



## Trust Accounts Are Subject To Unclaimed Funds

### Unclaimed Funds: Take One

In the fall of 2001, the Division published its position that real estate brokers are subject to unclaimed fund regulations, but not with respect to trust accounts. At that time, the Division specifically instructed real estate brokers to “not remit trust account moneys (sic) to the Division of Unclaimed Funds.” The Division reasoned that “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.”

### Unclaimed Funds: Take Two

Since that time, disputed and unclaimed earnest money deposits have accumulated in brokerage special or trust accounts, which do not earn interest. As a result of the growing concern, the Education and Research Committee granted funds to research the issue and to make recommendations as to how this issue may be addressed in Ohio. The results were published on the Division’s website: [http://www.com.ohio.gov/documents/real\\_earnest\\_money\\_report\\_FINAL.pdf](http://www.com.ohio.gov/documents/real_earnest_money_report_FINAL.pdf)

The Division examined this issue and concluded that the special or trust accounts should be subject to the Division of Unclaimed Funds (“Unclaimed Funds”) regulations. There is no regulation in either Chapter 4735 of the Ohio Revised Code or Chapter 1301:5 of the Administrative Code that precludes trust accounts from the jurisdiction of Unclaimed Funds. In addition, there is no such exemption provided in Unclaimed Fund’s regulations. In fact, R.C. 169.02(M)(2) expressly provides that escrow funds, security deposits and other money received by a licensed broker in a fiduciary capacity and that are unclaimed for two years constitutes unclaimed funds.

### And Action...

1. What are unclaimed funds?  
Funds become unclaimed when there has been no activity concerning the funds for a specific period of time and the broker cannot locate the person to whom the funds should be released.
2. What funds are considered unclaimed?  
Any payments that are owed to an individual can be subject to unclaimed funds including earnest money, security deposits, rents, and commissions owed.

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3. How long before funds are considered unclaimed?
  - a. Any funds required to be held in a non-property management special or trust account are considered unclaimed after two years of no activity.
  - b. Any funds required to be held in a property management special or trust account are considered unclaimed after one year of no activity.
  - c. Any commissions, wages, or salaries are considered unclaimed one year from the date they are payable or distributable.

The following types of accounts are considered reportable as unclaimed funds.

| <b>Nature of Funds Code</b> | <b>Description of Funds</b>                  | <b>Dormancy Period</b> | <b>Statutory Reference</b> |        |
|-----------------------------|--|------------------------|----------------------------|--------|
| MS02                        | Commissions                                  | 1                      | 169.02                     | (N)    |
| MS01                        | Wages- Payroll or Salary                     | 1                      | 169.02                     | (N)    |
| MS22                        | Real Estate Escrow Funds                     | 2                      | 169.02                     | (M)(2) |
| MS19                        | Deposits for Rent, Leases or Unused Services | 1                      | 169.02                     | (M)(1) |
| AC06                        | Security Deposits                            | 1                      | 169.02                     | (M)(1) |
| CK10                        | Expense Reimbursement Checks                 | 3                      | 169.02                     | (P)    |
| CK17                        | Refund or Rebate Checks                      | 3                      | 169.02                     | (N)    |
| MS06                        | Unidentified Remittances                     | 3                      | 169.02                     | (N)    |

4. What is considered activity?
 

Activity is when a party has shown interest in the funds – there is on-going communication concerning the funds. A broker needs to be able to confirm any activity and this is usually done by maintaining any written communication received.
5. When do I report funds to the Division of Unclaimed Funds?
 

A broker must identify any amounts payable to an individual that are dormant as of June 30 and every broker shall report those funds to the Division of Unclaimed Funds before November 1 annually.
6. How do I report funds to the Division of Unclaimed Funds?
  - a. Once you have identified dormant accounts, you must send notice to the party the funds are owed. Allow a minimum of 30 days for the party to respond to the notice prior to reporting the funds as unclaimed.
  - b. Once funds are reportable as unclaimed, the broker shall report and remit all of the funds to the Division of Unclaimed Funds during the annual reporting cycle.
  - c. The report to be filed with the Division of Unclaimed Funds may be found at: [http://www.com.ohio.gov/unfd/docs/unfd\\_2008AnnualReportOfUnclaimedFundsBooklet.pdf](http://www.com.ohio.gov/unfd/docs/unfd_2008AnnualReportOfUnclaimedFundsBooklet.pdf)
7. What needs to be contained in the notice (see 6a above) to each person?
 

The notice must identify or describe the funds and the amount due to that person based on the broker’s records. The notice must also inform the person that the funds will be reported as unclaimed funds 30 days after the mailing of the notice. The broker must include an OUF-8 Notice of Unclaimed Funds form and a self-addressed, stamped envelope.
8. How do I send the notice to each person?
 

If the funds have a value of more than \$50 but less than \$1,000, notice must be sent by first class mail to the last known address of the person owed the funds. If the funds have a value of \$1,000 or more, the notice must be sent by certified mail to the last known address of the person owed the funds.

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*Trust accounts are subject to unclaimed funds continued ...*

