



**The Ohio
Department
of Commerce**

Fall 2001

Division of

Real Estate and Professional Licensing

◆ N E W S L E T T E R ◆

Bob Taft
GOVERNOR

Gary C. Suhadolnik
DIRECTOR

Lynne Hengle
SUPERINTENDENT

◆ Agents Can Help Prevent Lock Box Abuse

Properties With Lock Boxes Should Be Treated With Care

Recently the Division of Real Estate and Professional Licensing has seen an increase in the number of complaints from sellers that revolve around how lock box access has been handled for the seller's property. The use of a lock box can be convenient for both the seller and the licensees. The lock box can relieve the seller and/or the listing licensee from needing to be present to allow access by other agents to show the property. While most lock box arrangements work out fine for all the parties concerned, problems can and do occur.

The typical complaint received by the Division comes from a seller who alleges that the property was damaged or left unsecured after the lock box had been used to gain entry to the property by an agent to show it to a prospective buyer. The complainants are often seeking to hold the listing licensee responsible for the damage that is alleged to have occurred to the property. The seller argues that it was the listing licensee that recommended the use of the lock box in the first place and controlled who had access to use it for entry onto the property.

Such situations potentially involve both civil liability and Ohio real estate license law considerations. Whether or not the listing or showing licensee is legally liable for any damage caused to the property during a showing where a lock box was used to gain entry to the property is a question for the courts, not the Division or the Ohio Real Estate Commission. It would be prudent for any licensee who employs lock boxes to consult with their private attorney about potential liability issues associated with such use.

From an Ohio real estate license law standpoint, generally a licensee is only responsible for his or her own actions. A

licensee is usually not subject to discipline for the actions of others, including the actions of prospective buyers. However, these generalities do not necessarily apply to every possible situation, so be careful.

The listing licensee needs to remember that they are in a fiduciary relationship with their clients, the sellers, and therefore have certain obligations to them. Some of these obligations are set forth in Ohio Revised Code Section 4735.62. This statute provides in pertinent part that the listing licensee must exercise "reasonable skill and care" in representing their clients and carrying out the responsibilities of the agency relationship. It is essential that the listing licensee exercise this "reasonable care" when entrusted with access to the client's property via a lock box. Failure to exercise reasonable care in the management of a lock box situation could, under appropriate circumstances, lead to a finding of a violation of Ohio Revised Code Section 4735.62 on the part of a listing licensee.

Exercising reasonable care basically requires the application of common sense to the situation. While no guidance is perfect, it may be helpful to treat the lock box situation on your client's property the way you would expect such a situation to be treated on your own property. It would be wise for listing licensees to explain the benefits and potential risks to their clients about lock box use. This discussion should include the topic of to whom and how the access code for the lock box will be distributed. Will the code only be given out to other real estate licensees? May it be given out to others, such as an appraiser, a home inspector, or even the potential buyers once the property has gone into contract? What verification, if any, will be required before the access code is given

out? Whatever understanding is reached on this important topic, the best practice would be to place this understanding in writing signed by all the parties to help avoid future misunderstandings.

There are some fairly obvious areas that need to be considered to maintain the reasonable care that is required. Protection of the lock box access code is one such obvious area. Just as one should not give out credit card information to a stranger over the telephone, it would not be prudent for a listing licensee to give out the access code to a lock box over the phone without verifying that the recipient is authorized to receive the code. Additionally, licensees need to make sure that passers-by can not obtain the access code when the licensee is using the code to obtain appropriate access to the property. Buyer's agents who have properly been given the access code also need to exercise care and caution when dealing with the code. They should not give the access code to anyone else without the express permission of the listing licensee. To avoid later confusion, it would be prudent to have any such expressed permission put into a signed writing. Also, a buyer's agent should not use the access code to re-enter the property at a later date without again obtaining proper authorization to do so. Again, to avoid later confusion, any re-entry authorization should be put into a signed writing.

A prudent licensee would make sure that a property that has been entered via a lock box is returned to the same condition that it was in prior to the entry. This would include things such as re-locking any doors and/or windows, turning off any lights or appliances that were turned on during the visit, and the like. Such reasonable actions will go a long way to avoid difficulties, misunderstandings, and possible damage to the property.

