



COMPLIANCE AUDITS: WHAT TO EXPECT

In March, the Division's investigators conducted 47 audits of the business records of real estate brokers. The majority were routine audits of brokerages across the state. Many brokers may recall being visited by a Division investigator for such an audit. However, other brokers who have recently become licensed may never have been audited. The purpose of this article is to give those new brokers an idea of what to expect when they are audited and to also refresh the memories of those other brokers who may not have been audited for several years.

Under Ohio Revised Code Section 4735.05, the Division of Real Estate is required to maintain an audit section and to review and audit the business records of real estate brokers. The purpose of conducting an audit is to assure that a broker is conducting business in accordance with the provisions of the real estate license laws. An audit also provides brokers with an opportunity to review license law requirements with a Division representative and to go over any questions they may have regarding trust accounts, advertising, or any other issues of concern.

Generally, audits are done on a random basis from the Division's computerized print-out of brokerages. If you are chosen to be audited, you will be contacted by an investigator from the Division's Enforcement Section. The investigator will attempt to schedule the

"As possible, if areas of non-compliance are found, the investigator will work with the broker to make the necessary corrections."

audit for a date that is convenient for both of you. Before the audit, you should have the following items ready for the investigator's review:

- your trust account columnar records
- your latest trust account bank statement and the cancelled checks reflected on that statement
- deposit receipts
- samples of your business cards, yard signs, stationery, envelopes and newspaper advertisements

- all licenses in your possession
- all current listings, purchase contracts, and pending offers to purchase

During the audit, the investigator will be checking to assure that the following license law requirements are being met:

- That a regular place of business is being maintained
- That there is a sign on the premises plainly identifying the real estate brokerage
- That the brokerage license is prominently displayed and that a copy of any branch office license and the licenses of all sales associates are readily available for inspection
- That all forms of advertising (including yard signs, business cards, letterhead, and newspaper) properly identify the brokerage by the name that appears on the brokerage license
- That all advertising adequately identifies the brokerage as a licensed real estate brokerage
- That the name of a salesperson is not more prominent than that of the brokerage in advertising
- That an Equal Opportunity Housing poster is displayed in

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COMMUNICATIONS WITH COMMISSIONERS CLARIFIED

As noted at a recent ARELLO conference, applicants or licensees involved in an administrative action or investigation are often tempted to contact a member of the state Real Estate Commission directly to discuss their case. Although in doing so they may have good intentions, the effect can cause more damage than good.

A private communication with a commissioner concerning a matter which is, or may become the subject of an administrative action is called *ex parte* communication. Such communication, when a decision is pending or an investigation is in process, is not proper.

If a person discusses a specific case or pending matter with a commissioner, the commissioner will be required to abstain from participating, discussing, or voting in the case. Generally, an applicant

or licensee will just want to discuss the matter with a commissioner or get a feel of how the Commission will decide a particular case. However, the applicant or licensee risks rendering the commissioner, who may be favorable to the caller's position, ineligible to participate in the decision making process.

It is important to understand that the Commission is composed of five individuals who, when acting as individuals, have no authority to act on an application, receive information on behalf of the Commission, or direct the staff of the Division of Real Estate to take specific action. The Commission's authority to act exists only during lawfully convened Commission meetings and while performing functions in their official capacities.

If you have a matter pending or under investigation, or if you desire

information about a certain matter, you should contact a Division of Real Estate staff member. Questions regarding investigations should be directed to the investigator assigned to the case. If disciplinary action is involved, Division legal counsel or your private counsel will be able to answer procedural questions.

The Division of Real Estate will attempt to answer your inquiries and provide you with information whenever possible. However, you should not attempt to contact any member of the Commission directly if you are the subject of an ongoing investigation or administrative action.

Commission meetings are open to the public. Applicants and licensees may present oral and written testimony at the meeting at which their case is discussed (subject to some procedural constraints).

