



**The Ohio
Department
of Commerce**

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Division of

Real Estate and Professional Licensing

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◆ *Suspicious of Misconduct should be reported to the Division*

Predatory Lending: A New Twist on an Old Crime

Don't doubt it for a minute; criminals are creative! The Division is committed to making all licensees aware of new schemes to strip non-existing equity from properties.

The most recent scheme involves a request that a real estate listing agent change the asking price for a property to match an inflated selling price. This request should be an automatic red flag for real estate licensees.

Suppose a property is listed for \$50,000. The buyer offers \$65,000 for the property with the extra \$15,000 going to the buyer at closing. Presumably, the \$15,000 is for rehabilitation to the home. First question: why doesn't the buyer want to meet the requirements to obtain a traditional rehabilitation loan? Then the licensee learns that the deal is contingent on the listing agent altering the listing agreement and MLS entry to reflect a \$65,000 list price. The next question: why is it necessary to change the listing agreement and MLS entry? The answers are that this arrangement gives the buyer an immediate \$15,000 to pocket while misleading any future appraisers, lenders or subsequent buyers about the actual sales price, and, therefore, the value of the home.

Real estate license law prohibits a licensee from knowingly inserting or participating in inserting any materially inaccurate term in a document. Therefore, both the listing agent who inserts an incorrect selling price in a listing agreement or the buyers' agent who participates in facilitating the transaction based on this inaccurate term are both in violation of

license law. Upon receiving such a request the licensee should not only refuse but notify the licensee's broker.

When refusing to insert a materially inaccurate term in a document, licensees should not be concerned about violating their fiduciary obligations to their clients. Section 4735.62(C) of the Revised Code requires licensees to follow the "lawful" instructions of their client. A licensee does not breach a fiduciary duty to a client if the licensee refuses to engage in unlawful activity on a client's behalf.

Appraisal license law prohibits certificate holders or licensees from rendering a value based on a pre-determined estimate or misrepresentation as to the value of the subject property. The prudent appraiser must routinely make a review of prior sales information part of their appraisal process to avoid a false reporting of value.

Finally, mortgage brokers and lenders are prohibited, pursuant to Section 1322.07(C) of the Revised Code, from knowingly participating in lending based on a false sales price that is inflated to strip non-existing equity from a property. Complaints against mortgage brokers and lenders should be forwarded to the Department of Commerce, Division of Financial Institutions Office of Consumer Affairs, 77 S. High Street, 21st Floor, Columbus, Ohio 43215. A toll free hotline (1-866-278-0003) has also been established for licensees and consumers to obtain more information about the laws pertaining to mortgage brokers and lenders.

Both real estate licensees and members of the appraisal industry should do their

part to report any suspicions of licensee misconduct described above to the Division of Real Estate & Professional Licensing by utilizing the online complaint form located on the Division's website at www.com.state.oh.us/real. By being informed and working together, we can all do our part to protect Ohio's consumers from falling prey to this newest twist on predatory lending.

CHANGE IN HANDLING OF INCOMING LICENSING APPLICATIONS

**On September 1, 2003,
the Real Estate Section
will begin returning to brokers
all documents that have been
received incomplete,
lacking attachments or
do not have the correct fees
enclosed. Please remember the
Division wants to process your
changes or requests as quickly
as possible. We want to keep you
working! The date of your
change(s) will be the date in
which all correct paperwork and
fees are received here
in the Division.**

Flat Fee Listings and Limited Agency Clarified

Complaints and inquiries on the execution of flat fee listing agreements and limited agency relationships are on the rise at the Division. As a licensee, what are your obligations in these arrangements?

Consider this typical scenario: Beta Broker will list Suzy Seller's house for \$495.00. The agency agreement stipulates that Beta Broker will provide access to the local multiple listing service (MLS) only and that Suzy Seller agrees to receive all offers herself and handle all showings.

