



## PROPER HANDLING OF EARNEST MONEY REVIEWED

Prior Division newsletters have stressed the importance of a licensee's handling of earnest money deposits and the laws/guidelines which licensees must comply with in maintaining and disbursing such deposits. One of the most common violations committed with respect to earnest money is the improper disbursement of earnest money when a transaction does not close.

To avoid confusion and many of the problems which exist in handling earnest money deposits, licensees should carefully review with both the buyer and seller the earnest money provision contained in the contract form utilized by the brokerage. While many purchase agreements reviewed by the Division clearly indicate how the earnest money will be handled in the event a transaction does not close, a large number of agreements do not adequately address the disposition of the earnest money. Even in transactions where the purchase agreement specifies that the funds will not be disbursed without a release being signed by both the buyer and seller, all too often this provision is not clearly explained to the parties prior to a contract being signed. Rather, the buyer often incorrectly assumes

that the earnest money will automatically be returned if they do not go through with the transaction.

By having clear, unambiguous language in the purchase agreement and carefully reviewing the provision with the parties, licensees can avoid allegations that the earnest money is not being properly handled in the event the transaction does not close.

As all terms and conditions in purchase agreements are negotiable between the buyer and seller, licensees may want to review with their clients (and legal counsel)

possible language to include in purchase agreements to address the handling of earnest money deposits in the event the transaction does not close. The following is a sample clause which could be included in purchase agreements to specifically address this issue:

*Buyer has deposited with Broker the sum receipted for below, which shall be returned to Buyer, upon Buyer's request, if no contract shall have been entered into. Upon acceptance of this contract by both parties, Broker shall deposit such*

*(Continued on page 4)*



*Division of Real Estate public inquiries assistant Craig Howell explains how to properly complete a sales transfer application.*

## TEST RESULTS

Below are the examination statistics for the second half of 1992:

### BROKERS

Test Date	Total Tested	Total Passed	Pass Rate
July	15	10	67%
August	21	15	71%
September	24	16	67%
October	20	13	65%
November	33	21	64%

### SALES

Test Date	Total Tested	Total Passed	Pass Rate
July	552	312	56%
August	547	310	57%
September	415	219	53%
October	419	216	52%
November	555	369	67%

### FOREIGN REAL ESTATE SALES

Test Date	Total Tested	Total Passed	Pass Rate
July	3	1	33%
August	7	6	86%
September	1	0	0%
October	4	3	75%
November	2	2	100%

### APPRAISER (GENERAL)

Test Date	Total Tested	Total Passed	Pass Rate
August	5	3	60%
September	5	5	100%
October	2	1	50%
November	6	4	67%
December	13	10	77%

### APPRAISER (RESIDENTIAL)

Test Date	Total Tested	Total Passed	Pass Rate
August	18	10	56%
September	14	6	43%
October	20	9	45%
November	35	21	60%
December	78	43	55%

## FUND ADVANCES EDUCATION, RESEARCH

The Education and Research Fund, administered by the Ohio Real Estate Commission, advances real estate education and research in Ohio.

One of the main purposes of the Education and Research Fund is to support and advance real estate education at Ohio's colleges and universities. Over the past three years, grants have been made to the University of Akron, University of Cincinnati and Cleveland State University to provide support to their real estate programs. In addition, grants have been made to Ohio State University's Center for Real Estate Education and Research to sustain their on-going research and education programs. The Center supports education projects designed to assist Ohio institutions of higher education that offer real estate licensure courses. These projects include developing and updating instructor's manuals with respect to content development, and sponsoring continuing education programs for the practitioner and academician. The Center also serves as a focal point for real estate research. Research topics are selected by a consensus of real estate professionals and government agency representatives with funding ultimately approved by the Ohio Real Estate Commission.

The Commission encourages the submission of ideas for real estate research projects that relate to issues currently affecting the real estate industry in Ohio which would be beneficial to the industry in the future.

