

# NEWSLETTER

Spring 2010 Issue

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## Property Flopping: An Emerging Problematic Trend in Real Estate

Current market conditions have created a new trend within the real estate industry known as property “flopping” that can be problematic to the real estate sales and appraisal processes – mostly because many real estate professionals are unaware that the practice even exists.

Property flopping, a process different than the well-known property “flipping” trend, typically occurs when parties involved in a short sale intentionally conspire to purchase the property for less than market value and then quickly sell it to another party at or near the property’s actual market value to turn a quick profit.

In a scenario like this, many problems can arise. The real estate agent involved in the sale, for example, may not be aware of the buyer’s motivation and fail to disclose important information to a lender about the sale. As a result, the lender may agree to finance the short sale before investigating all of the facts of the sale.

Property flopping can also create a temporary artificial market when a buyer purchases a short-sale property for much less than its real market value and then immediately resells it for a much higher amount, creating inaccuracies in future real estate appraisals.

The Ohio Association of REALTORS® reported in its May 10, 2010, eConnections newsletter that it has received numerous calls from real estate agents who over the past two years have been approached by investors hoping to purchase short sale properties with the intention of selling them immediately to generate quick revenue. In order to avoid the problems that property flopping can cause, real estate agents and appraisers must be aware of the growing trend and seek legal counsel if they encounter these types of activities to determine whether or not a potential sale is legitimate or merely a fraudulent scheme. Please review this [article](#) recently posted on the Freddie Mac website for more information.



(This article includes information, in part, from: A Valuation Magazine article titled “Flop Houses: Six Appraisal Experts Discuss the Unethical Practice of Property Flipping,” First Quarter 2010, pages 26-29, and an Ohio Association of Realtors OAR eConnections Newsletter titled “Legal Pitfall: Short Sale Fraud,” May 10, 2010.)

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## 2010 National Consumer Protection Week

The Division of Real Estate and Professional Licensing recently celebrated the 2010 National Consumer Protection Week, March 7 – 13, along with several of the other Divisions within the Ohio Department of Commerce. Each Division participated in outreach events and provided consumers with educational materials on how to avoid falling victim to con artists, scams, and schemes. The Division of Real Estate & Professional Licensing focused its consumer protection message on tips that buyers and sellers should employ to avoid common problems that people encounter when buying or selling real estate.

**1. Know Your Real Estate Agent:** Consult the Division's online License Information Lookup system to learn more about a real estate agent or broker before hiring one, such as whether or not a prospective agent is licensed to sell real estate in Ohio and, if so, whether or not his or her license is in good standing. You may also contact the Division directly to see if a complaint has ever been filed against the agent or broker you are considering. These are important questions you should answer before trusting someone to represent you in one of the most important and expensive transactions of your life.

**2. Choose a Lender and Understand Requirements:** Financing is a major part of the home buying process whether you are buying a home for the first time or selling your home to buy a new one. Once you compare the costs of taking out a loan and choose a lender, you should also make sure you understand what your lender is required to do for you. Lenders must, for example, provide you with written notice if they are not using an Ohio licensed or certified appraiser to conduct your appraisal. Licensed or certified appraisers are required to follow federal and state appraisal standards when performing an appraisal that non-licensed or certified appraisers are not. If your lender does not use one, it may be a good idea to order your own appraisal by a certified or licensed appraiser as a precaution.

**3. Understand Earnest Money and Trust Accounts:** Upon acceptance of a contract, buyers put down a good faith deposit, known as "earnest money," to indicate that they are serious about purchasing the home. The real estate agent, if one is involved in the transaction, then deposits the money into his or her broker's trust account. If a party rescinds an offer or acceptance, the injured party may retain the earnest money, depending on the purchase contract. However, Ohio law requires buyers and sellers to sign a mutual release prior to the broker dispersing the money. Make sure you understand what the contract says about earnest money and that your agent informs you of the earnest money amount and whether or not the buyer's agent is unable to collect the money from the buyer.

