



DIVISION OF REAL ESTATE NEWSLETTER

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SUPERINTENDENT OF REAL ESTATE

Superintendent's Column

Commission Rules On 'Double Dipping'

By Margaret J. Ritenour, Superintendent

With the business climate improving in Ohio, the real estate profession is becoming increasingly competitive. The improving economy is inspiring more brokers to utilize innovative advertising and marketing techniques. Among these strategies are the use of a broker's or a particular salesperson's sales figures in advertisements. Obviously, the use of these figures is intended to promote a broker's or a salesperson's sales volume.

Often these figures are arrived at by a practice commonly referred to as "double dipping" or counting the sale price of a property twice. In some instances, the sale price is counted once when the sales contract is signed and again when the transaction actually closes.

For example, a brokerage company handles the sale of a property at a price of \$50,000. This price is included in its sales figures at the time the purchase contract is executed. However, when the transaction actually closes, this \$50,000 sales price is counted again in the company's sales figures. Thus, the brokerage company and its salesperson include \$100,000 in their sales figures rather than the actual sales price of \$50,000.

Another situation in which "double dipping" can take place is where the company who lists a property for sale also secures the buyer. Instances have been discovered where the listing brokerage claims credit twice for the sales price of the property. Utilizing the figures in the example above, a real estate company would claim a total of \$100,000 for the sale of what was actually a \$50,000 home. This would be arrived at by claiming \$50,000 for listing the property and another \$50,000 for finding the buyer. Again, the use of the \$100,000 figure is clearly inaccurate as the property's sale price was \$50,000.

The use of these inflated sales figures in advertisements is not only inaccurate, but can be misleading to the public. Moreover, these practices place companies who do not utilize such advertising techniques at a disadvantage. The concern of the Division of Real Estate is that this unethical behavior may cause other brokers to resort to the same type of practices. This practice clearly gives the public a false picture and does nothing to enhance the professional image of the industry.

Because of these concerns, the Ohio Real Estate Commission considered these various practices at its May 26, 1986 meeting. At that time, it concluded that "double dipping" as described above is not to be utilized by Ohio real estate licensees. Therefore, any brokers or salespersons utilizing such inflated figures in advertising should discontinue this practice immediately. Any allegations of a licensee who continues to use this practice after September 1, 1986 will be investigated by the Division and, if proved, will be considered in violation of Ohio Revised Code Section 4735.18 (U). This section provides that the Ohio Real Estate Commission shall suspend or revoke the license of any licensee who, in his or her capacity as a real estate broker or salesperson, is found guilty of "having published advertising, whether printed, radio, display, or of any other nature, which was misleading or inaccurate in any material particular, or in any way having misrepresented any properties, terms, values, policies, or services of the business conducted."

This column serves to inform all brokers and salespersons of the Ohio Real Estate Commission's recent ruling on "double dipping." With the improved business climate in the Ohio real estate industry, each brokerage company and its salespersons have excellent opportunities in the marketplace without resorting to the use of inflated sales figures. The Ohio Division of Real Estate and the Ohio Real Estate Commission are continuously striving to improve the image of the real estate industry and to encourage fair competition within the profession. It is with this goal in mind that the Commission has adopted its position on "double dipping".

Attention!!!

PLEASE SHARE THIS NEWSLETTER WITH ALL
OF YOUR SALES ASSOCIATES. FEEL FREE TO
MAKE COPIES.

(THIS IS MAILED TO BROKERS AND BRANCH OFFICES ONLY)

Licensees Benefit From Reciprocity Agreements

The Ohio Real Estate Commission has entered into reciprocity agreements with several states whose educational and licensing requirements are similar to those in Ohio.

Under such agreements each state waives its real estate examination for qualified persons who are licensed in the other state. By statute, such reciprocal agreements may only be entered into by the Division with states who have similar requirements. Of course these states must likewise agree to waive their examination for Ohio licensees before the Division will extend an offer of reciprocity.

To date, the Ohio Real Estate Commission has entered into reciprocal agreements with Kentucky, New York, Nebraska, Tennessee, Utah and West Virginia.

If an Ohio licensee is interested in practicing real estate in one of these states, he or she may qualify for a license through reciprocity. Please note that under these reciprocal agreements there are still certain criteria that must be met before the examination can be waived. These requirements relate to length of time licensed, residency, etc. Because the reciprocal agreements with each of these states may vary somewhat, licensees interested in applying for a reciprocal license with one of the states listed above should contact either our Division or the Real Estate Commission in that state.

