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Division of

Real Estate and Professional Licensing

◆ N E W S L E T T E R ◆

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Regulation of the Real Estate and Appraisal industries includes a side that most of us don't like to think about - *enforcement*. It's a rather harsh word, but it is an important part of the Division's role to ensure that the real estate and appraiser licensing laws are being followed. The Division is not alone in these efforts. Most of our cases alleging real estate advertising violations are brought to us by licensees, and the overwhelming majority of appraiser complaints are filed by other appraisers involved in the review process. These professionals aim to ensure that those working in the real estate and appraiser industries live up to the established standards.

by Superintendent Kelly Davids

The number of complaints that are filed with the Division continues to grow. Last year the Division received 502 real estate complaints - an increase of six percent

over the previous year and the appraiser case count went up by more than fourteen percent with 153 complaints received. Our ten investigators keep very busy as they thoroughly review each case.

This issue of the *Newsletter* focuses on enforcement. You will find information to help you stay out of trouble as well as what to expect should you find yourself in the process. I hope you will take time to read each article thoroughly - not just the disciplinary section which by all accounts is everyone's must read. Among the pages you will find information about the hearing process, options for mediation and settlement agreements, the importance of securing your electronic signature, and more.

Recently, I had the opportunity to attend the Ohio Association of REALTORS' Inaugural dinner. I enjoyed the enthusiasm of incoming President Darleen Breen and was particularly struck by the officers' oath *to provide assistance wherever possible to the members and staff of the Division of Real Estate in the enforcement of the licensing statutes*. We appreciate that assistance, and although enforcement may not be our favorite task at hand, together we will use it as a way to achieve our mission to provide fair and consistent regulation while protecting consumers.

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Common Enforcement Issues in Real Estate Investigations

The Real Estate Enforcement Section investigates complaints received against licensed real estate brokers, salespersons, foreign real estate dealers, foreign real estate salespersons, and unlicensed persons engaging in activity which requires licensure. Some common issues found during the course of performing investigations include:

"Rent a Broker"

If you have a broker's license, be wary of any agreement by which you lend your name and license to a brokerage without any oversight of brokerage activities. O.A.C. 1301:5-1-14 provides that "no arrangement, direct or indirect, shall be entered into by any licensee whereby an individual licensee lends his or her name or license for the benefit of another person, firm or corporation, or whereby the provisions of the real estate license laws or regulations are circumvented."

Specifically, the administrative code provides that "lending a broker's license for the benefit of another person, firm or corporation shall be construed as including any arrangement whereby a broker fails to personally oversee and direct the operations of the business of which he or she is licensed as the sole broker."

Even if the broker has employed a management level licensee, O.A.C. 1301:5-6-01 provides that, "the assignment of supervisory duties to management level licensees does not relieve the brokerage and its brokers from their responsibility to actively oversee and direct the operations of the business conducted on behalf of the brokerage."

Entering into such an arrangement is considered misconduct and may result in sanctions being issued by the Ohio Real Estate Commission against the broker.

Referrals

A common question real estate brokers ask the Division of Real Estate is what, if anything, may be given to unlicensed persons for referrals of business to the broker under Ohio law.

Under Ohio Revised Code 4735.20, a licensed real estate broker may not pay a commission, fee, or other compensation to any person who is not a licensed real estate broker or a licensed real estate salesperson for performing any of the acts specified in R.C. 4735.01. Directing or assisting in the procuring of prospects which is calculated to result in the sale of real estate is among the acts provided in R.C. 4735.01(A)(7). Therefore, a broker may not provide any compensation to an unlicensed person for assisting in the procuring of prospects, or in other words, making a referral.

"A commission, fee, or other compensation" includes theater tickets, gift certificates, gift cards, cash, etc.... Sending a "thank you" card or a bouquet of flowers is permitted as this would be considered de minimus. However, giving something of substantive value to an unlicensed person would be considered a license law violation.

One of the primary exceptions that permit compensation to be paid to unlicensed persons for referrals is under R.C. 4735.20(B) which provides that a licensed real estate broker or licensed foreign real estate dealer may pay a commission to a licensed real estate broker or licensed foreign real estate dealer of another state. Specifically, O.A.C. 1301:5-5-06 provides that "a licensed real estate broker of this state may pay a commission or referral fee to a licensed real estate broker of another state who refers clients or prospects to the Ohio real estate broker."

Another question is whether a referral fee paid to a licensed salesperson must be paid to the salesperson's broker or may the broker pay the salesperson directly. R.C. 4735.21 provides that no salesperson may collect any money in connection with a real estate transaction except in the name of and with the consent of the licensed real estate broker with whom he or she is affiliated. Therefore, any referral fees must be paid to the salesperson's broker. Even if compensation for referrals is in the form of a gift certificate or gift card, such compensation should be directed to the salesperson's broker who may remit the compensation to the salesperson.

Disclosure of Material Defects

The Division often receives complaints regarding a licensee's failure to disclose material defects with the subject property. Pursuant to R.C. 4735.67, licensees may be charged for failing to disclose to a purchaser material facts pertaining to the physical condition of the property that the purchaser would not discover by a reasonably diligent inspection.

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Common Enforcement Issues continued...

For example, a salesperson is aware that a house has moldy drywall underneath paneling in the living room. The only way the buyer could discover this problem is if all the paneling were ripped off. Ripping off the paneling would not be a reasonably diligent inspection. Therefore, the salesperson should disclose this defect to the purchaser.

A contrasting example would be where the salesperson has knowledge that the walls in the basement have extensive cracks. The cracks in the wall would be discovered by simply viewing the walls or by a home inspection. Because this defect could be discovered by a reasonably diligent inspection, the licensee would not be charged for failing to disclose this defect to the purchaser.

A licensee is not required to discover latent defects in the property, advise on matters outside the scope of the knowledge required for real estate licensure, or to verify the accuracy or completeness of statements made by the seller. In other words, licensees are not expected to personally conduct extensive inspections to ascertain whether there are any "hidden" defects or defects otherwise not discoverable by a reasonable inspection.

In addition, if a seller makes statements indicating a lack of defects, the licensee may rely on those statements. However, if the licensee is aware of information that should reasonably cause him or her to question the accuracy or completeness of those statements, then the licensee should attempt to verify the seller's statements. For example, a licensee is aware that a particular home has recently sustained great flood damage, but the seller states that the house has never experienced any flooding. The licensee should question the seller further and, ideally, receive the seller's response in writing.

