

Fall 1998

Division of

Real Estate and Professional Licensing

◆ N E W S L E T T E R ◆

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GOVERNOR

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SUPERINTENDENT

◆ *Licensees Diddle and Czeh charged with negligence, misleading advertising*

Ohio Internet Advertising Case First of its Kind

In a first-of-its-kind case in Ohio and one that drew interest from real estate professionals and industry observers nationwide, two Ohio real estate agents were charged with license law violations that included advertising expired listings on their web sites.

In August, the Ohio Real Estate Commission found Barbara Diddle, a central Ohio licensee, guilty of two violations: negligence and advertising a property on her web site seven months after the listing had expired. She was fined \$500 for each of the two violations, for a total of \$1000. A 30-day suspension of her license was waived.

Richard Czeh was also found guilty of negligence and advertising the property on his web site after Diddle's listing had expired. In addition, he was found guilty of not clearly indicating that the property was listed with another brokerage. He was fined \$500 for each of the three violations, for a total of \$1,500. His 30-day suspension of license was also waived.

The case first came to the attention of the division when the owner of the property filed a complaint. The owner once listed his property with Diddle. The listing had expired seven months earlier, but the property was still being advertised for sale on Diddle's web site. Richard Czeh, who originally had permission from Diddle to advertise the property on his web site, was also advertising the property seven months after the listing had expired.

The issue is how long should it take for a licensee to remove a listing from his or her

web site after the property has been sold or once the listing expires. "Superintendent Rotaru and I feel a reasonable amount of time to get a listing off a web site is seven to ten days," says Paul Stickel, Deputy Superintendent and Chief Legal Counsel. "Any more than 14 days will most likely require a good explanation from the agent, or that agent might be in trouble with the division."

After the complaint was made, Czeh

the home page to reach inside to the advertising. Since the public could not bypass the home page that named their brokerage, the commission found no violation when Diddle and Czeh didn't identify their real estate brokerage.

But now, as the public becomes more computer literate and is searching web sites, licensees should become attuned to stating their brokerage's name on each and every page of their web site.

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removed the listing from both his and Diddle's web sites within four to six hours. The third charge Czeh was found guilty of was not divulging on his site that the property was listed with Diddle's brokerage, not his.

But what made the case especially compelling to real estate licensees, was that both Diddle and Czeh were found not guilty on the charge of not clearly identifying their real estate brokerage on each individual page of the advertisement.

In 1996 when Diddle's and Czeh's web sites went on line, people who surfed into their sites generally had to move across

"Advertising rules apply regardless of the media. The fact they apply regardless of the media also means though that the media used can result in different requirements," emphasizes Stickel.

For example if a licensee prints a home book that is distributed to the public, and a property sells, it would be impossible to find each and every book and stamp SOLD across the picture of that property. However, the division does feel it is possible to go to the web site and change

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Remember: all Real Estate renewals due by December 31!

It's great to continue to hear good things about the newsletter. It's important to me that we distribute a quality newsletter that is helpful to as many of our licensees as possible. In trying to do that, I thought I'd cover a few items that, while seemingly small, can cause you some real problems.

First, there's the difference between a buyer being "pre-qualified" and being "pre-approved." Time and time again, our enforcement section receives calls from sellers whose deals are going sour because a "pre-approved buyer" has been denied a loan. If those callers sent written complaints to us, the licensees might learn the hard way the difference between these terms! Simply put, a "pre-qualified" buyer is one who has determined the size of the mortgage payment he/she is *capable* of making. There has probably been no credit check or employment verification done. There may not even have been a complete debt accounting prepared.

On the other hand, a "pre-approved" buyer should actually have

met with a mortgage loan processor to determine the buyer's ability to be approved for financing up to a determined loan amount. About all that should have to be done for the "pre-approved" buyer to purchase a property, is for the property to appraise out. The buyer's financial position and obligations should not cause a deal to fall through. This assumes that the information profiled is accurate and/or has been verified.

Realizing the difference between these terms and accurately conveying that difference to clients and customers can save everyone involved in a transaction time, headaches, and possible problems with this office.

Second, particularly when working with buyers, it is imperative that agents not give clients and customers the impression that FHA and VA representatives do home inspections. I don't know how many times we hear about buyers finding problems with a house they've moved into where they claim their agent assured them FHA or VA would inspect the property. Because of the agent's

representation and assurance, the buyers felt they "had nothing to worry about," so no independent inspections were conducted. With an FHA or VA insured loan, the property is appraised to assess its value for loan purposes. While repairs might be required to secure the loan, those required repairs do not represent the results of inspections. If buyers want someone to check the physical condition of a property, a home inspection professional, preferably an inspector with structure evaluation experience, should be contacted. A whole house inspection can cost a couple hundred dollars, but it's money well spent.