9. What if the notice is returned by the post office?  
If the notice is returned due to a bad address or if the person's address is UNKNOWN, the funds must be reported as unclaimed.
10. What if I receive a signed OUF-8 form back?  
When a person returns a signed OUF-8 form then contact has been re-established and the funds would not be reportable as unclaimed. When a person does not sign or return the OUF-8 form, the money is reportable as unclaimed.
11. What happens if I don't file a report with the Division of Unclaimed Funds?  
You may incur civil penalties of \$200 per day and criminal penalties of up to \$500 per day. If you under report unclaimed funds, you may incur a penalty at a rate of 2% per month on the balance of funds due.
12. I was penalized by the Division of Unclaimed Funds. Do I have to report this to the Division of Real Estate & Professional Licensing?  
Yes. You would have to report this on the next application (i.e. renewal, transfer/reactivation, etc.) filed with the Division of Real Estate & Professional Licensing on the first question in the ethical conduct and legal history questions section.
13. What about funds that I am holding currently?  
As of June 30, 2009, the 2009 annual reporting cycle for brokers will begin. Brokers will need to address any funds that were in their possession on or before June 30, 2009, that are reportable as unclaimed funds. See the table in question 3 for a schedule of accounts held by a broker that can become unclaimed.
14. Does the Division of Unclaimed Funds require me to maintain any documents?  
Yes. Brokers must maintain the documents related to any unclaimed funds for five years from the date the unclaimed funds report is filed or until completion of an audit by the Division of Unclaimed Funds, whichever occurs first. Documentation to be maintained for Unclaimed Funds includes, but is not limited to, a copy of the final unclaimed funds report filed with the State, account lists identifying the unclaimed funds, copies of deposited/issued checks related to the funds, purchase contracts related to the funds, signed Unclaimed Funds forms, documentation of required mailings, other documentation used in identifying the unclaimed funds, and any other documents that would assist the State in paying the rightful owner.
15. In what format do I have to maintain documents?  
It would be permissible to maintain documents related to unclaimed funds in electronic format or as a hardcopy.
16. How am I selected for an audit by the Division of Unclaimed Funds?  
Usually, Unclaimed Funds looks to your reporting history. If there is something atypical found in your report, you may be subject to an audit.
17. What documents do I maintain for the Division of Real Estate and how long should I maintain them?  
These requirements have not changed – always maintain transaction documents for three years from the date of the transaction; a failure to do so is a violation of R.C. 4735.18(A)(24).
18. On June 15, 2009, my transaction ended. On May 1, 2011, the earnest money was considered unclaimed. How long do I need to maintain my documents?
  - a. You must maintain all of the transaction documents until June 15, 2012.
  - b. You must maintain the documents related to the unclaimed earnest money (see question 12) until May 1, 2016 unless an Unclaimed Funds audit is conducted prior to that date.

As part of its education program, the Division of Unclaimed Funds is planning to contact brokers directly to help guide them through the unclaimed funds process. However, for any immediate concerns and questions, you may go to <http://www.com.ohio.gov/unfd/>. You may also reach Jim Dowley, of the Division of Unclaimed Funds, at 614-644-7283 or [James.Dowley@com.state.oh.us](mailto:James.Dowley@com.state.oh.us).

## Coming April 7, 2009

### IMPLEMENTATION OF NEW EARNEST MONEY LICENSE LAW

The 127<sup>th</sup> General Assembly recently passed House Bill 130 that updates R.C. 4735.18(A)(26) and adds R.C. 4735.24. This legislation becomes effective on April 7, 2009. R.C. 4735.24 specifically addresses the disbursement of earnest money connected to a real estate purchase agreement that is deposited into a special or trust account. A summary of R.C. 4735.24 is provided below:

1. The broker shall maintain the earnest money under the terms of the purchase agreement until:
  - a. the transaction closes;
  - b. the parties provide signed, written instructions specifying how to disburse the earnest money;
  - c. a final court order specifies to whom the earnest money is to be awarded; or
  - d. the earnest money becomes unclaimed funds.
2. A purchase agreement may contain a provision that provides if there is a dispute regarding the disbursement of the earnest money the broker will maintain the money for two years from the date the earnest money was deposited into the special or trust account. This purchase contract provision is an optional clause. After that two years, the money is to be returned to the purchaser unless the broker receives:
  - a. written instructions signed by both parties; or
  - b. a written notice that a court action has been filed.
3. If the parties dispute the disbursement of the earnest money and the purchase agreement contains the optional clause mentioned in number 2 above, the broker shall maintain the money for two years from the date the earnest money was deposited into the special or trust account and thereafter the money shall be returned to the purchaser no later than the first day of September unless the broker receives:
  - a. written instructions signed by both parties; or
  - b. a written notice that a court action has been filed.

If the broker cannot locate the purchaser at the time the disbursement is due, the earnest money becomes unclaimed funds.

### ***YOUR QUESTIONS ANSWERED***

1. Does the new law mean that all earnest money has to be deposited into the trust account?  
No. How and where the earnest money is to be deposited is a negotiable term of the contract. If the parties prefer that the money be held by a third party, they can negotiate that as a term of the purchase contract.
2. What happens if I receive notice of a court action?  
If you receive notice that the parties have filed a court action to resolve a dispute over earnest money, you must act pursuant to the court order. Maintain the earnest money until you receive a final court order that specifies to whom the earnest money is to be awarded.
3. My brokerage has pre-printed contracts that provide for earnest money disbursement instructions that differ from the new law (see #1 in "Coming April 7, 2009"). Do I need to update my contracts?  
Yes. You have two options:
  - i. Add an addendum with compliant provisions regarding earnest money and citing R.C. 4735.24 and if you so choose, the optional clause.
  - ii. Print new contracts with the compliant language and if you so choose, the optional clause.

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*Your questions answered continued ...*

4. I have a contract that was entered into prior to April 7, 2009, the effective date of the new law, and it closed after April 7, 2009. The language in the contract regarding disbursement of the earnest money is different than the new law. How do I disburse the earnest money?

You may disburse the earnest money under the terms of the purchase agreement. However, any earnest money that becomes unclaimed must be reported to the Division of Unclaimed Funds.

5. What happens if I violate R.C. 4735.24?

You would be in violation of license law and your license would be subject to disciplinary action by the Ohio Real Estate Commission. The Commission may impose the following sanctions upon licensees: public reprimands, civil penalties, additional education, suspension of the license, and revocation.

6. My purchase contract has the “optional clause.” The earnest money was in dispute but now two years have passed since I deposited the money into my trust account and there has been no activity – I have not received any instructions or notice from the parties. When do I have to return the earnest money to the purchaser?

Although the new law provides that you shall disburse the earnest money no later than September 1 two years after the deposit of the money, you should still disburse the earnest money within a reasonable time. Under normal circumstances, a reasonable time is one week.

### ***Behind the Scenes Examples***

On April 15, 2009, a purchase agreement is signed and \$750 earnest money is deposited into ABC’s trust account. The transaction closes and the earnest money is disbursed as agreed.