Clarification of Whether Real Estate Brokers are Subject to Unclaimed Funds Audits

As a result of recent confusion among the Real Estate industry, the Division is providing this clarification on whether real estate brokers are subject to audits conducted by the Division of Unclaimed Funds (UCF). Real estate brokers are subject to the unclaimed funds statutes, Chapter 169 of the Revised Code. Although broker trust accounts by law are not subject to audit by the Division of UCF, all other accounts of a broker are statutorily subject to compliance audits by the Division of UCF. These accounts may include but are not limited to operating accounts, payroll, business expense and workers' compensation

payment history. UCF compliance audits of these other real estate broker accounts may be conducted at the discretion of the Division of UCF.

Both Ohio real estate license law and case law provide that a broker should not release trust account money without either the consent of all interested parties or a court order. Accordingly, brokers should follow the provisions of Ohio law and should not remit trust account moneys to the Division of UCF. As always, brokers should direct any questions regarding the requirements of real estate law or the unclaimed funds law to their personal attorney.

Distance Learning Committee Update

The blue ribbon committee put together by Superintendent Lynne Hengle to examine distance learning issues is now in the process of writing recommendations to be presented to the Ohio Real Estate Commission to supplement its earlier report. After the October meeting, the Commission will make a decision on the issues. No date has been set for initiation of distance learning, and the Division emphasizes that it is important to take the time to set up a program that works smoothly and well.

Red Books Are Available!

They are available for purchase at a cost of \$13/copy. Check our website for the order form or contact the Customer Service Section with questions at (614) 466-4100.

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Cheryl A. Churchill
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Real Estate Appraiser Board Members

Richard H. Hoffman, Chairman
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Lawrence A. Kell
Barbara E. Marihugh
Robert J. Weiler

Ohio Enters Limited Reciprocity Agreements

As of August 2001, the State of Ohio has limited reciprocal licensing agreements with seven other states. This means that a licensee in one state can be licensed in another state upon submission of all required application forms, documents, and payment of all fees, and if all provisions are met.

One of the provisions of the limited reciprocity agreement is that applicants for a reciprocal broker's license must be a legal resident of the state and shall have been continuously licensed as a real estate broker for a two year period immediately preceding the filing of the reciprocal application. There are many other provisions; please see the Division website for the entire list.

These are the states with limited reciprocity licensing agreements:

Arkansas

Arkansas Real Estate Commission
612 South Summit Street
Little Rock, AR 72201-4740
Phone: (501) 683-8010
www.state.ar.us/arec/arecweb.html

Colorado

Colorado Division of Real Estate
1900 Grant Street, Suite 600
Denver, CO 80203
Phone: (303) 894-2106
Fax: (303) 894-2683
www.dora.state.co.us/real-estate/

Connecticut

State of Connecticut
Department of Consumer Protection

Occupational and Professional Licensing Division

165 Capitol Avenue
Hartford, CT 06106-1630
Phone: (860) 713-7240
Fax: (860) 713-7239
www.state.ct.us/dcp/

Kentucky

Kentucky Real Estate Commission
10200 Linn Station Road, Suite 201
Louisville, KY 40223
Phone: (502) 425-4273
Toll Free: (888) 373-3300
Fax: (502) 426-2717
www.krec.net/

Nebraska

Nebraska Real Estate Commission
1200 'N' Street, Suite 402
P.O. Box 94667
Lincoln, NE 68509
Phone: (402) 471-2004
Fax: (402) 471-4492
www.nol.org/home/NREC/index.htm

Oklahoma

Oklahoma Real Estate Commission
4040 N. Lincoln, Suite 100
Oklahoma City, OK 73105
Phone: (405) 521-3387
www.oklaosf.state.ok.us/~orec/

Wyoming

Wyoming Real Estate Commission
2020 Carey Avenue, Suite 100
Cheyenne, WY 82002
Phone: (307) 777-7141
soswy.state.wy.us/director/boards/recomm.htm

The Appraisal Standards Board (ASB) Adopts Changes to National Standards

Due to recent federal regulatory activity, most notably the Federal Trade Commission's Final Rule on Privacy of Consumer Financial Information, 16 CFR Part 313, that took effect on July 1, 2001, the ASB voted to make certain sections of the newly adopted material effective July 1, 2001.

The following changes to Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the ASB are effective July 1, 2001:

- The *Confidentiality* section of the ETHICS RULE was edited to illustrate that "an appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment." Additionally, text was added to indicate that disclosure of confidential information is permissible to professional peer review

committees, "except when such disclosure to a committee would violate applicable law or regulation."

