

NEWSLETTER

Fall/Winter 2011 Issue

John R. Kasich
Governor of Ohio

David Goodman
Director of Commerce

Anne Petit
Superintendent

Takin' It To the Streets by Superintendent Anne Petit

The past several months just seem to have, well, flown! In part, I can point to the previously unheard of number of initiatives and projects the Division has undertaken as the conjuring cause of that cartoon image... You know, the one of a clock sprouting wings and taking flight. Beyond that, as our collective paradigm shifted to accommodate both the Division goals developed under Governor Kasich's Common Sense Initiative and our daily operations in licensing, education and enforcement, the staff was thrown – for the foreseeable future – into hyperdrive. A confluence of events that rightfully should have given us a group case of whiplash.



Anne M. Petit

As we immersed ourselves in the issues contemporaneous to licensees, together the staff and I have committed ourselves to increase outreach to the industries we serve. Everyone in the Division believes that we must get out into the grassroots of the real estate world to improve the quality of and number of opportunities for communication, interaction and education of Ohio's real estate brokers, appraisers and salespersons.

The golden opportunity to accomplish just that knocked in a big way when the rewrite of our our real estate statute, Ohio Revised Code Chapter 4735, was included in Ohio's 2012-2013 biennial budget bill (Am. Sub. HB 153, 129th General Assembly). The revisions to the real estate license law were numerous and of such import that the Division and the Commission felt strongly there needed to be an educational, regional rollout of the material. So we rolled up our sleeves, scheduled nine sessions, over just two weeks, in eight communities across Ohio and got the word out that we were hitting the road with a free core law continuing education course.

I was pleased that nearly 800 real estate brokers, salespersons, appraisers and attorneys broke from their daily routine, took time away from the hectic pressure cooker of real estate business, and traveled a distance to attend this class. Our post-event survey revealed that 89% of attendees found the course "Very Informative" or "Informative," but we still have room for improvement next time. I always believe that if one licensee learned something new, something that would keep the professional license for which s/he had worked so hard out of jeopardy, then for us, it was time and effort well expended.

In this issue, I think you'll find that more than one person gained a valuable "take away" from these continuing education presentations. On page 12 are many of the questions the Division fielded during the course and their corresponding answers. Some of the questions were the same class to class, but in every case each audience presented staff with at least one new question that is excellent information for all real estate licensees. As you read them, other questions may arise

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Takin' It To the Streets by Superintendent Anne Petit con't

in your mind; I encourage you to email or call us with those.

The work on the real estate license law overhaul didn't stop there, though. We must now align the corresponding Ohio Administrative Code, known as the real estate rules, to the statute changes. That process has begun in earnest and is expected to be complete during the first quarter of 2012. Finally, when rules are revised and adopted, regulations and rules will be reviewed by Division staff and our exam provider, PSI, to identify updates to Ohio's licensing examination question banks. This step will include communicating with all pre-licensing education providers to ensure the updated laws are taught.

We will work diligently to bring more of what you are asking for to locations throughout the state and incorporate the recommendations from this CE offering. To all of you who attended the September classes, thank you for your time, attention and feedback. To those who weren't in attendance, we hope to see you next time around!

Wishing you a safe and prosperous 2012!

Editor's Note:

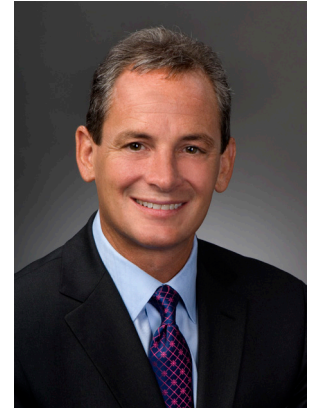
In addition to understanding the information provided within this newsletter, licensees that are member Realtors® should always be familiar with and follow MLS and association rules.

Comments from Commerce Director David Goodman:

Dear Friend to Commerce,

The American dream: in addition to owning a piece of this great country, the purchase of a home is the single biggest purchase/investment most Ohioans will ever make.

Like many of you, every time I open a newspaper, 'click on' a story online or watch the evening news, I am hoping for good news about your business. One article says, "U.S. Home Prices Fell 2.8% Over Last Year in October" another reads "Home Sales climb in November". The real estate picture is ever-changing, up and down. While recovery is slow, we are in recovery.