Common Enforcement Issues in Appraiser Investigations

The Appraiser Enforcement Section investigates complaints received against Certified and Licensed Appraisers and Registered Appraiser Assistants in the state of Ohio. Some common problems found during the course of performing investigations include:

Properties used as sales comparables that are not truly comparable to the subject property

For example, often in actionable cases there are significant differences between the subject and comparables as far as size (gross living area, site etc.), differences in age, style, and room count. Adjustments should be defensible and reasonable.

Data sources that are not verified through another source

In the event that there are conflicts between the data and verification sources, these conflicts should be reconciled.

Cost approach is not supported

What is the source for the site value? What is the basis for the depreciation and cost amounts? Be sure to include this information.

Inaccurate zoning description

Land use codes used by county auditors (such as R-510) are not zoning. Get the specific zoning classification and describe it. There may be multiple uses for the parcel.

Omission of negative information such as depreciation due to external factors

In order for the market analysis to be accurate, all of its attributes should be fully described in the appraisal. An omission of such data affects the credibility of the appraisal.

Not maintaining a complete work file

Please reference USPAP's Ethic's Rule, Record Keeping section for information on what an appraiser's work file should include.

The above listed items represent some of the more prevalent deficiencies found in appraisals that are the subject of appraiser complaint cases. To ensure the credibility of an appraisal, the appraiser cannot provide unsupported, unreasonable results. The appraiser must provide results that are reasonable and provable, maintain sufficient data to support the appraisal results, and take all other necessary steps to be in compliance with the Ohio Revised Code, USPAP Standards and other applicable standards the appraiser is subject to in the development and reporting of their appraisal.

The Mediation Process

If you or one of your fellow licensees is called upon to be a part of a mediation, the following information may help to give you some insight into the process.

Upon the filing of a complaint against a real estate licensee, the complainant and a licensee are given an opportunity to participate in a confidential informal mediation with one of the Division's mediators. A mediator serves more or less as a neutral facilitator to the parties' attempts to resolve their differences. The mediator is not there to judge the parties or their case. The parties should come to the mediation with open minds, looking forward to the possibility of agreement. While the mediation is only scheduled if both the complainant and licensee timely request it, the mediation provides a valuable opportunity for the parties to better understand each other's views and to mutually resolve their differences without the formality of an investigation and the possibility of an administrative hearing. For a complainant, this could mean an apology, the payment of remuneration by a licensee, or virtually anything lawfully to which they can agree. For a licensee, this could mean the final resolution of what could amount to a civil lawsuit, charges being filed if the matter were left to play-out in the investigative process, or both.

If a complainant and a licensee reach an accommodation at an informal mediation, the mediator will report this to the Superintendent of the Division. Should the parties fail to agree to mediate or fail to reach an accommodation, the Division will notify the parties that the Division will investigate the alleged violative conduct of the licensee against whom the complaint is filed.

While the mediation process is not the solution for all cases, it provides possibilities for those who participate in it, and it should be strongly considered by those who are offered the opportunity.

Citation Reminder

The Superintendent may issue a citation for advertising, fair housing, and agency disclosure violations.

R.C. 4735.16(B)(2)(a)(b) and (C)(1)-(5), effective September, 2000, provides the Superintendent the authority to issue a citation upon a licensee when he or she determines the licensee has violated an advertising statute or rule. For example, if a licensee fails to identify the name of the brokerage in real estate advertising, this is considered a violation of R.C. 4735.18(A)(21). A citation may be issued.

R.C. 4735.181, effective January 1, 2005, also provides the Superintendent with the authority to issue citations for additional conduct. For example, a licensee may also be issued a citation if his or her listing agreement does not contain an expiration date, correct fair housing language, or omits a statement defining "blockbusting" pursuant to R.C. 4735.55.

Failure to provide the seller the Consumer Guide to Agency Relationship prior to marketing or showing the seller's real estate or failure to provide a purchaser with the Guide prior to a triggering event are also examples of conduct for which a citation may be issued.

Finally, another example of when a licensee may be issued a citation is when he or she fails to provide an agency disclosure statement prior to preparing an offer to purchase for the purchaser which is in violation of R.C. 4735.58.

Citations may be served on the broker, the salesperson, or both, depending on the circumstances of the case. The citation may be served upon the licensee personally or by certified mail and will contain notice of the violation charged, the opportunity to request a hearing and the amount of the fine. The fine per violation is two hundred dollars (\$200) for all citations, with a maximum of \$2,500 per citation for advertising citations.

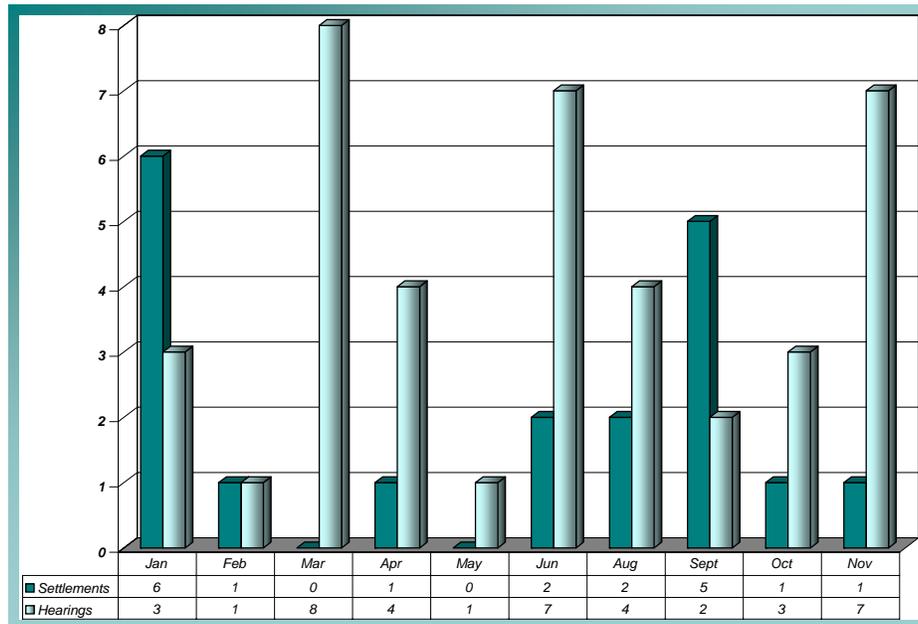
The licensee may choose to pay the fine and resolve the violation without a formal hearing with a hearing officer, or the licensee may request a hearing within 30 days of the issuance of the citation. If the licensee does not respond within 30 days, the citation becomes final and the licensee then has 30 days thereafter to pay the fine or the licensee's license will automatically be suspended. If any licensee is cited three times within 12 consecutive months, the Superintendent shall initiate disciplinary action pursuant to R.C. 4735.051.