- A notice regarding the adoption of federal privacy regulations was also added.
- The DEFINITION of "Confidential Information" was also changed to read "CONFIDENTIAL INFORMATION: information that is either:
 - identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or
 - classified as confidential or private by applicable law or regulation."
- A notice regarding the adoption of federal privacy regulations was also added.
- STATEMENT NO. 5 (SMT-5), *The Confidentiality Section of the Ethics*

Rule was retired.

In addition, the ASB made the following changes to USPAP effective January 1, 2002:

- A DEFINITION for "Jurisdictional Exception" was added;
- The DEFINITION of "Supplemental Standards" was edited;
- The SUPPLEMENTAL STANDARDS RULE was edited;
- STANDARD 6 on Mass Appraisal was revised;
- STATEMENT NO. 8 (SMT-8), *Electronic Transmission of Reports* was retired.

Individuals who are subject to USPAP, including state licensed/certified real estate appraisers and appraisers belonging to trade organizations that have adopted USPAP, are required to conform to these changes in accordance with the above posted effective dates.

Department of Commerce Celebrates the Long Career of Helen Hendershot

On July 31 the entire Department of Commerce was invited to commemorate the retirement of Helen Hendershot, the extremely dedicated Ohio Real Estate Commission Secretary. The Division of Real Estate and Professional Licensing coordinated the event, which was held in the festively decorated Director's conference room.

Ms. Hendershot had worked for the State of Ohio for 47 years, and now at age 84, she's looking forward to enjoying the fruits of her labor. At the event, she received formal recognition for her work from the Governor, the Ohio House of Representatives, the Ohio Senate, the Division, and the Ohio Real Estate Commission.

Four of the five Commissioners came from all over Ohio for the party, and as they, Director of Commerce Gary Suhadolnik, and Superintendent Hengle looked on, Ms. Hendershot was presented with gifts such as artwork created by an Ohio artist, a gold engraved clock, several Frank Lloyd Wright



Present at Helen Hendershot's retirement party were (left to right): Commissioner George Sarap, Commissioner Cheryl Churchill, President Owen Hall, Ms. Hendershot, and Commissioner Lois Yeager. Commissioner Dale Marks was unable to attend.

collectibles, and a dozen red roses. The Division wishes Ms. Hendershot much happiness in her retirement.

Division Changes Zip Code

Effective immediately, all correspondence to be delivered to the Division in Columbus must have all nine digits of the new zip code:

43215-6133

Please include all nine digits in order for the mail to reach the correct floor. While mail with the old zip code will still be delivered until December 31, 2001, the Division urges everyone to use the new zip code right away to expedite all transactions.

Appraiser Disciplinary Actions

Annette Allen (Lawrence), a state certified residential real estate appraiser from Euclid, Ohio was issued a written reprimand and her Residential Real Estate Appraiser Certification was suspended for (60) sixty days. She was found to have violated Ohio Revised Code Section 4763.11(G)(5) as it incorporates the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-1(b) and 1-1(c). She also is required to complete at least (30) thirty hours in a Market Data Approach to Value Course and a (15) fifteen hour course on the Uniform Standards of Professional Appraisal Practice within (90) ninety days of the date of the Appraiser Board's order. Annette Allen Lawrence communicated an appraisal report that failed to reference the particular class of the subject property in any regard. She also failed to recite pertinent restrictions and Homeowner's Association fees that were material to the preparation of the appraisal report and analysis it contained. Also, the market analysis approach was flawed. The appraiser used detached housing as comparables to the subject property that is an attached home located in a planned unit development. This conduct resulted in a gross overstatement of value rendered by the appraiser in the appraisal report.

Robert Cherkes, a state residential real estate licensed appraiser from Willoughby, Ohio was issued a reprimand for having violated Ohio Revised Code Section 4763.11(G)(5) as it incorporates the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-5(b). He

also was required to complete within (120) one hundred twenty days of the Appraiser Board's Order, a course at least (15) fifteen hours in length on the Market Data Approach to value and at least a (15) fifteen hour course on the Uniform Standards of Professional Appraisal Practice. Robert Cherkes in developing an appraisal report failed to consider and analyze a prior sale of the subject property that occurred within one (1) year of the date of the appraisal report and failed to disclose the poor condition of the subject property and how this condition would significantly impact its value.

