



Division of REAL ESTATE Newsletter

Summer 1995

George V. Voinovich
Governor

Donna Owens
Director

Ronald J. Rotaru
Superintendent

REAL ESTATE COURSE PROVIDER FOUND GUILTY OF FRAUD *Edward Guilfoyle Loses Real Estate License*

A Blue Ash real estate broker who was providing continuing education certificates of attendance to licensees who never attended the courses was found guilty in April of three counts of making false statements to mislead a public official and lost his license permanently.

After receiving information in December that Edward C. Guilfoyle may not have been teaching the courses that he was providing certificates of attendance for, an investigator for the Division of Real Estate called Mr. Guilfoyle. Using a fictitious name, the investigator asked to take the continuing education courses. For \$200, Mr. Guilfoyle offered to send the investigator the certificate of attendance without requiring the investigator to attend the courses.

A few days later, Mr. Guilfoyle sent the investigator a certificate of attendance even though the investigator never attended the courses. Mr. Guilfoyle then submitted an Attendance Course Roster to the Division of Real Estate saying that the investigator had been present and completed at least 90% of the continuing education courses.

Mr. Guilfoyle was arrested January 12, 1995 by the Blue Ash Police

Department after Superintendent of Real Estate Ronald J. Rotaru filed a complaint through Columbus City Attorney Ronald J. O'Brien. Prosecutor O'Brien handled the case personally.

After his arrest, Superintendent Rotaru determined that Mr. Guilfoyle's courses were invalid. The

"We hope the message has been sent that these fraudulent activities will not be tolerated," said Superintendent Rotaru.

Division of Real Estate then sent letters to the more than 100 agents and brokers who had been listed on Mr. Guilfoyle's Attendance Course Roster. The letter informed the licensees that their licenses would be suspended unless they could show proof that they had completed 30 hours of legitimate continuing education on or before January 31, 1995.

On April 5, Mr. Guilfoyle was found guilty on all three counts of making false statements to mislead a public official. He was fined \$1,000 on each count, given a 120-day

suspended jail sentence on each count, put on probation for a year, and ordered to do 40 hours of community service. The Ohio Real Estate Commission revoked Mr. Guilfoyle's real estate license during a hearing on June 8.

By January 31, all but 32 licensees had successfully completed their educational requirements and submitted their attendance certificates. An additional 13 salespersons had their licenses suspended because their brokers' licenses were suspended when they submitted invalid education obtained through Mr. Guilfoyle.

Since the January 31 deadline, six licensees have successfully completed their education and have had their licenses reinstated. Seven of the 13 salespersons whose brokers had their licenses suspended have transferred to other brokers.

"We hope the message has been sent that these fraudulent activities will not be tolerated," said Superintendent Rotaru. "To eliminate such fraud in the future, we are reinforcing our efforts by assigning an investigator primarily to education issues who will attend randomly selected classes throughout the state."



ESCROW FUNDS: WHEN THE PARTIES DO NOT AGREE

By Mark Landes
Attorney

(Editors Note: The Division of Real Estate has received several inquiries on the following topic in recent months.)

Typically, a real estate contract requires an earnest money deposit which is placed in a trust account of the agent. Assuming that the real estate transaction goes off without a problem, the agent transfers the money out of the trust account to the seller pursuant to the agreement of both sides. However, sometimes the deal falls through and the agent is left in possession of a sum of money — the earnest money deposit — in which both the buyer and seller may claim a right. What is an agent to do?

DUTIES OF THE AGENT

Earnest money held by a real estate agent is, by nature, a trust fund. Thus, under Ohio law, an agent's relationship is that of a trustee to both the seller and buyer of the funds entrusted to the agent. Because of their fiduciary duties as a holder of money, the agent should not transfer the money out of the trust account or release the funds until the parties resolve their dispute or until the dispute is taken to the court and the court orders disbursement. Improper disbursement by the agent, without the agreement of the parties or court order, may result in legal problems, such as a "misconduct" violation of license law.

AN ALTERNATIVE: THE INTERPLEADER PROCEDURE

One method available to the agent that will avoid these problems is a procedure known as interpleader in which all parties

who have a claim to the earnest money fund are brought into litigation as found in Ohio Rule of Civil Procedure 22.

Interpleader is a legal procedure which protects a stakeholder, such as an agent holding earnest money, when there are several parties who have conflicting claims against the funds. These funds are admittedly due someone other than the stakeholder, but the proper person is not known by the stakeholder. As a result, the stakeholder should attempt to avoid paying the "wrong" claimant and thereby exposing himself to suit by the "proper" claimant. The stakeholder, in order to avoid such multiple suits and multiple liability, "interpleads" the claimants (buyer and seller). Subsequently, the stakeholder pays the money into Court and drops out of the litigation, leaving the claimants to establish which of their claims is valid. The claimants are required to litigate the matter among themselves without further involving the stakeholder in their dispute.