If you receive a citation and have any questions, be sure to contact the Division.

Settlement Agreements

In recent years, Settlement Agreements have been an effective and prominent addition to the resources available to resolve cases under the real estate and appraiser licensing statutes.

Since 1990, real estate licensees facing enforcement sanctions have had the option of entering into an agreement to resolve the issues in question without going to a hearing. When a respondent accepts responsibility for the violation or violations charged, an agreement with the Division offers the opportunity to settle the controversy for a specified penalty without the time and expense associated with a hearing. As indicated on the chart, the Real Estate Commission considered 19 Settlement Agreements and 40 hearings in 2005.



The Division of Real Estate gained the authority to enter into settlement agreements in Appraiser cases in 2005. A March 2005 rule change provides appraisers the same opportunity to reach an accommodation with the Division that is available to real estate brokers and salespersons. The Appraiser Board considered its first settlement agreement in its last meeting of 2005, and considered six (6) settlement agreements at its January 27, 2006 meeting.

Both rules enumerate the particulars that must be included in the settlement agreement, specify that the Superintendent of Real Estate shall only enter into a settlement agreement when she knows that it is the real estate licensee's or appraiser's free and voluntary act, indicate that the hearing shall be cancelled and the terms of the agreement shall be presented to the Commission or Board at the next meeting, and stipulate that all settlement agreements are contingent on the approval of the Real Estate Commission or the Appraiser Board.

The rules specify seven (7) elements that must be included in every settlement agreement.

1. A description of the conduct that allegedly violated the division's standards;
2. An admission by the broker, salesperson or appraiser;
3. An acknowledgement by the broker, salesperson or appraiser that the conduct admitted constitutes a violation of law;
4. A waiver of the administrative hearing;
5. An acknowledgement by the licensee or appraiser that they had an opportunity to review the settlement agreement with counsel;

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Settlement Agreements continued...

6. An acknowledgement that the agreement will be reviewed by the Commission or Board and that, if accepted, will become a final order; and
7. A waiver of all appeals to the courts under the Administrative Procedure Act, R.C. 119.12.

The rule also allows the Superintendent to recommend a sanction to be imposed on the licensee or appraiser for the admitted violations. Generally, the sanctions recommended in a settlement agreement are expressed in terms of maximum penalties which the Commission or Board may impose; after reviewing a settlement agreement the Commission or Board may order a lesser penalty. The rules also allow that the settlement agreement may include any other provisions the Superintendent "deems to be appropriate."

The authority to enter into settlement agreements has provided a way to save money and time for the Division of Real Estate and license and certificate holders. Settlement agreements have the advantages of prompt and economical resolution in the face of unfortunate circumstances to real estate brokers, salespersons and appraisers.

A Guide to Hearings is Now Available on the Website



A guide is now on the Division's website to help explain the hearing process in appraisal and real estate enforcement cases. Hearings are generally held following an investigation by the Division. If you have any questions about the Hearing Guide or process, please contact Staff Attorney, Mark J. Ballenger at the Division. He can be reached at (614) 466-5963.

(Please note: The facts of any particular case cannot be discussed.)

2008 Appraiser Qualifications Seminar Held in December

On December 15, 2005, the Division held a seminar on the 2008 Appraiser Qualifications. Sandra Guilfoil, 2005 and 2006 Chair of the Appraiser Qualifications Board (AQB) was the primary speaker.

Ms. Guilfoil is a Certified General Appraiser and USPAP instructor. She has been on the Appraiser Qualifications Board since 2002. In addition, she currently works as a Manager with Weyerhaeuser Company where she oversees property valuations for corporate owned facilities in 45 states and Canada.

At the seminar, Ms. Guilfoil discussed the role of the AQB, the new criteria, and the purpose behind some of the new qualifications. The Division is appreciative that the AQB provided such an informative speaker for our seminar.

In addition, Doug White, Director of the Department of Commerce, spoke to the crowd regarding legislative updates affecting appraisers and the relationship between the Department of Commerce and the appraisal industry.

Finally, Division staff and Ms. Guilfoil sat on a panel and answered questions about the new criteria as well as the Ohio Real Estate Appraiser Board's intended implementation of the new criteria. For additional information regarding Ohio's implementation, please see the Fall 2005 Division Newsletter, page 2, at <http://www.com.state.oh.us/real/documents/2005Fall.pdf>.



Sandra Guilfoil, 2005 and 2006 Chair of the Appraiser Qualifications Board

Role of Non-Licensed Individuals Clarified

Frequently, the Division is asked what types of activities non-licensed individuals may perform in assisting a real estate licensee.

As a basic premise, a real estate license is required for an individual to lawfully engage in the activity set forth in R.C. 4735.01. Whether an individual is engaged in conduct requiring a real estate license is determined by reviewing the individual's specific conduct. However, there are some guidelines:

Duties Non-Licensees May Perform

An unlicensed individual may perform duties which are secretarial and clerical support services in nature such as filing, taking messages, calling to schedule appointments or calling a property owner to schedule a showing, closing, or inspection. The dialogue of these conversations should be limited to setting an appointment and should not focus on making representations about the services offered by the brokerage.

Although the mere setting of an appointment with an owner is not conduct requiring a license, extreme care must be exercised when a licensed agent authorizes an unlicensed individual to call an owner to set an appointment. A licensee who permits or authorizes an unlicensed individual to perform acts which require a license may be subject to disciplinary action.

Another duty an unlicensed individual can perform is the deliveries of documents, that is, act as a courier; however, the unlicensed person may not answer questions concerning or interpreting the documents.

Duties Non-Licensees May Not Perform

An activity that should be avoided is the permitting of an unlicensed individual to provide information over the phone to prospective purchasers and/or real estate agents. Property related questions concerning a property's asking price, address, or number of bedrooms should be referred to the licensee. For example, (an example set forth in the Division's Spring 1999 Newsletter) an unlicensed person is not allowed to tell a prospective buyer if a basement is finished into a family room.

R.C. 4735.01(A)(7) requires that an individual be licensed as a real estate broker or salesperson in order to direct or assist in the procuring of a prospect which does or is calculated to result in a sale, exchange, leasing or renting of any real estate.

