



SPRING 1993

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## SELLER DISCLOSURE FORM TO BE IN USE JULY 1

Sellers of residential property will soon be required to disclose various aspects of their property's physical condition through a state-prescribed property disclosure form. The form will become effective on June 19, 1993 and should be used in residential real estate transactions after July 1, 1993.

The seller disclosure law (Senate Bill 304) will require the disclosure form to be given to purchasers of residential property only. Under the statute (Revised Code Section 5302.30), "Residential Property" is defined as property that is improved by a building or other structure that has one-to-four dwelling units. Accordingly, the disclosure form is not required in the sale of unimproved land or commercial/industrial properties.

There are also 14 types of transactions which are excluded from the disclosure requirement. These excluded transactions involve the following types of transfers:

- court ordered sales
- foreclosure actions
- sale of newly constructed property not previously inhabited
- transfers between co-owners or transfers made to a family member
- transfers to or from the state or a governmental entity

- sales to a tenant who has resided in the property for at least one year prior to the purchase
- transfers by a fiduciary in administration of an estate, guardianship or trust
- inherited property where the seller has not occupied the property as a personal residence within one year immediately prior to the sale

*"The form will provide sellers with the mechanism to disclose material matters relating to the physical condition of the property."*

### PURPOSE OF THE FORM

The form will provide sellers with the mechanism to disclose material matters relating to the physical condition of the property. The form, which is to be completed by the seller, addresses matters relating to the source of the water supply system; the nature of the sewer system serving the property; structural matters including the roof, basement, foundation and

walls; mechanical systems; wood boring insects/termites; presence of hazardous materials; code violations; underground storage tanks/wells; and other known material defects in the property that are within the actual knowledge of the seller.

### PROCEDURE FOR PROVIDING THE DISCLOSURE FORM

The statute requires that the disclosure form be signed and dated by the seller and provided to a prospective buyer or his agent as soon as practicable. The buyer must acknowledge receipt of the form and return a signed and dated copy back to the seller or the seller's agent. The delivery of the form may be made by personal delivery to the other party or his agent, by ordinary mail or certified mail, or by facsimile. A seller may, but is under no obligation under the statute, amend the initial disclosure form. An amended disclosure, however, may be necessary depending on the circumstances. For example, an amended form would be appropriate when erroneous information was previously provided or conditions on the property have changed.

*(Continued on page 2)*



## **SELLER DISCLOSURE FORM** (Continued from page 1)

### **BUYERS RESCISSION RIGHTS**

As long as the disclosure form is given to a buyer prior to the time a contract is entered into, the buyer will have no rescission rights under the statute.

However, if the disclosure form or an amended disclosure form is not provided until after a contract to purchase is entered into, the buyer may rescind the contract within three business days after receipt of the form by giving written notice to the seller or the seller's agent. In this regard, the buyer's right to rescind, if applicable, only exists for 30 days after the contract is entered into or until the closing, whichever occurs first.

It is important to note that the seller's failure to provide the disclosure form does not automatically invalidate the transaction, however, the failure to provide the disclosure form will provide the buyer with the right to rescind the purchase agreement and entitle the buyer to the return of any deposits made in connection with the real estate transaction.

While the statute specifies that a buyer may waive the right of rescission if no disclosure form is delivered prior to the purchase contract being entered into, the statute does provide that the buyer's right of rescission or the absence of that right does not effect any other legal causes of action or remedies that a buyer may possess against the sellers.

### **REAL ESTATE AGENTS RESPONSIBILITY**

The statute and disclosure form specify that the representations on the disclosure form are made by the seller and are not the representations of the seller's agent or subagent. Accordingly, real estate brokers and agents must exercise care to avoid assisting the seller in completing the

form. For purposes of the real estate license laws, if an agent does assist a seller in completing the disclosure form, the agent will be responsible for the accuracy of information for which they provided assistance.

While the responsibility under the statute for providing the form is placed upon the seller, a seller's agent will have the responsibility of advising the seller of the disclosure requirement and the consequences that can occur (i.e. rescission of the contract) if the form is

***"As long as the disclosure form is given to a buyer prior to the time a contract is entered into, the buyer will have no rescission rights . . ."***

not provided prior to entering into a contract. A seller's agent, whether the listing agent or subagent, must take appropriate steps to assure that the disclosure form is properly delivered and acknowledged by a buyer prior to entering into a purchase contract. Conversely, an agent representing a buyer will have the responsibility of advising their client as to their ability to receive the disclosure form and their right of rescission in the event the form is not provided prior to entering into a contract.