Don't hesitate to drop me a note if you'd like any particular topic covered! I'm always open to your suggestions!

Thanks.



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advertising within just a few hours.

Says Stickel: "After all, if you advertise a property in the newspaper this week and the property sells, you don't advertise that property the following week as well. That's another example of how a home book differs from the newspaper or compares to the Internet. It's the type of media you use that dictates how quickly information can be modified."

Basically, to avoid administrative problems, embarrassment, and legal costs that Barbara Diddle and Richard Czeh found themselves in, licensees should remember these four basic rules of advertising.

- ◆ Always include the name of the brokerage in advertising.
- ◆ Salespeople's names cannot appear more prominently than the name of their broker.

- ◆ You must include the words real estate, realty or in some other manner designate that the advertiser is a real estate brokerage.
- ◆ No advertising can be misleading or confusing to the public.

These rules apply to all types of media.

New Enforcement Supervisor Announced

In September, the Ohio Division of Real Estate and Professional Licensing hired Rick Selegue as enforcement supervisor. This position was held by long-time division employee Joyce Kady from 1979 until she retired this past year.

Selegue's professional experience includes investigating credit card fraud for financial institutions. He holds a bachelor of science degree in criminal justice from the University of Dayton.

Ancillary Trustee Procedures Important

No one likes to think about a worst case scenario, but brokers need to understand the importance of an ancillary trustee upon their sudden death or if their license is revoked.

In reality, an ancillary trustee is to protect your business, the rights of the public, and the sales agents who sell through your brokerage. The ancillary trustee supervises the completion of existing contracts, completes management statements or reports, and oversees other pending matters that must be attended to in a timely manner. The appointment is subject to the approval of the Superintendent of the Division of Real Estate and Professional Licensing.

To appoint an ancillary trustee for a broker, a written request must be sent to the Superintendent. The request should provide the name of the person requesting the appointment, qualifications of the appointee, and the name of the suspended, revoked, or deceased broker. In cases of deceased brokers, it is recommended that the attorney handling the estate of the decedent be consulted about the application since the process will involve probate issues and probate approval.

The appointee must be versed in real estate knowledge, but does not necessarily need to be licensed. For example, a family member who is involved with the business or the fiduciary for the estate would be an appropriate appointee. After the division's Superintendent makes a

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determination of the suitability of the proposed appointee, the applicant is notified of the decision. In cases of deceased brokers, the Superintendent's recommendation must be taken to the Probate Court for final approval under the estate of the deceased broker. The Superintendent will make a decision within four to six days.

Here's a sample letter that can be used

when making application for an ancillary trustee:

Dear Superintendent:

It is requested that **(insert name)** be appointed to serve as ancillary trustee in order to conclude the business of **(insert broker's name)**. He/she is qualified because **(insert qualifications.)** (If applicable, insert the following sentence.) The Probate Court of this matter will be in **(insert county name)** County. The case number of this action is **(insert number)**.

A letter of this type will permit the ancillary trustee to assume his or her duties within a reasonable time. It's important to realize that the ancillary trustee is not authorized to initiate new ventures, such as drafting an offer to purchase or listing property or agreeing to list it. The ancillary trustee can only conclude pending matters.

Brokers are encouraged to call the division for an information packet on the conditions of appointment and the duties of an ancillary trustee.

ATTENTION BROKERS!
Are you forwarding copies of this newsletter to your salespersons?

Agency Agreements Must Include Specific Fair Housing Language

Cases involving the absence of required fair housing language in agency agreements continue to be brought to the attention of the division. House Bill 354, which went into effect in December 1996, clearly requires specific language to be contained in all agency agreements, such as listing contracts, property management contracts, and buyer agency agreements. Absence of fair housing language is a violation of real estate license law and the Superintendent and commission will act accordingly.

All agency agreements must either be updated or accompanied by an addendum that contains the required fair housing language to avoid possible disciplinary action being taken against the brokerage license.