On April 15, 2009, a purchase agreement is signed and \$750 earnest money is deposited into ABC’s trust account. There is no “optional clause” in the purchase contract (see #2 in “Coming April 7, 2009”). The transaction fails to close and the earnest money is in dispute. On June 1, 2010, Broker receives a copy of a final court order that specifies the earnest money is to be released to Buyer. The earnest money should be disbursed to Buyer as provided in the court order.

On April 15, 2009, a purchase agreement is signed and \$750 earnest money is deposited into ABC’s trust account. There is no “optional clause” in the purchase contract (see #2 in “Coming April 7, 2009”). The transaction fails to close and the earnest money is in dispute. The last time Broker receives any communication from Buyer or Seller regarding the earnest money (last “activity”) was July 20, 2009. Two years later, on July 20, 2011, Broker sends a notice to both Buyer and Seller to their last known address by regular mail because the deposit was less than \$1,000. Buyer does not respond and Seller’s notice is returned UNKNOWN. Broker shall report the earnest money as unclaimed funds during the 2011 annual reporting cycle.

On April 15, 2009, a purchase agreement is signed and \$750 earnest money is deposited into ABC’s trust account. The transaction fails to close. The purchase contract contains the “optional clause” (see #2 in “Coming April 7, 2009”). There is a dispute over the earnest money. After April 15, 2011, there has been no activity – Broker has not received any written instructions from the parties nor a notice of a court action. Pursuant to the “optional clause,” the earnest money should be disbursed to Buyer after April 15, 2011, but no later than September 1, 2011. Again, Broker has no reason to wait until September 1, 2011, and should return the earnest money within a reasonable time.

On April 15, 2009, a purchase agreement is signed and \$750 earnest money is deposited into ABC’s trust account. The transaction fails to close and the purchase contract contains the “optional clause” (see #2 in “Coming April 7, 2009”). There is a dispute over the earnest money. After April 15, 2011, there has been no activity – Broker has not received any written instructions from the parties or a notice of a court action. However, Broker cannot locate Buyer to release the earnest money. The earnest money is now considered unclaimed funds.

- Broker should send a notice to Buyer at their last known address and after a minimum of 30 days and during the next annual reporting cycle Broker should file an unclaimed funds report with the Division of Unclaimed Funds.

## Ohio Revised Code 4735.24

**O.R.C. 4735.24.** (A) Except as otherwise provided in this section, when earnest money connected to a real estate purchase agreement is deposited in a real estate broker's trust or special account, the broker shall maintain that money in the account in accordance with the terms of the purchase agreement until one of the following occurs:

(1) The transaction closes and the broker disburses the earnest money to the closing or escrow agent or otherwise disburses the money pursuant to the terms of the purchase agreement.

(2) The parties provide the broker with written instructions that both parties have signed that specify how the broker is to disburse the earnest money and the broker acts pursuant to those instructions.

(3) The broker receives a copy of a final court order that specifies to whom the earnest money is to be awarded and the broker acts pursuant to the court order.

(4) The earnest money becomes unclaimed funds as defined in division (M)(2) of section 169.02 of the Revised Code and, after providing the notice that division (D) of section 169.03 of the Revised Code requires, the broker has reported the unclaimed funds to the director of commerce pursuant to section 169.03 of the Revised Code and has remitted all of the earnest money to the director.

(B) A purchase agreement may provide that in the event of a dispute regarding the disbursement of the earnest money, the broker will return the money to the purchaser without notice to the parties unless, within two years from the date the earnest money was deposited in the broker's trust or special account, the broker has received one of the following:

(1) Written instructions signed by both parties specifying how the money is to be disbursed;

(2) Written notice that a court action to resolve the dispute has been filed.

(C)(1) If the parties dispute the disbursement of the earnest money and the purchase agreement contains the provision described in division (B) of this section, not later than the first day of September following the two year anniversary date of the deposit of the earnest money in the broker's account, the broker shall return the earnest money to the purchaser unless the parties provided the broker with written instructions or a notice of a court action as described in division (B) of this section.

(2) If the broker cannot locate the purchaser at the time the disbursement is due, after providing the notice that division (D) of section 169.03 of the Revised Code requires, the broker shall report the earnest money as unclaimed funds to the director of commerce pursuant to section 169.03 of the Revised Code and remit all of the earnest money to the director.

## *Attention Appraisers: Protect Your Credentials --Violations To Avoid*

Of the more than 3,000 appraisers in Ohio, most honor the profession by practicing within the law. Some, however, author appraisals that are riddled with errors and lack credibility, are misleading, and/or may be fraudulent. The Ohio Real Estate Appraiser Board is cautioning Ohio's appraisers that the following infractions can result in the **suspension** or **revocation** of an Ohio real estate appraiser license or certificate:

1. Certifying or otherwise stating in the appraisal that you inspected the subject property when you did not. Before you place an "x" in the box indicating you inspected the property, realize that you may lose your license for doing so.
2. Failure to fully respond to a subpoena issued by the Superintendent.
3. Failure to cooperate with a Division investigation or make your work file available to the Superintendent.
4. Failure to maintain a work file.
5. Using false photos of subject properties.
6. Failure to disclose a conviction on a license, certification or registration application.
7. Plagiarism – taking another appraiser's report and passing it off as your own.
8. Making up the comparable sales data.
9. Reckless maintenance or control of an electronic signature.
10. Failure to analyze and report listing history and/or sales history for the subject property and comparable sales when available and relevant.

Discipline typically ordered by the Ohio Real Estate Appraiser Board for this type of conduct may range from a 60 - 180 day suspension or revocation of the license, certificate or registration.

### *Friendly Reminders*

**Reminder:** The Cleveland office permanently closed on September 1, 2008. All inquiries regarding appraiser registrations, licenses and certificates, including applications, renewals and continuing education, should be directed to the Columbus office at (614) 466-4100.

#### **Division Correspondence**

It is important to read correspondence from the Division as it will contain information regarding your license.

If correspondence is sent to you via certified mail, return receipt requested, please be sure to claim that mail. Most documents sent from our office using certified mail will contain information based on a time constraint.