The above scenario represents what is known as a "Flat Fee Listing," whereby, for a predetermined fee, the listing broker provides specified services to the seller. The arrangement is beneficial to the seller because he or she is not paying a broker for services he or she believes is

needless. Brokerages are beginning to move beyond flat fee listings to offer a potpourri of flat fee services. Although the same principals apply to all flat fee arrangements, this article utilizes the listing example for illustrative purposes.

First, it is important to note that the Division has no direct authority over the practices of local MLS systems. Consequently, just because a flat fee listing may be allowable under license law does not mean it will be accepted by a local MLS.

A broker offering a flat fee listing is engaging in activity for which a license is required and therefore must comply with all provisions of license law. The flat fee listing agreement is an agency agreement and must comply with the content requirements provided in Section 4735.55 of the Revised Code. Additionally, the listing broker must complete the state mandated agency disclosure form and, pursuant to Administrative Rule 1301:5-6-06, may not alter the form to suit his or her particular agency agreement.

The term "Limited Agency" is not a term defined in Ohio license law. In fact, license law does not specifically recognize or provide for limited agency—it doesn't exist. Nonetheless, many licensees believe that as part of a flat fee listing they may limit their duties to the seller. This is true with respect to agency duties, but not fiduciary duties.

License law does allow for the duties of an agency relationship to be modified by agreement. This is consistent with traditional principals of agency law, which are based on the notation that an agent (broker) only obtains those duties which are specifically granted by the principals (seller). In a traditional listing context, licensees do this all the time. They agree to a certain level of advertising and a number of open houses, which are all part of defining the scope of agency duties. These defined agency duties are separate and distinct from general fiduciary obligations of good faith and loyalty.

Using the earlier example, Suzy Seller and Beta Broker may agree to limit the scope of Beta Broker's agency duties by agreeing that Beta Broker will only provide access to the local MLS. This agreement does not however obviate Beta Broker's fiduciary duty to act in Suzy Seller's best interest. So, if Beta Broker receives an offer (by mistake) on Suzy Seller's property, Beta Broker has a fiduciary duty to present that offer to Suzy Seller, even though the agency agreement provides that Suzy Seller will personally receive all offers.

Licensees who consider offering flat fee services and/or limiting the scope of their agency duties should consult the fiduciary duties outlined in license law. The Division will enforce these duties, irrespective of the scope of agency duties outlined in the agency agreement.

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Distance Education Update

Licensees:

Real Estate Licensees may now choose distance education as an option to fulfill 15 of 21 elective course hours in any three year cycle. All core courses must continue to be classroom hours. Licensees may submit proof of completion of up to 15 hours of distance education in computer specific courses. However, only six hours can be devoted to basic computer instruction. The Division has, to date, approved 29 online courses from three providers for this year. Check with your provider to determine if it offers options in distance education.

Providers:

When submitting applications for distance education course approval, please review and understand Ohio Administrative Code section 1301:5-7-04 to ensure that your course complies with all requirements. Additionally, please be certain to provide the Division with a complete copy of the course in the medium that is to be utilized. For online courses please provide all instructions, user ID's and passwords necessary to review the course on its Web site.

Meet the Staff: Customer Service Section

Would you like to match a voice on the phone to a face? This new series of “Meet the Staff” articles should allow you to get to know a little better some of the Division staff members you’ve probably worked with on numerous occasions.

First, let’s meet our hard-working Customer Service Representatives. Roger Jones is the section veteran, having been with the Division since 1994. Roger is currently on military leave ensuring homeland security during the Iraqi conflict. Darlene McDowell has served for four years, and relative newcomer Janessa Haynesworth recently marked one year with the Division. Liz Exline has just been hired as the new Customer Service Manager, although she has worked in various capacities with the State since 1980. Dee Amos and Kevin Misner are temporarily lending assistance to the customer service area and round out the Customer Service staff.

Customer Service Representatives field

700–800 inquiries a day from licensees and consumers. They screen the calls, answer any general Division questions themselves, and direct the more in-depth or complex queries to the appropriate Division staff member.

“They definitely have one of the toughest jobs in the Division,” said Diana Kenney, former Customer Service Manager.