Tony L. Willis, a former certified general real estate appraiser from Cleveland, Ohio was issued a written reprimand and was required to complete (30) thirty additional hours of appraisal education courses offered by the Appraisal Foundation within (90) ninety days of the date of the Appraiser Board's Order for having violated Ohio Revised Code Section 4763.11(G)(14) and 4763.11(G)(5) as it incorporates the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-5(b). Mr. Willis failed to maintain all records relating to an appraisal report developed and communicated for real property located in Cleveland, Ohio and failed to consider and/or analyze in the appraisal report prior sales of the subject property that occurred within (1) one year of the date of the appraisal report.

Michael J. Vanni, a state licensed residential real estate appraiser from Mayfield Heights, Ohio was issued a written reprimand and was suspended for

(120) one hundred and twenty days for violating Ohio Revised Code Section 4763.11(G)(7). He also was required to complete an education course that is at least (30) thirty hours in length in the Market Approach to Value and a course that is at least (15) fifteen hours in length on the Uniform Standards of Professional Appraisal Practice within (60) sixty days of the date of the Appraiser Board's order. Mr. Vanni in developing and communicating an appraisal report failed to accurately report the status of construction of a wood deck in the Certificate of Completion associated with the appraisal report for the subject property.

Debra Naleta Lind, a state residential real estate licensed appraiser from Lorain, Ohio was found to have violated Ohio Revised Code Sections 4763,11(G)(7) and (5) as it incorporates the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-5(b)(ii). Ms. Lind's appraiser license was suspended for (6) months. In addition, she was required to complete (60) sixty hours of appraisal continuing education in appraisal courses otherwise her appraiser license will continue to be suspended until she submits proof the education has been completed. Ms. Lind in developing and communicating an appraisal report failed to analyze a prior sale of the subject property that took place within (1) one year of the date of the appraisal report and indicated in the "as is" box within the report that the appraisal was based on "as is" condition of the property when in fact, the appraisal report was "subject to repairs."

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 people and companies engage in activities requiring a license. Most often, the Division issues Cease and Desist Orders in these cases, but if offenders continue to engage in the unlicensed conduct, the Division may ask the appropriate local prosecutor to consider initiating criminal action.

Since the last newsletter, the following

individuals/companies have been issued Cease and Desist Orders:

Kevin Reeves
41 Diamond Ave.
Barberton, OH 44203-2635

Melvin Mitchell
Real Estate Consultants Investment Corp.
North Olmsted, OH 44070

Heidi Paschke
8800 Carmichael
Chesterland, OH 44026

**ATTENTION
BROKERS!**

*Are you
forwarding
copies of this
newsletter
to your
salespeople?*

Real Estate Disciplinary Actions

REVOCATIONS

ROBERT C. STEIGER, sales associate, Sylvania, Ohio, had his sales license revoked violating two counts of Ohio Revised Code Section 4735.18(A)(6) as they incorporate Ohio Revised Code Section 4735.21. Mr. Steiger received funds in a fiduciary capacity, and deposited into a personal account of his, rather than in the trust account of the brokerage with whom his real estate license was associated with at the time, and he was convicted of making false bank entries. He defrauded the bank at which he was an officer by falsifying certain loan applications taken for his own personal benefit in managing the financial affairs of a family member.

SUSPENSIONS, FINES, EDUCATION

LEE E. BURCHAM, broker, Englewood, Ohio, had a \$500.00 fine levied against his license and was required to complete and to submit to the Division proof of completion of the ten (10) hour brokerage post-licensure course for violating Ohio Revised Code Section 4735.18(A)(24) and Section 4735.18(A)(6) as it incorporates Ohio Revised Code Sections 4735.62(A) and (F). Mr. Burcham failed to maintain a copy of the Ohio agency disclosure form provided to the sellers prior to marketing their property. In connection with the same property, a purchase agreement was entered into, but the transaction did not close and throughout this transaction he failed to exert best efforts on behalf of his clients, the sellers. He failed to obtain a pre-approval letter from the buyer's lender, and failed to advise his client, before the closing date, that the buyers were not intending to close.

TIMBERCREEK REALTY, INC., corporation, Englewood, Ohio, had a \$500.00 fine levied against the corporate license for violating Ohio Revised Code Section 4735.18(A)(24) and Section 4735.18(A)(6) as it incorporates Ohio Revised Code Sections 4735.62(A) and (F). The corporation failed to maintain a copy of the Ohio agency disclosure form provided to the sellers prior to marketing their property. In connection with the same property, a purchase agreement was entered into, but the transaction did not close. In addition, throughout this

transaction the company failed to exert best efforts on behalf of its clients, the sellers. The company failed to obtain a pre-approval letter from the buyer's lender, and failed to advise its client, before the closing date, that the buyers were not intending to close.