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DEPARTMENT OF COMMERCE  
DIVISION OF REAL ESTATE  
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# OHIO APPRAISER LAWS RECENTLY AMENDED

## STATE LAWS IN LINE WITH FEDERAL APPRAISER LAWS

Ohio's appraiser laws were recently amended to bring state law into line with existing appraiser laws at the federal level. This occurred when Governor George V. Voinovich signed Substitute Senate Bill 359 into law on December 22, 1992. A summary of the bill's key provisions is provided below:

**State-Licensed Residential Designation:** Individuals who were issued a **state-certified** residential certificate are now deemed to be "**state-licensed residential**" real estate appraisers. This change in terminology is designed to make Ohio's residential designation consistent with the federal designation. It is important to note that this change does not alter the authority of those who previously were designated as state-certified residential real estate appraisers.

Individuals who were issued a "residential certificate" should use the correct designation (i.e., state-licensed residential) in representing themselves in advertising or in a particular appraisal assignment.

**Definition Changed for State-Licensed Residential Appraisers:** Based upon the amendments, a state-licensed residential appraiser is authorized to perform appraisals of non-complex 1 to 4 unit single-family residential real estate having a transaction value of less than \$1 million and complex 1 to 4 unit single-family residential real estate having a transaction value of less than \$250,000.

(For purposes of this provision, "transaction value" means the loan amount and not the value of the property.) This amendment brings the types of properties which may be appraised by an Ohio state-licensed residential appraiser in line with that established on the federal level.

**Qualifying Appraisal Experience:** The law amended Revised Code Section 4763.05 regarding the time period for which appraisal experience may be claimed towards satisfying the requirements to be seated for the examination. Previously, an applicant's appraisal experience had to be obtained within the five-year period immediately preceding the filing of their application. This restriction was eliminated. Accordingly, an appraiser's experience will not be rejected on the basis of when the work was completed.

**Pre-Licensing/Pre-Certification Education:** The types of acceptable entities to offer pre-license/pre-certification education was amended to add "state and federal agencies". To be acceptable, this education must be provided in at least 15 classroom hour segments, cover specific appraisal topics, and the applicant must have successfully completed the course by examination.

**Certificate/License Renewal Period Changed to One Year:** Under the original law, appraiser certificates and licenses were valid for a period of two years. Under the new

law, general certificates and residential licenses are subject to an annual renewal. For those who received two-year certificates or licenses, the conversion will occur at the time of their first renewal. Please note that this change does not affect the appraiser's requirement to complete 20 hours of continuing education within two years from when their license/certificate is originally issued and every two years thereafter.

**Mandatory Disclosure Form:** Revised Code Section 4763.12(C) requires the Appraiser Board to approve a disclosure form that all certified and licensed appraisers must complete and furnish in conjunction with an appraisal assignment or specialized services performed. The Board is in the final stages of developing this form and anticipates mailing a working original to all appraisers in April, 1993.

**Temporary Practice:** The amendments to the appraiser laws added a temporary practice provision in accordance with the requirements of Title XI of the U.S.C.A. A non-resident appraiser may apply for a temporary certificate or license if the property to be appraised is part of a federally-related transaction, the appraiser's business is of a temporary nature, and the appraiser registers with the state regulatory agency. The temporary certificate or license only applies to the appraisal of one real estate property located in Ohio.

## MANY APPRAISERS MUST COMPLETE CONTINUING ED

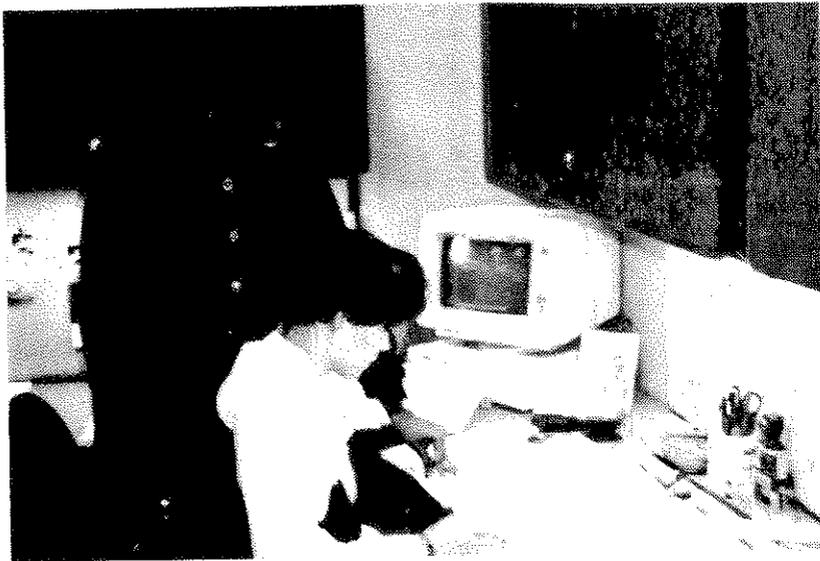
Division records indicate that many state-certified and state-licensed real estate appraisers who took advantage in 1991 of the early application filing will be renewing their licenses/certificates over the next few months, but have yet to submit proof of completing their pre-licensing/pre-certification education.