As recited in the Division's Spring 1992 Newsletter, an unlicensed person in calling an owner could use the following type of dialogue: "My name is John Smith. I'm calling on behalf of Mary Jones of ABC Real Estate to see if an appointment could be set for Mary Jones to discuss with you the services offered by ABC Real Estate." If the response is in the affirmative, an appointment could be set. However, any further inquiries by the unlicensed individual should be avoided.

Real Estate Forms Updated

Each year the Division updates its licensing forms to meet current rule changes and to eliminate or simplify the task of filling out forms and applications. Beginning in January, 2006, the Division implemented the 3 year renewal cycle to coincide with the licensee's education due date. To simplify the form completion process, we have created the Two-Part Education and Renewal Application. Although now on one form, the licensee should only fill out the continuing education portion if their education is due in 2006. Continuing education cannot be submitted early. If your c.e. is due in 2006, the renewal and continuing education is due together and must be submitted within the 60 days before your birthday. Also, we have eliminated the Multipurpose Application and have created the Business and Individual Change Application which incorporates the information that was on the Multipurpose Application. Please visit our website at <http://www.com.state.oh.us/real/realfom.htm> for the most current forms.

License To Steal...by Brian Weaver

You'd think that a 40 million dollar forgery case would grab a headline or two. But you'd be wrong.

Mike Brown, Director of the Appraisal Division for the Illinois Department of Financial and Professional Regulation (IDFPR), has revealed that (*currently*) his office is aware of over \$40 million worth of forged appraisals...and the number is climbing.

Forged appraisals?

According to Mr. Brown and his investigator, Don Potter, between 20% and 30% of all complaints coming into the department have a forged appraisal document at the center.

One of the first calls I made outside Illinois when researching this topic was to Greg Harding of California. I asked if he was familiar with the phenomena of appraiser identity theft. He proceeded to tell me that he was more than familiar with the problem. So familiar in fact, that he was recently telephoned to make "corrections" to an appraisal that he allegedly completed. When he informed the caller that not only hadn't he prepared a real estate appraisal in years, that he was the Chief of Licensing and Enforcement for California's Office of Real Estate Appraisers (*OREA*)...the caller hung up.

He was still trying to get a copy of that report when last we spoke.

When I contacted Board Investigator Jack McComb of the Texas Appraiser Licensing and Certification Board (*TALCB*) regarding the topic, he told me about a husband and wife team of commercial/industrial appraisers who were victims of the fraud.

The husband and wife were contacted by phone to "correct" a *residential* report that bore their names and licenses. Although neither had ever prepared a residential report, one of the appraisers was able to learn the location of the closing that was to take place shortly after their "report" was corrected. This time, the Mortgage Fraud Unit of the FBI (*Texas*) was there along with the Secret Service to make arrests at the scheduled closing.

But not every episode ends this well. As Jack McComb so colorfully added... "the odds of catching an appraisal forger are slim to none...and Slim's been seen ridin' outta town."

There are three scenarios of appraiser identity theft and forgery currently taking place.

First, there is the appraiser-trainee who is fed up with splitting fees with their sponsor/mentor and has decided to forge their mentor's name and affix their mentor's license number to reports without their mentor's knowledge or permission. The trainee establishes a separate e-mail account, new fax and phone numbers and a bank account where fees can be deposited. Checks are written to company names that may only contain initials.

Second, there are appraisers who go *phishing* for license numbers.

The term *phishing* refers to the current internet ploy by computer hackers to scour cyberspace for usable personal data that can be exploited. Another term would be *social engineering*.

In the case of appraisers who *phish*, they'll use whatever license number they can find. They won't necessarily use the license number of anyone they know. They may go trolling on any number of websites where appraisers and appraisal firms display their licenses like dinner menus. They'll choose a suitably licensed victim and begin grinding out reports for unscrupulous clients for a fee.

The third and most disturbing trend involves persons who never were licensed appraisers, yet find this to be their crime of choice. Like those who go phishing, they come up with almost random victims and prepare bogus reports for hefty fees.

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What about the signature?

Some are skilled at lifting signatures from PDFs (*Portable Document Files*), or from any number of specialty appraisal software packages. Maybe they have a hardcopy of a report that was completed by an appraiser in the past. Maybe they traced a signature at a course the appraiser attended. The reality is, most don't even *try* to match the signature.

When you think about it, who among your clients, is so familiar with your signature that they can spot a phony?

With so many thousands of appraisal documents being fed through the system every day, who has the time or the skills necessary to compare signatures?

Bob Scrivens, member of the State Board of Real Estate Appraisers in New Jersey, has been following the phenomenon for some time. He indicated that a New Jersey lender was holding *seventy* forged appraisals and wanted to know what New Jersey regulators planned to do about it. Regulators responded by asking what "*due diligence*" steps the lender had taken to prevent the forgeries in the first place. The lender told them that they had over a thousand mortgages to sell and only *five* days in which to complete any "*due diligence*".

Therein lies the problem.

Complicating matters is the appraiser who gets called in by their state regulator over appraisal improprieties and then insists that the reports are not his/hers. They hold that they are a victim of appraiser identity theft...that they aren't responsible for the poor quality work...that someone else is. But in fact, after a long and arduous investigation, they're found to be lying about their identity being stolen.

Regulators and/or board members were contacted from New York, New Jersey, Oregon, Arizona, California, Florida, and of course, Illinois. Most were aware of the problem but not the scale. New York's Supervisor of Licensing Examinations, William Stavola, seemed to think that maybe 15% of their cases involved appraiser identity theft and forgery.

No state has made an accurate survey of the scope of the problem. Most just have a gut feeling that the problem is getting out of control.

An e-mail from Ben Henson of the ASC, indicated that Illinois' level of complaints involving appraiser identity theft was "*dramatically higher than we have observed in any other state*".

Magda Jackson from Liability Insurance Administrators, one of the largest real estate E&O providers, said that they will be issuing an alert in a future newsletter for their insured's.

A Breeding Ground – U.S. Mortgage Market

The opportunity for forgery lies in the numbers and the inherent speed of the system.

The FFIEC (*Federal Financial Institutions Examination Council*) through HMDA (*Home Mortgage Disclosure Act*) revealed that since the year 2000 nearly 120 million loans were made. This represents an increase in volume of 118% between 2000 and 2003. In 2002 and 2003 (*the last year of available data*), over 75% of the mortgages currently held were written in those two years.

That's 5.7 trillion dollars in loans.

If only 10% of the loan amounts in 2002 and 2003 resulted in forgery and ID theft it would dwarf the 425 billion dollars lost in the top ten corporate bankruptcies since 1988.