Many times the Customer Service team finds that they must draw the licensee out, asking open-ended questions and trying to determine the exact nature of the call.

“It can be very stressful, and they do a terrific job,” said Kenney.

In order to increase quality service and assist each caller quickly and efficiently, the Division recently implemented a new telephone system, which offers detailed announcements to the caller, including the Division’s helpful and informative Web site address. It also will connect callers to the appraiser and cemetery sections located in the Division’s Cleveland office.



From left to right: Janessa Haynesworth, Liz Exline, Roger Jones, Darlene McDowell.

Brokers Are Responsible for the Actions of Their Agents

The Division sometimes receives a complaint against both a salesperson and the broker because the complainant believes that the broker is responsible for the salesperson’s actions in the real estate transaction. How valid is this type of complaint?

Let’s look at some examples:

- A salesperson fails to collect earnest money, but the broker doesn’t know this and doesn’t actively oversee how earnest money is collected. In this case, should the broker be charged for a license law violation because of the salesperson’s actions?
- A salesperson uses a listing agreement without the proper fair housing language and HUD logotype. Should the broker be charged along with the salesperson for this violation of license law?
- A salesperson neglects to provide

an agency disclosure form when required under R.C. 4735.58. The broker has had ample time to discover this discrepancy yet has not. Should the broker be held responsible?

The answer to all these questions is “yes.” While R.C. 4735.18(B) provides that a broker may be held responsible when the broker had knowledge of the salesperson’s actions, it is also true that O.A.C. 1301:5-6-01(C) and (D) provide that all brokers must actively oversee and direct the operations of the business and the activities of their salespersons. Therefore, it would be a violation of R.C. 4735.18(A)(6)—gross negligence—for a broker to fail to discover some wrongdoing by a salesperson even when the broker had no actual knowledge of the salesperson’s wrongdoing.

All licensees should be aware of this aspect of real estate license law, and brokers should pay special attention to the actions of their agents.

Port Clinton Broker Celebrates Milestones

Industry stalwart Ann Bolte retired May 3, 2003, after sixty-seven years (yes, 67!) in the real estate business. Mrs. Bolte maintained an active license and generated business right up to her retirement. Licensed by the State of Ohio as a broker on April 10, 1936, she established an office in Port Clinton. That brokerage is still located in the same building on Second Street in that north coast town.

Throughout her six-plus decades in real estate, Mrs. Bolte was an active participant in REALTOR organizations at the local, state and national level. She became the first female commissioner to the Ohio Real Estate Commission when Governor James Rhodes appointed her in 1980. Mrs. Bolte served the OREC from 1980 to 1985. Recently, Governor Bob Taft sent 100th birthday greetings to Mrs. Bolte, whose birthday coincides with her retirement date. At the time of her retirement, Mrs. Bolte was the oldest active real estate licensee in Ohio. The Division sends our best wishes to Mrs. Bolte for an enjoyable retirement!

Appraisal Standards Board Issues USPAP Q & A

This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. The ASB USPAP Q & A is issued (1) to inform appraisers, regulators, and users of appraisal services of the ASB responses to questions raised by regulators and individuals; (2) to illustrate the applicability of the Uniform Standards of Professional Appraisal Practice (USPAP) in specific situations; and (3) to offer advice from the ASB for the resolution of appraisal issues and problems.

Q: In an appraisal review assignment that includes the reviewer's own opinion of value, is the reviewer required to use the same scope of work as the original appraisers?

A: No. Standards Rule 3-1(C) states, in part, "in developing an appraisal

review, the reviewer must: (C) Identify the scope of work to be performed."

Comment: When the scope of work of the assignment includes a requirement for the reviewer to develop his or her own opinion of value, *the reviewer's scope of work in developing his or her own opinion of value may be different from that of the work under review.*

For example, the scope of work in the original appraisal may have included an interior and exterior inspection of the subject property, and the scope of work for the appraisal review may include only an exterior inspection or no inspection at all.

Q: Recently one of my appraisal reports was reviewed. The review report contained information that could not have been available to me at the time I completed my appraisal report. The reviewer used this additional information

to discredit my opinion of value. Is this appropriate?