David Goodman

The jobs picture is improving. The Ohio unemployment rate hit 8.1% in December matching the lowest rate since December 2008. Governor Kasich and the jobs development team have added or saved 82,785 jobs so far this year. That's more than \$4,773,269,878 in payroll – money that will be spent around the state – some of it on home purchases. Getting people back to work and getting companies growing is good for the real estate industry. The financial institutions are telling us they are anxious to lend, to qualified businesses and individuals. They have the capital to invest.

These economic indicators are positive signs for the future. We want to make it as easy as possible for you to meet regulatory guidelines and build your business as the state grows stronger.

The common sense adjustments to the licensing rules were a first step. Anne and the division staff did a great job turning the information into a continuing education course we made available around the state. We were happy to ease your burden by offering it free of charge. You were generous with your feedback as well as giving us great ideas for making it better for you in the future.

It's no wonder the real estate industry is on my mind. There's a lot to think about. But if there is anything I can do to help you succeed in your business, please don't hesitate to call: 614-644-7047

Dave

Division News and Reminders

Law Changes to Help Your Business

Chapter 4735 of the Ohio Revised Code (O.R.C.) sets regulations under which real estate professionals are licensed. September 29, 2011, changes to that chapter will make it easier for your business without compromising safety for all Ohioans, in line with Lt. Governor Mary Taylor's Common Sense Initiative. Click on any code citation to link to the statute.

- **Advisory Letters and Citations:**, the Superintendent may now issue an advisory letter to a licensee for minor infractions that require corrective action; not disciplinary action. Additionally, the Superintendent may now issue a citation when a broker fails to return a salesperson's license to the Division, a broker fails to notify the Superintendent of a change in business location, or a licensee fails to notify the Superintendent of a change of personal address. O.R.C. 4735.05
- **Assignment of a Commission:** A salesperson may not give or sell interest in a commission to an unlicensed person or entity like a pay advance lender. A broker is prohibited from paying an unlicensed individual or entity to which the interest was assigned. And the unlicensed person or entity cannot sue the broker for nonpayment. O.R.C. 4735.21
- **Confidential Disclosure:** Licensees may now disclose sales information requested by an appraiser for the purposes of performing an appraisal without violating the confidentiality requirements. O.R.C. 4735.74
- **Criminal Conviction:** You're still required to notify the Superintendent of a criminal conviction. You must notify in writing if you lose another license from the Departments of Commerce, Insurance or Agriculture, and if you are under order by any government agency related to real estate or financial matters. O.R.C. 4735.13
- **Dual Agency:** Also in an effort to eliminate a licensee's potential liability, a licensee cannot act as dual agent when he or she is personally handling the sale or purchase of his or her own property. O.R.C. 4735.71(C)
- **Disciplinary Sanctions:** Misrepresentation by anyone hurts the entire profession. Disciplinary Actions are clarified here: O.R.C.4735.18
- **Imputed Knowledge:** It used to be, one agent's knowledge of defect of the property would be attributed to all of the licensees within a brokerage. Now, to be liable for non-disclosure, the agent has to have actual knowledge of the problem. O.R.C. 4735.68

All licensed real estate brokers are required to maintain a place of business (not a P.O. Box). The change of address form should be submitted within 30 days and can be found at:

http://www.com.ohio.gov/real/docs/real_ChangeofBusinessAddress.pdf

Never hesitate to contact the Division at 614-466-4100, we're happy to answer your questions.

Understanding Ohio Revised Code 4735

4735.18: Disbursement of Earnest Money

As previously mentioned, changes in R.C. Chapter 4735 became effective on September 29, 2011. One of the changes includes R.C. 4735.18(A)(37), which makes it a violation of license law if you fail to comply with R.C. 4735.24. A violation of license law means that your license would be subject to disciplinary action by the Ohio Real Estate Commission. The Commission may impose the following sanctions upon licensees for violating license law: public reprimands, civil penalties, additional education, suspension of the license, and revocation.

R.C. 4735.24 specifically addresses the disbursement of earnest money connected to a real estate purchase agreement that is deposited into a special or trust account. This section of the law became effective on April 7, 2009. A summary of R.C. 4735.24 is provided below:

1. The broker shall maintain the earnest money under the terms of the purchase agreement until:
 - a. the transaction closes;
 - b. the parties provide signed, written instructions specifying how to disburse the earnest money;
 - c. a final court order specifies to whom the earnest money is to be awarded; or
 - d. the earnest money becomes unclaimed funds.

2. A purchase agreement may contain a provision that provides if there is a dispute regarding the disbursement of the earnest money the broker will maintain the money for two years from the date the earnest money was deposited into the special or trust account. This purchase contract provision is an optional clause. After that two years, the money is to be returned to the purchaser unless the broker receives:

- a. written instructions signed by both parties; or
- b. a written notice that a court action has been filed.