JOHN D. AUBRY, broker, Perrysburg, Ohio, had a \$750.00 fine levied against his license and was required to complete and to submit proof of completion of the ten (10) hour brokerage post-licensure course for violating Ohio Revised Code Section 4735.18(A)(6). Mr. Aubry was involved in selling a property, which included preparing and submitting a purchase offer on behalf of the buyer. He engaged in this activity, including the collection of a commission, in the name of a company other than in the name of and through the Ohio real estate brokerage he was licensed with at the time.

WILLIAM A. MICKEY, sales associate, Newark, Ohio, had \$1,000.00 in fines levied against his license and was required to complete and to submit proof of completion of the ten (10) hour sales post-licensure course for violating two counts of Ohio Revised Code Section 4735.18(A)(6), one as it incorporates Ohio Revised Code Section 4735.71(B), and one as it incorporates Ohio Revised Code Section 4735.58(B). Mr. Mickey listed property for sale and in connection with the agreement, he submitted to the seller a dual agency disclosure statement to sign. However, at the time he prepared and submitted this document to the seller for execution there was no dual agency agreement in effect. In addition, he showed a property, but prior to showing the property he failed to prepare and submit to the buyers an agency disclosure form identifying that he would be representing them.

BEVERLY A. WATSON, sales associate, Urbana, Ohio, had a \$300.00 fine levied against her license for violating Ohio Revised Code Section 4735.18(A)(6), as that section incorporates Ohio Revised Code Section 4735.58(B). Ms. Watson, prior to showing a property and prior to preparing an agency disclosure form, failed to prepare and submit to the buyers an agency disclosure form.

OLIVIA M. KNIGHT, sales associate, Dayton, Ohio, had a \$350.00 fine levied

against her license and was required to complete and to submit proof of completion of the ten (10) hour sales post-licensure course for violating Ohio Revised Code Section 4735.18(A)(6). Throughout 1999 and 2000, Ms. Knight provided property management services to numerous parties and for various properties. This conduct required an Ohio real estate license. However, she provided these services in a name not licensed as an Ohio real estate broker and engaged in property management through a company not licensed as a real estate broker, rather than the real estate broker with whom her license was associated.

BARBARA M. FOOKES, sales associate, Fairborn, Ohio, had \$500.00 in fines levied against her license for violating two counts of Ohio Revised Code Section 4735.18(A)(21). Ms. Fookes listed property for sale with her brokerage, thereafter, the property was advertised for sale in the local M.L.S. However, the advertisement was misleading or inaccurate in that it did not correctly identify the zoning, did not have a correct photograph, and incorrectly identified the wrong M.L.S. zone where the property was located.

MARILYN SCHOPP, broker, Alliance, Ohio, had \$400.00 in fines levied against her license for violating two counts of Ohio Revised Code Section 4735.18(A)(31). Ms. Schopp's brokerage collected a commission from the sale of two separate properties. However, she failed, within a reasonable time after collecting the commissions, to either provide an accounting to or pay an earned share of the commissions to an agent.

DEBORAH LaRUE-SHIMP, sales associate, Cambridge, Ohio, had a \$500.00 fine levied against her license for violating Ohio Revised Code Section 4735.18(A)(6), as that section incorporates Ohio Revised Code Section 4735.21. Ms. LaRue-Shimp collected directly a sum of money representing a portion of a commission from the sale of property. She collected this money directly, and in her name, and not from the real estate broker with whom her license was associated with at the time.

ROBERT S. BICKIS, SR., broker, Reynoldsburg, Ohio, was given no

penalty for violating Ohio Revised Code Section 4735.18(A)(6), as that section incorporates Ohio Revised Code Section 4735.55. Mr. Bickis entered into a written property management agreement for a property and failed to include specific fair housing language in this written agency agreement.

MIKE MILLER, sales associate, Chillicothe, Ohio, had a \$300.00 fine levied against his license and was required to complete and to submit proof of completion of a three (3) hour course on agency for violating Ohio Revised Code Section 4735.18(A)(6), as that section incorporates Ohio Revised Code Section 4735.55. Mr. Miller entered into a written agency agreement that did not include the specific fair housing language.

