



**The Ohio  
Department  
of Commerce**

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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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GOVERNOR

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LT. GOVERNOR  
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◆ *Learn How to Prevent a Client from Becoming a Victim*

## Licensees Play Critical Role in Reducing Predatory Lending

### Predatory Lending

Increased media coverage over predatory lending issues and the frequency of criminal prosecution of perpetrators has brought the topic to the forefront of the real estate industry. Real Estate brokers, salespersons and appraisers play a critical role in reducing the incidence of predatory lending. This article is intended to give the practitioner the tools necessary to prevent a client from becoming a victim of predatory lending by providing an overview of the predatory lending issues, description of applicable license law and an explanation of recent enactments by the Ohio legislature.

Predatory lending is a generic term used to describe multiple types of abusive lending programs and practices utilized by home equity lenders with subprime borrowers. Examples of abusive programs and practices include deceptive marketing, asset based lending, excessive fees, rolling excessive fees into the loan, inclusion of unnecessary insurance, high interest rates and balloon payments. Because of the growth of the home equity market, there is increased concern over predatory lending practices which target the elderly, poor and uneducated consumers.

### Real Estate Brokers & Salespersons

The Ohio Real Estate Commission, created in Section 4735.03, is vested

with the authority to impose disciplinary sanctions upon licensees found to be in violation of Ohio license law. Pursuant to 4735.051(I), the Commission is limited to the imposition of the following sanctions: revocation of a license, suspension of a license, public reprimand, completion of additional

**Predatory lending is a generic term used to describe multiple types of abusive lending programs and practices utilized by home equity lenders with subprime borrowers.**

hours of continuing education and imposition of a fine not to exceed \$2500.00.

The activities for which discipline may be brought against a licensee are outlined in Section 4735.18 of the Revised Code. There are 36 divisions that detail prohibited conduct, of which one is a generic prohibition against dishonest or illegal dealing, gross negligence, incompetence or

misconduct. In the area of predatory lending, the activities of a real estate broker or salesperson will typically become an issue in circumstances surrounding first mortgages and the transfer of title to real property from one individual to another. For example, license law prohibits a licensee from accepting an undisclosed commission or rebate. A sample fact scenario would be a real estate broker accepting an undisclosed fee from a lender or mortgage broker.

Real estate licensees may also become unwilling participants in a predatory lending scheme when offering "broker price opinions" or a "BPO" to a lender for purposes of a second mortgage or equity line of credit. A licensee should never formulate an opinion of value to meet a predetermined value offered by a lender or mortgage broker. Such a scenario should be an automatic red flag for the licensee.

### Real Estate Appraisers

Distinguishable from real estate license law, real estate appraisal law does not mandate the certification or licensure of all persons engaging in appraisal activity in Ohio. In industry terms, Ohio is not a "mandatory licensure" jurisdiction. Therefore, the Division lacks jurisdiction to review the appraisal activity of uncertified or

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# Important Predatory Lending Issues

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unlicensed individuals.

The next logical question is: If certification and/or licensure are not mandatory in Ohio to perform appraisals, why would anyone get certified or licensed? The answer: federal law.

Title XI, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 created the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. Title XI authorizes the committee to oversee the state appraiser regula-

tory agencies, grant funds to and review activities of the Appraisal Foundation, maintain a national registry of certified/licensed appraisers, collect registry fees and report to Congress annually.

The foregoing is important for several reasons. Title XI, among other things, prohibits any person, other than a state certified or licensed appraiser, from conducting an appraisal for a federally related transaction. The current threshold for a federally related transaction is \$250,000.00. This is significant because loans below the threshold amount are not required to be based on an appraisal opinion rendered by a state certified or licensed appraiser. Additionally, lenders granting second mortgages or equity loans may not use a state certified or licensed appraiser. This gives criminals the opportunity to base loans on fraudulent values, often times leaving the consumer holding the bag. Real estate licensees should always encourage clients to question their lender about the appraisal process and request that a licensed real estate or appraisal professional render the opinion of value.

In a license law case involving predatory lending, the basis for discipline is Section 4763.11(G)(9). This section prohibits an appraiser from accepting an assignment where employment is contingent upon the appraiser reporting a predetermined estimate, analysis or opinion. The typical case would involve an appraiser tailoring the appraisal to the lender's predetermined amount. An appraisal rendering a disproportionately high value for a property in conjunction with the predatory practice of lending without regard to the

borrower's ability to repay, may result in borrower default and foreclosure on the home.

