



**The Ohio
Department
of Commerce**

Fall 2002

Division of

Real Estate and Professional Licensing

◆ N E W S L E T T E R ◆

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GOVERNOR

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DIRECTOR

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SUPERINTENDENT

◆ *Audits are a positive opportunity to learn and receive assistance*

Compliance Audits Educate, Enforce License Law

What should brokerages expect during routine compliance audits? Licensees often inquire about the purpose of Division audits. More importantly, they want to know if the audit focuses more on educating the brokerage on license laws or on enforcing compliance with real estate statutes. Actually, audits serve both purposes.

Division investigators conduct monthly compliance audits of Ohio brokers in accordance with Section 4735.05 of the Ohio Revised Code. The goal is for investigators to conduct an audit of each brokerage every three to four years.

Audits can be performed upon request of the broker, if the Division receives a substantial increase in complaints in the brokerage's geographical area, and upon the Superintendent's request.

The purpose of the audit is twofold: first, to provide education and awareness of real estate law; and second, to provide assistance to brokerages to ensure compliance with all real estate license laws.

If investigators find areas of non-compliance, they will work with brokers to make necessary corrections. As one Division investigator often says to brokers who are scheduled for an audit, "We are here to help you. We're not the IRS!" The most important feature of the audit process is that it allows investigators to interact with

the real estate community and establish rapport with the brokerages the Division serves.

Since January of 2002, investigators have met with more than 300 brokerages. Often brokers express appreciation for the investigators' audits as it allows them an opportunity to ask questions, gain information, and rectify any discrepancies that may be

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found during the audit.

When an investigator schedules a compliance audit with a brokerage, the Division sends a fax with a confirmation letter and company policy checklist to the brokerage. The confirmation letter describes the types of documents the investigator will examine, and it requests that the

brokerage make these documents available for review on the scheduled audit date.

The company policy checklist is a fairly new procedure implemented by the Division's enforcement section in May 2002. This checklist is used to help alleviate confusion in the industry and to ensure compliance with the "Written Company Policy for Brokerage" as required pursuant to Section 4735.54 of the Revised Code and Administrative Code Rule 1301:5-6-03. The brokerage should review and complete the checklist prior to the scheduled date of the audit.

The compliance audit is a very thorough regulatory and education process. Some examples of the types of activities undertaken during an audit include:

- Review of all licenses held
- Review of trust accounts
- Examination of all advertising, business cards, and yard signs
- Review and discussion of office policies
- Review of mandated real estate forms such as listing agreements and agency disclosure forms

To ensure your audit goes smoothly, take time to cover some basic real estate areas:

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- Do you have a company policy for brokerage and a company policy on agency?
- Are you maintaining a columnar ledger for all trust account funds?
- Do all of your agency agreements contain the mandated fair housing language?
- Do all of your agency agreements contain a definite expiration date?
- Are you seeing to it that all agents are instructed to ensure

that a definite expiration date is clearly noted?

- Are you maintaining ALL transaction related records for a period of three years?
- Is your account for earnest money clearly marked as a “trust” or “special” account, and is the account non-interest bearing?
- Are ALL licenses properly displayed?
- Is there clear signage on the premises that identify the brokerage, even if you operate

out of your own home?

Compliance audits serve to help inform and educate brokers and ensure compliance to real estate law. Division investigators perform audits to provide information, answer questions, and assist brokers in understanding all aspects of license law. Brokers should look upon a compliance audit as a positive opportunity to meet with a Division representative and to receive any necessary assistance.

The Division of Real Estate and Professional Licensing Newsletter is published quarterly by The Ohio Department of Commerce, Division of Real Estate and Professional Licensing.

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Division Booth at OAR Trade Show a Hit

The Division recently hosted a booth at the Ohio Association of REALTORS 92nd Annual Convention, and it was such a success that the OAR has asked the Division to come back every year.

The booth, which was manned by staff from the Licensing and Enforcement section, promoted familiarity with the Division’s Web site and its online renewal function. Staff answered questions about the site and distributed a bookmark which describes the online renewal process.

