



FALL 1993

**George V. Voinovich**  
Governor

**James J. McNamee**  
Interim Director

**Julia McNeil Benton**  
Acting Superintendent

## NANCY CHILES DIX RESIGNS AS DIRECTOR

Nancy Chiles Dix resigned as Director of Commerce on October 29, 1993 and has been chosen to replace Senator Steven O. Williams in representing Ohio Senate's 31st District.

"I have thoroughly enjoyed my association with Ohio's real estate industry during my nearly three years with the Department of Commerce," Director Dix said.

Under her leadership, the Division of Real Estate:

- developed the seller disclosure form which requires sellers to disclose various aspects of their property's physical condition in residential real estate transactions



- supported Substitute Senate Bill 359 which brought state law into line with existing appraiser laws

- at the federal level
  - certified 676 general appraisers and licensed 1,522 residential appraisers
  - achieved a cost savings of \$55,628 by adopting more efficient management practices
  - adopted Governor Voinovich's Quality Services Through Partnership concept which promotes quality through teamwork and interactive skills
  - worked with the other Divisions of Commerce to promote new private sector relationships
- State Fire Marshal James J. McNamee is serving as Interim Director.

## LICENSEES CAUTIONED AGAINST INFLUENCING INSPECTIONS

While real estate licensees routinely refer buyers and sellers to pest control, home inspection and other testing companies in the course of a real estate transaction, extreme care must be exercised by the licensee to not influence, directly or indirectly, the inspector/tester on how the results are provided.

Real estate licensees have a vested interest in the results of an inspection. Obviously, a negative inspection report can be grounds for the buyer to be released from a

contract or a loan being denied, which can then result in the licensee losing a potential commission. For this reason, for inspections to be credible and of benefit to the parties to the transaction, the inspector must be a disinterested, unbiased, independent third party.

A licensee should never attempt to influence an inspector by indicating that a negative report will not be accepted or that certain language must be included or omitted from a report. This type of conduct is not in the best interests of either the

buyer or seller and could result in disciplinary action being instituted against the individual's real estate license. It is a disservice to all parties to a transaction if a detailed, competent report is discouraged in favor of a minimally acceptable report.

Typically, the amount of details included in an inspection report is dictated by the entity requiring the report (i.e. buyer, seller, lender) and the entity performing the inspection. Some inspectors choose to be

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# INFLUENCING INSPECTORS

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brief and satisfy the minimum reporting requirements, while others choose to provide a more detailed and inclusive report. In many cases, a detailed report will address not only the condition that is the subject of the inspection, but also include recommendations for treatment or identify other potential problems observed. While some of the information may be more than what the licensee feels is necessary, the inclusion of such information should not be discouraged by the licensee based upon the fear that the additional information may jeopardize the transaction. It is important to remember that the ultimate determination as to whether an inspection report is sufficient is with the buyer, seller, or lender.

Recognizing that licensees are frequently looked to by the parties to recommend an inspector for a certain condition (i.e. termites/pests, water, whole house inspections), care must also be exercised by the licensee in referring the party to a competent, qualified inspector. Inspectors who can be influenced or provide positive (no problem observed) reports based upon the expectation or promise of future business from the licensee must be avoided.

While most licensees optimistically hope that an inspection report will be acceptable, it is far better for the parties to learn of a problem or potential problem prior to closing than to be faced with defending a lawsuit alleging that information was withheld, slanted, or not fully disclosed.

The purpose of this article is not to question the general ethics or practices of real estate licensees or inspectors, but rather to alert licensees of concerns and possible problems which can occur in the event an inspector is influenced.

# APPRAISER UPDATE

Licensing vs. Certification . . . what is the difference? Which level is appropriate for the kind of appraisal work you perform? Are you using the correct designation?

The levels of appraiser licensing and certification in Ohio are distinct and it is important for the appraiser and client to understand the different levels and the type of properties applicable to each designation.

**IF YOU HAVE A:**  
Residential License

General Certificate

**YOU MAY PERFORM APPRAISALS ON:**  
1-4 unit single-family residential real estate with a transaction value of \$1 million or less if non-complex, or \$250,000 or less if complex. This includes vacant land whose highest and best use is for 1-4 unit residential purposes.

All real estate, without regard to use, transaction value, or complexity.