J. PAUL BASINGER, broker, North Lima, Ohio, had \$900.00 in fines levied against his license and was required to complete and to submit proof of completion of the ten (10) hour brokerage post-licensure course for violating three counts of Ohio Revised Code Section 4735.18(A)(6), one as it incorporates Ohio Revised Code Section 4735.55, one as it incorporates Ohio Revised Code Section 4735.58(A), and one as it incorporates Ohio Revised Code Section 4735.58(D). Mr. Basinger entered into a written agency agreement to sell a property at public auction. The agreement failed to contain the specific fair housing language. In connection with the same property, prior to marketing the property he failed to provide the seller with an agency disclosure form. Finally, he sold a property at public auction, but failed to provide the successful bidder with an agency disclosure form prior to their signing the purchase contract.

DAVID W. GEIGER, sales associate, Heath, Ohio, had \$600.00 in fines levied against his license and was required to complete and to submit proof of completion of a three (3) hour course on agency for violating two counts of Ohio Revised Code Section 4735.18(A)(6), one as it incorporates Ohio Revised Code Section 4735.21, and one as it incorporates Ohio Revised Code Section 4735.73. Mr. Geiger received commissions from a corporation not licensed as a real estate broker rather than from the brokerage with whom he was associated with at the time. Also, he prepared a dual agency disclosure statement in connection with an offer to

purchase property, but failed to properly complete the statement, in that, he did not identify a material relationship that existed between him and one of the buyers.

PHYLLIS A. GEIGER, sales associate, Heath, Ohio, had \$600.00 in fines levied against her license and was required to complete and to submit proof of completion of a three (3) hour course on agency for violating two counts of Ohio Revised Code Section 4735.18(A)(6), one as it incorporates Ohio Revised Code Section 4735.21. Ms. Geiger received commissions from a corporation not licensed as a real estate broker rather than from the brokerage with whom she was associated with at the time. She listed property for sale and in connection with the listing agreement; she prepared and submitted to the sellers an Ohio agency disclosure form. However, at the time there was no dual agency relationship created.

ANN B. LAMBERT, sales associate, Columbus, Ohio, had a ten (10) day suspension of her license, which commenced on June 29, 2001, a \$500.00 fine, and was required to complete and to submit proof of completion of the ten (10) hour sales post-licensure course for violating Ohio Revised Code Section 4735.18(A)(6), as that section incorporates Ohio Revised Code Section 4735.62(A). A purchase agreement was entered into for a property of which Ms. Lambert was acting as a dual agent for both parties. After the contract was entered into, but before closing, there was a fire at the property, of which she had knowledge. However, she failed to disclose this material information to her clients, the buyers.

RICHARD LEE SMENNER, broker, Toledo, Ohio, had a \$300.00 fine levied against his license for violating Ohio Revised Code Section 4735.18(A)(6), as that section incorporates Ohio Revised Code Section 4735.55. Mr. Smenner entered into a non-exclusive written agency agreement that did not contain the specific fair housing language.

CENTRAL GROUP, INC., corporation, Toledo, Ohio, had \$600.00 in fines levied against the corporate license for violating Ohio Revised Code Section 4735.18(A)(6), as that section incorporates Ohio Revised Code Section 4735.55, and Ohio Revised Code Section 4735.18(A)(24) as it incorporates Ohio Revised Code Section 4735.58(A). The

corporation entered into a non-exclusive written agency agreement that did not contain the specific fair housing language. The corporation also failed to maintain complete and accurate records relating to its listing of a property, including copies of the agency disclosure form required to be submitted to the owner.

C. MICHAEL ROYCE, broker, Dayton, Ohio, had a \$1,000.00 fine levied against his license and was required to complete and to submit proof of completion of the ten (10) hour brokerage post-licensure course for violating three counts of Ohio Revised Code Section 4735.18(A)(6), one as it incorporates Ohio Revised Code Section 4735.58(B), one as it incorporates Ohio Revised Code Section 4735.71(B), and one as it incorporates Ohio Administrative Code Section 1301:5-1-02(B). Mr. Royce prepared an offer on behalf of purchasers for the purchase of property; however, he failed to provide the purchasers with an Ohio agency disclosure form. In connection with the offer, he prepared and submitted to the parties a dual agency disclosure statement; however, this statement should have been submitted to the parties as soon as practicable after it was determined that such dual agency may exist. Finally, he is licensed as C. Michael Royce; however, throughout 1999 and 2000, he held himself out as only Michael Royce. He failed to advertise in the name as it appears on his real estate broker's license.