Licensees got a chance to use the Web site during the convention. Thomas E. Fortener of Dayton was the first to renew online and Judith F. Patriski of Cleveland was the last.



New Home Buyers’ Guide Available

The new, updated “Home Buyers’ Guide: How to Make the Most of Your Home Buyer Experience” is now available. The free 10 page booklet is intended to help home buyers through the purchase process. The book discusses planning, strategies, financial issues, credit ratings, and more. It also includes updated charts, of per-month payments, based on lower interest rates and higher prices.

While intended for buyers rather than agents or brokers, licensees may wish to keep copies of the booklet on hand to give to clients. It is available online or can be mailed. Visit the Division Web site for further information, or email the Division at REPLD@com.state.oh.us.

Home Inspections Protect Licensees, Buyers, Sellers

The Division receives many consumer inquiries regarding professional home inspections and what the licensees' responsibility is when advising clients about the importance of obtaining a home inspection.

While license law does not specifically require a licensee to instruct a client to have a home inspection, the Division cautions real estate agents that license law does require licensees to exercise reasonable skill and care in fulfilling fiduciary duties in general. The law regarding fiduciary duties is found in the Ohio Revised Code Section 4735.62 and states in pertinent part, "...In representing any client in an agency or subagency relationship, the licensee shall be a fiduciary of the client and shall use the licensee's best efforts to further the interest of the client including, but

not limited to, advising the client to obtain expert advice relating to material matters when necessary or appropriate."

Some of the issues that may be avoided with a professional home inspection include:

- latent defects that are undetectable by the home buyer
- complaints filed by the buyer against a licensee for defects that were not known to the licensee (or even the seller in some cases)
- deception by the seller to hide damage or cover up a defect not disclosed in the Residential Property Disclosure Form

With the information from a professional home inspection, buyers will have additional leverage to have the seller fix the

problem, negotiate the sale price to reflect any material defects, and help eliminate allegations that the real estate agents knew of material defects and failed to disclose them. If the client does not want a home inspection, both the licensee and the client should sign a "waiver of release" to signify the client's wishes. It is important for agents to remember that the Residential Property Disclosure Form should be completed by the seller only, and not with any assistance of the licensee.

A professional home inspection is an important piece to completing a successful real estate transaction. A home inspection will serve to protect not only the licensee, but also buyers and sellers should any material problems arise with property during or after a closing.

Mold Becoming an Important Issue in Real Estate

Mold as a real estate issue is no laughing matter. While mold exists in most every home and usually causes no harm, it can be toxic in some situations. Increasingly, civil court judges try cases where illness has been caused by household mold, and insurance adjusters see more and more mold claims related to water damage. Consumer advocate Erin Brockovich and entertainer Ed McMahon have both initiated litigation because of mold problems.

Experts believe that mold disclosure may be required in real estate transactions in the near future, so licensees should become aware of issues surrounding house mold now.

Under most circumstances, mold

is just a nuisance. Yet some people are unusually sensitive to common molds and can experience respiratory problems, rashes, nosebleeds, infections and possibly even brain damage. Because of the potential dangers, schools have been closed because of mold, and homeowners have been forced to move out of their homes in an attempt to avoid the toxicity.

Mold problems become a crisis when either insurance companies do not cover mold damage or insurance benefits run out. Homeowners sometimes must pay two mortgages, one on their unsalable mold-ridden house and one on a home they can live in without fear of illness. In a few

cases, the situation has caused bankruptcy and homelessness.

There are thousands of kinds of mold, but only a few cause health problems. Toxic mold grows in dark, moist areas such as unused heating ducts, behind damp walls, or around roof leaks. The way to prevent the excessive growth of mold is to reduce moisture and humidity in the environment through the repair of leaks, the use of a dehumidifier, and the addition of insulation to surfaces where water condenses when cold. Damp or wet building materials should be thoroughly cleaned and dried before use, and homeowners may want to consider replacing absorbent materials such as ceiling tiles.