To renew a general certificate, the appraiser must submit proof of completing a total of 165 classroom hours of appraisal education, with at least 15 hours covering the Standards of Professional Appraisal Practice. To renew a residential license, the appraiser must submit proof of completing a total of 75 classroom hours of appraisal education, with at least 15 hours covering the Standards of Professional Appraisal Practice.

In addition, all appraiser licensees/certificate holders must complete 20 hours of appraiser continuing education. An individual cannot apply the credits of the same course to satisfy both their pre-licensing/pre-certification education and continuing education requirements, even if the course is otherwise acceptable for both purposes.

It is the individual appraiser's responsibility to insure that proof of completion of the courses to fulfill their education requirements is submitted to the Division of Real Estate. Letters were sent by the Division in late 1991 and early 1992 as to the status, at that time, of all licensees/certificate holders who had not yet satisfied their education requirements.

Anyone who has questions concerning the acceptability of a course or desires to acquire their exact education status should contact the Division's Appraiser Section at (216) 787-3100.



*Division of Real Estate interns Carolyn Lane (standing) and Teresa Sullivan discuss correspondence from a real estate licensee.*

## EARNEST MONEY *(Continued from page 1)*

*amount in its trust account to be disbursed, subject to collection by Broker's depository, as follows: a) if Seller fails or refuses to perform, or any contingency is not satisfied or waived, the deposit shall be returned; (b) deposit shall be applied on purchase price or returned to Buyer when transaction is closed; (c) if Buyer fails to perform, the deposit shall be returned to Buyer, unless the Seller, upon notice of the Buyer's failure, demands in writing the earnest money deposit within 20 days of the stated closing date in the contract. In the event a demand is made by Seller, Broker shall retain the deposit until (i) Buyer and Seller have settled*

*the dispute; (ii) disposition has been ordered by a final court order; or (iii) Broker deposits said amount with a court pursuant to applicable court procedures. (Note: With this type of clause, the licensee would not be required under the license laws to obtain a release from the Seller if a written demand is not made by the Seller.)*

Any such clauses utilized should be carefully reviewed to determine whether they are in your client's best interest. It is also important to note that while the Division of Real Estate does not endorse or approve any particular earnest money provisions, a licensee should exercise extreme care to assure that they are not making legal determinations.

## CLEVELAND OFFICE ADMINISTERS REAL ESTATE APPRAISER PROGRAM

Please note that the Division of Real Estate recently transferred the administration of the appraiser program to its Cleveland office. With this transition, all appraiser certification and licensure applications, temporary practice permits and general inquiries will be handled by the Cleveland office. However, testing will continue to be conducted in both Columbus and Cleveland.

Currently, the Columbus office will continue to handle the appraiser continuing education functions through its education section. The address for the Cleveland office is:  
Ohio Division of Real Estate  
615 Superior Avenue N.W.  
Room 525  
Cleveland, OH 44113  
(216) 787-3100



# DISCIPLINARY ACTIONS

## REVOCACTION

CHAD VAN VOORHIS, sales associate, Wapakoneta, Ohio, had his sales license revoked for violating Section 4735.18(A)(6) of the Ohio Revised Code. This revocation became effective December 7, 1992. Mr. Van Voorhis obtained listing agreements from the sellers of six different properties. He altered the listing forms so that several references were made to The Sidney Board of Realtors. Mr. Van Voorhis knew or should have known that no such organization existed.