Division Continues To Issue Cease and Desist Orders

It's right there in black and white. Under section 4735.99 of The Ohio Revised Code, acting as a real estate agent without a real estate license is a first degree misdemeanor. Nevertheless, the Division of Real Estate and Professional Licensing occasionally finds evidence that people who are unlicensed as real estate agents are engaging in conduct requiring a real estate license. The division generally issues a cease and desist order to the individual in such matters. If these individuals or businesses continue to engage in conduct requiring a real estate license, the division may contact the appropriate local prosecutor and ask the prosecutor to consider initiating criminal action.

Since the last newsletter, the following individuals and companies in these cities have received cease and desist orders:

Westerville, Ohio
Randy Rhodes

Macon, Georgia
Hudson & Marshall, Inc.

Atlanta, Georgia
Asset Property Disposition, Inc.

Cincinnati, Ohio
Johannes Pieterse

One exam scheduled for December 17

During the month of December, the division will administer the sales agent examination at one location only. The exam will be given in Cleveland on December 17. **There will be no exam given in December in Columbus due to the license renewal process.**

All Real Estate Rules Apply When Selling for a Builder

One of the big myths of the real estate industry is that a person doesn't need a real estate license if that person works for a builder. That is only half true. A real estate license is not required if you are merely selling new construction for a builder and no real estate also is being sold. If real estate is being sold, the person assisting with the sale may need a license unless he or she falls within an exemption.

The fact that you have a real estate license does not mean you can engage in conduct within the scope of that license directly with the builder, excluding or bypassing your brokerage. As a licensed real estate agent in Ohio, you must sell real estate only through your brokerage, *unless you are a regular employee of the builder who owns the property and you are selling only for that builder.* The division defines a regular employee by the following criteria:

- ◆ You receive a W-2 form and not a 1099 at the end of the year from the builder, your employer.
- ◆ All city, federal, and state taxes are withheld by the builder, your employer.
- ◆ You are covered by workers compensation and unemployment insurance by the builder, your employer.
- ◆ Your work schedule is set by the builder, your employer.

If the above criteria are not met, then chances are you are an independent contractor. You are not a regular employee of the builder who owns the property; you need a real estate license to sell the real estate, and you must sell the property through your brokerage. Unlicensed people who are not regular employees of the builder who owns the property but are selling the builder's real estate are engaging in illegal activities.

Finally, if you are a regular employee, make sure you are an employee of the company that actually owns the property. Often, builders will have, for tax and other reasons, several companies. You must be a regular employee of the company that actually owns the property.

Points to Ponder

- 1 Just because a licensee takes a continuing education course and receives a certificate of attendance doesn't automatically mean this course is approved by the division. It is your responsibility to make sure all courses you take have been approved. You are invited to call the division's continuing education section for a list of all approved continuing education courses in your area. As always, the ultimate responsibility for fulfilling continuing education requirements is with you.
- 2 Your responsibilities with continuing education go beyond just finding the correct courses that have been approved. Your professional responsibility includes knowing the date of your continuing education deadline. Your deadline is printed on the renewal notice brokers receive once a year. If you have questions, check with your broker or call the division. We get thousands of calls from licensees who don't know their education date. Please take care to remember yours.
- 3 From time to time, real estate agents and brokers will submit to the division advertisements that they believe might be questionable or perhaps may not be in full compliance with Ohio real estate license law. The division is always happy to review these advertisements. However, it would be helpful if you send the entire page on which the advertisement appears. For example, if the ad was printed in the newspaper, we would like to see the entire page to confirm the publication and date the ad appeared. Of course, we don't need the entire newspaper, but a small clipping of the ad may be ambiguous and prevent us from fully answering your questions.
- 4 Once again, please keep in mind that the division does not have the expertise or authority to interpret purchase agreements or decide whether a contract is valid or enforceable. When buyers or sellers contact agents about such matters, agents need to refer them to personal legal counsel.
- 5 And here is a related topic from point four. Although you may have experience in real estate transactions, your role is not to act as legal counsel. As a licensed real estate agent, your job is to market a property and to find a purchaser. When people ask you whether or not they have a valid contract, advise them to talk to their own attorney. Always avoid placing yourself in a position of interpreting a contract, such as whether a point is enforceable or what a clause means. When you start interpreting contracts, you may cause trouble for yourself with our office, and you may also cross the line of practicing law without the proper licensure.
- 6 When real estate brokerages want to do business in a name other than the name of an individual broker, they need to check with two different offices to make sure that name is available for them to conduct business in Ohio. First, they need to check with the Secretary of State's office to see if the name is available. Next, they should check with our office to see if the name requested is available, or if the name, or a similar name, is being used by another brokerage. Name approval by the Superintendent does not necessarily mandate or compel name approval by the Secretary of State, or vice versa.
- 7 A final continuing education reminder is to send your certificates of attendance along with the appropriate form to the division as soon you have completed all required courses. If you wait until the last minute, and the certificate is inaccurate, incomplete, or has some other problem that affects your continuing education credits, you may pass your continuing education deadline and have your license suspended.