News from the Ohio Real Estate Appraiser Board

ASB Adopts Changes to USPAP

The Appraisal Standards Board (ASB) met on June 11, 2002 and adopted changes to the Uniform Standards of Professional Appraisal Practice (USPAP). The changes that will be effective January 1, 2003 were the result of two public exposure drafts released earlier this year. The members of the ASB deliberated over numerous written comments and oral testimony.

Modifications that will be incorporated into the 2003 Edition of the Uniform Standards of Professional Appraisal Practice include:

- Revisions to Standards Rules 1-5 and 7-5 on Property Sales History and an addition of Standards Rule 1-6 and 7-2 on Reconciliation
- Revisions to Advisory Opinion 3 (AO-3) and Statement on Appraisal Standard No. 7 (SMT-7) on Updating an Appraisal
- Approval of a revised Advisory Opinion on Appraising Properties Impacted by Environmental Contamination
- Revisions to Standard 3, Appraisal Review, Development and Reporting
- The addition of labels to clarify the application of USPAP by discipline
- A clarification of USPAP Compliance

Certification Courses Planned

The Appraisal Foundation has four courses planned for the balance of 2002. The courses are open to instructors who meet the pre-qualification requirements and are taught by current or former members of the ASB. For more information on qualifications, dates, and locations, check this schedule:

Westerville, Ohio
September 20–22, 2002
Hondros College
Westerville, OH
To register, call:
(614) 508-7222

San Francisco, California
October 4–6, 2002
Mariott San Francisco Airport
Burlingame, CA 94101
For hotel reservations, call:
(800) 228-9290

Dallas, Texas
November 1–3, 2002
Hyatt Regency
Dallas/Ft. Worth Int'l Airport
For hotel reservations, call:
(800) 233-1234

Orlando, Florida
November 15–17, 2002
Sheraton World Resort
10100 International Dr.
Orlando, FL 32821
For hotel reservations, call:
(407) 352-1100

AQB Votes to Include Exam

At its most recent meeting in Denver on July 19, 2002, the AQB discussed and decided to include an examination with the seven-hour national USPAP Update Course. The examination requirement will take effect with the release of the 2003 edition. However, the AQB postponed the requirement at least until 2006.

Appraiser Disciplinary Action

DEWEY V. GUIDA (RA), a state licensed real estate appraiser from Weiton, West Virginia, was found to have violated Ohio Revised Code Section 4763.11 (G)(5) as that Section incorporates USPAP Rule 2-2 (b)(xi); also violations of 4763.11 (G)(5) of Ohio Revised Code as it incorporates USPAP Rule 2-1 (b); and violations of 4763.11 (G)(5) and 4763.11 (G)(6) as it incorporates USPAP Rules 4 (b)(iii). For these violations Dewey Guida was ordered to complete a 15 hour course in Appraisal Reporting Writing within 90 days of the date of the Appraisal Board's order. Dewey Guida did the following with respect to developing and communicating an appraisal report: he failed to explain why

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Superintendent, Assistant Superintendent Appointed



Superintendent Anne Moorhead Petit

Director of Commerce Gary C. Suhadolnik appointed Anne Moorhead Petit as Superintendent and Mary Petro as Assistant Superintendent of the Division of Real Estate and Professional Licensing.

Moorhead Petit has served in state government since 1995, most recently as Director of Constituent Inquiries for Governor Bob Taft. She was also Administrator for the Secretary of State's campaign finance division and administered \$45 million in federal grants for the Office of Criminal Justice Services.

A Hilliard resident, Moorhead Petit previously served as Manager/Real Estate Lender with the former Diamond Savings and Loan in Findlay, Ohio. In this position, she originated and closed consumer, residential and business loans and

worked with area REALTORS, appraisers, and title agencies. She later served as Compliance Administrator of Mid-American National Bank in Toledo, where she oversaw the bank's regulatory compliance.

"Anne brings a wealth of administrative experience from the public and private sectors that will assist her in serving the industries we regulate and the consumers we serve," Suhadolnik said.