BEAVERCREEK REALTY, INC., corporation, Beavercreek, Ohio, had \$900.00 in fines levied against the corporate license for violating two counts of Ohio Revised Code Section 4735.18(A)(6), one as it incorporates Ohio Administrative Code Section 1301:5-5-08 and for violating Ohio Revised Code Section 4735.18(A)(24) as it incorporates Ohio Administrative Code Section 1301:5-5-09. The corporation failed, throughout 1999, to maintain the real estate brokerage trust account in good standing and in accordance with Ohio real estate license law. The corporation failed, throughout 1999, to maintain proper trust account records and failed to have checks drawn on the trust account to bear the words "trust account."

CYNTHIA L. SCHIMER, sales associate, Dayton, Ohio, had a \$300.00 fine levied against her license and was

required to complete and to submit proof of completion of a three (3) hour course on agency for violating Ohio Revised Code Section 4735.18(A)(6), as that section incorporates Ohio Revised Code Section 4735.71. Ms. Schimer prepared and submitted an Ohio agency disclosure form to buyers wherein she indicated that she was representing the buyers, as well as the owner of the property. Since she indicated she was representing both parties, she should have also prepared and submitted to the parties an Ohio dual agency disclosure form.

KITTYHAWK REALTY, INC., corporation, Dayton, Ohio, had a \$100.00 fine levied against the corporate license for violating Ohio Revised Code Section 4735.18(A)(6) as it incorporates Ohio Administrative Code Section 1301:5-5-11. Throughout 2000, the corporation engaged in property management, but failed to maintain separate property management trust account(s) for the deposit of security deposits, rents, and money either received from the owner or on the owner's behalf, for payment of expenses related to the management of the property.

ELLEN L. KARKUTT, sales associate, Cleveland, Ohio, had a \$100.00 fine levied against her license for violating Ohio Revised Code Section 4735.18(A)(6). Ms. Karkutt listed property for sale. Thereafter, a buyer entered into an agreement to purchase the property and the transaction closed. However, sometime before it closed the actual terms of the transaction changed. A new arrangement called for her clients, the sellers, to pay by way of check two amounts, one to the buyers and the other to another company. This arrangement was never placed in writing and signed by all appropriate parties.

PAUL BRYANT, sales associate, Cleveland, Ohio, had a \$100.00 fine levied against his license for violating Ohio Revised Code Section 4735.18(A)(6). With property listed for sale with the brokerage Mr. Bryant was affiliated with, a buyer entered into an agreement to purchase the property. The transaction closed. However, some time before it closed, Mr. Bryant assisted with negotiations that resulted in the terms of the transaction being changed. A new agreement called for the sellers to pay by way of check two amounts, one to the buyers and the other to another company.

This arrangement was never placed in writing and signed by all appropriate parties.

JOHN L. ESHELMAN, JR., broker, Newark, Ohio, had a \$1,000.00 fine levied against his license and was required to complete and to submit proof of completion of the ten (10) hour brokerage post-licensure course for violating Ohio Revised Code Section 4735.18(A)(6). Mr. Eshelman authorized real estate commissions to be paid directly into the account of an entity not licensed as an Ohio real estate broker.

RICHARD B. FERRIS, broker, Mentor, Ohio, had a five (5) day suspension of his license, which commenced on August 6, 2001, a \$1,000.00 fine, and was required to complete and to submit proof of completion of a three (3) hour course on agency for violating Ohio Revised Code Section 4735.18(A)(6) as that section incorporates Ohio Revised Code Section 4735.58(B). Mr. Ferris, as a licensed broker, failed to present to a buyer an agency disclosure form prior to showing the property that he had listed. Mr. Ferris did have attached an agency disclosure form declaring seller's representation to a subsequently drafted purchase offer for the buyer. In addition, he failed to pursue approval or rejection by the buyer of the agency disclosure form indicating seller's representation.

BERT G. CSIZEK, sales associate, Garfield Heights, Ohio, had a five (5) day suspension of his license, which commenced on August 6, 2001, a \$500.00 fine, and was required to complete and to submit proof of completion of a three (3) hour course on agency for violating Ohio Revised Code Section 4735.18(A)(6) as that section incorporates Ohio Revised Code Section 4735.58(B). Mr. Csizek, in arranging for the sale of a commercial property, failed to submit to the buyer, whom he represented, an agency disclosure form.

RENEE I. DALESANDRO-LIZER, sales associate, Canton, Ohio, had a \$100.00 fine levied against her license and was required to complete and to submit proof of completion of a three (3) hour ethics course for violating Ohio Revised Code Section 4735.18(A)(6), as that section incorporates Ohio Administrative Code Section 1301:5-1-02. Ms. Dalesandro-Lizer failed to have her name changed on her real estate salesperson license to her new legal married name. She had a

name change effected with the local Board of Realtors and believed the Board would notify the State of the change.