An example will illustrate how an interpleader can be employed by an agent: Suppose Buyer makes a written offer to purchase a certain parcel of real estate from Seller. Prior to the offer, Buyer makes an earnest money deposit of \$1,000 with the Agent. The deal between Buyer and Seller falls through and Buyer brings suit against Agent for the return of the \$1,000 earnest money deposit. Agent may file an interpleader action, pay the \$1,000 into the court and be dismissed as a defendant. Consequently, Seller will be named the new party defendant and will have to litigate the matter with Buyer.

The agent need not wait to be sued as in the example above. Instead, if the agent wishes to

release the funds in trust, the agent may initiate the action naming all parties who may claim an interest in the funds. The agent should be dropped from the suit leaving the claimants to establish their rights with regards to the earnest money.

While interpleader may not be the only legal procedure for an agent to handle earnest money deposits held in escrow, it is a viable method. Moreover, the Supreme Court favors the use of interpleader. In *Sharp v. Shelby* (1968), the Ohio Supreme Court declared "the purposes of interpleader . . . are to expedite the settlement of claims to the same subject matter, prevent multiplicity of suits, with attendant delay and added expense, and to provide for the prompt administration of justice." To these ends, interpleader is an appropriate legal device to resolve disputes concerning earnest money held by an agent.

PRACTICAL CONSIDERATIONS

In order to file an interpleader action, you should have a reason. It does cost some money to begin the action, and it generally costs nothing other than irritation to sit on the money. If you decide to use interpleader, go to a lawyer who has experience with them, as they are seldom used.

The area of earnest money deposits cries out for a change to the form contract, so that the agent may dispose of the funds pursuant to the contract without resorting to the courts. A change could also be considered that would allow the expense of interpleader to come from the escrow funds.

(Mark Landes is a partner in the Columbus law firm of Isaac, Brant, Ledman & Teetor.)

A.R.C.-O CLIENTS RECEIVE \$40,000 FROM FUND

The Ohio Real Estate Recovery Fund distributed \$40,000 to 62 people earlier this year after a real estate company took money from prospective buyers with the promise that the money would go towards the down payment on properties.

The American Real Estate Co-Operatives, C.M.H. Inc. dba A.R.C.-O Realty, offered their clients the ability to send their rent payments along with an additional sum of money to them. A.R.C.-O would then forward their client's rent payment to the appropriate landlord and keep the additional money. This additional money was to have been placed into a fund and saved until the client had enough money to make a down payment on a house that A.R.C.-O would build for their client. A.R.C.-O did not save the money as promised.

Superintendent of Real Estate Ronald J. Rotaru worked with the Ohio Attorney General's Office of Consumer Affairs to help compensate the people who lost money to A.R.C.-O Realty. The Ohio Attorney General's Office filed a class action suit on behalf of these consumers. When the Division of Real Estate determined the claim met Recovery Fund requirements, and was a claim compensable from the fund, the Division worked with the Attorney General's Office so that these consumers could recover some of their losses. In February of 1995, \$40,000 (the maximum amount payable from the fund) was paid out of the Real Estate Recovery Fund.

TEST RESULTS

Below are the examination statistics for the last half of 1994 and the first quarter of 1995:

BROKERS

Test Date	Total Tested	Total Passed	Pass Rate
July - '94	24	15	63%
August	20	13	65%
September	22	18	73%
October	24	17	71%
November	25	13	52%
December	0	0	0
January - '95	23	19	83%
February	21	19	90%
March	23	21	91%

SALES

Test Date	Total Tested	Total Passed	Pass Rate
July - '94	612	319	52%
August	276	168	61%
September	568	371	65%
October	526	280	53%
November	536	286	53%
December	196	104	53%
January - '95	520	334	65%
February	552	337	61%
March	528	303	56%

APPRAISER (GENERAL)

Test Date	Total Tested	Total Passed	Pass Rate
July - '94	5	5	100%
August	3	3	100%
September	3	3	100%
October	5	5	100%
November	3	2	67%
December	3	1	33%
January - '95	6	4	67%
February	4	2	50%
March	5	4	80%

APPRAISER (RESIDENTIAL)

Test Date	Total Tested	Total Passed	Pass Rate
July - '94	29	22	76%
August	28	18	64%
September	36	18	50%
October	18	11	61%
November	23	17	74%
December	25	20	80%
January - '95	17	11	65%
February	24	14	58%
March	18	10	56%

STATE OF OHIO
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DIVISION OF REAL ESTATE
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NAME I.D. ISSUES CLARIFIED

Many licensees mistakenly believe that a franchise designation attached to their real estate broker's licensed name is in fact the name of their broker. These licensees refer to their broker solely by that designation and even complete forms such as the agency disclosure form with only that designation. How many times have you heard an agent say he or she is with "Re/Max" or "Century 21." We have no real estate broker licensed solely under these names and such claims or references by licensees are incorrect and inaccurate.