Before being named Assistant Superintendent, Mary Petro was a principal at Davis and Hanna Consulting for 12 years. She has also served as the Associate Editor of a Cleveland area monthly small business newspaper and was the Co-op Advertising Manager for the Cleveland Plain Dealer. Petro is also active in volunteer work.

Appraiser Disciplinary Action

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there were departures from specific requirements of Standard I of the Uniform Standards of Professional Appraisal Practice. This was a result of not appropriately addressing the Income Approach to Value in the report. He also failed to appropriately utilize the cost approach in addressing the improvements on the subject property; he failed to supply complete and accurate information in the appraisal report concerning the age and rehabilitation of the subject property; and he failed to adequately address the "SM Home" when he addressed the Market Approach to Value.

Division Concerned about Low Broker Exam Pass Rate

In March 2002, four out of 23 applicants passed the Ohio real estate brokers examination and were licensed. In April, only eight out of 18 applicants passed the exam. In fact, currently the pass rate hovers at around 30 percent, as it has for the past three years, according to Division statistics.

The numbers are sobering. Even licensees who eventually pass the exam often have to take it several times. Yet the exam is not unduly difficult, and the information covered by the exam is vital.

"The Division wants brokers to be fully qualified, and the exam is the best way for us to assess an applicant's knowledge," said Laird Eddie, supervisor of education and training for the Division. "To be a broker, you need a wide spectrum

of knowledge."

Eddie has found that many applicants have not taken classes for many years, since current statutes do not require pre-education for individuals licensed before January 1984. "They need to get back into the mind-set of taking exams," said Eddie. The Division suggests taking a course such as a real estate principles and practices class, as a way to get used to taking exams.

"The applicants should read and understand the question before attempting to answer it," Eddie said. "They should avoid changing answers, too, since usually the first answer is the right answer.

"Preparation is key," Eddie continued, "as is becoming comfortable with test-taking."

Real Estate Disciplinary Actions

SUSPENSIONS, FINES, EDUCATION

DAVID M. SAVRON, sales associate, Hinckley, Ohio, had a \$250 fine levied against his license for violating Ohio Revised Code Section 4735.18 (A)(6) as that section incorporates Ohio Revised Code Section 4735.18 (A)(9) and Ohio Revised Code Section 4735.02. Mr. Savron provided services requiring an Ohio real estate license during a time when his license was in a “cancelled” status.

WANDA ROLLINS, sales associate, Cleveland Heights, Ohio, received a 30 day suspension of her license, which commenced on May 15, 2002, for violating Ohio Revised Code Section 4735.18 (A)(5). In addition, she was fined \$100, and she was required to complete and to submit proof of completion of the 10 hour sales post-licensure course. Ms. Rollins never remitted an earnest money deposit to her broker for deposit of the funds into the brokerage’s trust account.

ANNABELLE E. NESHKIN, broker, Cleveland Heights, Ohio, received a 15 day suspension of her license, which commenced on May 15, 2002, for violating Ohio Revised Code Section 4735.18 (A)(6) as that section incorporates Ohio Revised Code Section 4735.18 (A)(19). In addition, she was fined \$500, and she was required to complete and to submit proof of completion of the 10 hour brokerage post-licensure course. Ms. Neshkin negotiated the sale of a home with the seller directly, when she knew another broker had an outstanding exclusive listing agreement on the property.

MARTHA E. BONECUTTER, sales associate, Grove City, Ohio, received a 10 day suspension of her license, which commenced on May 15, 2002, for violating Ohio Revised Code Section 4735.18 (A)(6) as that section incorporates Ohio Revised Code Section 4735.18 (A)(9) and Ohio Revised Code Section 4735.02. In a previous case before the Ohio Real Estate Commission, Ms. Bonecutter’s license was suspended for five days. During her suspension time, she did not do anything to retract advertising in her name nor did she remove a yard sign with her name and phone number on it. Also, there were three listings with her photos, which went into a community newspaper, and there was active Internet advertising.

