

NEWSLETTER

December 2012 Issue

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SPECIAL EDITION NEWSLETTER

Summary of Primary Real Estate Rules Changes That Go Into Effect On January 1, 2013



Anne M. Petit

To assist Ohio’s real estate industry, the Division of Real Estate & Professional Licensing has completed its review of all of its administrative rules. This process is undertaken every five years – with significant input from the industry – so that the rules you operate under make sense and keep pace with an ever-changing marketplace.

The Division undertook this process in concert with Lt. Governor Mary Taylor’s Common Sense Initiative (CSI), which helps create a more jobs-friendly regulatory climate in Ohio. CSI works to create a regulatory framework that promotes economic development, is transparent, and makes compliance as easy as possible.

Those were our goals as we began this process and I am confident that we succeeded.

To assist you with the rules updates, I’m pleased to provide the attached newsletter which highlights the key changes. The updated rules go into effect on January 1, 2013. Please share the information in this newsletter with your salespeople and appropriate staff so that they are knowledgeable and current with the updated rules.

The most obvious and extensive rule change involved the Residential Property Disclosure Form. Based on input from real estate professionals and the public, the form was reformatted to make it easier to read with more consumer-friendly language and better grouping of related disclosures. Other rules of particular interest, which are summarized in the newsletter, include:

- 1) Advertising
- 2) Property management trust account – exclusions to the requirement to have one
- 3) Sponsorship of applicants/educational loans
- 4) Continuing education – changes that will enable online renewal, additional topics, and removal of some limits (e.g., allowable computer course hours).

I hope you find the newsletter very helpful.

If you, or one of your affiliates, have questions, please feel free to contact us. We are here to help!

Sincerely,
Anne M. Petit

Anne M. Petit
Superintendent

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The newly revised Residential Property Disclosure Form will go into effect on **January 1, 2013**.

The current form (in effect through December 31, 2012) and the new form are available on the Division's website at www.com.ohio.gov/real

Licensees should provide the form that is in effect at the time the client completes it. Prior to January 1, the licensee may inform their client that a new form will be effective at the beginning of 2013. If the client **voluntarily** chooses to use the new form prior to January 1, the Division will not charge the licensee with a violation of license law. If the client has questions about which form to use, the licensee should advise the client to speak with an attorney. After January 1, the new form **must** be used.

Licensees will also have listings that began in 2012 and that will still be on the market in 2013. If the seller completed the previously effective form in 2012, the seller may complete the new form after January 1. However, pursuant to R.C. 5302.30, there is no specific requirement that a seller update the form. Again, this is a client choice which may be best informed by talking with an attorney.

ADVERTISING

Name identification (O.A.C. 1301:5-1-02)

Licensees must be licensed in their legal name. However, for advertising purposes, the Division has historically allowed a person to advertise in a common derivative of the name in which they are licensed (see #1 below.) Changes in the rule now permit licensees to advertise their name in several different ways:

- 1) A commonly accepted derivative of the licensee's first name: Christopher/Chris, Suzanne/Susie
- 2) A licensee's first name abbreviated as an initial with the licensee's full middle name as it appears on the license: Name on license: Christopher James Smith/Acceptable advertisement: C. James Smith
- 3) A licensee's first and middle name as it appears on the license as an initial: Name on license: Christopher James Smith/Acceptable advertisement: CJ Smith
- 4) A nickname in parenthesis or quotation marks with the full licensed name: Name on license: Cynthia Jones/Acceptable advertisement: Cynthia "CeeCee" Jones.

Internet and Social Media (O.A.C. 1301:5-1-02)

Technology is always advancing and our licensees have new ways to advertise to clients and potential clients. One rule change has clarified that social networking sites and blogs are considered advertising.

By now, all licensees should know that internet advertising must include the name of the brokerage on every viewable web page of the website. In an effort to help our licensees maintain compliance with advertising laws, the Division has updated this rule. If advertising in electronic messages where a licensee is limited in the number of characters they may use, such as Twitter, the rule now allows a licensee to include a direct link to a display that complies with the disclosure of the name of the broker or brokerage. Also, if a licensee advertises on a website that is not owned or controlled by the licensee or brokerage and the website's terms of use limit the licensee's ability to include brokerage information, the license must provide a direct link to a display that complies with the disclosure of the name of the broker or brokerage.

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Advertising continued ...

Another long-time requirement is that the name of the broker be displayed in equal prominence with the name of a salesperson in all advertising. The Division has updated the rule to provide that a licensee is not in violation of this requirement if the licensee is advertising on a website not owned or controlled by the licensee and the terms of use or format of the website does not allow the licensee to control the size and prominence of the brokerage and salesperson's names.

Team Advertising (O.A.C. 1301:5-1-21)

The Division recognizes that many licensees pool their resources and create teams. The team advertising rule has been updated to define the term "team" as any group of two or more associated real estate licensees affiliated with the same broker or brokerage. Teams may include other non-licensed professionals such as administrative assistants and others specializing in real estate-related fields. Remember, teams, or groups, are NOT licensed entities like brokerages.