New Criteria for Real Property Appraiser Licensing and Certifications

The Appraiser Qualifications Board has increased the experience and education requirements for real estate appraiser license and certificate holders who wish to be included in the National Registry. These new criteria took effect on January 1, 1998. The new National Registry criteria must be met by anyone licensed or certified after January 1, 1998, and may affect an appraiser's ability to perform appraisals in connection with certain federally-related transactions. The following chart outlines the new Appraiser Real Property Qualification Criteria for inclusion in the National Registry.

APPRAISAL QUALIFICATION CRITERIA

APPRAISER ASSISTANT

Education: 75 classroom hours—including USPAP standards
Experience: None
Examination: None
Continuing Education: 14 classroom hours per year

CERTIFIED RESIDENTIAL APPRAISER

Education: 120 classroom hours—including USPAP standards
Experience: 2,500 hours over a minimum 24 months
Examination: Yes
Continuing Education: 14 classroom hours per year

STATE LICENSED RESIDENTIAL APPRAISER

Education: 90 classroom hours—including USPAP Standards
Experience: 2,000 hours over a minimum of 24 months
Examination: Yes
Continuing Education: 14 classroom hours per year

CERTIFIED GENERAL APPRAISER

Education: 180 classroom hours—including USPAP standards
Experience: 3,000 hours over minimum of 30 months (1,500 hours minimum of general experience)
Examination: Yes
Continuing Education: 14 classroom hours per year

Appraisers Licensed or Certified After January 1, 1998 Have Upcoming Deadline

If you were licensed or certified as a real estate appraiser after January 1, 1998, you must submit proof of completion of additional hours of education and experience to meet the qualification criteria for inclusion in the Appraisal Subcommittee National Registry. These qualification criteria were changed, effective at the beginning of the year. All persons affected were sent a notice of any additional hours needed. Please submit the requested education and experience as soon as possible. Failure to do so will cause you to be removed from the National Registry and may end your ability to perform appraisals for certain federally related transactions. If you are in this category and have any questions, please contact the Appraiser Section at (216) 787-3100.

Appraiser Continuing Education Changes

All state licensed or certified appraisers who wish to remain in the Appraisal Subcommittee National Registry must comply with the new continuing education qualification criteria, set forth by the Appraiser Qualification Board. The new National Registry criteria requires appraisers to submit at least 14 classroom hours of approved continuing education annually upon renewal of a license or certificate. Appraisers currently licensed or certified will be merged into a one-year reporting cycle by submitting their continuing education as follows:

- ◆ Appraisers who have continuing education due in the years 1998 and 1999 must still complete and submit the 20 hours of continuing education currently required by Ohio law. This

education will meet the standard for inclusion in the National Registry.

- ◆ Any appraisers who submits 20 hours of continuing education in 1998 must submit 14 hours of continuing education by his or her 1999 annual renewal date, and every year thereafter, if the appraiser wished to be listed in the National Registry.
- ◆ Any appraiser who submits 20 hours of continuing education in 1999 must submit 14 hours of continuing education by his or her next renewal date, and every year thereafter, if the appraiser wishes to be listed in the National Registry.

Note

Statutory language to modify sections of chapter 4763 of the Ohio Revised Code to make it compatible with the existing standards for inclusion in the Appraisal Subcommittee National Registry has been submitted to the Ohio Legislature. The language was included in Am. Sub. H.B. 695, which was passed by the Ohio Senate and will be considered by the Ohio House of Representatives in the next session. The amendments to the law will become effective, assuming passage of the bill by the House, 90 days after receiving the Governor's signature. The estimated effective date is March 1999. Passage of the legislation should eliminate confusion regarding the continuing education requirements for real estate appraisers in Ohio.

Disciplinary Actions Revocations

THOMAS A. HAMMONS, sales associate, Lancaster, Ohio, had his license revoked for violating Section 4735.18(A) of the Ohio Revised Code. This revocation will become effective upon reinstatement of his license. Mr. Hammons was convicted of endangering children in violation of Ohio Revised Code Section 2919.22 in the Court of Common Pleas for Defiance County.