## SUSPENSIONS

PAUL E. GROENIGER, sales associate, Worthington, Ohio, had his sales license suspended for 30 days for violating Section 4735.18(A)(21) as it incorporates Section 4735.16 of the Ohio Revised Code. This suspension began on December 17, 1992. Mr. Groeniger repeatedly caused advertising to be published where the name of his broker, North, was not displayed in equal prominence with his (Groeniger's) name.

ALBERTA LIVSEY, broker, Spring Valley, Ohio, had her broker's license suspended for 30 days for violating Sections 4735.18(A)(6) & (A)(26) of the Ohio Revised Code. However, due to mitigating circumstances, 15 days of the suspension were waived by the Ohio Real Estate Commission. The 15-day balance of the suspension began on February 19, 1993. Ms. Livsey received an earnest money deposit in connection with a buyer's agreement to purchase a property. Ms. Livsey placed these funds, which she received in a fiduciary capacity, in her real estate brokerage trust account. Thereafter,

without the consent of the buyer or pursuant to a court order, Ms. Livsey withdrew the funds from the trust account and deposited them into her personal account.

GEOFFREY MOORE, sales associate, Cleveland, Ohio, had his sales license suspended for violating Ohio Revised Code Section 4735.18(A). Mr. Moore's real estate license was suspended for the duration of his court ordered probation or until he was placed on inactive probation by the U.S. District Court, whichever occurred earlier. This suspension began on February 19, 1993 and ended on February 24, 1993. Mr. Moore was convicted of knowingly attempting to possess with intent to distribute marijuana in violation of Title 21 U.S.C. Section 841 (a)(1), 841 (b)(1)(D), & 846.

DONNA ONDA, sales associate, Cleveland, 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 December 1, 1992. Ms. Onda listed a property for sale.

Thereafter, prospective buyers entered into an agreement to purchase the subject property. However, Ms. Onda failed to disclose material information to these buyers prior to their entering into the purchase agreement, specifically, the existence of a gas well on the property.

ROBERT E. PLAISTED, broker, New Lexington, Ohio, had his broker's license suspended for one year for violating Sections 4735.18(A)(6) & (A)(26) of the Ohio Revised Code. This suspension began on February 19, 1993. Mr. Plaisted received an earnest money deposit in connection with a contract to purchase property. Mr. Plaisted

placed these funds, which he received in a fiduciary capacity, in his real estate brokerage trust account. However, he failed to continuously maintain these funds in his trust account. Mr. Plaisted systematically withdrew these funds and disbursed them to himself.

ALONZO C. RUPERT, sales associate, Lima, Ohio, had his sales license suspended for 90 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. This suspension began on December 1, 1992. Mr. Rupert received a check from a property owner in anticipation of the owner entering into a listing agreement with his brokerage. All or part of this money was to be used in connection with submitting the subject property to the local Multiple Listing Service. However, Mr. Rupert cashed the check prior to a listing contract being executed by the property owner. Mr. Rupert failed to utilize the funds for the purpose they were given to him, and failed within a reasonable time to remit the money to the property owner. Mr. Rupert also signed the property owner's name on a provision of the listing agreement without the owner's knowledge or written 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:

	Amount	Date
Frank Lomicka	\$515	11-5-92
Will Burson	\$9,426	12-23-92
Osmon Walker	\$5,000	1-15-93
Darrel Muncy	\$20,000	1-15-93



## 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
April 7/15	April 5	April 13
May 5/20	May 3	May 11
June 2/17	June 7	June 8
July 7/15	July 12	July 13

(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
April 1, 14	April 13
May 6, 20	May 18
June 3, 24	June 15

## REGISTRATION REQUIREMENT ELIMINATED

Real estate brokers no longer need to register their license or their salesperson's licenses with the Clerk of Courts in the county in which the broker maintains its place of business. Substitute Senate Bill 359 amended Revised Code Section 4735.16(C) resulting in the elimination of this requirement. This law change went into effect immediately.

It is important to remember that while licenses are no longer required to be registered, an individual cannot engage in any conduct for which a real estate license is required on behalf of a brokerage until the individual's license is issued by the Division of Real Estate.



State of Ohio  
Department of Commerce  
Division of Real Estate  
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Columbus, OH 43266-0547



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