PROPERTY MANAGEMENT TRUST ACCOUNTS (O.A.C. 1301:5-5-11)

All brokerages that manage properties are required to maintain a separate trust account for monies received in the course of managing those properties. The Division frequently received questions concerning what activities would trigger the need to open a property management account. In an effort to clarify the law, the Division added exclusions to the requirement of opening a property management trust account.

A broker/brokerage does not need to open a separate property management trust account if:

1. The broker does not collect rents, security deposits, escrow funds or other money received in a fiduciary capacity in the course of managing property;
2. The broker collects but does not retain security deposits or first/last month's rent, does not collect any other monthly rent, and has no other duties following the execution of a lease;
3. The broker only maintains property management trust accounts in the name of the owner pursuant to O.A.C. 1301:5-5-23.

SPONSORSHIP OF SALES APPLICANTS AND EDUCATIONAL LOANS

Sponsorship of Sales Applicants (1301:5-1-04)

As you know, each applicant for an Ohio sales license must be sponsored by a licensed broker. The rule has been updated to specify that if the sponsoring broker wishes to terminate sponsorship of the applicant, intent to terminate must be provided in writing to both the Division and the applicant. If at the time the broker terminates sponsorship the applicant has not yet been approved by the Division to sit for the exam, the applicant has 60 days to submit a corrected application with a new sponsoring broker. If a corrected application is not received by the Division within 60 days the application is void and the application fee is forfeited. Applicants already approved to sit for the exam at the time the broker withdraws sponsorship will be permitted to take the exam. However, the Division will only issue a license once the applicant passes the exam and submits to the Division the sponsorship of a new broker.

Education Loans (O.A.C. 1301:5-3-07)

The Division's Education Loan Program has been updated! These changes help make the program easier to understand and clarify the loan repayment plan. First, the maximum allowable loan amount will be based upon a percentage of the actual cost of tuition and text books and classroom materials in accordance with the following earned income chart:

- (1) 100% of the federal poverty level qualifies for 100%;
- (2) 133% of the federal poverty level qualifies for 80%;
- (3) 175% of the federal poverty level qualifies for 60%;
- (4) 200% of the federal poverty level qualifies for 40%; and
- (5) 250% of the federal poverty level qualifies for 20%.

Loan applicants not qualifying for 100% of the total cost of tuition and texts may still request the total cost. In this circumstance, the Ohio Real Estate Commission may consider factors affecting the applicant's current gross income such as loss of employment, medical expenses and divorce or legal separation.

Second, if a loan is approved, the Division will make payment directly to the institution where the applicant is taking the pre-licensure courses. The Division will no longer make payment directly to the applicant. The applicant will now need to submit proof of class registration to the Division. This change will allow students to get into the classroom faster. Finally, repayment of the loan will be due in full no later than 12 months from the date the applicant becomes licensed. If the applicant is not licensed within one year from the date they were eligible to take the exam, the full amount of the loan will be due immediately. Any debt owed beyond three years from the date of disbursement will be referred to the Ohio Attorney General's office for collection. The sponsoring broker of the applicant will still be the guarantor of the loan and will be liable for any amount outstanding on default by the applicant. However, by making payment directly to the education provider and providing a full year to make repayment, the likelihood of successful completion and repayment by the new salesperson is greatly increased.

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Continuing Education (O.A.C. 1301:5-3-15; 1301:5-7-02; 1301:5-7-03)

The first change in continuing education requirements is that the Superintendent will be able to audit any licensee to determine if that licensee is in compliance with the continuing education (CE) requirements. In addition, licensees must maintain proof (read: CE certificates) of their compliance for six years. This rule change allows the Division to eventually provide a complete renewal process online, including certification that the licensee completed continuing education requirements. More information will become available as the Division gets closer to implementation of full online renewal.

Other changes to this rule include:

1. Expanded topics of fair housing courses to include strategies to promote fair housing;
2. Removing the 15-hour limit for CE in the area of real estate-related computer hardware and software;
3. Allowing courses for land and community development, revitalization and general negotiation.
4. Permitting food/refreshments to be served during CE as long as instruction continues during the time food is served/consumed;

Rule changes will also provide the Superintendent with the authority to deny or withdraw the approval of an instructor or seminar/conference leader who has been convicted of a felony or crime of moral turpitude or has not established that they are honest, truthful, and of good reputation. A denial or withdrawal of approval to teach a CE course is appealable to the Commission.

Course providers will now be required to submit a roster of licensees who successfully completed the course within 10 days of each course offering or every 10 days for distance education courses. That list must include the correct course certification number, number of approved hours, date/location of the course, and the name and file number of each attendee. These changes will also help the Division to move to the complete online renewal process.