A licensee may be with the ABC Real Estate Company. This broker may belong to the Century 21 franchise system and is permitted under its franchise agreement to use the Century 21 logo. However, it is improper for the licensee to refer to his or her broker as only "Century 21." In such a situation, the correct designation would be the ABC Real Estate Company or Century 21 ABC Real Estate Company. To only say "I am with Century 21" is confusing and has the potential to be misleading. Such references should be avoided. While Century 21 is being used here for illustration purposes, the same guidelines apply to Re/Max franchisees, Coldwell Banker franchisees and others.

Telephones should not be answered by only identifying the broker as the franchise name such as "Re/Max." This is not correct. They should be answered "XYZ Realty" or "Re/Max XYZ Realty."

The name of the broker as it appears on the real estate license should be used in all forms of advertising and name identification. It is up to the broker whether it wants to add the franchise name to the licensed name in advertising

and for identification purposes. However, to repeat, the name of the real estate broker as it appears on the real estate license should be used in all forms of advertising and name identification.

A real estate broker may add its franchise name to its licensed name without needing to change the real estate license. So, a broker licensed as The ABC Real Estate Company may advertise as "Century 21 ABC Real Estate Company" without having to change its licensed name to include the franchise designation.

Another area of confusion relates to a misconception among some real estate licensees that they may work for and on behalf of any broker who is a member of the same franchise as the licensee's broker. This is incorrect and can be the basis for disciplinary action. Real estate agents may only act in their capacity as such in the name of the broker with whom they are licensed. As an example, Ms. Jones is licensed as a salesperson with broker "Century 21 ABC Real Estate Company." She is not permitted to manage property or engage in other real estate conduct on behalf of "Century 21 DEF Real Estate Company." These are two separate licensed entities that only happen to belong to the same franchise system. Ms. Jones may only act as a real estate agent for her broker, the ABC Real Estate Company.

Though your franchise name might not have been referred to in this article it is hoped you will examine your practices and your office's practices. If you see that you or your office has only been referring to your brokerage by the franchise name, it would appear corrective action is in order. Any questions you may have on this matter may be referred to the Division's Enforcement Section at (614) 466-4100.

REAL NOTES

- If you are selling real estate at an auction, you must have both an auctioneer's license and a real estate license. The sale must then be handled through the licensed broker.

- Inquiries regarding cemeteries and appraisers are handled through our Cleveland office at 216-787-3100, or call us at 614-466-4100 and we'll forward your call.

- Do not panic when you receive a call requesting an appointment for a routine compliance audit! The information needed for the audit will be reviewed in advance so that we take as little of your time as possible. We try to make audits a pleasant and informative encounter. If you need information before the audit, call us!

- Take the time to put changes/modifications/extensions of listing and sales contracts in writing.

- Remember that a person must receive a copy of what the person signs **WHEN IT IS SIGNED** by that person. Have extra copies available to meet this requirement.

- Documents of ALL transaction-related matters are to be retained by the broker for three years. This includes, but is not limited to, such things as rejection offers and notes for deposits.

- If you want to do real estate business in any name other than the name that appears on your actual real estate license, you must secure a license in that name. This is done by effecting a multiple change application that allows for an individual name change. Feel free to contact the Division's Licensing Section with any questions on the name change process.



DISCIPLINARY ACTIONS

REVOCATIONS

TALBERT TED FLORA, broker, New Carlisle, Ohio, had his broker's license revoked for violating Sections 4735.18 (A)(5) and (A)(6) of the Ohio Revised Code. This revocation became effective on November 29, 1994. Mr. Flora received an earnest money deposit in connection with an offer submitted by a prospective purchaser. The transaction did not close and all parties who executed the original purchase agreement signed a release directing Mr. Flora to disburse the deposit, with which he failed to comply.

JUNE HAJDIN, sales associate, Cleveland, Ohio, had her sales license revoked for violating Sections 4735.18 (A), (A)(1), (A)(6) and (A)(9) of the Ohio Revised Code. This revocation became effective on December 5, 1994. On two occasions, Ms. Hajdin submitted sales transfer applications to the Division of Real Estate representing that she had not been convicted of any unlawful conduct excluding minor traffic violations. As a result of the applications, licenses were issued. However, Ms. Hajdin had been convicted of grand theft, and did not disclose this conviction on the applications but represented that no such conviction occurred. Later, Ms. Hajdin was convicted of an additional theft charge and she failed to notify the Superintendent of the Ohio Division of Real Estate of this new conviction.