## Ohio Department of Commerce; Office of Consumer Affairs

Governor Taft and the Ohio legislature answered the call of Ohio's citizens by enacting H.B. 386, which became law on May 24, 2002 (certain provisions were effective February 22, 2002). Among other things, the law created the Office of Consumer Affairs within the Ohio Department of Commerce. The Office is charged with providing education to Ohioans on borrowing and related financial topics, referrals to credit counseling services, receiving complaints regarding failure to comply with lending laws and referring matters to the Superintendent of Financial Institutions for enforcement of lending laws. A toll free hotline (1-866-278-0003) has been established for consumers to call and obtain information about Ohio's lending laws and predatory lending. The Office has also developed very informative "Borrow Smart" pamphlets about predatory lending with consumer tips, definitions and common predatory lending tricks. These pamphlets can be obtained from the Department of Commerce Web site at [www.com.state.oh.us](http://www.com.state.oh.us).

Real estate and appraiser licensees are encouraged to familiarize themselves with the issues surrounding predatory lending, the applicable provisions of license law and the services and resources available through the Office of Consumer Affairs. Only the informed licensee can steer his/her clients away from criminal lending practices and prevent more Ohioans from becoming victims of predatory lending.

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# Lt. Governor Jennette Bradley Leads Department of Commerce

The Ohio Department of Commerce has a new leader. Governor Bob Taft has appointed Lt. Governor Jennette Bradley as Director of Commerce. She succeeds former Director Gary Suhadolnik, who was recently named Executive Director of the Ohio Turnpike Commission.



**Lt. Governor Jennette Bradley**

As Director of the Ohio Department of Commerce, Lt. Governor Bradley will oversee the Division of Real Estate and Professional Licensing in addition to the Divisions of Administration, Financial Institutions, Industrial Compliance, Labor and Worker Safety, Liquor Control, Securities, State Fire Marshal, and Unclaimed Funds.

“I’m honored and excited by the Governor’s call to serve in this capacity. Ohioans depend on the

services the Department of Commerce provides and I look forward to the challenge of effectively and efficiently running the agency,” she said.

Prior to being elected the nation’s first female African American to serve as Lieutenant Governor, she served as an 11-year member of the Columbus City Council and as Senior Vice President, Public Funds Manager at Huntington National Bank. In previous positions, Lt. Governor Bradley served as Senior Vice President for Kemper Securities and as the Executive Director of the Columbus Metropolitan Housing Authority.

In addition to her official duties as Lieutenant Governor and serving as Director of Commerce, Governor Taft appointed Lt. Governor Bradley to serve in the following capacities:

- Chair of the Clean Ohio Council
- Chair of the Ohio Housing Finance Agency
- Chief policy advisor for community development and housing programs
- Coordinator for urban revitalization
- Liaison to county and local governments
- Co-chair of the Governor’s Small Business Advisory Council and as the Taft Administration’s liaison to small business

Lt. Governor Bradley began serving in these positions after taking the oath of office on January 13, 2003.

## Online Renewal is Easy, Quick

It’s easier to renew your license online than you might think. If you have an active license and will be renewing active, or if you have an inactive license and will be renewing inactive, please visit the Web site at [www.com.state.oh.us/real](http://www.com.state.oh.us/real).

Your renewal notice is mailed to your home address 60 days before the expiration date (your birthdate). To renew, you’ll need your file number and PIN, which you’ll find on the upper right of the notice.

Go to the Web site and click on the license renewal button on the main page and follow the directions from there. You must renew by 11:59 p.m. on your birthdate. Renewal fees are \$39 for salespeople and \$49 for brokers. Visa or Mastercard are accepted via the Web site or in person at the Division’s Columbus office only.

## Attention: Distance Learning Course Providers

Real Estate Education Providers can now print out the Distance Education Course Application and Instructions from the Division Website at [www.com.state.oh.us/real](http://www.com.state.oh.us/real). All required materials must be complete before submitting to the Education Section for review and approval.

## Buyers’ Guide Update

The Division has been inundated with requests for the Home Buyers’ Guide. As a result, we’ll be happy to send 10 copies of the Guide at no charge. Requests over 10 copies will require payment of 40 cents per copy.

## News from the Ohio Real Estate Appraiser Board

### USPAP Continuing Ed Period Changes

Effective January 1, 2003, every state licensed, certified residential, and certified general appraiser must complete the seven hour National USPAP course within a two year reporting period. The two year reporting period is determined by the appraiser's expiration date starting in 2003.

The National USPAP course, developed by the Appraiser Qualifications Board (AQB) of The Appraisal Foundation, is revised annually to address changes to USPAP and any misunderstandings. Beginning in 2003, only an AQB certified instructor can teach this course, which can be included in the 14 hours of required annual appraiser continuing education for the year in which it is received.