#### **Auction Disclosure Requirements**

Under Ohio Revised Code 4735.58(B), prior to the start of the auction, a licensee is required to verbally disclose that they are representing the seller in the transaction. At the close of the auction, the licensee must provide the Agency Disclosure Statement to the successful bidder prior to that bidder signing a purchase contract. A licensee's failure to follow ORC 4735.58(B) is evidence of misconduct. A licensee must also provide a Consumer Guide to Agency to the seller prior to marketing or showing the real estate and should have the guide available to all bidders prior to the start of the auction.

## *Branch Office and Place of Business Requirements*

Advancing technology is changing how, when, and where a person can do business. A question frequently received at the Division is “When does a location’s use rise to the level of requiring a branch office license?” The Division’s determination would provide for a review of a number of factors. While many of these factors may vary from location to location, the ultimate answer is determined by how the location is actually being used.

While not all inclusive, the following is provided to give you an idea about what the Division looks at in determining whether a location needs to obtain a branch office license.

***Is the location the principal place of business of one or more licensees?*** If a majority of a licensee’s business is conducted out of the non-licensed location through the use of telephones, computers, mailings, meeting clients or prospective clients, executing original documents, adding to their client base, and listing the location’s phone number on advertisements, then that location would require a branch office. A broker or salesperson who merely uses the main office or branch office as a mail drop would probably need to obtain a branch office license for his/her principal place of business. The Division would also look at where the original records of all transactions are being worked on and being maintained. All original records need to be kept at a licensed main or branch office. If an audit is conducted by the Division and originals are at the off-site location, then that location would probably need to be licensed as a branch office.

If your actions meet the factors listed above, it is the recommendation of the Division that you obtain a branch office license for that location. A branch office license can be obtained from the Division with the submission of the Branch Office application and \$8.00 check or money order for each branch location. The application form may be found on the Division’s website under Business Forms. You may also contact the Division directly with any questions.

### *Broker Reminders*

#### **BROKERS – READ YOUR MAIL CAREFULLY!**

Failure to return the license of a salesperson or broker within three days of the receipt of a request from the Superintendent is evidence of misconduct pursuant to Ohio Revised Code 4735.18(A)(6). This conduct may result in formal charges being issued against you. The Division recommends that the return of the license be by certified mail so you will have evidence of the return of the license.

#### **Brokerage Address**

When completing forms requesting broker information, be sure to use the broker’s main business address and not the branch office address. Pursuant to Ohio Revised Code 4735.13, the license must be maintained at the main office.

#### **Brokers**

Be advised that although you may refer to a broker in your company as an “associate broker” or “primary broker,” the Division does not differentiate between brokers. Pursuant to the Ohio Revised Code, all brokers share equal responsibility for the company and its transactions.



## *Approved Pre-license Courses for Appraisers Available on Website*

The Division of Real Estate and Professional Licensing is pleased to announce the release of the Central Accreditation Matrix (CAM) for appraiser qualification education. The CAM is a listing of appraisal qualification education courses approved by the Appraiser Qualification Board (AQB) and the Division.

The 2008 Real Property Appraiser Qualification Criteria requires the completion of specific educational topics and hours called **Core Curriculum Modules**. The modules detail specific amounts and types of subject matter that must be taken to complete appraiser registration, licensure and certification.

By searching the CAM, individuals can find specific coursework and a detailed list of course providers. The CAM permits a search by Required Core Module type, and provides a listing of **modular** and **integrated** courses.

**Modular Courses** fulfill **all the major topical requirements** of a specific AQB subject module.

**Integrated Courses** fulfill a **portion of an AQB Module by covering some major subtopics** – but fails to completely fulfill all subtopics of a module. Other courses must also be taken and “integrated” to fulfill the AQB modular requirement.

**Both:** The course completely fulfills one modular requirement but has additional hours of subject matter fulfilling a different modular requirement.

While the Division is not restricted to accepting only those listed within the CAM, students may feel confident that the CAM serves as the “informational well” of approved qualification education courses and allows students and providers to know upfront what courses meet specific modular and sub-topical categories.

In addition, the CAM permits individuals to view courses offered and then make choices based on individual accreditation fulfillment needs. Please visit the CAM at: [https://www.comapps.ohio.gov/real/real\\_apps/real/CAM/Disclaimer.aspx](https://www.comapps.ohio.gov/real/real_apps/real/CAM/Disclaimer.aspx)

Please note: The State of Ohio does not accept all AQB-approved courses.

The State of Ohio does not accept any online, web-based or correspondence courses for appraiser qualification education.

### *Attention Registered Real Estate Appraiser Assistants:*

The rules in the Ohio Administrative Code relating to the real estate appraiser experience requirements have changed in response to federal requirements issued by the Appraiser Qualifications Board.

Effective January 1, 2009, a registered assistant who applies for a residential appraiser certificate or a general appraiser certificate must be supervised by an appraiser who is either a certified residential or certified general appraiser (depending on the credential sought).

A registered assistant who applies for a residential appraiser license must be supervised by an appraiser who is either a licensed residential appraiser or certified (residential or general) appraiser.

Assistants must be registered with the State of Ohio for experience hours, obtained after March 1, 2005, to count towards a higher credential.

## *Selling Real Estate at Public Auction*

*Donna Brinker Potter, Program Manager, Ohio Department of Agriculture*

The Ohio Auction Law underwent a major revision in May 2005. There were many changes that affect the sale of real property at auction. Selling real property at auction requires compliance not just with Chapter 4735 of the Ohio Revised Code, but also with Chapter 4707. The Department of Agriculture would like to review some of the key components of the Ohio Auction Law (O.R.C. 4707) that directly affect the sale of real property at auction. For a current copy of the Ohio Auction laws and rules, visit the Ohio Department of Agriculture web page at [www.ohioagriculture.gov/auction](http://www.ohioagriculture.gov/auction), and then click on Auctioneer Guide.

Before real property can be sold at auction, O.R.C. 4707.021 requires a licensed auctioneer, who is also licensed as a real estate broker or a real estate salesperson under O.R.C. 4735, to enter into the auction contract for the sale of real property at auction. A real estate broker or salesperson who is not licensed as an auctioneer cannot sign the auction contract for the sale of real property at auction. However, this does not mean that a real estate broker or salesperson cannot enter into a listing agreement for a piece of real property. If the seller ultimately chooses the auction method of marketing, the licensed auctioneer/licensed real estate broker or salesperson who is going to conduct the auction must sign the auction contract, which is a different document from the listing agreement. The contract must comply with the provisions found in O.R.C. 4707.20. Apprentice auctioneers are not permitted to sign contracts for the sale of real property at auction even if they are licensed under O.R.C. 4735.