According to the regulators I contacted, forgeries began to emerge noticeably around the year 2000.

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Collateral Damage – Hidden Cost

In Illinois, appraiser ZY has spent the last sixteen years appraising commercial/industrial property. Until recently, he wasn't aware that some twenty or more residential reports bearing his name and license number have been making their way through the system. He was made aware by accident. Despite Mike Brown's intervention on his behalf, several lenders have placed him on an exception list of those whose appraisal work will no longer be accepted.

While his being black-balled doesn't affect him as significantly as it would if he relied upon residential work, nonetheless his employer, who employs residential appraisers, still has to answer for the allegations.

I asked appraiser CT about her own difficulties with a stolen license number. She told a similar tale of accidental discovery by way of a distant colleague/reviewer who happened upon a stunningly bad report bearing CT's name. The reviewer, several states away, recognized CT's name from having lived in Illinois, but found the report far below CT's level of competence. The reviewer made a call to CT and that's when the discovery was made.

CT, like ZY has been put on Exception Lists by certain large lenders. This time, the damage to CT is financial and maybe irretrievably so.

Lenders admit that they have neither the time nor the resources to sort out which appraisers are victims of fraud or if the substandard product truly belongs to them. In almost all cases the victimized appraisers end up being black-balled.

The ID thieves merely move onto another license.

Where'd The Money Go?

Let's say you find your license number and something that passes for your signature on a number of reports. You notify your state regulator. You notify the lenders. You call a lawyer, the FBI, the Secret Service, and maybe even Interpol. So, you're done, right?

Ask yourself this question:

Where did the money go?

Where are the fees for the twenty or thirty reports that you allegedly completed?

They're not in your bank account, so the undeclared income isn't your responsibility, right?

The IRS may not see it that way. In the end, you may not only be on the hook for bogus reports, but for undeclared income that you don't even know about.

The appraisers I've interviewed about their victimization were quite candid about the details. But when I raised the issue of undeclared income, most hadn't given it much thought. Their response came across as an "I dun no" shoulder shrug.

If someone is calculating enough to steal your identity and forge your name to an appraisal document...then it shouldn't be a quantum leap to believe them to be forging your name to checks and money orders.

Lenders Getting Savvy?

Recently, GreenPoint Mortgage has begun issuing e-mails to appraisers to verify whether a certain property was appraised by them or not. The e-mails list the address of the subject, the mortgage broker who ordered it, the date of value and the appraised value. The e-mail asks that the appraiser contact GreenPoint if the information provided is incorrect.

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But few lenders are taking any precautions. Most lenders dismiss the crime as “isolated” or “minimal”. Some in the Quality Control departments were stunned that such a thing was even occurring. Most are just crossing their fingers and hoping that it doesn’t result in mortgage buy-backs.

You’re Asking For It

Because no one truly knows the extent of the phenomena, advice about how to protect one’s appraisal identity seems trite at best. Law enforcement officials, E&O providers, and state regulators all seem to offer similar advice that boils down to:

“Be careful out there.”

Which is about as helpful as telling a child not to run with scissors.

The best one can do is reduce the opportunity for identity theft. The following fall under the category of common sense and nothing more:

- Remove your license number from your business card (*if legally permissible*).
- Remove your license number from your stationery (*if legally permissible*).
- Remove your license number(s) from your website and e-mail stamp (*if legally permissible*).
This includes removing the actual image of your license.
- Remove your license number from websites that advertise your services (*if legally permissible*).
- Stop sharing your software signature codes with everyone in the office.
- Stop taping signature codes on the wall next to the computer at the office.
- Try using something a little more complex than “appraiser” for a password.
- Eliminate your E&O declaration page from your website.
- Be more circumspect about who has access to your license.

In conclusion, the speed and volume by which lending decisions are made has provided a breeding ground for appraiser identity theft and forgery. Nobody is running around forging for eminent domain or divorce cases. These are crimes of opportunity and the players are well aware of risks versus rewards.

Too many in the lending industry...and it is an industry, find it easier to blame appraisers for this growing problem. But preaching temperance from a barstool helps no one.

Appraisers need to be far more circumspect in their hiring and information security. Lenders need tighter controls on quality. State regulators need greater resources to protect the public.

This study and resulting article were commissioned by the Illinois Coalition of Appraisal Professionals.

www.icapweb.org

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The remaining publication schedule for 2006 is as follows:

Spring - May 1

Summer - August 1

Fall - November 1

Real Estate & Professional Licensing Welcomes New Education Compliance Administrator



Superintendent Davids is pleased to announce that Tom Yersavich has joined the Division of Real Estate and Professional Licensing as the Education Compliance Administrator. His responsibilities include reviewing and auditing continuing education courses and administering the Ohio Real Estate Commission's Education and Research Fund Advisory Committee's grants procedures.

Tom has over twelve years of experience in state government and extensive experience in education, grants and compliance issues. He most recently served as an Associate Director for the Department of Education. Prior to his work at the Department of Education, Tom worked six years for the Ohio Environmental Protection Agency.

While most recently employed in state government, Tom is no stranger to the world of real estate in Ohio. "My first (non-food related) job as a kid in high school was working for a realtor. My brother and I did maintenance and improvements on rental units and properties that were being sold. Before long, the word spread and we worked with other realtors and investors on bigger projects. I basically continued doing construction, improvements and rehab work all the way through graduate school at Ohio State."

When asked what he will be focusing on for the next six months, Tom replied, "In addition to reviewing the CE courses, I really want to focus on improving the institutional controls of the Continuing Education process." After a thorough review of Ohio Law and statute, Tom plans to document and publish the policies and procedures of the continuing education process. "I don't think that there is necessarily any kind of problem currently, but I do think that we can reduce some confusion across the state. It may seem simple, but it has been my experiences that education and compliance go hand in hand, once the rules are fully and clearly explained most people are more than willing to comply. My goal for the next six months is to focus on building that understanding. Once we have built that understanding, if needed, we can start focusing on issues involving non-compliance and enforcement."

Three Year Renewal Cycle Implemented For Licensees

We are very pleased to announce our new eLicensing system has enabled the Division to implement the **three (3) year** renewal and education process for real estate licensees. During this conversion year, licensees will receive a renewal for 1, 2 or 3 years, depending upon the education due date. To eliminate extra work, we are asking licensees to send in the completed renewal application and appropriate fee and only send in the education portion of the two-part application if it is due. By following this process, everyone will convert to having both their education and their renewal due every 3 years on their birthday. Renewal notices will continue to be mailed out approximately 60 days prior to the birth date (expiration date). Please complete the renewal portion of the application and mark the education form "education not due until the appropriate year", or if the education is also due, then complete the education application and attach the certificates. If you do not know when your education is due, you can verify this information by logging on to our website at www.com.state.oh.us/real and click on the "Licensing Center" Button - the date is listed as "CE Due Date".