COMPLIANCE AUDITS *(Continued from page 1)*

the office and the similar brochure is readily available

- That listing contracts include a definite expiration date, with the number of days of the listing and noted expiration date coinciding; the rate of commission is noted; and that they have been properly executed
- That the broker is maintaining a non-interest bearing trust account at an Ohio depository and that this account is designated as either a "trust" or "special" account; this account must be in the brokerage name as it appears on the brokerage license
- That all monies received in a fiduciary capacity are deposited and maintained in the brokerage trust account, and that columnar

form records are kept for all such funds

- That all monies received in a fiduciary capacity for property management activity are deposited and maintained in a brokerage property management trust or special account, and that columnar form records are kept for all such funds
- That no personal funds of the broker (beyond a minimum amount necessary to cover any service fee charges or to have service charges waived) are in the brokerage trust or special account(s)

During the course of the audit, the investigator will complete a checklist verifying compliance with these requirements. The investigator will also use your

trust account records and statement to insure the brokerage can account for funds received in a fiduciary capacity. Both the checklist and audit will be reviewed at the conclusion of the compliance audit. As possible, if areas of non-compliance are found, the investigator will work with the broker to make the necessary corrections.

It is hoped that this article will help to relieve some of the natural anxieties that are experienced by brokers when they are contacted by an investigator to schedule an audit. It is also hoped that brokers will look upon a compliance audit as a positive opportunity to meet with a Division representative and to receive assistance as may be necessary.



REQUIREMENTS FOR ADVERTISING REVIEWED

The Division regularly receives questions from licensees on the format and content of their advertisements.

In response to these inquiries, the license law requirements regarding advertising are reviewed below:

The law regarding advertisements by licensees is found in Section 4735.16 of the Ohio Revised Code and in Rule 1301:5-1-02 promulgated by the Ohio Real Estate Commission. The law and rule basically require that licensees must be identified in all advertisements "by name and by indicating that he is a real estate broker or salesman."

Under Rule 1301:5-1-02, name identification in advertising by a licensee can only consist of the name of the person, corporation or partnership as it appears on the license issued by the Division. There are, however, three exceptions to this rule. They are:

1) If a broker has been granted permission by the Superintendent to do business in a trade name or "dba"

(doing business as), this name as it appears on the license must be used in all advertisements.

2) Terms such as "Inc." or "Co." that appear in the licensed name to indicate the brokerage's legal framework may be omitted from advertisements.

3) The words "Realty", "Real Estate" or an insignia indicating membership in a real estate organization (e.g., the name Realtor or "R") may be used in advertising even if these words or the insignia are not included in the name as it appears on the real estate license.

It is important for brokers to remember that if they opt to advertise under any of these exceptions, they should do so on a consistent basis. For example, if broker John Doe adds the words "Real Estate" to his name and advertises as "John Doe Real Estate", he should do so consistently in all advertisements.

Besides advertising by name, brokers must be identified in their advertisements as a broker. If the

words "real estate", "realty" or a trade insignia is utilized in a broker's name, the Division considers that to be acceptable identification of his status as a broker. If such words are not used, then the ad must identify the person as a broker.

As to salespersons, their advertisements must likewise identify them by name. Additionally, Ohio Revised Code Section 4735.16(B) requires that all advertisements by a salesperson include the name of the broker with whom he/she is affiliated. Further, the name of the broker must be displayed in at least equal prominence with that of the salesperson.

These requirements regarding the form of advertisements by brokers and salespersons apply not only when they are acting in their capacity as a licensee, but also when they are advertising the sale or lease of their own personal property. Thus, if broker John Doe is selling his own house, he must advertise as John Doe, Broker/Owner. Likewise, a salesperson selling or leasing property she owns must advertise as Jane Smith, Owner/Agent. In the latter situation, Jane Smith should not include the name of her broker, unless she has actually listed the property with her broker.

A broker or salesperson should realize that if he or she advertises in a manner other than provided in Section 4735.16 of the Ohio Revised Code or Ohio Administrative Code Rule 1301:5-1-02, he or she can be found guilty of violating section 4735.18(A)(21) of the Revised Code.

The purpose of this article is to help educate Ohio's licensees regarding these advertising requirements so they may avoid a violation of these provisions. If you have any questions regarding these requirements, please contact the Division's Enforcement Section at (614) 466-4100.