### **USE OF THE FORM**

The seller disclosure law specifies that the disclosure is to be provided through the form as prescribed by the Director of the Department of Commerce. While many brokerages are currently utilizing seller property information forms on a volun-

tary basis, beginning July 1, 1993, the seller of residential property will be required to utilize the state prescribed form. Brokerages will need to take necessary steps to have sellers complete the mandatory form for use on or after July 1, 1993. In addition, brokerages cannot alter or otherwise amend the form prescribed by the Department of Commerce. This includes adding or changing questions to the form, altering the forms' appearance or including the brokerage's name or logo on the form. During the first part of June, the Division of Real Estate will be sending the approved disclosure form to all brokerages. Each brokerage should duplicate the form in a quantity sufficient to satisfy the needs of its clients. It is also anticipated that copies of the form will eventually be available through Boards of REALTORS, lenders, and business form supply entities.

In upcoming Division newsletters, specific issues relating to the licensee's responsibilities in connection with the seller disclosure form will be addressed. Additionally, licensees with questions as to the use and applicability of the form should contact private counsel or the Division of Real Estate for guidance.

## **ATTENTION BROKERS!**

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



# APPRAISER BOARD ADOPTS/AMENDS EIGHT RULES

The Ohio Real Estate Appraiser Board recently adopted one new rule and amended seven existing rules. These rules incorporate the amendments to Revised Code Chapter 4763 (Ohio Appraiser Laws) which were included in Sub. S.B. 359 which became effective on December 22, 1992. The following is a summary of the affected rules:

## 1301:11-1-09 Fees

The existing rule was amended to clarify and establish the fee assessed upon a non-resident applicant seeking to obtain a temporary certificate or license as a real estate appraiser.

## 1301:11-3-02 Effective date of certification/licensure; cancellation.

This existing rule was amended to include the term "STATE-LICENSED" real estate appraiser with respect to a person's effective date of licensure as a real estate appraiser.

## 1301:11-3-03 Pre-certification/ pre-licensure education requirements.

All certified general and licensed residential appraisers must report to the Division of Real Estate any change of their home or business address within 30 days of the change (Ohio Revised Code Section 4763.05).

The Division's Cleveland office provides an "Appraiser Multiple Change Form" to report these

This existing rule was amended to include the term "STATE-LICENSED" real estate appraiser with respect to the education requirements an applicant seeking a license as a real estate appraiser must satisfy.

## 1301:11-3-04 Experience requirements

This existing rule was amended to include the term "STATE-LICENSED" real estate appraiser with respect to the experience requirement an applicant seeking a license as a real estate appraiser must satisfy.

## 1301:11-3-05 Examination requirements

This existing rule was amended to include the term "STATE-LICENSED" real estate appraiser with respect to the examination requirement for applicants seeking a license as a real estate appraiser.

## 1301:11-3-06 Temporary Practice

This new rule was adopted to

clarify the guidelines and criteria applicable to a non-resident appraiser for a temporary certificate or license.

## 1301:11-5-01 Appraisal standards

This existing rule was amended to include the term "STATE-LICENSED" real estate appraiser with respect to the standards applicable to a state-licensed real estate appraiser.

## 1301:11-7-01 Continuing education requirement.

This existing rule was amended to include the term "STATE-LICENSED" real estate appraiser with respect to the continuing education requirements applicable to a state-licensed real estate appraiser.

Copies of these amended rules can be obtained by writing:

Ohio Department of Commerce  
Division of Real Estate  
Appraisal Section  
615 Superior Avenue N.W.  
Cleveland, Ohio 44113

## REAL ESTATE APPRAISER NEWS

changes. The form is also to be used to request the replacement of a lost or damaged license or certificate because of a name change. All change requests must be accompanied with a \$20 fee, except for a home address change.

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The Ohio Appraiser Board has

indicated that use of computer-generated forms to replicate the prescribed appraiser disclosure form is allowable. However, the language and format of the form must not be altered. There is no requirement that the Division name, address or telephone number be included on such computer-generated forms.