The following is a list of the addresses and phone numbers of the agencies in the states with whom we have reciprocity agreements:

Kentucky Real Estate Commission
222 S. First Street, Suite 300
Louisville, KY 40402
(502) 588-4462

Nebraska Real Estate Commission
301 Centennial Mall South
P.O. Box 94667
Lincoln, NE 68509
(402) 471-2004

State of New York
Department of State
Division of Licensing Services
270 Broadway — 27th Floor
New York, NY 10007
(212) 587-5747

Tennessee Real Estate Commission
1808 West End Avenue
Nashville, TN 37219-5322
(615) 741-2273

Utah Division of Real Estate
Department of Business Regulation
P.O. Box 45802
Salt Lake City, UT 84145
(801) 530-6747

West Virginia Real Estate Commission
1033 Quarrier Street — Suite 400
Charleston, WV 25301
(304) 348-3555

We Regret The Error

In an article in the May/June issue of the Division of Real Estate Newsletter regarding compliance audits, there was a typographical error that resulted in an incorrect citation of the section of real estate license law regarding these audits.

The column, which provided suggestions for brokers to follow when preparing for an audit by the Division, should have cited Section 4735.05 (B) (4) of the Ohio Revised Code. It is this section which requires the Division of Real Estate to review and audit the business records of real estate licensees.

To clarify, Section 4735.05 (B) (4) of the Ohio Revised Code states that the Superintendent of Real Estate shall "establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries as in the judgment of the superintendent are appropriate to enforce this chapter (4735). The investigators or auditors have the right to review and audit the business records of licensees during normal business hours. Information obtained from licensees by investigators or auditors shall be held in confidence by the superintendent."

The Division of Real Estate Newsletter regrets this error.

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Disciplinary Actions

The purpose of this article is to disseminate to licensees information concerning recent Commission activities and decisions, pursuant to Section 4735.03(E) of the Ohio Revised Code.

The Commission has taken the following action with regard to these real estate licensees:

SUSPENSIONS

CLIFFORD W. DAVIS, broker, Columbus, Ohio had his broker's license suspended for 180 days for violating Section 4735.18(A), (C), and (F) of the Ohio Revised Code. This suspension commenced on May 27, 1986. Davis verbally agreed to sell, to the complainant, a property for an agreed upon consideration. He failed to reduce to writing this agreement or any of the terms or conditions for the sale of the subject property. During the negotiations, David represented to the complainants that he was the owner of the subject property and that he was able to convey clear title when, in fact, he did not own the property at the time. Also, Davis knowingly failed to disclose the existence of a previous mortgage on the subject property. From these facts it was concluded that Davis engaged in a continued course of misrepresentation and the making of false promises with regard to the conveyance of the subject property to the complainants.

In a separate case, Davis had his broker's license suspended for 90 days for violating Section 4735.18(F). In this case, Davis entered into an agreement to purchase a property from the complainant. In consideration for the purchase of the subject property, Davis agreed to pay off certain liens and/or bills owed on the property. He was found to be grossly negligent in failing to pay for these bills within a reasonable time after the closing of this property. This suspension will begin to run after the suspension Mr. Davis is currently serving in the case discussed above.

FRANK LATHAM, sales associate, Columbus, Ohio had his sales license suspended for 60 days for violating Ohio Revised Code Sections 4735.18(E), (F), and (I) as it incorporates Section 4735.21. This suspension commenced on May 27, 1986. Latham failed to render an accounting of monies he received in connection with the management of a property. He also collected these monies in his own name rather than in the name of his broker, as required by Section 4735.21 of the Ohio Revised Code. Latham's conduct in this matter was also found to be grossly negligent.

GEORGE R. STOLPE, broker, Columbus, Ohio, had his broker's license suspended for 60 days for violating Section 4735.18(A) and (C) of the Ohio Revised Code. However, 30 days of this suspension were waived. Stolpe began serving the 30 day balance on May 27, 1986. This disciplinary action was the result of Stolpe's knowingly misrepresenting that he was in receipt of an earnest money deposit in connection with the contract to

purchase the subject properties when he knew, or should have known, that he was not in receipt of said funds at that time. Furthermore, Stolpe failed to disclose, within a reasonable time thereafter, that he was not in receipt of this earnest money deposit. Stolpe's conduct in failing to later disclose that he did not have these funds was found to constitute a continued course of misrepresentation.