**4. Hire an Attorney to Review Your Paperwork:** It is a good idea to hire an attorney to review the details of your real estate transaction before it is complete. This will ensure that the details of the contract are accurate and will serve as an opportunity to correct any problems that may exist before it is too late.

**5. Ask Questions Often:** If at anytime during the home-buying or home-selling process you have questions, do not hesitate to ask your real estate agent or broker to clarify the subject. It is important to ask questions anytime something does not make sense – no matter how silly you may think it is!

## REMINDER: 2010 Brokerage Assessment

The time is upon us to collect annual brokerage assessments as mandated by Ohio Revised Code Section 4735.15.

The Division mailed assessments to all brokerages with at least one branch office and/or 11 or more salespeople on April 1, 2010.

Please remember that:

- The annual brokerage assessment is due by June 30, 2010
- Payments that are not postmarked by June 30, 2010, will result in suspension of the brokerage and all associated branch offices, brokers, and salespeople

If your brokerage did not receive its annual assessment, please contact the Division at 614-466-4100.

## Recent Changes in What is Considered a Public Record

A recent Franklin County Court of Common Pleas decision has impacted what information the Division of Real Estate & Professional Licensing can consider a public record and how it can respond to public records requests. In *Ohio Education Association vs. Ohio State Department of Education*, Case Number 09CVH-17023, the Court found home addresses, home phone numbers, and personal email addresses for Ohio Department of Education licensees to be confidential and, therefore, non-releasable in public records requests. As a result, the Division removed this information from public on-line searches and is redacting these fields when fulfilling public records requests.

## Have Questions about Paying a Commission to a Salesperson's LLC?

The Division often receives inquiries from salespeople that want to set-up an LLC and from brokers with questions about paying commissions to those LLCs. Pursuant to Ohio Revised Code Section 4735.20(C), a broker may pay all or part of a fee, commission, or other compensation earned by an affiliated licensee to a partnership, limited liability company, limited liability partnership, or corporation that does not hold a real estate broker's license IF that entity satisfies the following conditions:

- At least one of the partners, members, officers, or shareholders of the unlicensed entity must hold a valid and active license issued under R.C. Chapter 4735;
- At least one of the partners, members, officers, or shareholders of the unlicensed entity must be the affiliated licensee who earned the fee, commission or other compensation;
- The unlicensed entity must not engage in any of the acts specified in R.C. Section 4735.01(A);
- The broker must verify that the affiliated licensee complies with R.C. Section 4735.20(C)(1) and (2) and keeps a record of this verification for a period of three years after the date of verification, and;
- The broker must keep a record of (a) the name of the affiliated licensee who earned the fee, commission, or other compensation, (b) the amount of the fee, commission, or other compensation that was earned, and (c) the name of the unlicensed entity to which the broker paid the affiliated licensee's fee, commission, or other compensation for each transaction and for a period of three years after the date of those transactions.

Please Note: An "affiliated licensee" is defined as a person who holds a valid and active license under R.C. Chapter 4735 and who is associated with the broker that is paying a fee, commission, or other compensation at the time that the fee, commission, or other compensation is earned.

If you have created a company in order to be paid under R.C. Section 4735.20(C), it is important to remember the following information:

- You may not advertise in the name of that entity;
- You should not hold that entity out as engaging in the business of real estate;
- All advertising must reflect your name as it appears on your license and include the name of the brokerage with which your sales license is affiliated.

Please contact the Division's Enforcement Section at 614-466-4100 if you have additional questions about R.C. Section 4735.20(C).