For example, if an appraiser's expiration date is June 18, 2003, the seven hour National USPAP course must be taken between June 19, 2003 and June 18, 2005 to satisfy the AQB requirements. ***In order to satisfy the seven hour National USPAP criteria, the course cannot be taken before June 19, 2003.***

If you have any questions, please contact the Appraisal Section at (216) 787-3100 or visit the Division Web site at [www.com.state.oh.us](http://www.com.state.oh.us) to obtain appraiser continuing education reporting forms.

### Revisions to Sales History Rules Made

The USPAP, Standards 1, Standards Rules 1-5 (a) requires appraisers to analyze "any current agreement of sale, option, or listing of the property, if such information is available to the appraiser in the normal course of business; and (b) analyze any prior sales of the property that occurred within the following minimum time periods:

(i) one year for one to four family residential properties; and

(ii) three years for all other property types; and (c) reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used."

Standard Rule 1-5 (e)(i) has been changed. **Starting on January 1, 2003**, the sales history requirement for analyzing prior sales of the subject property will be a minimum of three years for all property regardless of the type, which includes residential property that falls within the one to four units of residential property category.

These revisions to USPAP Standards Rule 1-5(b)(i) were the result of various written communication and oral testimony by appraisers and other interested individuals, which resulted in exposure drafts and the Appraisal Standards Board adopting the revisions at its June 11, 2002 meeting.

### Appraiser Disciplinary Actions

**Randy J. Evans (RA)**, a state residential real estate licensed appraiser from Cleveland Heights, Ohio, for count one was found to have violated Ohio Revised Code Section 4763.11 (G)(5) as that section incorporates Ohio Revised Code 4763.13 (A) and the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-1 (b), 1-1 (c), 1-4 (a), 2-1 (a), and Sections 4763.11 (G)(6), (7), and (8) of the Ohio Revised Code. For these violations Mr. Evans was ordered to complete a 15 hour course in the Uniform Standards of Professional Appraisal Practice, a 15 hour course in the Sales Comparison Approach to Value, and a 15 hour course in Appraisal Principal and Practices within six months of the date of this order. The appraisal education taken to satisfy this order can be used for credit to meet the annual 14 hours of required appraisal continuing education.

For count two, Mr. Evans was found to have violated Section 4763.11 (G)(5) of the Ohio Revised Code as that section incorporates Section 4763.14 of the Ohio Revised Code. For this violation, the State Residential Real Estate Appraiser License of Mr. Evans is suspended for six months to commence on November 12, 2002. Mr. Evans failed to correctly disclose the transfers

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## Appraiser Disciplinary Actions continued from page 4

of the subject property and comparable sale properties and to include them in the results of the appraisal. He also failed to respond to a Division subpoena or otherwise cooperate in making records available regarding the appraisal to the Division.

**Dennis S. Krasienko** (RA), a state residential real estate licensed appraiser from Elyria, Ohio, was found for count one to have violated Ohio Revised Code Section 4763.11 (G)(5) as that section incorporates the Uniform Standards of Professional Appraisal Practice, Standards Rule 2-2. For this violation Mr. Krasienko is issued a written reprimand.

Dennis S. Krasienko for count two 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 1-2 (f) and 2-2 (c), (xi). For this violation Mr. Krasienko was ordered to complete the 2003 15 hour course in the Uniform Standards of Professional Appraisal Practice and successfully pass the course examination. Credit will be granted to satisfy the 14 hours of required appraisal continuing education.

Mr. Krasienko for count three was found to have violated Ohio Revised Code Section 4763.11 (G)(5) as that incorporates Uniform Standards of Professional Appraisal Practice, Standards Rule 1-1 (b), 1-1 (c), 1-4 (a), 2-1 (a) and Ohio Revised Code Section 4763.11 (G)(6). For these violations Mr.

Krasienko was ordered to complete a 15 hour 2003 course in Sales Comparison Approach to Value and successfully pass the course examination. Credit for this course will be granted to satisfy the annual 14 hours of required appraisal continuing education. The courses noted above cannot be taken prior to January 1, 2003 and shall be completed by June 30, 2003. Mr. Krasienko failed to state what reporting option an appraisal he prepared was developed and communicated under. He also failed to disclose the transfer of a comparable sale property correctly and failed to disclose or explain the omission of the Income Approach to Value.

## New Law Addresses Team Advertising; Advertising Definition Adopted

Thanks to the Division and the Ohio Association of REALTORS, Ohio Administrative Code now includes specific language governing the use of team advertising. Until the rule was instituted, the Division had only general guidelines to describe how team advertising should be used. Now Ohio Administrative Code 1301:5-1-21, which can be found in the most recent Red Book edition, addresses the subject directly.