Volunteers Needed to Develop Test Questions

Each year the Division of Real Estate reviews and develops questions for the State (jurisdictional) portion of the Test.

If you are an active broker in good standing, do not teach continuing education, and would like to volunteer to serve on this committee, please contact the Division at 614-466-4100 or RELPD@com.state.oh.us by **April 1, 2006**, and ask to serve on the test question committee. Your input would be greatly appreciated.

The New eLicense Center



Welcome to the eLicense Center. The gateway to managing and reviewing your license information.



PUBLIC INFORMATION

- [Lookup License Information](#)
- [Continuing Education Course Lookup](#)

LICENSE MAINTENANCE AREA

- [Renew Your Real Estate License \(if online renewal is unavailable, it remains the obligation of the licensee to make certain the renewal is filed timely.\)](#)
- [Maintain Your License Information \(e.g., home address\)](#)

In the **Lookup License Information** section, data such as License Status, License Expiration Date, Continuing Education Due Date, Post-License Education Due Date, and Original Issue Date is available. Records for Real Estate Brokers and Salespeople will also show the company they work for, and Real Estate Company records will show each Broker and Salesperson who is affiliated with that company.

The **Continuing Education Course Lookup** provides information on courses that have been approved for credit by the Division. You will find the category the class fulfills, the course title, whether it is offered on the internet or in a classroom setting, the date of the class, the number of hours, the course sponsor's contact information, and the location of the class.

Within 60 days before your license expiration date, you may pay your renewal fees online with a Visa or MasterCard in the **Renew Your Real Estate License** section. Your UserID and Password will be supplied in your renewal notice. Remember that if the online renewal website is unavailable for any reason, it remains the responsibility of the licensee to ensure that the renewal is timely filed (received or postmarked by the license expiration date). Also note that as part of the transition to the Three-Year License Period your continuing education requirement (if it is due) is considered part of your renewal. If you fail to fulfill your C.E. obligation by the time it is due, your renewal will be considered incomplete and you will be subject to the same late renewal penalty fee and reactivation fee as if you had not paid your license renewal fee.

In the **Maintain Your License Information** section you can update your Home Address. [For many individuals, the system has an address qualified as something other than "Home" such as "Main Address". These other address types are not currently available for online editing, but you should still alert the division to changes in your address information by using the *Change Application - Individual* form available from our website.]

Using the License Lookup Utility:



License Search

License Number . -

OR

Board

Profession/Institution

Business Name/DBA

-or- Name (Last, First) ,

City, State Zip - DISPLAY ALL -

County

Note: Search results include historical name changes.

By License Number: If you know the license number of the record you wish to lookup, you may enter that in the second field. If you wish to search by license number though, you will also need to select a license prefix or type (first field). Some of the more common license types are listed here.

- ACG: Certified General Appraiser
- ACR: Certified Residential Appraiser
- ALR: Licensed Residential Appraiser
- ARA: Registered Appraiser Assistant
- BRK: Real Estate Broker
- REC: Real Estate Company
- SAL: Real Estate Salesperson

By Name: To search by name, first choose the appropriate board (Division of Real Estate & Professional Licensing), then enter the business name or the individual's last name. If it is a common last name, you may limit your search by including a first name.

By Profession: If you want to look up all of the Brokers in Adams County, choose Broker from the Profession/Institution drop down and Adams from the County drop down. **[CAUTION: There are over 50,000 Salespeople in the state. We do not recommend pulling the entire salesperson list at one time.]**

Results will display under the License Search Fields, so you will likely have to scroll down to see them after you run a search. Click on the blue name field to access the license information for the record you want.



Answers to Your Frequently Asked Questions

Q. Do I have to pay the full amount on my 2006 annual renewal notice for my real estate license?

A. Yes, the amount due is for a three year renewal cycle, no partial payment can or will be accepted.

Q. Must I submit my education and renewal together?

A. Yes, as part of the three year renewal process, you must submit your education and renewal together in order for it to be complete. **EXCEPTION: During this transition year only, if your education is not due in 2006, you will not submit your continuing education until the year due. At that time, the continuing education and renewal will be due and submitted together within the 60 days before your birthday.**

Q. What if I am unable to complete my education by the due date, can I go ahead and submit my renewal fee then pay the \$20.00 reactivation fee once I have completed my education?

A. The renewal is not considered complete until we receive the completed two-part renewal/education form. Failure to submit your renewal and continuing education together will result in suspension of your license and you will be assessed a 50% penalty of the total renewal fee plus the \$20.00 reactivation fee. (See Chart in 2005 Fall Newsletter for penalty fees).

Q. Where can I find the correct verbiage required by law, for inserting into the listing agreements and sales contracts concerning Megan's Law and Fair Housing?

A. The fair housing language is found at: <http://www.com.state.oh.us/real/app/Fair%20Housing%20Statements%20Handout.pdf>. R.C. 4735, licensing law, has no specific requirement concerning Megan's Law. The Columbus Board of REALTORS Real Estate Purchase Contract, Section 11.4, has language concerning Ohio Sex Offender Registration and Notification.

Q. I currently have a real estate license and I was recently convicted of a felony or crime of moral turpitude. Will I lose my license?

A. It depends on the Division's evaluation of the individual case. However, if you fail to report the conviction to the Superintendent within fifteen days of the conviction, Section 4735.13(C) the Ohio Revised Code provides that the Superintendent "immediately may revoke the license of the licensee." If you comply with the reporting requirement an investigation will be done and you will be entitled to a formal hearing, before action, if any, is taken against your license. This same reporting requirement applies to any conviction for "violating any federal, state, or municipal civil rights law pertaining to discrimination in housing, or any court that issues a finding of an unlawful discriminatory practice pertaining to housing accommodations described in division (H) of section 4112.02 of the Revised Code or that convicts a licensee of a violation of any municipal civil rights law pertaining to housing discrimination".

The following FAQ focuses on individuals seeking licensure as a real estate salesperson after having been convicted of a felony. However, the basic principles underlying how the Division addresses those with other reportable conduct and those seeking licensure, certification or registration for any professional licensing program administered by the Division are the same. In this case, reportable conduct means anything that would require you to answer "Yes" to any of the Legal and Ethical questions on any Division application. These are some of the common questions the Division receives pertaining to this situation.