PAULETTE HEDRICK, sales associate, Columbus, Ohio, had her sales license revoked for violating sections 4735.18(A)(5) and (A)(6) of the Ohio Revised Code as it incorporates Ohio Administrative Code Section 1301:5-5-11. This revocation became effective April 25, 1995. In three separate cases, Ms. Hedrick managed and engaged in property

management activities for the owners of rental properties. In connection with her management of these properties she collected rent payments, but failed to provide an accounting or to remit the funds to the owner. In connection with another property managed by Ms. Hedrick, she allowed the management account to have a negative balance by authorizing disbursements for the management of the property when the account balance was insufficient to cover expenses. Furthermore, she utilized a property management trust account, which paid interest and utilized the property management trust account, as a personal and operating account.

BURTON J. SPAULDING, broker, Cincinnati, Ohio, had his broker's license revoked for violating Section 4735.18(A) of the Ohio Revised Code. This revocation became effective March 7, 1995. Mr. Spaulding was convicted of knowingly and intentionally distributing cocaine in the U.S. District Court for the Eastern District of Kentucky.

SUSPENSIONS

BILLIE R. ALLEN, sales associate, Newark, Ohio, had his sales license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived by the Commission. Ms. Allen completed an MLS Information Sheet on a property representing that it had a public sewer system, when in fact, it did not have public sewers. The information sheet misrepresented the condition of the property by containing this inaccurate information.

CHARLES D. AMATO, sales associate, Parma, Ohio, had his

sales license suspended for 90 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. This suspension began on October 7, 1994. Mr. Amato, while licensed with a company, negotiated listing agreements on behalf of, and for the benefit of, another real estate company.

PAUL E. BAIER, sales associate, Canton, Ohio, had his sales license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code, as it incorporates Ohio Administrative Code Section 1301:5-5-05 (B). This suspension began on November 14, 1994. Mr. Baier prepared a purchase contract that was contradictory in a material respect and did not clearly and accurately reflect the intent of the parties. In connection with this contract, Mr. Baier prepared an agency disclosure form indicating that he represented both the buyer and the seller. However, he failed to attach to the form a written agreement signed by buyer and seller acknowledging consent to such dual representation.

CLARENCE M. BENSON, sales associate, Akron, Ohio, had his sales license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Benson began serving his suspension on March 27, 1995. Mr. Benson had a final judgment entered against him, which arose out of his conduct as a licensed real estate salesperson. He had not satisfied the judgment at the time the notice of the administrative hearing was sent by the Ohio Division of Real Estate.

PETER B. CARY, sales associate, Beachwood, Ohio, had his

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BULLETIN

On June 30, 1995, House Bill No. 117 became law which authorized an increase in the fees charged by the Ohio Division of Real Estate. The new fee schedule is outlined below:

	<u>Old fee:</u>	<u>New fee:</u>
Broker Application	\$59.00	\$69.00
Broker Reinstatement	\$59.00	\$69.00*
Broker Reciprocity	\$59.00	\$69.00
Limited Broker	\$59.00	\$69.00
Sales Application	\$39.00	\$49.00
Sales Reinstatement	\$39.00	\$49.00*
Sales Reciprocity	\$39.00	\$49.00
Broker Activate Sales	\$17.00	\$25.00
Broker Transfer	\$17.00	\$25.00
Sales Transfer	\$12.00	\$20.00
Broker Renewal	\$34.00	\$49.00
Sales Renewal	\$24.00	\$39.00
Branch Office License	\$3.00	\$8.00
Broker on Deposit	\$7.00	\$13.00
Limited Sales	\$39.00	\$49.00

EFFECTIVE AUGUST 31, 1995, all applications must be accompanied by the correct fee amount. Any item submitted to the Division without the appropriate fee will be delayed pending receipt of the correct amount.

Your cooperation in implementing this new fee schedule is greatly appreciated. If you have any questions about fees, please contact the Division at (614) 466-4100. **A copy of this Bulletin should be provided to all sales persons in your office(s).**

*These fee increases will be effective on September 30, 1995.

DISCIPLINARY ACTIONS *(Continued from page 5)*

license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. This suspension began on May 24, 1995. Mr. Cary submitted an offer, on behalf of a prospective purchaser, to the seller without completing and providing an agency disclosure form.