Sometimes agents band together with other agents, licensed appraisers, or other non-licensed professionals, such as administrative assistants and marketing professionals specializing in real estate. As a self-promotion tool, the group advertises itself as a real estate team. This kind of team

advertising cannot be misleading in any way, according to the new rule.

The new rule states that the team's name cannot be more prominent than the brokerage's name in the advertisement. The name of the broker or brokerage must be included. Additionally, at least one team member's name must appear in the ad. If a photo of the team appears in the ad, the rule does not require the listing of all team members' names, but if they are listed, unlicensed team members must be identified. The advertisement should not give the impression that all team members are licensed if they are not.

Also a definition of advertising was added to the existing advertising Rule, 1301:5:1-21. Division (H)

and (I) define advertising to be "any manner, method or activity by which a licensed real estate broker or salesperson makes known to the general public properties for sale or lease or any services for which a real estate license is required, through the use of, including, but not limited to, newspapers, magazines, radio, television, signs, Internet Web sites, unsolicited mail, voicemail, email, or facsimile transmissions." Yet any forms of private communication, such as the dissemination of information about a property through private mail, email, FAX, or password protected Web site, does not constitute advertising, as long as the communication is initiated at the request of the client, customer or prospective client.

# Real Estate Disciplinary Actions

## SUSPENSIONS, FINES, EDUCATION

**DALE E. TAYLOR**, broker, Pomeroy, Ohio, had three \$500.00 fines levied against his license and was required to complete and to submit proof of completion of a three hour agency course. Mr. Taylor was found to have violated Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Revised Code 4735.58(B), for failing to provide a buyer with an agency disclosure form prior to showing them a property and before placing an offer on the property. He also violated Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Revised Code 4735.58(A) for failing to provide an agency disclosure form to the seller of a property prior to marketing the property. Next, he violated Ohio Revised Code 4735.18(A)(6) by failing to have the prescribed dual agency form signed by the seller, in accordance with Ohio Revised Code 4735.71(B). Because Mr. Taylor failed to comply with the above noted disciplinary sanctions—he didn't cooperate in the close down of his real estate brokerage—his license was indefinitely suspended.

**MARVIN S. MINNEMAN**, broker, Canfield, Ohio, had two 15

day suspensions of his license to be served consecutively, which commenced on October 11, 2002, two \$750.00 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. Minneman was found to have violated Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Revised Code 4735.62.(A), for failing to exercise reasonable skill and care to ensure that a first purchase contract, which had been accepted by his seller, was no longer pending before marketing and reselling the property. He was also found to have violated Ohio Revised Code 4735.18(A)(6), as it incorporates Ohio Revised Code 4735.62(F) for failing to disclose to buyers the pending nature of the first purchase contract. He should have made the buyers aware that the first contract was still pending.

**JAN A. MCINTURF**, broker, New Philadelphia, Ohio, had a \$100.00 fine levied against his license for violating Ohio Revised Code 4735.18(A)(6) as it incorporates Ohio Revised Code 4735.13(B). Mr. McInturf failed to immediately return a salesperson's license to the Division after the salesperson had requested the return of their license.

**DONALD B. SPENCER**, salesperson, Cincinnati, Ohio, had a \$100.00 fine levied against his license for violating Ohio Revised Code 4735.18(A)(6) as it incorporates Ohio Revised Code 4735.58(B)(1)(c). Mr. Spencer failed to timely serve an agency disclosure form on the buyers he represented, prior to showing them a property.

**ROGER D. KENNARD**, broker, Bellefontaine, Ohio, had a \$500.00 fine levied against his license for violating Ohio Revised Code 4735.18(A)(6). Mr. Kennard failed to disclose to buyers, before they submitted a purchase contract on a property, that the property was part of a bankruptcy case.

**ANITA J. MYERS**, salesperson, Cincinnati, Ohio, had a 10 day suspension of her license, which commenced on October 16, 2002, a \$500.00 fine levied against her license, and was required to complete and to submit proof of completion of the 10 hour sales post-licensure course. Ms. Myers was found to have violated Ohio Revised Code 4735.18(A)(19), when she negotiated the sale of a property directly with the owner, when she knew, or should have known, that the property was exclusively listed with another company.