Q. I was convicted of a felony. Can I get a license? If so, how?

A. In order for a decision to be made as to whether a particular applicant can be licensed, you must submit a sales license examination application with the standard application fee and additional supporting documentation.

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Frequently Asked Questions continued...

Q. What kind of supporting documentation do I have to submit?

A. The Division requires all of the following items if they apply in your particular situation:

- ✓ A letter requesting that the Superintendent disregards your conviction and an explanation of the circumstances surrounding your conviction.
- ✓ Certified copies of all court entries showing sentencing.
- ✓ Certified copies of all documents demonstrating release from custody or control. (e.g. final release from prison, community control, parole, post-release control, probation or any other restriction on liberty.)
- ✓ If available, documents from the court, prison, probation service or similar agency indicating how you performed while in prison or any form of control.
- ✓ A letter of recommendation from the broker who will be supervising you stating that the recommender is aware of the specifics of the prior convictions and in spite of them is willing to take responsibility for you on the same terms as any other applicant.
- ✓ Any recommendations or other evidence you believe demonstrates that your activities and employment record since the conviction show that you are honest, truthful, and of good reputation, and there is no basis in fact for believing that you will again violate the laws involved.

Q. Once I have assembled all of the documentation where should I send it.

A. Your cover letter should be addressed to the Superintendent and sent to the same address as all other applications. You may access the application on our website at <http://www.com.state.oh.us/real/realform/htm>.

Q. How long will it take before I have an answer?

A. The process of review may take quite a long time depending on the specific facts of the case and how complete the application material is that is submitted. You will be notified in writing of the Superintendent's decision.

Q. What if the Superintendent denies my request?

A. You may appeal the Superintendent's decision to the Ohio Real Estate Commission.

Q. What happens before the Commission?

A. If you appeal an unfavorable decision by the Superintendent to the Commission you will have the opportunity to appear in person before the Commission. If you appear in person, you will be placed under oath, given the opportunity to address the Commission and respond to questions from the Commission.

Q. Should my Broker come with me to a hearing before the Commission?

A. Your Broker is not required to appear. However, past experience has demonstrated that there are cases where the personal appearance of the Broker and the ability of the Commission to examine the Broker under oath have improved an applicant's chances for approval.

Q. What if the Commission upholds the Superintendent's denial?

A. You may appeal that decision to an appropriate court of law.

Q. Can I just appeal the Superintendent's Decision to court without requesting a hearing before the Commission?

A. No. The law does not permit a court appeal without exhausting your administrative appeals.

Real Estate Disciplinary Actions

REVOCATIONS

AMY R. MOONEY, salesperson, Cleveland, Ohio, had her license revoked for violating Revised Code (R.C.) 4735.18(A), following her conviction on January 6, 2005, on two counts of Grand Theft, a felony of the fourth degree.

SUSPENSIONS, FINES, EDUCATION

KELLY L. WARREN, salesperson, Cortland, Ohio, was fined \$500.00 and was required to complete and to submit proof of completion of the ten hour sales post-licensure course for violating R.C. 4735.18(A)(25), as the result of an investigation of a formal complaint. The Commission found that Ms. Warren failed to furnish the sellers of a property a true copy of the listing agreement at the time they signed the agreement.

BRADLEY JAY EWING, broker, Eaton, Ohio, was fined \$1,000.00, for violating R.C. 4735.18(A)(11) when he divided the real estate commission from the sale of a property, with an unlicensed person.

PAUL C. PANCAKE, II, broker, Chesapeake, Ohio, was fined \$500.00 for violating R.C. 4735.18(A)(6) as that section incorporates the Ohio Canons of Ethics for the Real Estate Industry, Article 3. The Commission found that Mr. Pancake failed to immediately return the license or to obtain a replacement license of a real estate salesperson after the Division had requested him to return the license or to obtain a replacement license.

LARRY G. STANLEY, broker, Waverly, Ohio, as the result of an investigation of a formal complaint, was fined \$2,000.00 and was required to complete and to submit proof of completion of the ten hour brokers post-licensure course for violating R.C. Sections 4735.18(A)(31) and 4735.18(A)(24). The Commission found that Mr. Stanley failed, within a reasonable time after receipt of a commission, to render an accounting to and to pay a salesperson their earned share. In addition, he failed to maintain a copy of the company policy on agency which was provided to the buyers of the property.

KIMBERLY A. BARRETT, salesperson, Dublin, Ohio, as the result of an investigation of a formal complaint, had her license suspended for a period of five days, which commenced on October 5, 2005, was fined \$500.00 and was required to complete and to submit proof of completion of the ten hour sales post-licensure course for violating R.C. 4735.18(A)(35). The Commission found that Ms. Barrett named a false consideration in a document when she acknowledged receipt of earnest money in the purchase contract, on a particular date, when the money was not collected on that date.

JANICE I. BETZ, salesperson, Marion, Ohio, as the result of an investigation of a formal complaint, was required to complete and to submit proof of completion of a three hour course on agency for violating R.C. 4735.18(A)(9) as that section incorporates R.C. 4735.56(A) and R.C. 4735.18(A)(6) as that section incorporates R.C. 4735.58(A). The Commission found that Ms. Betz failed to provide the company policy to the seller regarding cooperation with a licensee acting as a subagent, a seller's agent, or purchaser's agent, including whether the broker offers compensation to such subagents or agent, or will seek compensation from such agents. In addition, the Commission found that Ms. Betz failed to present the seller with an agency disclosure form prior to marketing or showing the seller's property.

EDWARD L. CERANKOWSKI, broker, Cleveland, Ohio, as the result of an investigation of a formal complaint, was fined \$250.00 and was required to complete and to submit proof of completion of a three hour fair housing course for violating R.C. 4735.18(A)(9) as that section incorporates R.C. 4735.55(A)(2), when he failed to use the proper fair housing language in a listing agreement.

GARY N. SHEAFFER, broker, Centerville, Ohio, as the result of an investigation of a formal complaint, was fined \$1,000.00 and was required to complete and to submit proof of completion of a three hour ethics course for violating R.C. 4735.18(A)(6), when he failed to purchase a home warranty for a property as he was required to do by the terms of an addendum to the purchase contract.