DOROTHY M. CROOKS, broker, and SHIRLEY E. ARNOTT, sales associate, East Liverpool, Ohio, were suspended for 30 days and 20 days, respectively, for violating Section 4735.18 (A)(6) of the Ohio Revised Code. Ms. Crooks and Ms. Arnett began serving their suspensions on October 7, 1994. Property was listed with Ms. Crooks' brokerage, The Corner Realty, with Ms. Arnett as the listing agent representing the owners. Ms. Arnett submitted an offer to purchase the property. On the agency disclosure form, she noted that she and the broker also represented the purchaser, thereby creating a dual agency relationship. However, the respondents failed to have a written agreement signed by the purchaser and seller acknowledging consent to such dual representation.

ALAN L. CUMMINGS, sales associate, Cleveland, Ohio, had his sales license suspended for 180 days for violating Sections 4735.18(A)(6) and (A)(9) as it incorporates 4735.21 of the Ohio Revised Code. Mr. Cummings will serve this suspension upon reinstatement of his license. Mr. Cummings collected funds in his own name as part of a real estate brokerage transaction. He managed a property by collecting the rents on behalf of the owner but failed to engage in this activity through the broker with which his license was associated.

MICHAEL S. DEVIS, sales associate, Berea, Ohio, had his sales license suspended for 30 days for

violating Sections 4735.18 (A)(6) & (A)(21) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived by the Ohio Real Estate Commission. Mr. Devis listed a property for sale with his brokerage. He authorized or permitted to be published an advertisement for the property which was misleading or inaccurate.

NANCY J. FEYH, sales associate, Columbus, Ohio, had her sales license suspended for 15 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived by the Ohio Real Estate Commission. A purchase contract was entered into in which Ms. Feyh was the listing agent. The purchasers were provided with a property information checklist. However, Ms. Feyh advised the seller that the checklist be revised noting a roof leak problem. Ms. Feyh did not provide the purchasers or their agent with a copy of the revised form and after closing a serious roof leak occurred.

SCOTT J. FITZPATRICK, sales associate, Canton, Ohio, had his sales license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, 20 days of the suspension were waived by the Ohio Real Estate Commission. Mr. Fitzpatrick began serving the 10-day balance of his suspension on December 28, 1994. Mr. Fitzpatrick showed property to a potential purchaser and represented that he had control of the property. In addition, by his actions, he led the potential purchaser to believe that he had ownership interest in the property, when in fact, his brokerage was only a party to a

commission agreement with the seller of the property.

MICHAEL J. GLENN, broker, Cleveland, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18 (A)(28) of the Ohio Revised Code. Mr. Glenn will serve this suspension upon reinstatement of his broker's license. Mr. Glenn had a final judgment entered against him, which arose out of his conduct as a licensed real estate broker. He had not satisfied the judgment at the time the notice of the administrative hearing was sent by the Ohio Division of Real Estate.

THOMAS E. HOCKER, broker, Dayton, Ohio, had his broker's license suspended for 45 days for violating Sections 4735.18 (A)(6) and (A)(26) of the Ohio Revised Code. Mr. Hocker began serving his suspension on October 7, 1994. Mr. Hocker had lease agreements with the owner of properties, which did not authorize the use or removal of security deposits during the terms of the leases. Mr. Hocker failed to continuously maintain the security deposits received from tenants during the full terms of these leases.

THOMAS D. HOLLINS, sales associate, Cincinnati, Ohio, had his sales license suspended for 30 days for two separate violations of Section 4735.18 (A)(6) of the Ohio Revised Code, one of which as it incorporates Ohio Administrative Code Section 1301:5-5-05. This suspension began on September 6, 1994. Mr. Hollins prepared an offer to purchase property with prospective buyers, but failed to provide and complete an agency disclosure form in the transaction. Also, as part of this transaction, the offer was to be presented to the seller by

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DISCIPLINARY ACTIONS *(Continued from page 6)*

a specified time. Mr. Hollins failed to take appropriate action and follow through so that the offer would be presented within the allotted time period.

THOMAS J. JACOBS, sales associate, Columbus, Ohio, had his sales license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Jacobs began serving his suspension on March 27, 1995. Mr. Jacobs, acting in a representative role for a landlord, altered or modified a lease agreement by including an additional clause. Mr. Jacobs had the tenant acknowledge this clause in writing, but failed to submit the document to his client, the owner, for its approval/signature.

WILLIAM E. JONES, broker, Shaker Heights, Ohio, had his broker's license suspended for 45 days for violating Sections 4735.18(A)(5), (A)(6) and (A)(26) of the Ohio Revised Code. Mr. Jones began his suspension on May 17, 1995. In connection with the purchase of property listed with Mr. Jones' brokerage he collected funds in a fiduciary capacity but failed to have these funds deposited into his real estate brokerage trust or special account. At the closing of the property, a portion of the funds were not paid to the purchaser and not returned until seven months later.