WILLIAM E. SAXTON, broker, Grove City, Ohio, had a \$1,000 fine levied against his license, and he was required to complete and to submit to the Division proof of completion of the 10 hour brokerage post-licensure course for violating Ohio Revised Code Section 4735.18 (A)(6) as that section incorporates Ohio Revised Code Section 4735.18 (A)(34). Mr. Saxton permitted an affiliated agent of the brokerage to engage in active advertising during a period of time when the agent’s license was under a disciplinary suspension.

KAREN M. BLAKLEY, sales associate, Cincinnati, Ohio, had a \$300 fine levied against her license, and she was required to complete and to submit to the Division proof of completion of a three hour course on agency for violating Ohio Revised Code Section 4735.18(A)(6) as that

section incorporates Ohio Revised Code Section 4735.71 (C). Ms. Blakley failed to properly complete the in-company transaction portion of an agency disclosure form as it related to her representation of a buyer.

CANDACE K. McDONALD, sales associate, Cincinnati, Ohio, was found to have violated Ohio Revised Code Section 4735.18 (A)(6) as that section incorporates Ohio Revised Code Sections 4735.62 (A) and 4735.62 (C), but no penalty was imposed. Ms. McDonald caused earnest money to be deposited into the brokerage’s trust account before the real estate purchase offer had been accepted. The purchase offer stated that the earnest money should not be deposited until the offer had been accepted.

COMEY & SHEPHERD, INC., corporation, Cincinnati, Ohio, was found to have violated Ohio Revised Code Section 4735.18 (A)(6) as that section incorporates Ohio Revised Code Sections 4735.62 (A) and 4735.62 (C), but no penalty was imposed. The corporation deposited earnest money into its trust account before the real estate purchase offer had been accepted. The purchase offer stated that the earnest money should not be deposited until the offer had been accepted.

LESTER L. VanBUREN, sales associate, Reynoldsburg, Ohio, was found to have violated Ohio Revised Code Section 4735.18 (A)(25), but no penalty was imposed. Mr. VanBuren failed to provide a copy of the purchase offer to the buyer at the time it was signed.

RION T. MacCONNELL, sales associate, Washington Township, Ohio, received a 60 day suspension of his license, which commenced on June 20, 2002, for violating Ohio Revised Code Section 4735.18 (A) (6) as that section incorporates Ohio Revised Code Section 4735.21. In addition, he was fined \$1,000, and he was required to complete and to submit proof of completion of the 10 hour sales post-licensure course. Mr. MacConnell collected commissions from the seller on behalf of the brokerage directly and without the knowledge or consent of his broker.

DAVID E. BIEDERMAN, broker, Cincinnati, Ohio, had a \$100 fine levied against his license, and he was required to complete and to submit to the Division proof of completion of a three hour core law course for violating Ohio Revised Code Section 4735.18 (A) (24). Mr. Biederman, in his capacity as broker, failed to retain copies of two rejected purchase offers for the prescribed three-year period.

DALE A. ANDERSON, sales associate, Parma, Ohio, had a \$100 fine levied against his license for violating Ohio Revised Code Section 4735.18 (A) (20). Mr. Anderson offered property for sale without the knowledge and consent of one of the owners or an authorized agent of the owner.

SHARON S. HAIR, sales associate, Ashland, Ohio, had a \$1,000 fine levied against her license and she was required to complete and to submit proof of completion of the 10 hour sales post-licensure course for violating Ohio Revised

Code Section 4735.18 (A) (21). Ms. Hair caused to be published advertising that was materially inaccurate; she misstated a lot's dimensions.

DAWN R. BUROKER, sales associate, Bluffton, Ohio, had a \$100 fine levied against her license for violating Ohio Revised Code Section 4735.18 (A) (6) as that section incorporates Ohio Revised Code Section 4735.62 (C). Ms. Buroker failed to follow her sellers' instructions not to permit the buyer to enter the property until after the closing.