A: No. Standards Rule 3-1(C) allows a reviewer to use additional information *that was not available to the original appraiser in the development of his or her value opinion; however, the reviewer must not use such information as the basis to discredit the original appraiser's opinion of value.*

Q: In an appraisal review assignment for which the reviewer develops his or her own opinion of value, is it permissible for the reviewer to use an effective date that differs from the work under review?

A: Yes. The comment to Standards Rule 3-1(C) states, in part that *the effective date of the reviewer's opinion of value may be the same or different from the date of the work under review.*

Appraiser Disciplinary Actions

JACK L. BURGESS (RA), a state licensed residential real estate appraiser from Uniontown, Ohio, as to count one was found to have violated Ohio Revised Code Section 4763.11(G)(5) as that section incorporates the Uniform Standards of Professional Appraisal Practice Standards Rule 1-1(b) and 1-1(c) and Ohio Revised Code Section 4763.11(G)(6) and (G)(7) as set forth in the Notice of Opportunity for Hearing. For these violations, Mr. Burgess is ordered to complete a 15 classroom hour course in the Uniform Standards of Professional Appraisal Practice and a 15 classroom hour course in the Sales Comparison Approach to Value and must remit proof of passing both course examinations. These courses must be completed within 120 days of the date of the order. The appraisal education taken to satisfy the order cannot be used for credit for the 14 hours of annual continuing education.

For count two Mr. Burgess is found to have violated Ohio Revised Code Section 4763.11(G)(5) as that section incorporates the Uniform Standards of Professional

Appraisal Practice, Standards Rule 2-3 as set forth in the Notice of Opportunity for Hearing. For this violation the residential real estate appraiser license of Mr. Burgess is suspended for 30 days. Mr. Burgess failed to communicate an accurate physical description of a subject property by citing the lot size as 20,998 square feet when the lot actually contained only 10,500 square feet. Additionally, Mr. Burgess failed to disclose in the subject appraisal report the individual who provided him with significant professional assistance in developing and communicating the appraisal report and failed to include a Statement of Limiting Conditions and Certification.

THOMAS P. BRETT (RA), a state licensed residential real estate appraiser from Ravenna, Ohio as to count one was found to have violated Ohio Revised Code Section 4763.11(G)(5), as that section incorporates Uniform Standards of Professional Appraisal Practice, Standards Rule 1-1(b) and 1-1(c) and Ohio Revised Code 4763.11(G)(6) as set forth in the Notice of Opportunity for Hearing. For this violation Mr. Brett is ordered to complete a 15 hour classroom course in the Sales Comparison Approach

to Value and must present proof of passing the course examination. The course must be completed within 120 days of the date of the order. The appraisal education taken to satisfy the order cannot be used for credit for the 14 hours of annual continuing education.

As to count two, Mr. Brett is found to have violated Ohio Revised Code Section 4763.11(G)(5), as that section incorporates the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-5(a) and Ohio Revised Code Section 4763.11(G)(6) as set forth in the Notice of Opportunity for Hearing. For this violation Mr. Brett is issued a written reprimand and admonished to use greater care in the reviewing and preparation of appraisal reports. Additionally, Mr. Brett is ordered to complete a 15 hour classroom course in the Uniform Standards of Professional Appraisal Practice and must present proof of passing the course examination within 120 days of the date of the Board's order. The appraisal education

•continued on page 5

Appraiser Disciplinary Actions continued from page 4

taken to satisfy the order cannot be used for credit for the 14 hours of annual continuing education. Mr. Brett communicated and developed an appraisal report that contained inaccurate data for the size of the subject property and also indicated it had a lower level (basement) when it did not. He also failed to properly analyze an agreement of sale for the subject property to determine the correct sale price or to indicate and explain what efforts were made to obtain the information.

CAROL ANN SOHMER, a state licensed residential real estate appraiser from Cincinnati, Ohio as to count one was found to have violated Ohio Revised Code Section 4763.11(G)(5) as that section incorporates Uniform Standards of Professional Appraisal Practice, Standards Rule 1-1(b) and Section 4763.11(G)(6) of Ohio Revised Code.