3. If the parties dispute the disbursement of the earnest money and the purchase agreement contains the optional clause mentioned in number 2 above, then the broker must maintain the money for two years from the date the earnest money was deposited into the special or trust account. After two years, the broker shall return the money to the purchaser unless the broker receives:

- a. written instructions signed by both parties; or
- b. a written notice that a court action has been filed.

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

Remember, the new law does not mean that all earnest money has to be deposited into the trust account. How and where the earnest money is to be deposited is a negotiable term of the contract. If the parties prefer that the earnest money be held by a third party, that may be negotiated as a term of the purchase contract.

Also, check to make sure that all the purchase contracts being used have language compliant with R.C. 4735.24. If a salesperson notices the purchase contracts they are using does not have this language, they should contact their broker for advice.

4735.022: Out-of-State Commercial Licensees

Does your company ever work with out-of-state commercial brokers or salespersons on transactions concerning commercial properties located in Ohio? If so, this article explains how you can stay in compliance with Ohio license law. R.C. 4735.022 permits an out-of-state commercial broker or salesperson to affiliate with an Ohio real estate broker if certain requirements are met.

R.C. 4735.022(A) states that in order to perform any act that requires an Ohio real estate license, an out-of-state commercial broker must do all of the following:

1. Work in cooperation with an Ohio real estate broker who holds a valid, active Ohio real estate license;

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Understanding Ohio Revised Code 4735 continued ...

2. Enter into a written agreement with the Ohio broker. This agreement must include the terms of cooperation and compensation and a statement that the out-of-state commercial broker and its agents will agree to adhere to the laws of Ohio;
3. Furnish the Ohio broker with a copy of the out-of-state commercial broker's current certificate of good standing from any jurisdiction(s) where the out-of-state commercial broker maintains an active real estate license;
4. File an irrevocable written consent with the Ohio broker that legal actions arising out of the conduct of the out-of-state commercial broker or its agents may be commenced against the out-of-state commercial broker in the court of proper jurisdiction of any county in Ohio where the cause of action arises or where the plaintiff resides. A form can be found on the Division's website.
5. Include the name of the Ohio broker on all advertising in accordance with R.C. 4735.16;
6. Deposit all escrow funds, security deposits, and other money received by either the out-of-state commercial broker or the Ohio broker in the trust or special accounts maintained by the Ohio broker;
7. File all documentation required by this section and all records and documents related to the transaction(s) with the Ohio broker.

Furthermore, the Ohio broker is required to retain the documentation that is provided by the out-of-state commercial broker and the records and documents related to a transaction for three years after the date the documentation is provided, or the date the transaction occurred, as appropriate.

R.C. 4735.022(B) states that, in order to perform any act that requires an Ohio real estate license, an out-of-state commercial salesperson must do all of the following:

1. Be licensed with and work under the direct supervision of an out-of-state commercial broker;
2. The out-of-state commercial broker must meet all of the requirements set forth in R.C. 4735.022 (the seven listed above);
3. Provide the Ohio broker with a copy of the out-of-state commercial salesperson's current certificate of good standing from the jurisdiction(s) where the out-of-state commercial salesperson maintains an active real estate license in connection with the out-of-state commercial broker;
4. Collect money, including commissions, deposits, payments, rentals, or otherwise, only in the name of and with the consent of the out-of-state commercial broker.

Finally, if any out-of-state entity or person is licensed in a jurisdiction where there is no distinction between a real estate broker license and a real estate salesperson license, that entity or person must meet all of the requirements for an out-of-state commercial broker before engaging in any activity that requires a real estate broker license in Ohio. [R.C. 4735.022(A)]

Any out-of-state commercial broker or salesperson who fails to comply with all of the above requirements will be engaging in unlicensed activity, which is a violation of R.C. 4735.02. Under R.C. 4735.052, the Ohio Real Estate Commission is authorized to impose a penalty of up to \$1,000 per day, per violation of unlicensed activity. Additionally, any Ohio broker who participates in a transaction with an out-of-state commercial broker or salesperson who does not comply with all of the requirements of R.C. 4735.022 will be authorizing or permitting unlicensed activity to occur in violation of R.C. 4735.18(A)(34). Under R.C. 4735.052, the Ohio Real Estate Commission is authorized to impose any of the following sanctions against an Ohio licensed broker or salesperson for a violation of R.C. 4735.18: revocation of a license, suspension of a license, imposition a fine of up to \$2,500 per violation, a public reprimand, and/or order the completion of additional education.