GARY N. SHEAFFER, broker, Centerville, Ohio, was suspended for a total of 12 months and was fined a total of \$4,000.00 as the result of an investigation of a formal complaint. Mr. Sheaffer had his license suspended for 6 months, which commenced on December 23, 2005, and was fined \$2,500.00 for violating R.C. 4735.18(A)(6) as that section incorporates the Ohio Canons of Ethics for the Real Estate Industry, Section 1, Article 3. The Commission found that Mr. Sheaffer failed to provide assistance to the Division by not submitting a written response to a complaint and documents related to the complaint. He was also suspended for 6 months to run consecutively with the suspension above and was fined \$1,500.00 for violating R.C. 4735.18(A)(24), when he was found to have failed to keep complete and accurate records of all transactions for a period of three years.

ROLAND E. NIEMAN, salesperson, Cincinnati, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 for violating R.C. 4735.18(A)(6) as that section incorporates the Ohio Canons of Ethics for the Real Estate Industry, Section 1, Article 1, when Mr. Nieman failed to check the box as to whom he was representing on the agency disclosure form. In addition, he was fined \$200.00 and was required to complete and to submit proof of completion of

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Real Estate Disciplinary Actions continued...

three hours of continuing education relating to agency for violating R.C. 4735.18(A)(21) as that section incorporates Ohio Administrative Code (OAC) Rule 1301:5-1-02(B), when he advertised property in newspapers, disbursed business cards identifying him in a name other than the name as it appeared on his license issued by the Division.

GARY PIATT, salesperson, Canton, Ohio, as the result of an investigation of a formal complaint, was fined \$200.00, the equivalent of the cost of an advertising citation issued pursuant to R.C. 4735.16(C)(1), for violating R.C. 4735.18(A)(20), when he advertised the sale of a property on the multiple listing service in a "pending" status when the listing for the property had expired, when there was no outstanding contract for the sale of the property and when the owner of the property no longer consented to advertising the property for sale.

MARVIN A. SINGHAUS, salesperson, Canton, Ohio, as the result of an investigation of a formal complaint, was fined \$200.00, the equivalent of the cost of an advertising citation issued pursuant to R.C. 4735.16(C)(1), for violating R.C. 4735.18(A)(20), when he advertised the sale of a property on the multiple listing service in a "pending" status when the listing for the property had expired, when there was no outstanding contract for the sale of the property and when the owner of the property no longer consented to advertising the property for sale.

DALE W. MARKS, broker, Canton, Ohio, was fined \$200.00, the equivalent of the cost of an advertising citation issued pursuant to R.C. 4735.16(C)(1), for violating R.C. 4735.18(A)(20), when he advertised the sale of a property on the multiple listing service in a "pending" status when the listing for the property had expired, when there was no outstanding contract for the sale of the property and when the owner of the property no longer consented to advertising the property for sale.

STEPHEN G. VELTEN, salesperson, Dublin, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of three hours of additional continuing education, which shall not be credited to the continuing education required for the renewal of his license, for violating R.C. 4735.18(A)(6) as that section incorporates R.C. 4735.58(B)(1)(b). The Commission found that Mr. Velten failed to present an agency disclosure form to a purchaser prior to requesting specific financial information from the purchaser.

PAMELA J. MITCHELL, salesperson, Westerville, Ohio, as the result of an investigation of a formal complaint, was fined \$300.00 and was required to complete and to submit proof of completion of three hours of additional continuing education, which shall not be credited to the continuing education required for the renewal of her license, for violating R.C. 4735.18(A)(20). The Commission found that Ms. Mitchell offered real property for sale without the knowledge and consent of one of the owners or the owner's agent.

UNLICENSED ACTIVITY

LaKRITZ WEBER & COMPANY, Southfield, Michigan, was assessed a civil penalty in the amount of \$18,000.00 for violating R.C. 4735.02, unlicensed activity, with regard to 3 properties. The company negotiated the sublease of one property, expected to receive a commission for the sublease negotiation of the property and advertised the property. With respect to another property, they negotiated a lease, expected to receive a commission for the lease negotiation and advertised the property. For a third property, they continued to advertise the property on their website, agreed to list the property and expected to collect a commission.

PHILLIP KLIMA, Strongsville, Ohio, was assessed a civil penalty in the amount of \$1,000.00 for violating R.C. 4735.02, unlicensed activity, when he negotiated, listed and assisted in the procurement of prospects for the purchase of a property at an open house, which resulted in the sale of the property without first being licensed.

AMERICAN AFFORDABLE BUILDERS & CONTRACTORS, North Royalton, Ohio, was assessed a civil penalty in the amount of \$36,000.00 for violating R.C. 4735.02, unlicensed activity, when the company acted as a property manager, managed and operated properties, handled some of the account receivables and payables, handled lease and contract negotiation, handled all tenant related issues and complaints, handled all sub-contractors negotiations and contracts for the properties, computed, billed and collected all rent and/or lease payments, security, cleaning, damage and other deposits and all other deposits and all other expenses chargeable to or payable by tenants, agreed to and expected to receive compensation for these services and received compensation for these services without first being licensed.

Meeting Schedules for 2006

The **Ohio Real Estate Commission** (OREC) meetings are held in the Division's Columbus office at 77 S. High Street in the 20th Floor Hearing Room. All OREC meetings are open to the public but are subject to change. Anyone wishing to address the Real Estate Commission must submit a formal, written request. Please contact the Division if you have questions.

January 4

February 8

March 15

April 19

May 24

June 28

August 2

September 6

October 18

November 29

The **Ohio Real Estate Appraiser Board** meetings are held in the Division's Columbus office at 77 S. High Street in the 20th Floor Hearing Room. All Appraiser Board meetings are open to the public but are subject to change. Anyone wishing to address the Appraiser Board must submit a formal, written request. Please contact the Division if you have questions.

January 27

March 24

June 9

August 18 or 25 (to be determined at a later date)

September 29

November 17

The **Education and Research Fund Advisory Committee** was established by the Ohio Real Estate Commission to provide information and education for all licensees. One of the duties of the committee is to discuss and to develop topics for research papers by colleges, universities and trade organizations. These research topics are then considered for funding by the Ohio Real Estate Commission. The Committee consists of 11 members comprised of the Superintendent of the Division, two Commission Members, brokers and industry representatives. The Committee meets quarterly in Columbus at 77 S. High Street, 23rd Floor Director's Conference Room. The meetings begin at 1:30 p.m.

February 1

April 11

July 12

October 11



The Ohio Department of Commerce

State of Ohio

Department of Commerce

Division of Real Estate and Professional Licensing

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