HELEN M. GUYLER, sales associate, Beavercreek, Ohio, had her license revoked for violating eight counts of Ohio Revised Code Section 4735.18(A)(6), and three counts of Ohio Revised Code Section 4735.18(A)(9) as that section incorporates Ohio Revised Code Section 4735.21. This revocation became effective immediately. Ms. Guyler, in the capacity as a licensed property manager, misdirected a series of checks to herself out of the company's trust account. In addition, Ms. Guyler collected real estate commissions in her name and not in the name of the real estate broker with whom she was licensed.

RAYMOND L. CRAMBLIT, broker, Lancaster, Ohio, had his license revoked for violating Ohio Revised Code Sections 4735.18(A)(1), (2), (5), (6), (20) and (22). This revocation became effective immediately. Mr. Cramblit misrepresented the terms of a real estate venture regarding the ownership status of property to be acquired and the terms of sale in the purchase and sales agreements. Mr. Cramblit also made false promises about the source and reliability of monies and of financial benefits to be forthcoming from investment in the property. He offered the property for sale without the consent of the owner and failed to properly account to the investors for money belonging to the investors.

Suspensions

ANIA PETREAS, sales associate, Seven Hills, Ohio, had disciplinary action and a fine levied against her license for violating Ohio Revised Code Section 4735.18(A)(6). Ms. Petreas was fined \$1,000.00. She was also required to submit proof of completion of the 10-hour sales post-licensure course. Ms. Petreas prepared a purchase agreement for the purchase of property where in she represented the sellers. The buyers did not complete the transaction and sought the return of their earnest money. Ms. Petreas did not obtain the consent of her clients, the sellers, to return the earnest money. She proceeded to advise her broker that it was appropriate to do so based upon incorrect information.

BUNNIE LAUBER, sales associate, Sidney, Ohio, was fined \$100.00 for violating Section 4735.18(A)(6) of the Ohio Revised Code. In connection with an offer to purchase property, on which she was the listing agent, Ms. Lauber failed to have a verbal agreement between the

buyer and the seller reduced to writing. As a result of an inspection, the buyers wanted repairs done to the property but this was not put in writing as required by the purchase agreement.

ZENA M. SMITH, broker, Columbus, Ohio, had disciplinary action and a fine levied against her license for violating Sections 4735.18(A)(5) and (A)(6) of the Ohio Revised Code. Ms. Smith was fined \$1,000.00, her license was suspended for 60 days, commencing on February 6, 1998, and she was ordered to submit proof of completion of the 10-hour brokerage post-licensure course. In connection with her negotiation of a lease/purchase option agreement, Ms. Smith collected a non-refundable option fee. This money was to be held until the option was exercised. Ms. Smith secured a signed mutual release of the fee, however, she failed to remit the money to the seller within a reasonable time.

RUSSELL & ASSOC., INC., dba RUSSELL, corporation, Brook Park, Ohio, had its corporate broker's license fined \$100.00 for violating Section 4735.18(A)(6) of the Ohio Revised Code. In connection with an agreement to purchase property listed with Russell an earnest money deposit was received. The transaction did not proceed and without the authorization of their client, the seller, or a court order, the money was disbursed from the company's trust account.

MICHAEL SCHILL, JR., broker, Middleburg Heights, Ohio, had disciplinary action and a fine levied against his license for violating Ohio Revised Code Section 4735.18(A)(6) as that section incorporates Ohio Administrative Code Section 1301:5-5-05(B). Mr. Schill was fined \$1,000.00, and his license was suspended for 30 days, however, due to mitigating circumstances, imposition of the suspension was waived by the Commission. He was also ordered to submit proof of completion of the 10-hour brokerage post-licensure course. In connection with an agreement to purchase property listed with Mr. Schill's brokerage, he indicated that he was representing the buyer and the seller, thereby acting as a dual agent. However, he failed to have a written agreement signed by the purchaser and the owner, acknowledging consent to such dual representation. A separate written agreement was required to be attached to the agency disclosure form at that time.

ELYHUE E. DUFF, broker, Akron, Ohio, had disciplinary action and a fine levied against his license for violating Section 4735.18(A) of the Ohio Revised Code. Mr. Duff's license was suspended for one year, commencing on February 6, 1998, and he was ordered to pay a fine of \$1,000.00. Mr. Duff was convicted of solicitation in the Municipal Court of Akron. This conviction arose out of his conduct as a real estate licensee.