Pursuant to O.R.C. 4707.22(F), the advertisement for the real estate auction must list the name of the licensed auctioneer, as well as the Ohio licensed real estate broker. This does not mean, however, that the real estate brokerage may advertise "auction services," "an auction division," or use similar words, unless the real estate brokerage is also licensed pursuant to O.R.C. 4707.073. It is the Ohio Department of Agriculture's position that the use of such terms as "auction division" or "auction services" would reasonably lead a member of the public to believe that the brokerage holds a valid auctioneer's license, when this is not correct. Such advertising, when the brokerage firm does not have a valid auction license itself, is a violation of the prohibitions contained in O.R.C. 4707.073(A). O.R.C. 4707.22(F) merely gives the Ohio licensed real estate broker the right to advertise the particular auction of real property without the need to obtain an auctioneer license.

Another issue to keep in mind when advertising real property at auction is that if the real property is being sold absolute, the advertisement must explicitly state that the property is being sold at absolute auction, which is pursuant to O.R.C. 4707.22(C). If no mention is made in the advertisement as to whether the auction is absolute or with a reserve, then the auction is considered to be with a reserve. If the advertisement is for an auction of more than one piece of real property, and if some of the lots are to be sold absolute and others with a reserve, then the advertising must clearly state which properties are being sold absolute and which ones are being sold with a reserve pursuant to O.R.C. 4707.072(B)(3).

The Ohio Department of Agriculture would also like to address an issue related to the real estate broker and auctioneer corporation license. The question has been asked whether a real estate brokerage is allowed to advertise auction services to prospective clients using either the terms "auction division," "auction services," or words similar thereto. "Auction services" are defined in O.R.C. 4707.01(M) as "arranging, managing and sponsoring a personal property auction ... including the taking and advertising of personal property on consignment to be sold at auction by a licensed auctioneer." The use of terms such as "auction services" or "auction division" gives the impression that the brokerage is licensed and can perform acts that only a corporation licensed under O.R.C. 4707 may perform. O.R.C. 4707.073(A) provides that a corporation may not "act or hold itself out as an auctioneer" unless it is licensed under O.R.C. 4707.073 or 4707.071. While O.R.C. 4707.073(G) exempts a real estate broker licensed under O.R.C. 4735 from this licensing requirement (as long as O.R.C. 4707.021 and 4707.22 are complied with), O.R.C. 4707.073 still does not permit a corporation licensed as a real estate broker to represent itself as being a licensed auctioneer, unless the corporation also holds an auctioneer's license.

**The information provided in this article is general in nature; it serves to highlight specific sections of the Ohio Auction Law. Therefore, it is recommended that you consult a legal professional regarding any specific questions or concerns that you may have on this topic regarding compliance with this Chapter or any Chapter of the Ohio Revised Code.**

## *Licensee Receives Honor During the 2008 Ohio Fire Service Hall of Fame Ceremony*

It doesn't matter if it is 2 p.m. or 2 a.m., raining or snowing; Patrick Guanciale is almost always on the scene with the men and women of the Newark Fire Department.

Governor Ted Strickland, Commerce Director Kimberly A. Zurz, State Fire Marshal Michael P. Bell and the State Fire Commission presented **Patrick Guanciale**, an Ohio real estate broker from Newark, Ohio, with the **William L. Howard Public Service Award** at the Ohio Fire Service Hall of Fame ceremonies on Sept. 11, 2008.

The William L. Howard Public Service Award is conferred to outstanding individuals who are not members of the fire service, but who have, during the course of their career or their lives, made significant contributions toward the furtherance of the fire service.

Newark firefighters say Guanciale "gets in the trenches" with them, helping to fill air bottles or to make sure there is plenty of water available for everyone at the scene of an incident. He is so much a part of the department that new firefighters often ask what shift he works. The fact is Guanciale volunteers his time to the firefighters and the community.

He has been described as a tireless fire buff who has helped make Newark a better place to live and work. In addition to his volunteer efforts with the Newark Fire Department, Guanciale also served as a Chairman of the State Fire Commission, serves on the Board of Directors for Licking County Memorial Hospital, served as the Past President of the Licking County Chamber of Commerce, Granville Planning Commission, Newark Rotary, Newark United Way and the Licking County Board of Realtors. He has been licensed as an Ohio real estate broker since 1972. Those who know him say his wife Carol and his dog Lucy should share in the credit for their unwavering support that allows him to give so much to the community.



*From left to right: Governor Ted Strickland, Patrick Guanciale and Director Kimberly A. Zurz*

### *New FHA Policy Concerning Licensed and Certified Appraisers*

**No Later than October 1, 2009**, all FHA Appraiser Roster appraisers in **all** states and territories must be state certified in order to be eligible to conduct appraisals for FHA-insured mortgages and remain on the FHA Appraiser Roster.

For more information, go to the FHA Appraisers home page at <http://www.hud.gov/appraisers/>.

## Licensing Q & A

### **What are the 10-Hour Post Licensure and Continuing Education requirements?**

Proof of completion of the 10-Hour Post Licensure course is due within 12 months of a licensee's first ISSUE date. The first issue date is the date on which the license was first issued by the Division.

The Combined Renewal Application, the appropriate renewal fee (\$117 for salespeople and \$147 for brokers) are due the first birthday after the licensee's first issue date. The Renewal Application with Education Compliance Form, CE application certificates and the renewal fee are due every three years thereafter.

A licensee's completed Combined Renewal Application with Education Compliance Form, CE completion certificates and fee must be postmarked *or hand-delivered* to the Division *on or before* the licensee's due date.

### **I was licensed on July 1, 2008. My next birthday is March 1, 2009. Why is my CE due date 2012? I thought CE was due every 3 years.**

Your first renewal is due the first birthday *after* your first issue date. The three-year CE due date goes from your first RENEWAL date, not your first issue date. In this instance, the licensee's 3-year period goes from March 1, 2009 to March 1, 2012.