## Q & A: Real Estate License Requirements

**Q: I just completed my continuing education requirement. Will the continuing education provider submit my certificates to the Division on my behalf?**

A: No. The Division often hears from licensees whose licenses are suspended for not properly submitting proof of continuing education. Ohio license law requires ALL licensees to submit to the Division physical copies of their continuing education certificates and a completed Continuing Education Compliance Form in addition to the renewal fee. Many licensees incorrectly assume that the courses listed on the eLicense lookup are proof of CE compliance. This list is simply an online roster that the course provider submits to the Division and that the Division later uses to verify attendance. Remember that your mailed-in continuing education documents must be post-marked on or before your expiration date to be considered timely!

**Q: What is the 10-hour post-licensure course and when do I have to complete and submit it to the Division?**

A: The 10-hour post licensure course is a course that is required for all newly licensed salespeople and brokers. For salespeople, the course is due within 12 months from the date your license is issued by the Division. For brokers, the course is due 12 months from either: 1) the date the license is first issued (if it is issued within 30 days of passing); or 2) the date the broker passed the broker's exam (if the license is not activated within 30 days). For example, if a broker passes his or her exam on May 1 and activates the license on May 15, the 10-hour post licensure course would be due on May 15 the next year. If a broker passes his or her exam on May 1 and does not activate the license within 30 days, the Division would automatically place the license into an inactive status and the 10-hour post due date would be May 1 of the next year.

**Q: I am a new salesperson or broker – when is my first renewal due?**

A: A new salesperson's first renewal due date is on the first birthday that occurs after the license is issued. For example, if the Division issues the sales license on May 1 and the licensee's birthday is June 24, the licensee would need to pay a \$135 renewal fee to the Division on or before June 24. The 30-hour continuing education requirement is NOT due with a new salesperson's first renewal; it will be due on his or her birthday three years from the first renewal date. A new broker will maintain the three-year renewal cycle of his or her sales license. For example, if a salesperson with a renewal due date of June 24, 2011, passes the broker exam on May 1, 2010, and activates the broker's license on May 15, his or her renewal due date would remain June 24, 2011. The licensee would need to pay the \$180 broker renewal fee and submit 30 hours of continuing education on or before that date. If both licenses are inactive as of the expiration date, the licensee will pay the broker renewal fee and submit 30 hours of continuing education. If you are over the age of 70, please call the Division at 614-466-4100 to learn more about your renewal requirements.

**Q: What is a Resign Application and why would I use one?**

A: A licensee should only submit a Resign Application to the Division if he or she intends to permanently surrender his or her Ohio real estate license. Licensees often incorrectly use this form when trying to transfer to a new company or to inactivate their license. If your intention is to transfer to a different real estate company, you need to submit a Transfer/Reactivation Application to the Division. If you would like to inactivate your license, you need to ask your broker to mail your license back to the Division. As long as you pay the renewal fee and submit continuing education requirements on time, you can reactivate an inactive license at any time. A resigned license, however, cannot be reactivated. If you submit a Resign Application to the Division in error, you will have to re-apply for a license and pass the state and national portions of the Ohio real estate exam in order to obtain a new Ohio real estate license.

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## Q & A: Real Estate License Requirements continued...

### Q: What is the difference between inactive status and voluntary hold status?

A: Inactive status is a status that licensees can use if they are looking to take time off from the real estate business but don't want to permanently surrender the license. In this case, you should have your broker send your license back to the Division. Once received, the Division will place the license into an inactive status. As long as you renew your license and submit continuing education requirements on time, you can reactivate the license at any time. Voluntary Hold is a status that licensees can use if they intend to permanently resign their license. Please understand that Voluntary Hold is a special status for those seeking to resign their license and, therefore, very different from inactive status. If you later decide that you no longer want to permanently surrender your license, you would have to reactivate the license within 12 months of placing it into Voluntary Hold status AND submit the renewal fee, continuing education requirements, and a reactivation fee IF your expiration date passed while you were in the Voluntary Hold status. A resigned license cannot be reactivated. You would have to re-apply for the license and pass the state and national portions of the Ohio real estate exam in order to obtain a new Ohio real estate license.