MICHAEL P. PORCHETTI, sales associate, Worthington, Ohio, had his sales license suspended for 30 days commencing on January 2, 1998 for violating Section 4735.18 (A)(6)

and (A)(20) of the Revised Code. Mr. Porchetti advertised a property for sale without the consent of the owner who had only expressed an interest in possibly listing the property.

SUSAN A. BROWN, sales associate, Nashville, Tennessee, had disciplinary action and a fine levied against her license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Ms. Brown was fined \$500.00 and required to submit proof of completion of the 10-hour sales post-licensure course prior to reinstating her license. In connection with an offer to purchase property, Ms. Brown prepared the agreement which allowed the buyers to have a home inspection and a removal of this contingency within 12 days in writing. As a result of the inspection, the buyers wanted certain repairs completed, however, Ms. Brown failed to place in writing any arrangement between the buyers and the sellers regarding the repairs. She failed to have the inspection contingency removed, in writing, as provided for by the purchase agreement. Her failure in these regards was not in the best interest of her client.

LISA MCKIVERGIN, sales associate, Granville, Ohio, had disciplinary action and a fine levied against her license for violating Sections 4735.18(A)(6) and (A)(21) of the Ohio Revised Code. Ms. McKivergin's license was suspended for a total of 10 days, commencing on March 9, 1998, was fined a total of \$500.00 and was required to submit proof of completion of the 10-hour sales post-licensure course. As the listing agent for property that had been sold and conveyed, Ms. McKivergin continued to advertise the property as available for sale, when, at the time, it was no longer on the market.

BARBARA J. VANFOSSEN, sales associate, Steubenville, Ohio, had a fine levied against her real estate license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Ms. VanFossen was ordered to pay a fine of \$250.00. Ms. VanFossen prepared an offer to purchase property and acknowledged receipt of an earnest money deposit. However, Ms. VanFossen did not receive the deposit with the contract and later encountered difficulty in collecting the funds.

FIRST LIMA REALTY CO., dba PROFESSIONALS PLUS, corporation, Lima, Ohio, had its corporate brokerage license fined \$1,000.00 for violating Sections 4735.18(A)(6) and (A)(31) of the Ohio Revised Code. The company failed, within a reasonable time, to render an accounting to and to pay a salesperson his earned share of commissions on the sale of two properties.

ANTHONY S. AZZARELLO, broker, Lima, Ohio, had disciplinary action and a fine levied against his license for violating Sections 4735.18(A)(6) and (A)(31) of the Ohio Revised Code. Mr. Azzarello had his license suspended for 15 days but, due to mitigating circumstances, imposition of the suspension was waived by the Ohio Real Estate Commission. He was also ordered to pay a \$1,000.00 fine and to submit proof of completion of the 10-hour

brokerage post-licensure course. Mr. Azzarello failed, within a reasonable time, to render an accounting to and to pay a salesperson his earned share of commissions on the sale of two properties.

GREGORY P. ANDERSON, broker, Columbus, Ohio, had disciplinary action and a fine levied against his real estate license for violating Ohio Revised Code Section 4735.18(A)(6). Mr. Anderson's license was suspended for 30 days, however, due to mitigating circumstances, 20 days of the suspension were waived by the Ohio Real Estate Commission. Mr. Anderson began serving the 10-day balance of the suspension on March 9, 1998. In addition, he was fined \$250.00 and ordered to submit proof of completion of the 10-hour brokerage post-licensure course. Mr. Anderson prepared an offer to purchase property which was subsequently accepted by the sellers. The offer he prepared created an impression that he was in receipt of an earnest money deposit, however, he did not have in his possession these funds and had not collected such a deposit from the buyers when he presented the offer to the sellers.

DIANE C. BANKS, sales associate, Dublin, Ohio, had disciplinary action and a fine levied against her license for violating Ohio Revised Code Section 4735.18(A)(6) as that section incorporates Ohio Revised Code Section 4735.58(C). Ms. Banks' license was suspended for 15 days, however, due to mitigating circumstances, imposition of the suspension was waived by the Ohio Real Estate Commission. She was fined \$500.00 and further ordered to submit proof of completion of the 10-hour sales post-licensure course. Ms. Banks prepared and submitted an offer for the purchase of property to sellers for their consideration without also submitting an agency disclosure form.