JOHN S. JURON, broker, Akron, Ohio, had his broker's license suspended for 45 days for violating Section 4735.18 (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. Juron began serving the 30-day balance of his suspension on December 28, 1994. Mr. Juron prepared a purchase agreement on behalf of a prospective purchaser of a property.

In connection with this agreement and in his fiduciary capacity, Mr. Juron accepted an earnest money deposit to be deposited into escrow with his broker. Mr. Juron failed to remit this check to his broker or otherwise have the check deposited into the broker's trust account per the terms of the agreement.

PAULA M. KAVAL, sales associate, Cleveland, Ohio, had her sales license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, 10 days of the suspension were waived by the Ohio Real Estate Commission. Ms. Kaval began serving the 20-day balance of her suspension on December 28, 1994. Ms. Kaval was the listing agent for a property on which an offer to purchase was submitted. An agreement was entered into which called for the seller to provide a certificate of occupancy. Ms. Kaval submitted a document which provided that certain repairs to the property would be taken care of by the buyer. She signed the names of the parties to the purchase contract to this document without their knowledge or consent.

DOUGLAS M. KEYSE, sales associate, Berea, Ohio, had his sales license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, 20 days of the suspension were waived by the Ohio Real Estate Commission. Mr. Keyse began the 10-day balance of his suspension on February 6, 1995. Mr. Keyse was the selling agent in a transaction when an agreement to purchase the property was consummated. Mr. Keyse signed the purchaser's name and initialed the seller's property disclosure form, without the

knowledge and consent of the purchaser.

KEITH A. LAWSON, sales associate, Dayton, Ohio, had his sales license suspended for 60 days for violating Section 4735.18(A)(28) of the Ohio Revised Code. Mr. Lawson will serve his suspension upon reinstatement of his sales license. Mr. Lawson had a final judgment entered against him, which arose out of his conduct as a licensed real estate salesperson. He had not satisfied the judgment at the time the notice of the administrative hearing was sent by the Ohio Division of Real Estate.

REBECCA "BECKY" M. LENT, sales associate, Zanesville, Ohio, had her sales license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. Ms. Lent will serve this suspension upon reinstatement of her sales license. Ms. Lent failed, without reasonable cause, to remit funds to the seller which she had received as a commission, and to which she was not entitled.

MOSES MACKLIN, broker, Woodmere Village, Ohio, had his broker's license suspended for 60 days for violating Sections 4735.18 (A)(5), (A)(6) and (A) (26) of the Ohio Revised Code. This suspension began on September 6, 1994. Mr. Macklin received funds in a fiduciary capacity for an appraisal on a subject property, but failed to deposit and maintain these funds in his brokerage's trust account. The appraisal was not conducted. However, it was not until 18 months later that Mr. Macklin returned the funds to the prospective purchaser.

ROBERT WILLIAM MCNEIL, broker, Greenfield, Ohio, had his

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DISCIPLINARY ACTIONS *(Continued from page 7)*

broker's license suspended for 45 days for violating Section 4735.18(A)(26) of the Ohio Revised Code. However, due to mitigating circumstances, 15 days of the suspension were waived by the Commission. Mr. McNeil began serving the 30-day balance of his suspension on August 8, 1994. Mr. McNeil failed to maintain a trust account which was non-interest bearing.

THELMA D. MONTGOMERY, broker, Logan, Ohio, had her broker's license suspended for 45 days for violations of Section 4735.18 (A)(6) of the Ohio Revised Code, as it incorporates Ohio Administrative Code Section 1301:5-5-05. Ms. Montgomery began this suspension on August 27, 1994. Ms. Montgomery instructed the seller, her client, to make two simultaneous counter-offers with respect to a property. It was determined that this action was not in her client's best interest. Also, agency disclosure forms were provided to the purchasers but Ms. Montgomery failed to submit these disclosure forms to the seller prior to the presentation of the offers.

TERRENCE NAK, broker, Maple Heights, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived by the Ohio Real Estate Commission. Property was listed for sale with Mr. Nak's brokerage. A real estate purchase offer was submitted by one of his sales associates. The agency disclosure form submitted with the offer noted that Mr. Nak's brokerage and the selling agent also represented the purchaser. Thus, a dual agency relationship existed

between the brokerage and the parties to the contact. However, Mr. Nak permitted the agent to complete the agency disclosure form without attaching a written agreement signed by the purchaser and the seller acknowledging their consent to such dual representation.

