission. Ms. Nicol prepared an offer on behalf of a prospective buyer of a property. Subsequently, Ms. Nicol induced the sellers of the subject property to enter into a contract with the prospective buyer by agreeing to reduce the real estate commission. However, Ms. Nicol failed to disclose this inducement on the sales contract as part of the consideration.

GARY PISTNER, broker, Reynoldsburg, Ohio, had his broker's license suspended for 15 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. This suspension commenced on December 4, 1990. Mr. Pistner received an earnest money deposit from a prospective buyer in connection with a real estate purchase agreement. Mr. Pistner placed this earnest money in his trust account, but thereafter returned it to the prospective buyer without the knowledge or consent of the seller.

DOROTHY M. RITCHIE, sales associate, Scottsdale, Arizona, had her sales license suspended for 20 days for violating Section 4735.18(A)(1) of the Ohio Revised Code. This suspension shall begin upon reinstatement of Ms. Ritchie's license. Ms. Ritchie prepared a purchase agreement on behalf of the buyer of a property. However, Ms. Ritchie misrepresented the purchase price on this agreement; the buyer and seller had agreed on a different purchase price. Later, Ms. Ritchie prepared another purchase agreement for the buyer of the subject property. Again, Ms. Ritchie misrepresented the purchase price when the parties had already agreed on a purchase price.

CURTIS ROYCE, broker, Dayton, Ohio, had his broker's license suspended for 45 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. This suspension commenced on November 5, 1990. Mr. Royce allowed the seller of a property to enter into a purchase agreement when he knew that there existed an outstanding contract for the sale of the subject property. In obtaining the second agreement, Mr. Royce failed to designate it as a back-up contract, or contingent upon the first contract being void. Also, Mr. Royce altered various dates on the first purchase offer without the knowledge or consent of the prospective

buyers. In addition, Mr. Royce altered an agency disclosure form signed by the prospective buyers in connection with their offer to purchase the subject property. Mr. Royce altered this agency disclosure form with respect to various dates without the buyers' knowledge or consent.

## 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:
Richard Dale Hall* \$2,500.00	08/20/90
Richard Long \$7,500.00	11/30/90
Sammie Ruffin* \$6,471.40	11/30/90

\*Richard Dale Hall repaid \$2,500.00 to the recovery fund on 8/20/90. Sammie Ruffin repaid \$6,471.40 to the recovery fund on 12/17/90. Mr. Ruffin's broker's license has been reinstated.

## DUAL AGENCY PROHIBITIONS

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and which sold for \$1 million, was significantly increased in value because the buyer had an interest in other tracts of land in the area and therefore had the ability to develop the area into a commercial property. The sellers claimed this failure of disclosure affected their decision to proceed with the transaction.

Subsequent to the decision of the trial court, the parties filed a joint motion to reverse the judgment and remand the cause to the trial court in order to effectuate a compromise and settlement agreement. The motion was granted January 25, 1990.

Even absent license law requirements, the Common Law of Agency in every state makes failure to disclose dual agency a potentially high-risk venture.

Thus, in addition to continuing a longstanding legal requirement of disclosure of dual agency, the Ohio Real Estate Commission, by requiring the use of the agency disclosure form and requiring the attachment of the agreement between the parties, may have performed a valuable protective function for licensees by providing the format for complying with law already in existence.



# APPRAISAL SUBCOMMITTEE ADVISORY RAISES CONCERNS

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council issued Advisory 90-2 on November 28, 1990, which addresses the state qualification requirements for the licensing/certification of residential real estate appraisers.

In response to Advisory 90-2, the

Ohio Real Estate Appraiser Board is reviewing its pre-certification rules. For this reason, the Division of Real Estate will accept applications for certification, however, the Division may not take final action on an application until the Division has assurances that our application criteria satisfy all applicable federal requirements.

The Appraisal Subcommittee has the authority to not recognize appraiser certifications/licenses issued from states whose appraisal policies, practices, or procedures are found to be inconsistent with Title XI of the Federal Financial Institutions Reform Recovery and Enforcement Act of 1989.

## APPRAISER EXAM STATUS REVIEWED

The Appraisal Qualifications Board (AQB) of the Appraisal Foundation has begun the process to endorse appraisal certification examinations. The AQB has hired the consulting firm of Hoffman Research Associates of Chapel Hill, North Carolina, to review the proposed exams and make recommendations to the AQB.

The AQB will then either endorse the question bank and examination forms or specify any needed revisions.

Once the AQB endorses one or more exams, the Division of Real Estate will begin the process to purchase one of the endorsed exams.

All applicants seeking state-certification as real estate appraisers must successfully complete an endorsed examination. There is no alternative to successful completion of the exam.

## 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
February	13	27	4
March	6	20	11
April	3	18	8

(Additional exams may be added if warranted)

### FOREIGN REAL ESTATE SALES

February	5
March	5
April	2, 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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