As a reminder, individuals who were initially issued a state-certified residential certificate are now deemed to be state-licensed residential real estate appraisers. Individuals who were issued a residential certificate must use the correct designation (i.e. state-licensed residential) in signing an appraisal assignment or in representing themselves in advertising.

The following definitions should also be kept in mind when determining whether your designation is appropriate for the appraisal assignment.

**Transaction Value** - Transaction value is a fundamental criteria for determining whether an appraisal is required and if it is required, whether it needs to be performed by a certified general appraiser or a licensed residential appraiser.

For lending purposes, transaction value refers to the amount of the loan or extension of credit.

**Residential Real Estate** - One to four dwelling units is the key to the definition of what is residential and what is non-residential real estate. Accordingly, property with one to four dwelling units is considered residential property, and the appraisal of such property can be performed by an appraiser holding a general certificate or residential license (assuming that the transaction value is \$1 million or less).

**Complex Appraisals** - The determination of the complexity of the appraisal is typically a judgment of the lending institution. Complex generally refers to situations in which the property, the market conditions, or the form of ownership is atypical.

Some of the factors considered in determining whether a property is atypical are:

- Architectural style of the improvements
- Age and size of the improvements
- Size of the lot
- Use of the property in relation to other neighborhood land use
- Presence of potential environmental hazard liability
- Changes in neighborhood characteristics suggesting that the highest and best use has changed.

## DISCIPLINARY REPORT

The following formal disciplinary action was taken by the Ohio Real Estate Appraiser Board:

Name	Violation	Action Taken	Date
Henry Cleland, Jr.	USPAP violation- improperly certified that property had been inspected	10-day suspension, repeat USPAP course	9/15/93

# DISCIPLINARY ACTIONS

## REVOCATIONS

**HELEN MARTIN**, broker, and **THE ALLIANCE GROUP**, corporate brokerage, Cincinnati, Ohio, had their real estate brokers' licenses revoked. Ms. Martin's license was revoked in three separate cases for violating Sections 4735.18 (A)(6), (A)(21) and (A)(28) of the Ohio Revised Code. The Alliance Group's license was revoked in two separate cases for violating Sections 4735.18 (A)(6) and (A)(28) of the Ohio Revised Code. These revocations became effective November 1, 1993.

On two separate occasions, Ms. Martin and The Alliance Group entered into purchase contracts with buyers wherein the buyers were promised at least three lot selections. However, Ms. Martin and The Alliance Group failed to provide the buyers with the promised site selections.

Helen Martin and The Alliance Group also failed to fully satisfy a court judgment rendered against them which arose out of their capacity as real estate brokers.

Ms. Martin later transferred her broker's license to a corporate brokerage where she was the sole broker. Thereafter, Ms. Martin permitted advertisements to be published in a name other than the real estate brokerage with which she was associated.

**MATTHEW WILLMORE JR.**, broker, Cleveland Heights, Ohio, had his broker's license revoked in two separate cases for violating Sections 4735.18 (A)(5) and (A)(6) of the Ohio Revised Code. This revocation became effective on September 29, 1993. The Ohio Division of Real Estate issued a subpoena pertaining to an investigation conducted by the Superintendent. The subpoena required that Mr. Willmore produce copies of documents, including trust account records, in connection with a

real estate transaction. However, Mr. Willmore failed to comply with the subpoena.

Mr. Willmore also collected money from two potential buyers. The buyers did not purchase the subject properties and requested that their money be returned. The sellers did not demand these funds. Without good cause, Mr. Willmore failed to account for or remit the funds to the buyers.

## SUSPENSIONS

**EDWARD DENNISON**, sales associate, Columbus, Ohio, had his sales license suspended for 30 days for violating Ohio Revised Code Section 4735.18 (A)(6) as it incorporates Ohio Administrative Code Section 1301:5-5-05 (B). This suspension began on November 29, 1993. A property was listed for sale with Mr. Dennison's brokerage, thereby making him an agent of the owners. Thereafter, Mr. Dennison's son submitted a purchase offer for the subject property which was prepared by Edward Dennison. On the agency disclosure form, Mr. Dennison noted that he and his brokerage were also representing his son in the purchase of the property. Thus, a dual agency relationship existed between Mr. Dennison and the parties to the contract. However, Mr. Dennison failed to have a written dual agency agreement attached to the agency disclosure form signed by both parties acknowledging their consent to such dual representation.