ANNA F. WEBB, sales associate, Springboro, Ohio, had her sales license suspended for 60 days for violating Sections 4735.18(F) and (I) as it incorporates Section 4735.21 of the Ohio Revised Code. This suspension commenced on May 27, 1986. Webb collected monies in a fiduciary capacity, in her own name, in connection with the sale of the subject properties. She then deposited these monies in a personal account rather than in her broker's trust account.

ALI YAZIDIAN, foreign real estate dealer, Cincinnati, Ohio, had his dealer's license suspended for 10 days for violating Section 4735.18(F) of the Ohio Revised Code. This suspension commenced June 28, 1986. Yazidian issued a check made payable to the Ohio Division of Real Estate for the renewal of foreign real estate sales licenses. Payment of said check was refused by the bank upon which it was drawn. Under Ohio Administra-

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TEST RESULTS

In an effort to keep you apprised of the number of new licensees joining the real estate profession, publication of the testing statistics will now be regularly included in the newsletter. Below are the statistics compiled for the first half of this year.

TEST DATE	BROKERS		
	Total Tested	Total Passed	Pass Rate
January, 1986	48*	40	83%
February, 1986	25	21	84%
March, 1986	25	23	92%
April, 1986	23	23	100%
May, 1986	24	22	92%
June, 1986	47*	42	89%

TEST DATE	SALESPERSONS		
	Total Tested	Total Passed	Pass Rate
January, 1986	599	436	73%
February, 1986	676	534	79%
March, 1986	744	544	73%
April, 1986	1059*	775	73%
May, 1986	766	573	75%
June, 1986	1379*	1002	73%

*NOTE: Additional examinations were given in these months due to the increased number of applicants.

Disciplinary Actions (continued from page 3)

tive Code Section 1301:5-1-10, this conduct constitutes misconduct in violation of Ohio Revised Code Section 4735.18(F).

RECOVERY FUND ACTIONS

PRESTON L. FENDERSON, broker, had his broker's license automatically suspended pursuant to Section 4735.12(E) of the Ohio Revised Code. This suspension was a result of a payment made from the Real Estate Recovery Fund on May 5, 1986, in the amount of \$603.97 as a result of an unsatisfied judgment obtained against him for failure to deposit in his broker's trust ac-

count an earnest money deposit and then failing to return it to the proper party.

JOEL J. JORDAN, sales associate, Dublin, Ohio, had his sales license automatically suspended pursuant to Section 4735.12(E) of the Ohio Revised Code. This suspension was a result of a payment made from the Real Estate Recovery Fund on May 5, 1986, in the amount of \$24,200 of an unsatisfied judgment obtained against him by reason of his fraudulently obtaining title to property by misrepresenting to potential purchasers that it was unavailable for showing. After obtaining title, the licensee failed to pay the sellers the purchase price.

REAL ESTATE BRIEFS: A FEW REMINDERS

When a licensee discontinues his association with any real estate professional organization, the Division recommends that all business forms be reviewed to ensure that they no longer reflect membership in that organization. Use of a trade name or insignia of membership in a professional real estate organization to which a licensee does not belong is a violation of Ohio Revised Code Section 4735.18 (L) and could result in license suspension or revocation.

* * * * *

A broker or salesperson who issues a check to the Division of Real Estate which is dishonored may have his or her license suspended or revoked. According to Rule 1301:5-1-10, issuance of such a check is prima facie evidence of a violation of Section 4735.18 (F) of the Ohio Revised Code for which disciplinary action can result. Moreover, even if such a check is later made good by the licensee, the Division will **not** accept personal checks from such an individual again.

UPCOMING TEST DATES

The following are the tentatively scheduled dates for the real estate sales and brokers examinations for the remainder of 1986:

	SALES COLUMBUS/CLEVELAND	BROKERS COLUMBUS
Aug.	13	6/27
Sept.	10	24
Oct.	8	21
Nov.	12	26

No examinations are given in the month of December. Additional examinations may be added in the months to come as is necessary to accommodate potential licensees.

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