COMMISSION RECOGNIZES HELEN



The Ohio Real Estate Commission recently recognized Helen Hendershot for her 40 years of continuous state service with the Ohio Division of Real Estate. Helen serves as secretary for the Commission. Director of Commerce Donna Owens and Superintendent Ronald Rotaru joined in congratulating Helen on a job well done.

DISCIPLINARY ACTIONS

REVOCATIONS

CAROL McGLOTHAN, sales associate, Cleveland Heights, Ohio, had her sales license revoked for violating Section 4735.18 (A)(6) of the Ohio Revised Code. This revocation became effective on January 26, 1994. In two separate cases, Ms. McGlothan received funds in a fiduciary capacity in connection with a buyer's offer to purchase property. These funds were to be deposited in her brokerage's real estate trust account. However, Ms. McGlothan failed to deposit and/or assure that the funds were deposited in the brokerage trust account per the terms of the purchase agreement.

QUANG NGUYEN, sales associate, Englewood, Ohio, had his sales license revoked for violating Sections 4735.18 (A)(6) & (A)(9) of the Ohio Revised Code. This revocation became effective on March 9, 1994. Mr. Nguyen collected a real estate commission in his own name and not through the broker with whom he was licensed. In another transaction, Mr. Nguyen prepared an offer on behalf of the purchaser of a property. Mr. Nguyen noted on the offer that he had collected and received an earnest money deposit from the purchaser. Mr. Nguyen collected this earnest money in his own name and not in the name of and with the consent of the broker with whom he was licensed.

SUSPENSIONS

MICHAEL R. BAUGHMAN, broker, Dayton, Ohio, had his broker's license suspended for 15 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code.

Mr. Baughman began serving his suspension on February 28, 1994. For eight months, Mr. Baughman failed to maintain a separate trust account designated as a property management trust account in connection with his management of a property. Also, Mr. Baughman issued a check from his trust account which was not honored by the bank due to insufficient funds.

TERRENCE K. JARBEAU, broker, Beavercreek, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, 15 days of the suspension were waived by the Ohio Real Estate Commission. Mr. Jarbeau began serving the 15-day balance of his suspension on February 28, 1994. A property owner entered into a contract prepared by Mr. Jarbeau to sell a property. In connection with this contract, an earnest money deposit was placed in Mr. Jarbeau's brokerage trust account. The prospective purchaser did not proceed with the purchase of the subject property. Without the consent of the seller, Mr. Jarbeau authorized the return of the earnest money to the buyers.

HOWARD D. LEATHERMAN, broker, Canton, Ohio, had his broker's license suspended for 60 days for violating Sections (A)(6) & (A)(26) of the Ohio Revised Code. This suspension began on December, 1993. A buyer of a property provided Mr. Leatherman's brokerage with an earnest money deposit. Mr. Leatherman failed to assure maintenance of these funds,

received by his brokerage in a fiduciary capacity, in a non-interest bearing real estate trust account. Furthermore, the Ohio Division of Real Estate issued a subpoena pertaining to the investigation of this matter. The subpoena required Mr. Leatherman to produce the records of his brokerage's trust account. Mr. Leatherman failed to obey the subpoena issued.

DENNIS J. LYNCH, broker, Rocky River, Ohio, had his broker's license suspended for 30 days for violating Sections 4735.18 (A)(6) & (A)(19) of the Ohio Revised Code. Due to mitigating circumstances, however, imposition of the suspension was waived by the Ohio Real Estate Commission. Mr. Lynch negotiated the sale of a property with the owner when he knew that the owner had a written outstanding exclusive agency contract with another brokerage.

RONALD L. POWERS, broker, Norton, Ohio, had his broker's license suspended for 45 days for violating Sections (A)(6) & (A)(26) of the Ohio Revised Code. This suspension began on April 20, 1994. A buyer of a property provided Mr. Powers' brokerage with an earnest money deposit. Mr. Powers failed to assure the maintenance of these funds, received by his brokerage in a fiduciary capacity, in a non-interest bearing real estate trust account.