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# DISCIPLINARY ACTIONS

## REVOCATIONS

D. GERALD LACH, broker, Cincinnati, Ohio, had his broker's license revoked for violating Sections 4735.18 (A)(6), (A)(25) and (A)(26) of the Ohio Revised Code. This revocation became effective February 25, 1993. A sales associate of Mr. Lach's prepared and submitted an offer to purchase a property for herself. Mr. Lach failed to deposit this prospective buyer's earnest money check into his trust account in a timely fashion. Secondly, Mr. Lach failed to assure that an agency disclosure form accompanied the offer which he submitted to the seller of the subject property. Also, Mr. Lach added a provision to the purchase offer for which he did not obtain the buyer's acknowledgment. Finally, Mr. Lach failed to provide the seller with a true copy of the signed purchase agreement.

SUSAN LEVY, sales associate, Cincinnati, Ohio, had her broker's license revoked and her sales license suspended for six months for violating Sections 4735.18 (A)(6), (A)(24), and (A)(26) of the Ohio Revised Code. The revocation and suspension became effective March 11, 1993. In a fiduciary capacity, Ms. Levy received an earnest money deposit from a prospective purchaser in connection with a purchase agreement. Ms. Levy failed to deposit and/or maintain these funds in her non-interest bearing real estate trust account. When the prospective buyer did not proceed with purchasing the property, Ms. Levy issued a check to the buyer which represented the return of his earnest money. However, this check was not honored by the bank due to insufficient funds.

Also, Ms. Levy failed to maintain complete and accurate records relating to the prospective buyer's

attempt to purchase the subject property. Specifically, Ms. Levy failed to maintain a copy of the deposit slip for the prospective buyer's earnest money, as well as a copy of the trust account bank statement for that month.

## SUSPENSIONS

PAUL R. MACCOMBS, sales associate, Athens, Ohio, had his sales license suspended for 60 days for violating Sections 4735.18 (A)(6) and (A)(12) of the Ohio Revised Code. This suspension was a result of a routine compliance audit conducted by the Ohio Division of Real Estate. Mr. MacCombs began serving his suspension on March 26, 1993. Throughout 1992, Mr. MacCombs represented through purchase and listing agreement forms that he was a member of the local Board of REALTORS. However, at the time, Mr. MacCombs was not a member of this professional real estate association.

CAROL PAPPAS, sales associate, Canton, Ohio, had her sales 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 this suspension were waived by the Ohio Real Estate Commission. Ms. Pappas began serving the 15 day balance of her suspension on March 26, 1993. While Ms. Pappas was licensed with one real estate brokerage, she entered into property management agreements for another real estate brokerage. Ms. Pappas agreed to manage properties in a name other than the name of the real estate brokerage with whom her license was associated.

PHYLLIS ROBERTS, sales associate, Cincinnati, Ohio, had her sales license suspended for 30 days for violating Sections 4735.18 (A)(6)

and (A)(21) of the Ohio Revised Code. However, due to mitigating circumstances, 15 days of the suspension were waived by the Commission. Ms. Roberts began serving the 15 day balance of her suspension on March 26, 1993. Ms. Roberts represented through MLS that a property she listed had a public water system. However, Ms. Roberts knew or should have known that the subject property did not have public water, but only had the ability to be hooked-up to the public water system.

ROGER SHAW, sales associate, Logan, Ohio, had his sales license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. This suspension began on March 26, 1993. Mr. Shaw executed a purchase agreement, addendum, and agency disclosure form representing himself as the owner/seller of the subject property, when in fact, he did not own the property.

MONICA STITH, broker, Columbus, Ohio, had her broker's license suspended for 45 days for violating Sections 4735.18 (A)(6) and (A)(26) of the Ohio Revised Code. This suspension was a result of a routine compliance audit conducted by the Ohio Division of Real Estate. Ms. Stith began serving her suspension on March 26, 1993. Ms. Stith received earnest money in a fiduciary capacity in connection with two separate agreements to purchase a property. However, Ms. Stith failed to continuously maintain these funds in her non-interest bearing trust account.

JOHN VODOPICH, sales associate, Canton, Ohio, had his sales license suspended for 30 days for violating Section 4735.18 (A)(6) of the

*(Continued on page 5)*



# DISABILITY ACT AFFECTS MANY LICENSEES

The Americans with Disabilities Act of 1990 (ADA) was enacted to protect Americans with disabilities from discrimination in the work place. The real estate industry is impacted by the legislation. Issues include the broker and agent's secondary responsibility as the buyer's, seller's, lessor's or lessee's agent as well as providing workplace accessibility for the disabled.