## BROKER ASSESSMENTS

**Broker Assessments are issued only if a broker has at least one branch office and/or ten or more sales agents. Broker Assessments are mailed out on April 1 every year. The dollar amount is assessed according to the number of branch offices. The fee for each branch is \$8.00. A separate fee is also assessed according to the number of sales agents. Both fees are recorded on April 1 and are due by June 30. Nonpayment or late remittance results in suspension of broker and sales licenses. Both fees are calculated based on April 1 status with the Division.**

# Top Five Complaints Commonly Filed with Division

The Division's enforcement section accepts written complaints for allegations against real estate agents and brokers. Complaints are also filed against individuals or entities that may be conducting real estate business when not licensed to do so. From July 1, 2002 through December 31, 2002, the Division received 265 written complaints. The enforcement section receives varied, and in many instances, complex complaints in which there could be many allegations made against several agents or individuals. It is important to remember that if a complaint is filed, it does not mean an investigation will automatically be initiated. Allegations in the complaint may be unfounded or determined to be outside the Division's regulatory authority.

The five most common complaints filed with the Division, as determined by the enforcement section are:

## 1. MISREPRESENTATION

The most common complaint filed with the Division involves misrepresentation, especially in dual agency situations. Overwhelmingly, consumers allege the agent is not fulfilling his fiduciary duty and fails to keep their best interests in mind during real estate transactions.

## 2. EARNEST MONEY RELEASE

As discussed in the above article, the Division cannot disburse contested earnest money, but it can ensure licensees are compliant to fulfilling their fiduciary duties especially in regard to money coming into the licensees' possession.

## 3. PROPERTY DISCLOSURE

Another complaint often registered regards the failure of an agent to disclose a material defect(s) of the property. In these cases, usually consumers complain that soon after they purchase a property, a major defect is discovered such as a leaking roof or flooded basement, and that the agent should have known of this defect and disclosed the condition before the purchase.

## 4. EARNEST MONEY DEPOSIT

Yet another common earnest money complaint concerns the untimely deposit of said funds. Consumers often allege the earnest money was not deposited according to the contractual terms of the purchase agreement, or that the money simply was never deposited. The Division cautions that all real estate licensees are held to a high standard of professionalism, especially when handling earnest money deposits and other monies received in a fiduciary capacity.

## 5. TRANSACTION DOCUMENT COPIES

Failure to provide copies of transaction documents rounds at the top five complaints. Consumers complain that the licensee has failed to provide copies of transactions documents they have signed. License law requires that licensees furnish true copies of all transaction documents to their client at the time the documents are signed.

Licensees can take steps to avoid complaints filed against them. Agents and brokers should fully understand the regulations found in the Red Book, which is currently available from the Division. Licensees should pay special attention to their fiduciary duties in representing the buyer or seller. All Statutes and the Ohio Administrative Code can be found via the Division Web site at [www.com.state.oh.us/odoc/real](http://www.com.state.oh.us/odoc/real). The Division cannot give legal advice, so any uncertainties arising regarding these issues should be directed to private legal counsel.

Remember that investigation of a complaint is not automatic. If the allegations are determined to be unfounded or they don't fall under Division jurisdiction, the Division will decline to initiate an investigation.

## Attention Licensees and Brokers!

**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](http://www.com.state.oh.us)**

# Court Rules Licensees Must Comply with Canons of Ethics

In the case of Richard T. Kiko Agency, Inc. vs. The Ohio Department of Commerce, Division of Real Estate, (1990), 48 Ohio St.3<sup>d</sup> 74, the Supreme Court ruled that licensees are responsible for making sure they comply with the Canons of Ethics. Misconduct covered under The Division's Code Section includes anything prohibited under the Canons, so it is important for licensees to thoroughly understand them and take them to heart.

The Canons are comprised of 19 articles divided into three sections relating to the duties of the licensee to the general public and the real estate

industry, clients and customers, and fellow licensees.

Here is an excerpt from Section 1, General Duties to the Public and Industry:

"Article 1: Licensing as a real estate broker or salesman indicates to the public at large that the individual so designated has special expertise in real estate matters and is subject to high standards of conduct in the licensee's business and personal affairs. The licensee should endeavor to maintain and establish high standards of professional conduct and integrity in dealings with members of the public

as well as with fellow licensees and, further, seek to avoid even the appearance of impropriety in any activities as a licensee.

Article 2: It is the duty of the broker to protect the public against fraud, misrepresentation or unethical practices in real estate transactions. The licensee should endeavor to eliminate in the community any practices which could be damaging to the public or to the integrity of the real estate profession."

The entire text of the Canons can be found on the Division Web site at [www.com.state.oh.us/odoc/real/pub/canonethics.pdf](http://www.com.state.oh.us/odoc/real/pub/canonethics.pdf).

## RED LAW BOOKS ARE AVAILABLE

They are available for purchase  
at a cost of \$13/copy.  
Check our Web site for the order form.



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