### **Where do I find the Division's forms?**

Forms can be found on the Division's website. Go to [www.com.ohio.gov/real](http://www.com.ohio.gov/real) and click on the word Forms in the upper left corner of the page. Or go to the "How Do I..." column on the right side of the page and click "Find All Forms?"

### **Can I fax or e-mail my licensing paperwork to the Division?**

No, you *must mail or hand-deliver* all licensing paperwork to the Division. Remember: the division goes by U.S. Post Office's postmark date. As long as your paperwork is postmarked by the U.S. Post Office by your due date, we will consider the paperwork on time.

Note: The Division's enforcement section will accept faxed or e-mailed complaints.

### **What do I need to do to reactivate my INACTIVE license?**

#### **To reactivate a SALES license:**

A SALESPERSON should submit a completed Salesperson Transfer/Reactivation Application, including broker information and signature, and a \$20 check or money order.

#### **To activate a BROKER license:**

##### **Activate broker license as a sole proprietor**

A BROKER should submit a Broker Transfer/Reactivation Application, a letter from a financial institution (bank) stating you have a non-interest bearing special or trust account, and return your salesperson license. There is no fee if the application is received within 30 days of passing the exam. If not within 30 days of passing the exam, the fee is \$25.

##### **Activate broker license as a sole proprietor with a DBA**

A BROKER should submit a name reservation application. Once you receive the approval from the Division, you may proceed with the following: register the DBA name with the Secretary of State; submit the certificate from the Secretary of State's office with the Broker Transfer/Reactivation Application (no fee if submitted within 30 days of passing the exam); a letter from a financial institution (bank) stating you have a non-interest bearing special or trust account; and return your salesperson license. If not within 30 days of passing the exam, the fee is \$25.

##### **Activate broker license with an existing company**

Submit a Broker Transfer/Reactivation Application (no fee if submitted within 30 days of passing the exam), return your salesperson license and the company's license with addendum. If not within 30 days of passing the exam, the fee is \$25.

*continued on page 13*

*Licensing Q & A continued ...*

**Activate license with a company that you started**

A BROKER should submit a name reservation application. Once you receive the approval from the Division, register the name with the Secretary of State; submit a copy of the letter of organization and certificate, company application (corporation, limited liability company, partnership, or association application which applies to your type of company); a letter from a financial institution (bank) stating you have a non-interest bearing special or trust account; a Broker Transfer/Reactivation Application (no fee if submitted within 30 days of passing the exam); and return your salesperson license. If not within 30 days of passing the exam, the fee is \$25.

**What do I need to do to place my license in an inactive status? Do I need to renew while I'm inactive?**

Return the Sales or Broker license to the Division, along with a completed Sales or Broker Transfer/Reactivation Application.

Yes, inactive licensees are required to submit their Combined Renewal Application with Education Compliance Form, CE completion certificates and the appropriate renewal fee by their respective due dates.

**How do I transfer from one broker to another? Do I need my original license?**

An active SALESPERSON should submit a completed Salesperson Transfer/Reactivation Application, including broker information and signature, along with a \$20 check or money order. It is NOT necessary to return your original license from your previous company. A new license will be mailed out to the new company.

An active BROKER who wishes to transfer to another existing brokerage should submit a completed Broker Transfer/Reactivation Application, the present company's license and broker addendum, the new company's license and broker addendum and a \$25 fee. The Division cannot transfer a broker without the original licenses from BOTH companies.

**I no longer wish to hold my Ohio Real Estate Broker and/or Salesperson license. Is there any way to give up my license without it showing up REVOKED?**

Yes, effective September 22, 2008, a licensee may place the license in a RESIGNED status.

The resignation of a license allows the licensee to permanently surrender the license if he/she no longer wishes to hold the license. The resignation of a license is considered to be final without the taking of any action by the superintendent. A licensee whose license is active, inactive or suspended (except due to disciplinary action) may request that the license be placed in a resigned status. If a person whose license is in a resigned status wishes to obtain an active license, the person shall apply for an active license in accordance with the requirements specified in Ohio Revised Code 4735.07 or 4735.09, as applicable.

Please note: Once a license is placed in a resigned status, the licensee cannot reactivate that license. A new license must be obtained.

**I'm not sure if I want to permanently give up my license. Is there a way to hold off making this permanent decision until I decide what I want to do?**

Yes, effective September 22, 2008, a licensee whose renewal fees and continuing education requirements are current may place the license in a VOLUNTARY HOLD status for up to 12 months. If the licensee's triennial renewal date occurs during the 12-month period, the licensee's renewal fee and continuing education would be due at the time of reactivation. If the licensee does not apply to reactivate a license on voluntary hold during the 12-month period or does not fulfill the renewal and/or continuing education requirements in that time, the license will be automatically resigned.

Please note: If an active broker places his/her license in a voluntary hold or resigned status that results in the closure of the broker's brokerage, the broker must provide to each salesperson associated with that broker a written notice stating that fact within three days of applying to the Division for the voluntary hold or resigned status.

## *Medical Extensions for Continuing Education*

A licensee may request an extension for submission of continuing education based on a medical need. The basis for these types of requests is very narrow and can be found in Ohio Revised Code 4735.141(E).

Here are some items to remember when requesting an extension:

1. The renewal form and fee must be submitted by the licensee's due date.
2. The extension request must be submitted no later than one month prior to the end of the licensee's three-year reporting period, unless the disability did not arise until the last month of the reporting period. If the disability happened in the last month of the reporting period, then the request must be made as soon as practical but before the licensee's due date.
3. The licensee must be the individual with the disability—it cannot be a family member who is disabled.
4. The request must be made prior to the due date.
5. A physician's statement must be received describing the disability, and include the expected duration of the disability and a certification that the disability is of such a nature that the licensee cannot attend any instruction that lasts for more than three hours in duration.
6. Only one extension will be granted.
7. The extension does not alter the reporting time frame for the following continuing education due date. For example, your continuing education due date is October 15, 2008, and you are given a three-month extension for submitting the courses, making your due date January 15, 2009. Once you meet the continuing education requirements, your next due date will be moved to October 15, 2011.