Title I of ADA requires that employers provide "reasonable accommodations" allowing disabled individuals equal opportunities in all aspects of employment. Title III of ADA addresses public accommodations and services in commercial facilities. Those included as responsible for provisions of Title III are owners, lessors, lessees and operators of public

accommodations. Brokers and other businesses are accountable under the provision of the ADA for not providing ready accessibility to their place of business for persons with disabilities.

Particularly affected are those brokerages that conduct property management activities. Although the ADA doesn't directly address residential property (the Fair Housing Act and subsequent amendments cover residential property), many other types of property owned or managed by the real estate brokerages are impacted, and the property management firm may be responsible for compliance. Properties impacted include office buildings, shopping malls, restaurants, hospitals, convention centers, etc.

Brokers also have an agency responsibility under ADA for any property bought, sold, or leased using the services of their business. Brokers and agents should disclose any known ADA infringements to buyers, sellers, or lessees.

This article was included for information purposes only. The requirements of Ohio law may in some cases be different. The Ohio Real Estate Commission has no regulatory authority under ADA and cannot answer questions regarding it. If you have any questions or would like further information regarding ADA, you may contact the Ohio Civil Rights Commission, Staff Development Section at (614) 466-6157 or its Special Enforcement Section at (614) 644-7706.

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## DISCIPLINARY ACTIONS *(Continued from page 4)*

Ohio Revised Code. However, due to mitigating circumstances, 15 days of the suspension were waived by the Commission. Mr. Vodopich began serving the 15 day balance of his suspension on March 26, 1993. Mr. Vodopich authorized or permitted sales associate Carol Pappas to manage properties in a name other than the name of her real estate brokerage.

H. KENNETH WAKEFIELD, sales associate, Granville, Ohio, had his sales 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. Wakefield began serving the 15 day balance of his suspension on March 26, 1993. Mr. Wakefield accepted and deposited into his brokerage's trust account an earnest money deposit from a prospective purchaser of a property. The prospective purchaser did not proceed with purchasing the

subject property. Thereafter, Mr. Wakefield returned the earnest money to him without a written release from the seller, and without a court order.

MYRTLE E. WILLIAMS, broker, Columbus, Ohio, had her broker's license suspended for six months for violating Sections 4735.18 (A)(6) and (A)(26) of the Ohio Revised Code. This suspension was a result of a routine compliance audit conducted by the Ohio Division of Real Estate. Ms. Williams began serving her suspension on March 26, 1993. Ms. Williams prepared purchase contracts for eight different properties wherein each contract provided for an earnest money deposit. A review of Ms. Williams' trust account bank statements indicates these earnest monies were either not placed in her trust account, or not continuously maintained in the account.

JANE S. WOOD, broker, Athens, Ohio, had her broker's license sus-

pending for 60 days for violating Sections 4735.18 (A)(6) and (A)(12) of the Ohio Revised Code. This suspension was a result of a routine compliance audit conducted by the Ohio Division of Real Estate. The suspension shall commence upon the reinstatement of Ms. Wood's license. Throughout 1992, Ms. Wood represented through purchase and listing agreement forms that she was a member of the local Board of REALTORS. However, at the time, she was not a member of this professional real estate association.

## 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:

	Amt. Pd.	Date Pd.
Nancy Dickens	\$8,500	3-16-93
Samuel Johnson & Earsie Mack	\$1,000	3-16-93



## 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	FOREIGN SALES COLUMBUS
June 2/17	June 7	June 8
July 7/15	July 12	July 13
Aug. 4/19	Aug. 2	Aug. 10
Sept. 1/23	Sept. 13	Sept. 14

(Additional exams may be added if warranted)

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.

### APPRAISER CERTIFICATION EXAMS (GENERAL AND RESIDENTIAL)

COLUMBUS	CLEVELAND
June 3, 24	June 15
July 8, 22	July 13
Aug. 5, 19	Aug. 17
Sept. 2, 16	Sept. 21

## REAL ESTATE REMINDER

Some licensees, when preparing offers to purchase, acknowledge receipt of deposits that they have not yet received, but which are to be paid at a later date (i.e. upon acceptance of the offer). The acknowledgment is typically either the licensee's typewritten or handwritten name along with the dollar amount in the earnest money box/line on the purchase agreement.

The offer to purchase should accurately reflect the status of the deposit. The misrepresentation of the receipt of a deposit can result in the initiation of disciplinary action. To prevent problems from arising, the offer to purchase should clearly identify if the deposit has been delivered to the licensee or whether the deposit is to be provided at some other time (i.e. at time of acceptance or within a specified time period after acceptance of the offer).



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