## New Real Estate 10-Hour Post-Licensure Course Curriculum

The Ohio Division of Real Estate & Professional Licensing announces the release of a new 10-hour post-licensure real estate course curriculum. The course is required of new licensees and includes real estate law, fiduciary duties and the basic steps to succeed in the real estate business. The new curriculum includes presentation resources as well as instructor and student guidance materials that will standardize the 10-hour post-licensure courses. The Ohio Real Estate Commission's Education and Research Committee provided funding for the development of the new curriculum, which includes substantial input from more than 30 real estate professionals, including commission and committee members. The Division hosted a meeting on May 7, 2010, to distribute the curriculum to the approved providers and to answer course delivery questions. The curriculum will be available on the Division's website for course providers to access once the final version is complete.

## What is a Real Estate Branch Office and How Do I Open One?

A branch office is defined as a location other than a real estate company's main address where real estate agents conduct business. All branch offices of Ohio real estate companies must have a valid Ohio address. In order to open a branch office, you must complete a Branch Office Application and submit it to the Division along with a \$15.00 fee. Make certain that a broker affiliated with the real estate company that is applying for the branch office signs the application prior to submission. Once the Division approves the application, the branch office must comply with specific advertising requirements, including posting a sign and the branch office license. For more specific information about branches, please review the article on Page 8 of the [Winter 2008-2009 newsletter](#), "Branch Office and Place of Business Requirements."

## Verbal Acceptance: How to Avoid Confusion When an Offer is Not Put in Writing

In today's high-tech world, real estate agents often conduct negotiations by email, through a website, or over the phone. It is always important for agents to communicate effectively with their clients no matter the form of communication, but clear communication with clients is particularly important when offers and counteroffers are not placed in writing. The topic of "verbal agreements" often arises when negotiating a property that is bank owned. The bank, for example, may verbally accept one buyer's offer but then accept a higher offer from a different buyer before the first buyer and the bank have both signed a written contract. In this instance, the first buyer would be left confused and disappointed. It is essential for the agent to inform the buyer after a verbal agreement is made that the sale will not be official until the agreement is in writing and signed by both parties.

## Reminder to Licensees: Records, Maintenance Requirements

Ohio Revised Code Section 4735.18(A)(24) requires all real estate salespeople and brokers to maintain complete and accurate records of their transactions for a period of three years from the date of the transaction. Failure to comply is a violation of Ohio real estate license law and may result in sanctions against your license.

Licensees often ask the Division if they can keep electronic files of their records as opposed to hard copies. Electronic record keeping is permissible so long as the records are true copies of the original documents and can be produced when requested. The Division encourages licensees to also maintain hard copies of original primary documents at the broker's main office location for added security and to ensure absolute compliance with Ohio license law. Examples of primary documents include listing agreements, purchase contracts and earnest money receipts. Please remember that if you send your documents to a third party for any reason, you must keep a copy of those records for your files. If you have questions regarding record keeping, please contact the Division's Enforcement Section at 614-466-4100 for further explanation.

## Attention Brokers!

Allowing others to sign on behalf of the broker or using signature stamps in lieu of the broker's signature is strictly prohibited on applications or other paperwork being submitted to the Division. The broker's signature certifying the information on the application must be obtained after the forms are filled out. Unacceptable practices related to broker signatures are occurring more frequently and may result in the denial of the application and possibly the loss of the broker's license!

## Appraiser Workfiles: Securing Your Workfiles is a Must!

An appraiser's workfile is a vital part of each appraisal assignment. In fact, it is equally as important as the appraisal report itself. The workfile is simply a file that contains documents that support an appraiser's analysis, opinions, and conclusions for each report he or she has conducted.<sup>1</sup> MLS listings, market statistics, county auditor property cards, comparable sales search results and search criteria, copies of purchase contracts, income data and even newspaper articles are examples of what would be found in a workfile.