### Ohio Revised Code 4735.141 (E)

**(E) Any licensee who is a physically handicapped licensee at any time during the last three months of the third year of the licensee's continuing education reporting period may receive an extension of time to submit proof to the superintendent that the licensee has satisfactorily completed the required thirty hours of continuing education. To receive an extension of time, the licensee shall submit a request to the division of real estate for the extension and proof satisfactory to the commission that the licensee was a physically handicapped licensee at some time during the last three months of the three-year reporting period. The proof shall include, but is not limited to, a signed statement by the licensee's attending physician describing the physical disability, certifying that the licensee's disability is of such a nature as to prevent the licensee from attending any instruction lasting at least three hours in duration, and stating the expected duration of the physical disability. The licensee shall request the extension and provide the physician's statement to the division no later than one month prior to the end of the licensee's three-year continuing education reporting period, unless the physical disability did not arise until the last month of the three-year reporting period, in which event the licensee shall request the extension and provide the physician's statement as soon as practical after the occurrence of the physical disability. A licensee granted an extension pursuant to this division who is no longer a physically handicapped licensee and who submits proof of completion of the continuing education during the extension period, shall submit, for future continuing education reporting periods, proof of completion of the continuing education requirements according to the schedule established in division (A) of this section.**

## Real Estate Disciplinary Actions

Listed below are the Real Estate Disciplinary Actions for May 2008 to October 2008. The actions can be found on the website at: <http://www.com.ohio.gov/documents/alphsRealEstate.pdf>

### REVOCATIONS/PERMANENT SURRENDER

|                                |             |                 |
|--------------------------------|-------------|-----------------|
| <b>James H. McClain, Jr.</b>   | Salesperson | Cincinnati      |
| <b>Kenneth J. Miller</b>       | Salesperson | Twinsburg       |
| <b>Mary E. Ross</b>            | Salesperson | West Portsmouth |
| <b>Jack L. Travis</b>          | Salesperson | Columbus        |
| <b>Roxanne Varble</b>          | Salesperson | Hamilton        |
| <b>Nicholas P. Verbus, Jr.</b> | Broker      | Medina          |

### SUSPENSIONS, FINES, EDUCATION and REPRIMANDS

|                                 |             |              |
|---------------------------------|-------------|--------------|
| <b>Rebecca S. Armington</b>     | Broker      | Aurora       |
| <b>Eddie R. Arnold, II</b>      | Salesperson | Mentor       |
| <b>Lorie M. Arnold</b>          | Salesperson | Coshocton    |
| <b>Davie E. Barlow</b>          | Broker      | Columbus     |
| <b>Teresa M. Beckley</b>        | Salesperson | Dublin       |
| <b>Betty Lee Benes</b>          | Broker      | Piedmont     |
| <b>Michelle M. Brewer-Clark</b> | Salesperson | Columbus     |
| <b>Tracee J. Caldwell</b>       | Salesperson | Worthington  |
| <b>Jim Case Realty, Inc.</b>    | Brokerage   | Jefferson    |
| <b>Dave T. Culbertson</b>       | Broker      | Mount Vernon |
| <b>Jacquie L. Fadel</b>         | Salesperson | Columbus     |
| <b>Teresa L. Farley</b>         | Broker      | Diamond      |
| <b>Carolena M. Fortner</b>      | Salesperson | Chillicothe  |
| <b>Thomas G. France</b>         | Salesperson | Strongsville |
| <b>Harry D. Furman</b>          | Salesperson | Jefferson    |
| <b>C. William Hager</b>         | Broker      | Dayton       |
| <b>Deborah D. Helmrich</b>      | Salesperson | Dublin       |
| <b>Jeremiah E. Householder</b>  | Salesperson | Columbus     |
| <b>Paul M. Hutchins</b>         | Broker      | Dayton       |
| <b>Gene P. Johnson</b>          | Broker      | Reynoldsburg |
| <b>Juscot Realty, Ltd.</b>      | Brokerage   | Toledo       |
| <b>Deborah J. Kidd</b>          | Salesperson | Mentor       |
| <b>Michael W. Koester</b>       | Salesperson | Cincinnati   |
| <b>Linda G. Knight</b>          | Salesperson | Columbus     |
| <b>Jeffrey M. Lieberman</b>     | Broker      | Columbus     |
| <b>Maria S. Lignos</b>          | Salesperson | Cleveland    |
| <b>Cerise M. Ly</b>             | Salesperson | Dublin       |
| <b>Frances L. Lyons</b>         | Salesperson | Columbus     |
| <b>Robert J. McIntosh</b>       | Salesperson | Toledo       |
| <b>Lisa McKivergin</b>          | Salesperson | Worthington  |

*continued on page 16*

## Real Estate Disciplinary Actions continued...

|   |             |                   |
|---|-------------|-------------------|
| <b>John J. Miller</b>                       | Salesperson | Cincinnati        |
| <b>Jonathan D. Modene</b>                   | Broker      | Perrysburg        |
| <b>Richard E. Nobles, Jr.</b>               | Salesperson | Galena            |
| <b>Jamie A. Paliath</b>                     | Salesperson | Dayton            |
| <b>Jonathan E. Pemberton</b>                | Salesperson | Dayton            |
| <b>Marci L. Press</b>                       | Salesperson | Gahanna           |
| <b>Kathy L. Rader</b>                       | Broker      | Port Clinton      |
| <b>Brian A. Rhodes</b>                      | Salesperson | Cleveland         |
| <b>Laney J. Ross</b>                        | Broker      | Saint Clairsville |
| <b>H. Shareef A. Sherrod</b>                | Broker      | Cincinnati        |
| <b>Franklin J. St. Germain</b>              | Broker      | Toledo            |
| <b>William M. Sullivan</b>                  | Broker      | Cleveland         |
| <b>Scott M. Sutter</b>                      | Salesperson | Toledo            |
| <b>Jeffrey A. Swiecicki</b>                 | Broker      | Hudson            |
| <b>\$2100\$ Realty Sellers Choice, Inc.</b> | Brokerage   | Fairview Park     |
| <b>Duke R. Wippel</b>                       | Broker      | Dublin            |
| <b>Carla I. Williams</b>                    | Salesperson | Columbus          |
| <b>Robyn E. Woods</b>                       | Salesperson | Beachwood         |
| <b>Nancy L. Worsencroft-Jenkins</b>         | Broker      | Wadsworth         |
| <b>D. Anthony Zehe, II</b>                  | Broker      | Mentor            |
| <b>Charles P. Zidian</b>                    | Broker      | Youngstown        |