EDWARD P. FERNANDEZ, broker, Canton, Ohio, had disciplinary action and a fine levied against his license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Fernandez's license was suspended for 60 days, commencing on March 31, 1998, he was fined \$2,500.00 and ordered to submit proof of completion of the 10-hour brokerage post-licensure course. In advance of closing on property Mr. Fernandez had listed, septic and well inspections were done and the sellers were contacted to have a second chlorination done. At the time of closing Mr. Fernandez failed to disclose that a second chlorination was required. He did not know if the second chlorination had been accomplished. At closing the buyers were not informed the water had not been approved and went forward only to discover after closing that the well water was not potable.

JAMES B. SPENCER, sales associate, Warren, Ohio, had disciplinary action and a fine levied against his license for violating Ohio Revised Code Section 4735.18(A)(6) as that section incorporates Ohio Administrative Code Section 1301:5-5-05. Mr. Spencer's license was

suspended for 30 days, however, due to mitigating circumstances, imposition of the suspension was waived by the Ohio Real Estate Commission. Mr. Spencer was fined \$500.00 and required to submit proof of completion of the 10-hour sales post-licensure course. In a real estate transaction Mr. Spencer was acting in a disclosed dual agency status. He prepared the separate dual agency agreement, which the parties approved, however, he did not have them sign the mandatory agency disclosure form.

EDWARD F. RYBKA, broker, Garfield Heights, Ohio, had disciplinary action and a fine levied against his license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Rybka's license was suspended for 30 days, however, due to mitigating circumstances, imposition of the suspension was waived by the Ohio Real Estate Commission. Mr. Rybka was also fined \$500.00. In connection with an agreement to purchase property, Mr. Rybka was given an earnest money deposit. The transaction was not completed, and Mr. Rybka proceeded to disburse the earnest money deposit to the sellers without an agreement between the parties approving the release of the funds.

ALFRED HILL, sales associate, Cleveland, Ohio, had disciplinary action and a fine levied against his license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Hill's license was suspended for 60 days commencing March 31, 1998. Mr. Hill was fined \$1,000.00 and required to submit proof of completion of the 10-hour sales post-licensure course. Mr. Hill prepared an offer to purchase property which was owned by HUD, however, he neglected to deliver the offer to the appropriate party at the Department of Housing and Urban Development for consideration. Mr. Hill also failed to retain copies of all documents in connection with the offer as required by law.

MAYNARD D. HERSHBERGER, broker, Wooster, Ohio, had disciplinary action and a fine levied against his license for eight violations of Section 4735.18 (A)(6), three violations of Section 4735.18 (A)(5), and three violations of Section 4735.18 (A)(26) of the Revised Code. His license was suspended for 30 days on each violation with all suspensions being served concurrently. The suspension commenced on March 31, 1998. He was further fined \$500.00 per violation for a total of \$7,000.00. Mr. Hershberger caused to be issued checks from the brokerage trust account for which there were insufficient funds. He also failed to account within a reasonable time, to three clients, for monies received on their behalf. Finally, he failed on three occasions to maintain in his trust account monies received from others in a fiduciary capacity.

CAROLE L. HERSHBERGER, sales associate, Wooster, Ohio, had disciplinary action and a fine levied against her real estate license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Ms. Hershberger's license was suspended

for 30 days, commencing on March 31, 1998, and she was fined \$500.00. Over a period of time Ms. Hershberger caused to be issued checks drawn from the brokerage's trust account, when there were not sufficient funds available in the trust account to pay these checks.

JOHN A. RUPER, broker, Brecksville, Ohio, had disciplinary action and a fine levied against his real estate license for violating two counts of Section 4735.18(A)(6) of the Ohio Revised Code, one as it incorporates Ohio Administrative Code Section 1301:5-5-08. Mr. Ruper's license was suspended for 60 days, however, 30 days of the suspension was waived by the Ohio Real Estate Commission. The remaining 30 day suspension commenced on May 26, 1998. He was also fined \$1,000.00 and required to submit proof of completion of 3 hours of approved continuing education in agency law. Mr. Ruper prepared and submitted an offer to the seller without completing the appropriate Ohio agency disclosure form and having it accompany the offer. In connection with this offer he accepted a photocopy of a check as an earnest money deposit. By accepting a non-negotiable instrument without the knowledge and written consent of the owner of the real estate, he fostered the impression that the funds had been received by him and were properly deposited in the brokerage trust account.

MILTON R. MOORE, sales associate, West Jefferson, Ohio, had disciplinary action and a fine levied against his license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Moore's license was suspended for 30 days, commencing on May 27, 1998. He was fined \$500.00 and required to submit proof of completion of the 10-hour sales post-licensure course. Mr. Moore entered into an agreement to purchase property on his own account. Prior to closing, without the knowledge or the consent of the seller or the listing agent, he improperly entered the property.