DEBORAH A. WOLF, sales associate, Strongsville, Ohio, was given no penalty for violating Ohio Revised Code Section 4735.18(A)(14). Ms. Wolf listed property for sale. Thereafter, a buyer submitted an offer to purchase the property. Ms. Wolf induced the sellers to counter the offer by promising to pay the sellers the sum of \$100.00 should the buyer accept the counter offer. However, she failed to disclose this inducement in the purchase agreement.

DENNIS W. WOLF, sales associate, Strongsville, Ohio, was given no penalty for violating Ohio Revised Code Section 4735.18(A)(14). Mr. Wolf listed property for sale. Thereafter, a buyer submitted an offer to purchase the property. Ms. Wolf induced the sellers to counter the offer by promising to pay the sellers the sum of \$100.00, should the buyer accept the counter offer. However, he failed to disclose in the purchase agreement itself, this inducement.

HARRIETT FOUT, broker, Greenfield, Ohio, had a \$300.00 fine levied against her license and was required to complete and to submit proof of completion of a three (3) hour ethics course for violating Ohio Revised Code Section 4735.18(A)(6), as that section incorporates Ohio Revised Code Section 4735.55. Ms. Fout utilized written agency agreement forms for her brokerage that did not set forth the specific fair housing language.

VICKI L. SCHLECHTINGER, sales associate, Cincinnati, Ohio, had a \$500.00 fine levied against her license and was required to complete and to submit proof of completion of the ten (10) sales post-licensure course for violating two counts of Ohio Revised Code Section 4735.18(A)(6), one as it incorporates Ohio Revised Code Section 4735.58(B). Prior to showing a property, Ms. Schlechtinger neglected to prepare and submit to the purchaser an Ohio agency disclosure form. It was provided days later and in connection with the purchaser's offer to purchase. She failed to provide the Ohio agency disclosure form in a timely manner. In addition, she signed the purchaser's name to an addendum to the purchase agreement, but failed to obtain written consent to sign the purchaser's name to this

document. The purchaser indicated they neither sanctioned this addendum nor authorized her to sign the form on their behalf.

MARCUS HANNAH, broker, Columbus, Ohio, had a \$300.00 fine levied against his license and was required to complete and to submit proof of completion of a three (3) hour ethics course for violating Ohio Revised Code Section 4735.18(A)(6), as that section incorporates Ohio Revised Code Section 4735.55. Mr. Hannah utilized written property management agreements that did not contain the specific fair housing language.

Brokers Must Meet Commission Requirements

While most often commission transactions go smoothly, occasionally a disagreement arises between a broker and a salesperson regarding commission payment. Both parties should review Ohio Revised Code 4735.18(E)(31), which would control in such cases.

The law says that a broker must render an accounting to *and* pay a real estate salesperson his or her earned share of a commission within a reasonable time. Failure to meet both these requirements may result in disciplinary action against the broker.

The accounting should communicate to the salesperson the amount of his or her earned share. If the salesperson is not entitled to an earned share, the accounting should notify him or her to that effect. Brokers should be aware, though, that the fact that a lawyer has advised nonpayment of commission does not constitute a good defense for nonpayment.

A dispute over the dollar amount of the commission is a matter for either the courts or arbitration. The Division cannot become involved with determining the amount.

Brokers Must Return Licenses In Timely Manner

Ohio Revised Code section 4735.13(B) addresses an important issue. Sometimes a salesperson wishes to transfer his or her license, but the Division cannot complete the transfer until the prior license is returned. This section of the Code deals with the timely return of licenses.

It provides, in part, "The failure of a broker to return the license of a real estate

salesperson who leaves or who is terminated within three business days of the receipt of a written request from the salesperson for the return of the license, when a copy of the request also is forwarded to the superintendent, is prima facie evidence of misconduct...."

A broker must return the license within three business days of receipt of the request.

This means that if a broker receives the request on a Monday, the license must be in the mail and postmarked by Thursday. If the Division does not receive the license in a timely manner, it is possible the broker could face disciplinary action for failure to comply. In order for the law to apply, the salesperson needs to give written notice to his or her broker and also to the Division.



**The Ohio
Department
of Commerce**

**State of Ohio
Department of Commerce
Division of Real Estate and Professional Licensing
77 South High Street, 20th Floor
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