As to count four Ms. Sohmer is found to have violated 4763.11(G)(5) of Ohio Revised Code as that section incorporates Uniform Standards of Professional Appraisal Practice, Standards Rule 2-1(b) and Section 4763.11(G)(6) of Ohio Revised Code.

As to count five Ms. Sohmer is found to have violated 4763.11(G)(5) of Ohio Revised Code as that section incorporates the Uniform Standards of Professional Appraisal Practice as that section incorporates Rule 2-1(a) and Section 4763.11(G)(6)

of Ohio Revised Code.

For each of these violations Ms. Sohmer is issued a written reprimand and admonished to use greater care in reviewing appraisal reports. Further, she is ordered to complete a 15 classroom hour course in Uniform Standards of Professional Appraisal Practice and a 15 classroom hour course in Sales Comparison Approach to Value, and submit proof of successful completion of each of the course examinations. The courses must be completed within 120 days of the date of the order. The appraisal education taken to satisfy the order cannot be used for credit for the 14 hours of annual continuing education. This board ordered discipline shall be imposed for each of the three violations found but shall be imposed concurrently. Ms. Sohmer communicated and developed an appraisal report that contained inaccurate data as it related to the gross living area by including an area that was below grade. She also failed to properly identify or describe the comparable properties cited in the appraisal report. The subject appraisal report listed an inaccurate amount of acreage in one of the comparable properties used and failed to identify all of the buildings on the site in the Market Analysis Section of the report.

MICHAEL S. GRAHAM, a state licensed residential real estate appraiser from Hudson, Ohio was found to have violated Ohio Revised Code Section 4763.11(G)(5)

as that section incorporates the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-1(c) as set forth in the Notice of Opportunity for Hearing. For these violations the Residential Real Estate Appraiser License of Mr. Graham is suspended for a period of 30 days. Additionally, Mr. Graham is ordered to complete a 15 classroom hour course in Uniform Standards of Professional Appraisal Practice, a 15 classroom hour course in the Sales Comparison Approach to Value and must submit proof of passing of both course examinations. The courses must be completed within 120 days of the date of the Board order. The appraisal education taken to satisfy the order cannot be used for credit for the 14 hours of annual continuing education. Mr. Graham communicated and developed an appraisal report that failed to accurately report the prior transfers of all the comparable sales properties included in the report. He failed to appropriately identify the zoning for the subject property as well. It was also concluded that three “pertinent” prior sales for two of the comparable properties included in the appraisal report was not revealed. The appraiser’s failure to provide this information was determined to make the appraisal report misleading since it had been communicated and developed in a “careless and negligent” manner.

Division Defines Advertising Complaint Process

Complaints concerning real estate licensees’ advertising are required to be on the Division’s complaint form, which may be downloaded from the Division’s Website. Anonymous complaints will only be processed if, upon review, the advertising is so misleading and inaccurate that it risks harm to the consumer. The complaint should include copies of the advertising material in question and/or any evidence to support the allegations contained in the complaint. Complaints alleging false statistical advertising will not be reviewed unless documentation is provided to substantiate the alleged violation. Complaints that do not contain this information will be returned to the complainant for additional information.

Once the complaint is complete, the

Division’s legal staff will review it for compliance. If it is determined the advertisement is in violation of license law, an advisory letter will be issued to the licensee. This letter will consist of the specific code violation, and a requirement of the licensee to respond in writing, verifying his/her understanding of the violation, and/or submission of a copy of corrected advertising material.

An advertising citation may be issued in lieu of an advisory letter, if a real estate licensee has received past advisory letters, or if the violation is so misleading or inaccurate it risks harm to consumers. Section 4735.16 of the Ohio Revised Code provides that if the Superintendent determines that if prima facie evidence of a violation exists, the Superintendent may

issue an advertising citation. The citation will contain a fine of \$200 per violation, not to exceed \$2,500 per citation and notification of a right to request a hearing. If the licensee fails to either pay the fine or request a hearing within 30 days of the citation, the citation becomes final. If the licensee does not comply with the final citation, the Superintendent will suspend the licensee’s license.