According to the Uniform Standards of Professional Appraisal Practice (USPAP), standards with which appraisers must comply as mandated by the Ohio Revised Code (ORC), appraisers must "prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment."<sup>2</sup> USPAP standards also require appraisers to retain their workfile for at least five years after an assignment is prepared or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.<sup>3</sup> Under ORC, if an appraisal is involved in pending litigation, the appraiser must retain the workfile for five years after final disposition of the litigation.<sup>4</sup>

It is the appraiser's responsibility to keep work files in a secure, dry location. In case of an unforeseen disaster, appraisers should protect themselves by backing up their paper files with electronic copies or by investing in fireproof and/or waterproof file storage units.

Appraisers must make workfiles available when required by state appraiser regulators or due process of law. Non-compliance with this mandate would constitute a violation of ORC and USPAP Standards Ethics Rule Record Keeping section. If an appraiser does not have custody of his or her work files (for instance: if a former employer has them), he or she must make arrangements, preferably in writing, to retrieve the files when needed. If an appraiser has custody of another appraiser's workfile, the first appraiser would be obligated under USPAP to make the workfile accessible and retrievable to the second appraiser if the second appraiser needed to submit the workfile to a state regulatory agency, comply with due process of law, submit the workfile to a duly authorized professional peer review committee or comply with retrieval arrangements.<sup>5</sup>

The Ohio Real Estate Appraiser Board (OREAB) takes seriously an appraiser's failure to maintain or produce a workfile upon order by the Superintendent. When charges of record keeping violations have gone before OREAB in the past, the result has been suspension or revocation of the appraiser's license.

Keeping appraiser records secure and accessible protects appraisers and ensures their compliance with USPAP and ORC.

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1-3 Uniform Standards of Professional Appraisal Practice 2010-2011 edition

4 Ohio Revised Code Section 4763.14

5 Uniform Standards of Professional Appraisal Practice 2010-2011 edition



## Real Estate Disciplinary Actions

Listed below are the Real Estate Disciplinary Actions for January 2010 to May 2010. Details of each action can be found on the website at: <http://www.com.ohio.gov/documents/Spring10REdiscipline.pdf>

### REVOCATIONS/PERMANENT SURRENDER/RESIGNATIONS

Amy E. Ayer	Salesperson	Kennesaw, GA
Scott J. Bryant	Salesperson	Hamilton
James M. Catalano	Salesperson	Chagrin Falls
Michael J. Catalano	Broker	Bedford Heights
William C. Eves, Jr.	Salesperson	Westerville
G. Terry Jordan	Salesperson	Columbus
Jerry McKinney	Broker	Youngstown
Steven E. Mueller	Broker	Cincinnati
Jennifer R. Woken	Salesperson	Circleville
Robyn E. Woods	Salesperson	Cleveland Heights

### SUSPENSIONS, FINES, EDUCATION and REPRIMANDS

Wesley J. Brown	Salesperson	Cable
Thomas G. France	Salesperson	Strongsville
Jodi Marie Holtsberry	Salesperson	Lima
Timothy C. McCloud	Salesperson	Canton
Christine B. Moore	Broker	Columbus
Callista A. Sill	Salesperson	Cincinnati
Jeffrey A. Swiecicki	Broker	Hudson
Thomas H. Young	Salesperson	St. Clairsville

### UNLICENSED ACTIVITY

Deborah C. Busby	North Canton
Erika Ann Carlson	San Diego, CA
GAIA Real Estate Investments	San Diego, CA
Carolyn Carpenter Nark	Willoughby
Private Property Management Co., LLC	Willoughby
Keith Satterfield	Cincinnati

## The Felony Waiver Process: A Guide for New Applicants Who Have Been Convicted of a Felony or Crime of Moral Turpitude

A new applicant who is applying to become licensed as a real estate salesperson in Ohio may request a conviction waiver if he/she has been convicted of a felony or a crime of moral turpitude. The applicant must submit a completed Salesperson License Examination Application, a copy of a transcript or certificates of completion for the four pre-licensure education courses, and the application fee. In addition, the applicant must submit a cover letter requesting the waiver, an explanation of the conviction, a certified copy of the judgment entry, a certified copy of a release from incarceration, probation, or community control, and any letters of recommendation establishing the applicant's honesty, truthfulness and good reputation. It is also important to include a letter from the applicant's sponsoring broker.