JANET L. O'DONNELL, sales associate, Middleburg Heights, Ohio, had her sales license suspended for 45 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. However, due to mitigating circumstances, 20 days of the suspension were waived by the Ohio Real Estate Commission. Ms. O'Donnell began serving the 25-day balance of her suspension on October 7, 1994. Ms. O'Donnell permitted a real estate sales agent who was not associated with her brokerage to negotiate listing agreements on her behalf. She subsequently executed the contracts as the listing agent.

RAINTREE ASSOC., INC., corporate broker, Centerville, Ohio, had its corporate license suspended for 30 days for violating Sections 4735.18 (A)(6) and (A) (30) of the Ohio Revised Code. However, due to mitigating circumstances, imposition of the suspension was waived by the Commission. The corporation, acting by and through its officers, agents, and/or employees, failed within a reasonable time to pay a salesperson his earned share of commissions.

HANK RICHARDSON, sales associate, New Paris, Ohio, had his sales license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. Mr. Richardson began serving his suspension on December 28, 1994. Mr. Richardson prepared a purchase agreement on his own behalf to purchase a property. Subsequently, the contract to purchase was executed between the sellers and Mr.

Richardson. In connection with this transaction, Mr. Richardson completed an agency disclosure form wherein he noted that he was only representing the sellers, when in fact, he was also acting for himself as a party in the transaction.

MEL RUTHERFORD, broker, Miamisburg, Ohio, had his broker's license suspended for 60 days for violations of Section 4735.18(A)(6) of the Ohio Revised Code, as it incorporates Ohio Administrative Code 1301:5-5-05. Mr. Rutherford began serving this suspension on November 14, 1994. Mr. Rutherford failed to reduce an agreement to writing regarding the terms of sale for a real estate transaction. In a later purchase agreement, Mr. Rutherford failed to complete an agreement that fully disclosed all terms of the sale. In connection with this same transaction, Mr. Rutherford failed to complete an agency disclosure form.

HOMER SHEFFIELD, broker, Cleveland, Ohio, had his broker's license suspended for 180 days for violating Sections 4735.18(A)(6), (A)(26) and (A)(28) of the Ohio Revised Code. This suspension began on May 24, 1995. Mr. Sheffield maintained an interest bearing trust account which was used for personal purposes. He also failed to keep his trust account separate and distinct from his personal account. Also, out of his conduct as a real estate broker, Mr. Sheffield had an unsatisfied judgment entered against him.

PATRICK L. SHERIDAN, broker, Cincinnati, Ohio, had his broker's license suspended for 30 days for violating Sections 4735.18(A)(6) and (A)(30) of the Ohio Revised Code. This suspension

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DISCIPLINARY ACTIONS *(Continued from page 8)*

shall begin upon reactivation of Mr. Sheridan's license. Mr. Sheridan collected a commission from the sale of real property. However, he failed within a reasonable time to render an accounting or pay a sales associate their earned share of the commission.

JOHN A. SIMEONE, broker, Girard, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code as it incorporates Ohio Administrative Code 1301:5-5-05. However, due to mitigating circumstances, 15 days of the suspension were waived by the Ohio Real Estate Commission. Mr. Simeone began serving the 15-day balance of his suspension on December 28, 1994. Mr. Simeone prepared and submitted an offer to a seller without providing an agency disclosure form to the purchaser.

JOHN T. SMITH, broker, Shaker Heights, Ohio, had his broker's license suspended for six months for violating Sections 4735.18 (A)(5), (A)(6) and (A)(26) of the Ohio Revised Code. Mr. Smith began serving his suspension on November 1, 1994. An earnest money deposit was submitted to Mr. Smith's brokerage in connection with a purchase contract. Mr. Smith failed to continuously maintain these funds in his trust account. The property did not close and the buyer received only a partial return of the deposit. No good cause was given for why the entire amount was not returned to the buyer. Also, for eight months, Mr. Smith utilized funds in his brokerage trust account for his personal use. He failed to keep his real estate trust account separate and distinct from his personal account.

KENNETH J. STOFFER, broker, Columbus, Ohio, had his broker's license suspended for 45 days for

violating Ohio Revised Code Sections 4735.18 (A)(6) and (A)(9), as it incorporates Section 4735.21. This suspension began on October 7, 1994. Mr. Stoffer managed and engaged in property management activities for the owner of a rental property. He engaged in this conduct in his own name and not through the real estate broker with whom his license was associated at the time. Further, in connection with his management of this property, he collected money in a fiduciary capacity and deposited these funds into an interest bearing account, rather than a non-interest bearing trust or special bank account.