### UNLICENSED ACTIVITY

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|  |                          |
|--|--------------------------|
| <b>Another Chance Properties, LLC</b>    | Hillsboro                |
| <b>David E. Clark</b>                    | Youngstown               |
| <b>Harry David &amp; Company</b>         | Pittsburgh, Pennsylvania |
| <b>Christopher DeSelms</b>               | Cincinnati               |
| <b>Michael Flynn</b>                     | Cincinnati               |
| <b>Ursula S. Harris</b>                  | Blacklick                |
| <b>Gretchen McCauley</b>                 | Toledo                   |
| <b>Debra Naleta Lind</b>                 | Lorain                   |
| <b>Ronald Watson and Apec Properties</b> | Cincinnati               |



## Appraiser Disciplinary Actions

Listed below are the Appraiser Disciplinary Actions for April 2008 to October 2008. The actions can be found on the website at: <http://www.com.ohio.gov/documents/appraiserDiscipline.pdf>

### REVOCATIONS/PERMANENT SURRENDER

|                          |                                 |                |
|--------------------------|---------------------------------|----------------|
| <b>Lee Coleman, Jr.</b>  | Licensed Residential Appraiser  | East Cleveland |
| <b>Thomas Gavanditti</b> | Certified Residential Appraiser | Solon          |
| <b>Angel Rogers</b>      | Licensed Residential Appraiser  | Columbus       |
| <b>Chris Roteff</b>      | Licensed Residential Appraiser  | Reynoldsburg   |
| <b>Alane K. Sadler</b>   | Licensed Residential Appraiser  | North Canton   |
| <b>Jason Yonker</b>      | Licensed Residential Appraiser  | Fostoria       |

### SUSPENSIONS, FINES, EDUCATION AND REPRIMANDS

|                                |                                 |                        |
|--------------------------------|---------------------------------|------------------------|
| <b>Genna Faye Bennett</b>      | Licensed Residential Appraiser  | Cincinnati             |
| <b>Sally Carothers</b>         | Certified General Appraiser     | Columbus               |
| <b>Leland Coe</b>              | Certified Residential Appraiser | Dayton                 |
| <b>Joseph Colegrove</b>        | Licensed Residential Appraiser  | Grove City             |
| <b>John Cooney</b>             | Certified Residential Appraiser | Cleveland              |
| <b>Frederick Council</b>       | Licensed Residential Appraiser  | Cincinnati             |
| <b>Timothy Dannemiller</b>     | Certified General Appraiser     | Massillon              |
| <b>Marilyn Graef</b>           | Certified General Appraiser     | New Philadelphia       |
| <b>Leshanda Griffie</b>        | Licensed Residential Appraiser  | Cleveland              |
| <b>Shannon Hodge</b>           | Licensed Residential Appraiser  | Cleveland              |
| <b>Christian Holcomb</b>       | Licensed Residential Appraiser  | Canal Winchester       |
| <b>Bruce Hoover, II</b>        | Certified Residential Appraiser | Garfield Heights       |
| <b>Linda Hunter</b>            | Licensed Residential Appraiser  | Willowick              |
| <b>Gerald Kaleal</b>           | Licensed Residential Appraiser  | Cleveland              |
| <b>Mark Koncz</b>              | Licensed Residential Appraiser  | Akron                  |
| <b>Donald Kostar</b>           | Certified General Appraiser     | Richfield              |
| <b>Connie Loukinas</b>         | Licensed Residential Appraiser  | Washington Court House |
| <b>Richard Morris, Jr.</b>     | Licensed Residential Appraiser  | Youngstown             |
| <b>Thomas Puncekar</b>         | Licensed Residential Appraiser  | Boardman               |
| <b>Stacey Rentz</b>            | Certified General Appraiser     | Mentor                 |
| <b>Terrance Roberts</b>        | Licensed Residential Appraiser  | Columbus               |
| <b>Jon Schwinkendorf</b>       | Licensed Residential Appraiser  | Port Clinton           |
| <b>Jacqueline Shoffner</b>     | Licensed Residential Appraiser  | Lakeview               |
| <b>Maurice R. Skiffey, Sr.</b> | Licensed Residential Appraiser  | Niles                  |
| <b>Angela Smith</b>            | Certified Residential Appraiser | Dayton                 |
| <b>Craig Smith</b>             | Certified Residential Appraiser | Dayton                 |
| <b>Jamie Spenthoff</b>         | Licensed Residential Appraiser  | Columbus               |
| <b>Lynn Tankersley</b>         | Licensed Residential Appraiser  | Carlisle               |
| <b>John Thomas</b>             | Certified Residential Appraiser | Canfield               |
| <b>Eileen Vogel</b>            | Certified Residential Appraiser | Hamilton               |
| <b>David Ward</b>              | Certified Residential Appraiser | Strongsville           |
| <b>Hazel Williams</b>          | Licensed Residential Appraiser  | Piketon                |

## *The Ohio Division of Real Estate Wins National Award!*

The face of the Ohio Division of Real Estate's newsletter has evolved since its inception more than 30 years ago, but the newsletter's intent – licensee education and information – has remained the same.

In October, Superintendent Kelly Davids accepted the Association of Real Estate License Law Officials (ARELLO) Communications Award for the division's newsletter. The award committee felt that the content and design were excellent examples of a professional newsletter and recognized it as a model for regulatory agencies.

The Division's newsletter is an essential part of the communication that flows between the Division as a regulator and Ohio's real estate and appraiser licensees.



*Superintendent Kelly Davids accepts the ARELLO Communications Award.*



State of Ohio  
Department of Commerce  
Division of Real Estate and Professional Licensing  
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