**ARTHUR E. FRIEDMAN**, broker, Cleveland, Ohio, had his broker's license suspended for 30 days for violating Sections 4735.18 (A) and (A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, 15 days of the suspension were waived by the Ohio Real Estate Commission. Mr. Friedman began serving the 15-day balance of the suspension on October 25, 1993. Mr.

Friedman was convicted of attempted illegal transportation of hazardous waste in case #CR-285354 in the Cuyahoga County Court of Common Pleas. Mr. Friedman also failed to notify the Superintendent of this felony conviction within 15 days of the conviction.

**KENNETH L. HUNT**, sales associate, Cleveland Heights, Ohio, had his sales license suspended for 45 days for violating Sections 4735.18 (A)(6) and (A)(9) of the Ohio Revised Code. This suspension began on September 15, 1993. On behalf of the buyers of a property, Mr. Hunt prepared a lease with an option to purchase the property. This agreement noted that an unlicensed entity, Kenneth L. Hunt Properties, would receive a fee. Mr. Hunt prepared this document as a representative of Kenneth L. Hunt Properties and not through the broker with whom he was licensed. In connection with this agreement, Mr. Hunt collected monies in his own name and not through the broker with whom he was associated.

**JAMES W. KENNEDY**, sales associate, and **RICHARD J. KERR**, broker, each had their real estate licenses suspended for 30 days for violating Ohio Revised Code Section 4735.18 (A)(6) as it incorporates Ohio Administrative Code Section 1301:5-5-05 (B). Due to mitigating circumstances, however, imposition of these suspensions were waived by the Ohio Real Estate Commission. Mr. Kennedy and Mr. Kerr entered into a purchase agreement to acquire a property. On the agency disclosure form, they indicated that they were representing themselves as purchasers. However, Mr. Kennedy and Mr. Kerr were also representing the seller thereby becoming dual agents. Mr. Kennedy and Mr. Kerr failed to obtain

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## DISCIPLINARY ACTIONS *(Continued from page 3)*

a written agreement from the seller acknowledging his consent to the dual representation. They also failed to attach a copy of such an agreement to the agency disclosure form.

SHERRY A. METZ-ARMSTEAD, broker, Fairfield, Ohio, had her broker's license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, 25 days of the suspension were waived by the Commission. Ms. Metz-Armstead began serving the five-day balance of the suspension on October 25, 1993. In connection with a closing on a property listed by Ms. Metz-Armstead, a wood destroying insect inspection was conducted which noted visible evidence of wood destroying insect infestation. How-

ever, at closing, Ms. Metz-Armstead provided the purchasers with an inspection report prepared by a different company which noted that no visible evidence of infestation was observed. Ms. Metz-Armstead did not advise the purchasers about the results of the first inspection until after the real estate transaction closed.

QUANG NGUYEN, sales associate, Englewood, Ohio, had his sales license suspended for 60 days for violating Sections 4735.18 (A)(6) & (A)(9) of the Ohio Revised Code. This suspension shall be effective upon the reinstatement, reactivation or re-licensing of Mr. Nguyen. Mr. Nguyen prepared a purchase offer on behalf of the buyer of a property. Mr. Nguyen noted on the offer that

he would be holding the earnest money deposit. The buyer gave Mr. Nguyen a check representing an earnest money deposit which was made payable directly to Mr. Nguyen. Mr. Nguyen collected this earnest money in his own name and not in the name of and with the consent of the broker with whom his license was associated.

### RECOVERY FUND ACTIONS

The following persons had their real estate licenses automatically suspended pursuant to Section 4735.12 (E) of the Ohio Revised Code. These suspensions were a result of payments made from the Real Estate Recovery Fund:

Licensee	Amt. Pd.	Date Pd.
Lonnie Burghardt	\$5,038	10-25-93

## REAL ESTATE NEWS

New real estate license law books are now available from the Division of Real Estate. This law book contains the current statutes of the Ohio Revised Code and the Ohio Administrative Code relating to the real estate license laws, appraiser laws, civil rights laws and landlord/tenant laws.

To receive a copy of the law book, please forward a check or money order for \$8.00 payable to the Ohio Division of Real Estate. The address is 77 S. High St., 20th Floor, Columbus, Ohio 43266-0547.

Due to the volume of mail received

and the establishment of a checking logging system, the Division asks for your patience during the renewal season. **Please allow a sufficient amount of time to pass before contacting the Division about the status of paperwork being processed.** Your cooperation is greatly appreciated.



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Department of Commerce  
Division of Real Estate  
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