THERESA A. WALTERS, sales associate, Maple Heights, Ohio, had her license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code as it incorporates Ohio Administrative Code Section 1301:5-5-05(B). However, due to mitigating circumstances, imposition of the suspension was waived by the Ohio Real Estate Commission. Property was listed for sale with the brokerage with whom Ms. Walters was associated. A real estate purchase offer was submitted by Ms. Walters. The agency disclosure form submitted with the offer noted that Ms. Walters and her brokerage also represented the purchaser. Thus, a dual agency relationship existed between Ms. Walters and the parties to the contract. However, Ms. Walters failed to attach to the agency disclosure form a written agreement signed by the purchaser and the seller acknowledging their consent to such dual representation.

FRANCES K. WILLIAMS, broker, Shaker Heights, 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, 15 days of the suspen-

sion were waived by the Commission. Ms. Williams began serving the 15-day balance of this suspension on May 17, 1995. Ms. Williams permitted an unlicensed individual to escort parties through a property her brokerage had listed. She further permitted this individual to utilize her brokerage office to meet with and negotiate a property transaction in which funds were given to this individual and never recovered.

CYNTHIA A. WILSON, sales associate, Strongsville, Ohio, had her sales license suspended for 30 days for violating Section 4735.18(A)(6) of the Ohio Revised Code. Ms. Wilson began serving her suspension on March 27, 1995. Ms. Wilson was presented with an offer and agency disclosure form from a purchaser and she signed these documents as seller and owner, when, in fact, Ms. Wilson did not have an ownership interest in the property. In connection with the same transaction, Ms. Wilson inaccurately represented that a BIA Warranty would be available, when in fact, it was not.

MARK F. WILSON, broker, Hillsboro, Ohio, had his broker's license suspended for 15 days for violating 4735.18(A)(21) and two counts of violating 4735.18(A)(6). One violation of 4735.18(A)(6) incorporated Ohio Administrative Code Section 1301:5-5-05. However, due to mitigating circumstances, imposition of the suspension was waived by the Ohio Real Estate Commission. Mr. Wilson published advertising that was misleading or inaccurate in material information. He did not disclose that the acreage calculations in his advertisement were only approximations. Also in this real estate transaction, Mr. Wilson prepared a purchase contract

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DISCIPLINARY ACTIONS *(Continued from page 9)*

and submitted this document to the seller without providing an agency disclosure form to the buyers.

CHARLES W. WOFTER, broker, Zanesville, Ohio, had his broker's license suspended for 30 days for violating Section 4735.18 (A)(6) of the Ohio Revised Code. Mr. Wofter began serving his suspension on February 6, 1995. Mr. Wofter

received funds representing a commission for the sale of property. However, the property did not sell and no closing ever occurred. The seller requested a return of the funds. Mr. Wofter failed without reasonable cause to return the funds.

GARY E. ZINKON, broker, Zanesville, Ohio, had his broker's license suspended for 18 months for

two separate violations of Section 4735.18 (A)(6) of the Ohio Revised Code, one of which referred to Ohio Administrative Code Section 1301:5-1-13. This suspension began on September 6, 1994. The Ohio Division of Real Estate issued a subpoena pertaining to the investigation of a matter. The subpoena required Mr. Zinkon to appear at the offices of the Ohio Division of Real Estate and to produce certain correspondence and documents. Mr. Zinkon failed to obey the subpoena issued. In connection with the above matter, Mr. Zinkon induced a buyer to close on a real estate transaction by promising to the buyer, in writing, that he would convey some additional property to him in lieu of other property originally intended for him. Mr. Zinkon failed to comply with the terms of this agreement.

UPCOMING TEST DATES

The following are the **TENTATIVELY** scheduled dates for the real estate sales examination for the upcoming months and information on the foreign real estate and real estate appraiser examinations:

SALES	BROKERS
COLUMBUS/CLEVELAND	COLUMBUS
July 12/20	July 10
Aug. 2/17	Aug. 14
Sept. 7/21	Sept. 11
Oct. 11/19	Oct. 16
Nov. 8/16	Nov. 6

(Additional exams may be added if warranted)

The foreign real estate examination is given *only* in Columbus. Because of the small number of applicants for both the dealer and sales examinations, these exams are scheduled on an individual basis as the applications are received.

The real estate appraiser examinations are given in Cleveland and Columbus one to two times per month per location. Appraiser exams are scheduled as the applications are received.

If you require assistance or special accommodations, please call (614) 466-4100 at least two weeks prior to the exam.

RECOVERY FUND ACTIONS

The following real estate company had its real estate license 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.
American Real Estate	\$40,000	2/95
Co-Operatives, C.M.H., Inc.		



State of Ohio
 Department of Commerce
 Division of Real Estate
 77 South High Street, 20th Floor
 Columbus, OH 43266-0547

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