In order to file an advertising complaint, please remember to complete a Division complaint form, which is available on our Web site at www.com.state.oh.us. A signed complaint form assists the Division not only in reviewing the complaint but also in allowing our office to notify the complainant of the results of the Division’s review.

Real Estate Disciplinary Actions

REVOCATIONS

DALE E. TAYLOR, broker, Pomeroy, Ohio, had his license revoked for violating Ohio Revised Code 4735.18(A)(6). Mr. Taylor became subject to a disciplinary suspension Order of the Ohio Real Estate Commission in 2002. He was ordered to serve a license suspension and to pay a fine. Subsequently, Mr. Taylor was scheduled for an audit, which he cancelled due to an emergency. Then, he never cooperated in the rescheduling of the meeting, nor has he paid the fine.

SUSPENSIONS, FINES, EDUCATION

EDWARD F. ZAMARELLI, broker, Warren, Ohio, had two \$500 fines levied against his license and was required to complete and to submit proof of completion of the 10 hour brokerage post-licensure course. Mr. Zamarelli was found to have violated Ohio Revised Code 4735.18(A)(11), for paying a commission to an individual who was unlicensed. He also was found to have violated Ohio Revised Code 4735.18(A)(31), for failing to timely pay a salesperson their earned commission.

NANCY J. COUSINS, salesperson, Westerville, Ohio, had a \$542 fine levied against her license for violating Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Administrative Code 1301:5-1-10. Ms. Cousins issued a check for her annual license renewal fees. The check was returned by Ms. Cousins' bank for "insufficient funds." Despite notice to her of the return of this check, the fees remained unpaid.

JAMES R. WATSON, broker, Lakewood, Ohio, had a \$313 fine levied against his license for violating Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Administrative Code 1301:5-1-10. Mr. Watson purchased a Division license law book by personal check. The check was returned for "insufficient funds." Despite notice to him of the return of this check, the fees remained unpaid.

IRENE R. FLORES, salesperson, Maumee, Ohio, had a \$339 fine levied against her license for violating Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Administrative Code 1301:5-1-10. Ms. Flores issued a check for her annual license renewal fees. The

check was returned by Ms. Flores' bank for "insufficient funds." Despite notice to her of the return of this check, the fees remained unpaid.

LYNDA J. McMILLIAN-PENNINGTON, salesperson, Cincinnati, Ohio, had a \$369 fine levied against her license for violating Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Administrative Code 1301:5-1-10. Ms. McMillian-Pennington issued a check for her annual license renewal fees. The check was returned by Ms. McMillian-Pennington's bank for "insufficient funds." Despite notice to her of the return of this check, the fees remained unpaid.

DENNIS M. FOLEY, salesperson, Columbus, Ohio, had a \$100 fine levied against his and was required to complete and to submit proof of completion of a three hour agency course, for violating Ohio Revised Code 4735.18(A)(9), as that section incorporates 4735.55(A)(2) of the Revised Code. Mr. Foley failed to include the correct fair housing language in a written agency agreement with the seller.

DONALD K. HAINES, salesperson, Dublin, Ohio, had a \$100 fine levied against his license for violating Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Administrative Code 1301:5-1-10. Mr. Haines issued a check for his reactivation and annual license renewal fees. The check was returned by Mr. Haines' bank for "insufficient funds." Despite notice to him of the return of this check, the fees remained unpaid.

WARREN T. FELBER, salesperson, Port Clinton, Ohio, had a \$500 fine levied against his license and was required to pay a total of \$271.50, as replacement of two dishonored checks, for violating Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Administrative Code 1301:5-1-10. Mr. Felber issued checks for his annual sales and broker license renewal fees. The checks were returned by Mr. Felber's bank for "insufficient funds." Despite notice to him of the return of these checks, the fees remained unpaid.