Once the applicant has submitted the application and supporting documents, the Superintendent will thoroughly review all the information provided and make a determination as to whether the applicant may sit for the license examination. Applicants need to read the Superintendent's determination letter carefully, as a denial letter would contain important information about how the applicant can request that the Ohio Real Estate Commission review the decision.

## Appraiser Disciplinary Actions

Listed below are the Appraiser Disciplinary Actions for January 2010 to May 2010. Details of each action can be found on the website at: <http://www.com.ohio.gov/documents/Spring10appraiserdiscipline.pdf>

### SUSPENSIONS, FINES, ADDITIONAL EDUCATION AND REPRIMANDS

Steven Burgess	Certified Residential Appraiser	Akron
William Dunlevy	Certified Residential Appraiser	Empire
LaTrice Gober	Licensed Residential Appraiser	Rockhill
Teri Goodyear	Licensed Residential Appraiser	Lancaster
Brian Hopkins	Certified Residential Appraiser	Columbus
Theresa Strickler	Licensed Residential Appraiser	Reynoldsburg

## “Take Your Child to Work Day”

Six children with parents or relatives in the Division of Real Estate & Professional Licensing participated in Take Your Child to Work Day on April 22: Cierra, Hope, Mercedes, Mitchell, Nakhi, and Roshawn.

Many of the Department of Commerce’s divisions hosted activities that made the children’s day fun and educational. The Division of State Fire Marshal led a fire safety and arson-dog presentation; the Division of Industrial Compliance & Labor led a stuffed-animal inspection; and the Division of Financial Institutions led a savings and investing discussion. Since Take Your Child to Work Day coincided with Earth Day this year, the Division of Real Estate & Professional Licensing led an Earth Day activity and demonstration on how Commerce employees recycle and practice environmental protection in the workplace each day. The children ended their day with a tour of the Ohio Statehouse.

*Three children with parents in the Division of Real Estate & Professional Licensing, below, show the flowers they planted and pots they decorated in recognition of Earth Day. From left to right: Nakhi (mom, Quiana Taylor), Roshawn (mom, Jodi Phillips), and Mitchell (mom, Madelin Esquivel).*



*The Division’s Laurie Perin, right, demonstrated how Department employees recycle their paper scraps everyday.*



## The Division of Real Estate & Professional Licensing Gives Back to the Community by Participating in Charitable Campaigns

The Division of Real Estate & Professional Licensing participates in many charitable campaigns every year. In 2009, it held numerous fundraisers to assist the Department of Commerce in its mission to raise money and collect food items for those in need through Operation Feed, the Combined Charitable Campaign and the Holiday Food Basket program.

### Operation Feed 2009

The Division's fundraisers helped contribute to the Department of Commerce's overall collection of 20,919 meals for those less fortunate through its Operation Feed campaign.

### Combined Charitable Campaign

With much hard work and generosity, members of the Division helped the Department of Commerce collect a total of \$77,490.47 for various statewide charities in its Combined Charitable Campaign.

### Holiday Food Basket

During the holiday season, the Division participated in fundraisers with the Department of Commerce to collect 8,612 meals (3,195 pounds of food and \$2,709) for those in need.

The Division has continued its charitable campaign fundraising efforts by participating in 2010's Operation Feed, which kicked off on March 15. With the leadership of its campaign coordinators, Beth Dunkle and Yolanda Poole, the Division raised enough money to meet its goal of 900 meals by the time the campaign ended on June 4.



## Department of Commerce

Division of Real Estate &  
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