Finally, the 10 hours of post-licensure instruction may be offered in increments of up to eight classroom hours in any one calendar day. The previous rule limited instruction to no more than six hours in one calendar day.

QUESTIONS & ANSWERS RELATING TO OTHER RULE CHANGES

The following Q&A will help licensees with other rules that go into effect on January 1, 2013.

INVESTIGATIONS AND SANCTIONS FOR LICENSE LAW VIOLATIONS

Q1: It has been a year and a half since I was suspended for failing to pay a disciplinary fine ordered by the Ohio Real Estate Commission. I now have the money to pay the fine. How may I reactivate my license?

A1: After failing to pay the fine, your license was automatically suspended for 12 months. By not reactivating your license within those 12 months, your license was automatically revoked. If you wish to obtain an active license, you will need to pay the outstanding fine and apply for an active license in accordance with the requirements specified in ORC 4735.07 or 4735.09, as applicable. At the time of your new application, your pre-licensure education cannot be used if you completed it more than 10 years ago. (O.A.C. 1301:5-1-18)

Q2: The Division investigated a complaint against me and I was charged with two license law violations. I entered into a settlement agreement and it is scheduled to be reviewed by the Ohio Real Estate Commission. What happens at this review?

A2: The review is only for discussion related to mitigation of the settlement agreement. The Commission has the authority to accept the settlement, reject it or reduce the sanctions agreed to in the settlement. The only testimony permitted is from the licensee and the Superintendent as parties to the settlement. No additional witnesses will be allowed to testify and you may not admit any new exhibits. (O.A.C. 1301:5-3-14)

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Questions & Answers Relating to Other Rule Changes continued ...

Q3: I had a complaint filed against me. The complainant and I attended mediation with a Division investigator and we reached an agreement. Will the case against me be closed?

A3: The complaint file will be closed if both parties fully comply with the agreement or if you have made a good faith effort to comply with the terms of the agreement and the complainant failed, without good cause, to comply with the terms. (O.A.C. 1301:5-5-24)

LICENSES

Q1: I am opening an LLC and planning on having it licensed as a real estate brokerage. I understand that I must employ a broker but I don't want the broker to be a member of my company. Is this ok?

A1: No. At least one individual broker must be affiliated with the company and be a member or officer of that company. (O.A.C. 1301:5-1-03)

Q2: I reserved a business name with the Division but my original 60 days to apply for the license has expired. May I request an extension?

A2: Yes. Once you file your written request for an extension, the Superintendent may grant an extension of time as she deems appropriate. You must show good cause for requesting the extension. (O.A.C. 1301:5-3-13)

Q3: I failed to notify the Superintendent of my felony conviction within 15 days of that conviction. As a result, my license was automatically suspended. How do I reactivate my license?

A3: You must submit a transfer/reactivation application and a reactivation fee. You must also be in compliance with all continuing education requirements and be properly renewed. If you were disciplined by the Commission, you must also be in compliance with all of the terms of the discipline. You will be required to present evidence of your activities since the conviction to show that you are honest, truthful, and of good reputation. (O.A.C. 1301:5-1-19)

Q4: I just returned from military service. My license was inactive and I am ready to reactivate my license. What do I need to do?

A4: Thank you for your service to our country. In 2011, O.R.C. 4735.13 was updated to provide military service members more time to complete their continuing education and renewal process. Your renewal date will be the next renewal date after your discharge date. Your continuing education will be due within 12 months of your first birth date after discharge.

To reactivate your license out of inactive status due to military service, please submit a transfer/reactivation application, the reactivation fee, and present satisfactory evidence of honorable discharge or separation under honorable conditions within six months of that discharge or separation.

Q5: My sole broker passed away and I was appointed the ancillary trustee. I have concluded all the business transactions. Now what?

A5: You must prepare a report notifying the Superintendent that the business transactions are concluded and that you are withdrawing as ancillary trustee. (O.A.C. 1301:5-3-02)

RUNNING A BROKERAGE

Q1: I am a broker and I have a person working for me who is only performing the limited property management duties listed in O.A.C. 1301:5-5-07. How may I pay this person so they do not have to obtain a license?

A1: An unlicensed person must be paid on a salaried or hourly basis and must be paid by and through you as the broker. (O.A.C. 1301:5-5-07)

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Q2: Are there any new requirements for my company policy?

A2: Your company policy must now also address the steps to be taken to protect confidential information on internet websites, social networking sites and blogs. (O.A.C. 1301:5-6-03)

Q3: I supervise salespeople who sometimes delegate authority to other licensees in my brokerage. What happens if this creates a dual agency relationship?

A3: Both the seller and purchaser must have full knowledge of the dual agency at the time it is created and consent in writing to the dual agency representation on the agency disclosure statement. (O.A.C. 1301:5-6-08)

Q4: Do I need to update any of my brokerage forms?

A4: There is a new Residential Property Disclosure Form. This form is required to be used beginning January 1, 2013. It is available on the division's website.



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