TAMITHA A. CHANEY, salesperson, Copley, Ohio, had a \$500 fine levied against her license and was required to pay \$72, as replacement of a dishonored

check, for violating Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Administrative Code 1301:5-1-10. Ms. Chaney issued a check for her annual license renewal fees. The check was returned by Ms. Chaney's bank unprocessed. Despite notice to her of the return of this check, the fees remained unpaid.

COLLEEN L. BYLER, salesperson, Concord, Ohio, had a \$500 fine levied against her license and was required to pay \$20, as replacement of a dishonored check, for violating Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Administrative Code 1301:5-1-10. Ms. Byler issued a check for the reactivation of her real estate license. The check was returned by Ms. Byler's bank for non-sufficient funds. Despite notice to her of the return of this check, the fee remained unpaid.

LUCY BUCKNER, salesperson, Akron, Ohio, had a six month suspension of her license, which commenced on February 28, 2003, a \$2,000 fine levied against her license, and was required to complete and to submit proof of completion of the 10 hour sales post-licensure course and a three hour ethics course. Ms. Buckner was found to have violated Ohio Revised Code 4735.18(A)(10), when she demanded a commission from the buyer of a property, of which she was not entitled.

WILLIAM R. MONBECK, broker, Stow, Ohio, had two five day suspensions and one 10 day suspension of his license, which ran consecutively and commenced on August 30, 2002. He also had two \$300 fines and one \$500 fine levied against his license. In addition, he was required to complete and to submit proof of completion of the 10 hour brokerage post-licensure course. Mr. Monbeck was found to have violated Ohio Revised Code 4735.18(A)(6) as it incorporates Ohio Revised Code 4735.62(A), for failing to reduce in writing the terms of a listing agreement extension. He was also found to have violated Ohio Revised Code 4735.18(A)(6) as it incorporates Ohio Revised Code 4735.56(A), when he failed to provide the company agency policy statement to the sellers. Finally, he was found to have violated Ohio Revised Code 4735.18(A)(6), when he failed to disclose in writing, a buy-out arrangement in a listing agreement.

Division Details Examination Application Process

The Division often receives questions about the real estate license examination application process. If you are a potential licensee, here is what you can expect:

1. You send an examination application to the Division. A complete application includes your legal name, complete address, all questions answered, education enclosed, application fee, applicant's signature, broker's name printed and broker's signature.

2. The Division processes complete applications within 24 hours of receipt and returns incomplete applications to potential licensees or their brokers, depending upon the deficiency, to be completed and resubmitted.

3. Every day the Division electronically sends a list of approved applications to Experior.

4. Experior mails an eligibility letter along with a Candidate Information

Bulletin (CIB) to your home address.

Experior also electronically notifies Prometric which applicants are approved to take a specific examination.

5. When you receive your eligibility letter, you can then call the Prometric call center in Baltimore to schedule your examination. You can either request to take the exam at a testing center of your choice, or you can provide your location, and Prometric will give you the address of the closest testing center. Prometric will accommodate requests for examination based on seating availability. The service will also honor morning or afternoon preferences, again, subject to seating availability. All of the Ohio testing centers are listed in the CIB.

6. You pay for the examination by major credit card at the time you schedule the examination. Prometric then gives you a confirmation number, date and

time, as well as the name and address of the center where you will take the exam. If you need to change an appointment time you must do so 48 hours prior to the time of the scheduled appointment or you will be charged for the examination time.

7. You take the exam at the scheduled time at your area testing center.

8. You receive the results of the examination immediately after completing the examination, but only if you sign off of the computer or if you complete the survey.

9. If you pass the examination, that data is transmitted to the Division the next business day, and the Division then issues you a license.

10. If the you fail one or both parts of the examination, you are given a retake application at the testing center. You must submit the retake application and fee to the Division and begin the process again.

Attention Licensees!

Please use the most recent versions of all forms and applications. They can be downloaded from the Division Web site at www.com.state.oh.us/real

Answers to Division Frequently Asked Questions

Q: How long should you give the Division to return your phone call?