CHERYL L. LAYMON, sales associate, Columbus, Ohio, had a \$500 fine levied against her license and she was required to complete and to submit proof of completion of the 10 hour sales post-licensure course for violating Ohio Revised Code Section 4735.18 (A) (35). Ms. Laymon inserted the words "Commit Ltr. Att." into a purchase agreement, when she knew this was a materially inaccurate reference, since no commitment letter had been obtained.

DAVID M. POCHEDLEY, sales associate, Fairview Park, Ohio, was found to have violated Ohio Revised Code Section 4735.18 (A) (6), but no penalty was imposed. Mr. Pochedley failed to correctly fill in the expiration date in a listing contract he had negotiated for a property.

ANNA L. SPINO, broker, Oak Harbor, Ohio, received a five day suspension of her license, which commenced on August 1, 2002, for violating Ohio Revised Code Sections 4735.18 (A) (6) and 4735.62. In addition, she was fined

\$500, and she was required to complete and to submit proof of completion of a three hour ethics course. Ms. Spino failed to notify her clients, the sellers, in a prompt manner, that there were motivated buyers interested in viewing a property.

JUNE A. BOYD, broker, Marion, Ohio, had a \$1,000 fine levied against her license and she was required to complete and to submit proof of completion of the 10 hour brokerage post-licensure course for violating Ohio Revised Code Section 4735.18 (A) (14). Ms. Boyd offered an inducement, a reduction of her commission, but failed to recite the inducement in the purchase agreement.

PATRICIA M. MICKLEY, broker, Mount Vernon, Ohio, had a \$500 fine levied against her license for violating Ohio Revised Code Section 4735.18 (A) (6) as that section incorporates Ohio Revised Code Section 4735.55 (A) (4). Ms. Mickley failed to include in a written agency agreement a copy of the U.S. Department of HUD equal housing opportunity logotype.

DEBRA D. FOWLER, sales associate, Mount Vernon, Ohio, had a \$200 fine levied against her license for violating Ohio Revised Code Section 4735.18 (A) (6) as that section incorporates Ohio Revised Code Section 4735.55 (A) (4). Ms. Fowler failed to include in a written agency agreement a copy of the U.S. Department of HUD equal housing opportunity logotype.

Remember Proper Submission Procedure for Applications, Requests

The Division receives hundreds of applications and requests daily. In order to properly and efficiently process them, it is imperative that licensees communicate their intentions effectively when they submit applications and requests.

Licensees' submissions often lack an important piece of information. For instance, the Division mails an annual renewal form 60 days prior to the due date. A licensee will sometimes send a check for \$39 but will not return the required form with it. Sometimes a check will be in the name of the business or in a name other than the exact licensed name. At this point, Division staff members are forced to begin tracking the check, which can include internal research, telephone calls, and the mailing of a letter of inquiry. This procedure extends processing time for not only the deficient submission, but also for all submissions received. Remember,

renewal forms, like all other forms, can be downloaded from the forms section of the Web site.

Licensees also frequently submit college transcripts trying to determine if they have met the educational requirements to apply to take the broker's exam. The Division sometimes receives the transcript, which might be in a name not currently licensed, without a cover letter identifying the licensee or the licensee's intent. Again, this causes a significant delay in the processing of the information.

To expedite matters, all correspondence with the Division should include a cover letter explaining the submission and the licensee's file number, which can be found on the pocket card, renewal notice, or online.

Licensees should review the forms available from the Division's Web site and keep the Division's email address, REPLD@com.state.oh.us, handy.

Note on Applications, Deficiency Notices

To avoid license application delays, applicants should thoroughly review materials before submitting them. If the application lacks a necessary piece of information or an original license, the Division sends out a deficiency notice requesting the license, additional information, fees, or other materials. Applicants must respond to this notice within 30 days, or they will have to repeat the entire application process.

The Ohio Administrative Code section 1301:5-1-4 (C) states, "Upon notice from the Division of Real Estate that an application is incomplete or incorrect as filed, the applicant shall within 30 days for the date of the last such notice submit to the Division a corrected application or the additional information requested." If you have questions, you can email the Division at REPLD@com.state.oh.us.



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