VIVIAN E. RIDLEY, broker, Cleveland, Ohio, had her broker's

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CONTINUING EDUCATION REMINDER

In the last Division Newsletter, real estate licensees whose continuing education is due on or before January 31, 1995 were reminded of their continuing education requirements. While many licensees wait until the last minute to submit proof of completing their courses, by doing so, they are taking the risk of such classes not being available.

Once again, if your continuing education is due by January 31, 1995, proof of completion must be submitted prior to this date. Otherwise, your license will be **automatically suspended**.

When you have your total 30 hours completed, send in your certificate(s) of completion along with the required compliance form to the Division. This compliance form must be **typed**. Only black ribbon will be accepted. If you need one of these forms, or a list of approved courses available in your area, please contact our Continuing Education Section at (614) 466-4100.

For those of you who may have taken some course work, but have not completed a total of 30 classroom hours, please do not send it in

to the Division until you have completed the remainder of the required hours. As a professional licensee, it is your responsibility to maintain records of the education you take. Not until the classroom hours you have taken total 30 hours will it be accepted by this Division.

Remember, submitting your continuing education early will not affect future education reporting periods. Therefore, it is important to make arrangements now to complete these courses in order to avoid the suspension of your license.

DISCIPLINARY ACTIONS *(Continued from page 4)*

license suspended for 60 days for violating Section 4735.18 (A) of the Ohio Revised Code. This suspension began on February 28, 1994. Ms. Ridley was convicted of conspiracy to submit false statements or entries to the United States in violation of Title 18 U.S.C. Section 371 in the U.S. District Court for the Northern District of Ohio.

MONICA STITH, broker, Columbus, 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 Commission. Ms. Stith began serving the 15-day balance of this suspension on April 8, 1994. In three separate cases, Ms. Stith received an earnest money deposit in connection with a purchase

contract. Ms. Stith failed to continuously maintain these funds, received in a fiduciary capacity, in her real estate trust account. Also, for eight months, Ms. Stith utilized funds in her brokerage trust account for personal uses. She failed to keep her real estate trust account separate and distinct from her personal account.

MARK A. TOTH, broker, RONALD C. HARBERT, sales associate, and ANDREWS AGENCY, INC., corporate broker, Canton, Ohio, were each suspended for 45 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. Due to mitigating circumstances, however, 15 days of each suspension were waived by the Commission. The respondents began serving the 30-day balance on April 8, 1994. Andrews Agency

obtained an exclusive listing on a property. Respondents Toth and Harbert were licensed with Andrews Agency. Respondent Harbert agreed to act as agent for the buyer to purchase the subject property thereby creating a dual agency representation. However, the respondents failed to obtain the written consent of the sellers to such dual representation.

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:

Licensee	Amt. Pd.	Date Pd.
Frank Lomicka	\$5,815	3-10-94
Alliance of Real Estate Coops	\$6,801	4-14-94

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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
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June 1/16	June 13
July 6/14	July 11
Aug. 3/18	Aug. 1
Sept. 7/22	Sept. 12

(Additional exams may be added if warranted)

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

TENTATIVE REAL ESTATE APPRAISER EXAMS

COLUMBUS	CLEVELAND
June 9, 23	June 14
July 7, 21	July 19
Aug. 11	Aug. 16
Sept. 8	

REGIONAL APPRAISER MEETING

The Appraisal Standards Board of the Appraisal Foundation will be hosting regional informational meetings regarding the recently adopted Statement on Appraisal Standards No. 7 on *Permitted Departure from Specific Guidelines for Real Property Appraisals*.

Seven regional meetings will be held across the country with Chicago being the nearest meeting site for Ohio residents. The Chicago meeting will be held on June 27, 1994 at the Bismarck Hotel, 171 West Randolph Street, (800) 643-1500.

The one-day meetings will be open to appraisers, users of appraisal services, regulators and education providers. The cost is \$90 and includes continental breakfast, lunch and all materials. To register, call the Appraisal Foundation at (202) 347-7722.



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Division of Real Estate
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