A: Please allow 24 hours for a response. When you reach a staff member, please remember to contact the same individual until the problem is resolved. Phone calls placed to numerous staff members usually delay your response, result in confusion for you, and cause staff to duplicate efforts. In 2002, the Real Estate Licensing Section averaged nearly 900 phone calls a week. Should you not receive a response within 24 hours, please feel free to contact Liz Exline, Customer Service Supervisor, at (614) 644-9734.

Q: On what date will a license become effective?

A: If you have completed an application properly, enclosed an original

license, and pay the correct fee, you will be legal and able to work on the date the Division receives all your correct paperwork and fees.

For example, let's say you sent all the correct materials overnight for next day delivery on June 1st (save your receipt for proof). If everything is in order, your license will be dated June 1st, the day it arrives at the Division. All mail goes to the Commerce Department mailroom before being delivered to the Division. Mail sent with a check enclosed will first be processed through the fiscal section and then be given to the appropriate section for processing. Please remember the application process can take up to 10-15 business days.

Q: Do you wait for your courtesy

renewal letter to remind you to send in your yearly renewal form and fee?

A: No. Remember, mail can get lost. Remember, too, that the Division must be notified of any address change (use the Change Application, COM 3628, on our website). We cannot help you if we do not have your correct home address. If you miss your renewal, it will result in license suspension, paying a late fee, having to return your license, and filing a reactivation application. To avoid this, please remember your renewal date is your birthday.

Q: Where do you get all our most current forms and applications?

A: Please go to our website for all our interactive forms: www.com.state.oh.us/real. Click on Real Estate and go under forms to Real Estate Forms.

Earnest Money Can Spark Disputes Among Clients

Earnest money in a real estate transaction represents a buyer's intention to fulfill a contract to purchase. The licensee has four main obligations to clients when it comes to dealing with earnest money.

Duty to Collect

The licensee must collect the earnest money in accordance with the provisions of the purchase agreement. Licensees should exercise great care in ensuring that they are not a party to any misrepresentation regarding the collection of earnest money. License law prohibits the naming of false consideration, including earnest money, which is part of the purchase price. For example, if an offer indicates that earnest money has been collected, the buyer's agent should not wait until after acceptance by the seller to collect the earnest money from the buyer.

Duty to Deposit

Once collected, earnest money must be deposited promptly and within a reasonable time of receipt. If the licensee is holding the funds, they must be deposited in the brokerage trust or special account. If the parties prefer that the money be held by a third party, the licensee should

ensure the contract to purchase reflects where the money is being held and how it is disbursed.

Duty to Lawfully Disburse the Earnest Money

Usually earnest money is covered by contractual provisions, which must clearly set forth procedures for disbursement of the deposit. Such language should include disposition if the seller fails to perform, if the buyer fails to perform, if there is a closing, and if either the seller or buyer provide a written notice disputing the disposition of the earnest money.

The dilemma occurs if earnest money is not addressed in the purchase agreement. If the parties cannot reach an agreement as to the disposition of the funds, the broker must hold the earnest money until the broker (1) obtains a written release from both parties, or (2) receives a court order as to the disposition of the funds, or (3) places the funds with a court in an interpleader action.

Duty of Fairness and Fair Dealing

Above all, by virtue of licensure, licensees are held to a higher standard of care than the typical person. Clients rely

on ethical licensees to assist them with what can be a complex transaction. Consequently, licensees should always communicate fully with both clients and non-clients, treating all parties in the transaction fairly.

No Cease and Desist Orders Issued

Acting as a real estate agent without a real estate license violates Section 4735.99 of the Ohio Revised Code and is a first degree misdemeanor. Despite this prohibition, the Division still finds evidence that unlicensed individuals and companies engage in activities requiring a license. Most often, the Division issues Cease and Desist Orders in these cases. If offenders continue to engage in the unlicensed activity, the Division may ask the appropriate local prosecutor to consider initiating criminal action.

Since the last newsletter, no individuals or companies have been issued Cease and Desist Orders.



**The Ohio
Department
of Commerce**

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