WILBERT JOHNSON, JR., broker, Warren, Ohio, had disciplinary action and a fine levied against his real estate license for violating Sections 4735.18(A)(6) and (A)(24) of the Ohio Revised Code. Mr. Johnson was fined \$500.00 and required to submit proof of completion of the 10-hour brokerage post-licensure course. Mr. Johnson prepared an offer for the purchase of property but failed to maintain, in connection with the offer, a copy of the Ohio agency disclosure form.

STEVEN C. HALSTEAD, sales associate, Worthington, Ohio, had disciplinary action and a fine levied against his license for violating Section 4735.18(A)(6) of the Ohio Revised Code. His license was suspended for 30 days, commencing May 27, 1998. He was fined \$500.00 and ordered to submit proof of completion of the 10-hour sales post-licensure course. Mr. Halstead executed a purchase agreement for property with the agreement

calling for a real estate commission to be paid to a company of which he is a principal. Subsequently, the company collected the commission, but at the time of the contract and collection of the fee the company was not licensed as a real estate broker.

GERALDINE L. SHIRK, sales associate, Toledo, had disciplinary action and a fine levied against her Ohio real estate license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Ms. Shirk was fined \$300.00 and was required to submit proof of completion of a 3-hour course on agency. In connection with an offer to purchase property, Ms. Shirk was acting as a dual agent. However, Ms. Shirk neglected to complete that portion of the dual agency disclosure statement noting her material relationship with one of the buyers, who was her daughter-in-law.

BOB R. DANIEL, sales associate, Cincinnati, Ohio, had disciplinary action and a fine levied against his license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Daniel's license was suspended for 30 days, however, due to mitigating circumstances, 15 days of the suspension was waived by the Ohio Real Estate Commission. Mr. Daniel began serving the 15 day balance of the suspension on May 27, 1998. Mr. Daniel was also fined \$500.00 and ordered to submit proof of completion of a 3-hour course on agency and agency relationships. Mr. Daniel prepared a purchase agreement for the purchase of property, but failed to prepare and to submit to the buyer an Ohio agency disclosure

statement. Furthermore, on the dual agency disclosure form he neglected to complete that portion of the form identifying his material relationship with the seller, who was his brother.

CHARLES D. SCOTT, III, broker, Columbus, Ohio, had a fine of \$500.00 levied against his real estate license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Scott was given a check from a potential buyer to be used towards the purchase of real estate. Mr. Scott acknowledged receipt of the check, but he failed to promptly deposit the money which had been received by him in a fiduciary capacity, into his real estate brokerage trust account. Later, when the funds were necessary to resolve a closing, Mr. Scott discovered the check was not deposited and was lost.

HENRY G. HARGRAVE, sales associate, Columbus, Ohio, had disciplinary action and a fine levied against his license for violating Ohio Revised Code Section 4735.18(A)(6) as that section incorporates Ohio Administrative Code Section 1301:5-5-05(B). Mr. Hargrave was fined \$300.00 and ordered to submit proof of completion of a 3-hour course on the law of agency. In connection with property listed with Mr. Hargrave's brokerage, he prepared and submitted an offer for the purchase of the property. However, on the agency disclosure form he noted that he was representing the buyer, thereby, creating a dual agency in the transaction. Mr. Hargrave failed to have a written agreement signed by the parties acknowledging

their consent to such dual representation attached to the agency disclosure form as mandated by the law.

RIMA S. RIGGS, broker, Mentor, Ohio, had a fine of \$500.00 levied against her real estate license for violating Section 4735.18(A)(21) of the Ohio Revised Code. In connection with property listed for sale with her brokerage, Ms. Riggs advertised the property to have been built in 1971 when it actually was built in 1957. She published advertising that was inaccurate or misleading in a material particular.

WILLIE BAZEN, JR., broker, Canton, Ohio, had disciplinary action and a fine levied against his license for violating Section 4735.18(A)(6) of the Ohio Revised Code. Mr. Bazen was fined \$500.00 and required to submit proof of completion of the 10-hour brokerage post-licensure course. Mr. Bazen had previously assisted in the selling of property by land contract. Several years later, he became aware of delinquency of the purchaser on the land contract and the intent of that person to relocate. Mr. Bazen arranged for the re-sale of the property from the land contract vendee to a new buyer without obtaining written permission of the original owner as required by the terms of the land installment contract.

**Remember: all renewals due
December 31!**



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