As an Ohio real estate licensee, it is essential that you be knowledgeable of your duties and responsibilities as a licensee. If you are approached by an out-of-state commercial broker or salesperson, be sure to follow the requirements of R.C. 4735.022.

Please contact the Division's enforcement section at 614-466-4100 should you have any questions in regards to compliance with ORC 4735.

Frequently Asked Questions of the Customer Service Section

The Division's customer service team answers roughly 900 phone inquiries per week. Some of the most frequent questions the customer service staff receives include:

Q1: I am trying to renew online but don't know my username and password. What are they?

A1: The Division sends licensees a renewal notice roughly 60 days prior to their expiration date. Their username and password are included within that notice. If you misplaced your notice, click either the "Forgot Password" or "Forgot Username" buttons on the eLicense Center login page. If you are still unable to access the information using those tools, please contact the Division at 614-466-4100. A customer service representative will provide you with your username and ask you to select a new password.

Q2: I sent my renewal paperwork to the Division on "X" date. Has my status been updated yet?

A2: It takes the Division roughly three business days to process paperwork once it is received. Licensees may use the Division's Online License Information Lookup tool to see if their license status has been updated. The information found within the License Information Lookup is pulled directly from the Division's licensing database, so it will be updated at the same time as our internal database, providing our licensee's with real-time updates.

Q3: I recently moved. How do I notify the Division of my new home address?

A3: It is very important for you to notify our office immediately of a change of home address. Per ORC 4735.14(D), failure to do so does not negate licensees' renewal requirements. Your change of address notice must be in writing and can be submitted to the Division via the Change Application or by sending the notice via email to webreal@com.state.oh.us.

Q4: I looked up my license online and saw that the continuing education courses I completed are listed. Do I still need to send my certificates to the Division?

A4: Yes, currently you must send physical copies of your continuing education certificates with your renewal application, continuing education compliance form, and renewal fee on or before your expiration date in order to meet all of your renewal requirements. The list of courses you see when using the Division's License Information Lookup tool is simply a roster that we received from your continuing education provider. The physical certificates verify that you attended at least 90% of the course as required.

HELPFUL TIP!

When contacting the Division, please be sure to have your file number (license number) and pen and paper ready. This will help make your phone experience more efficient and helpful.

New and Revised Division Real Estate Forms

The Division recently created a new form and edited existing forms as a result of the re-write of Ohio Revised Code Chapter 4735. It also provided an opportunity to make business more efficient for our licensees. Below is a list of the forms that were created or altered:

New Forms

- Change of Business Address Form. ORC 4735.13(D) now requires brokers to give notice to the Division, on a form prescribed by the Superintendent, within 30 days after the change in a business address. As a result of this revision, the Division had to create an individual form for brokers to use when they needed to inform the Division of a change in their business address. Prior to the 4735 re-write, brokers used the Change Application – Business form to submit their change of business address requests to the Division; they must now use the Change of Business Address form.

Revised Forms

- Change Application - Business. As mentioned above, the Division created a new form specific for brokers to use when notifying our office of a change in business address. We, therefore, removed that option from the Change Application – Business form.

- Transfer/Reactivation Form for Salespeople. A salesperson whose license was suspended as the result of his or her broker being suspended is now able to reactivate his or her license without being assessed a fee, per ORC 4735.07(G) (2). The Division edited this fee change in the Transfer/Reactivation Form for Salespeople. Prior to the re-write, salespeople in that instance were assessed a \$25.00 reactivation fee.

- Fair Housing Statement. The re-write included a slight change to the mandatory fair housing statement. In sentence one, the words “as amended” were added to the statement as a result of changes made in the Federal Fair Housing Law that is cited within the fair housing statement. Other than those two words, the statement stayed the same. Licensees may continue to use any documents they already have printed with the previous statement but should use the new language when ordering new documents that include the fair housing language.

- Broker Examination Application. In the summer of 2011, the Division revised this form to make the processing of it more efficient for the applicant, the applicant’s sponsoring broker(s), and the Division. Previously, the applicant would submit the broker examination application to the Division, and, upon receiving it, the Division would then send an affidavit to the applicant’s broker(s) so that the broker(s) could verify that the applicant met the experience requirements (20 real estate transactions). That process often proved time consuming and confusing; at times, it could take weeks to receive affidavits from the broker(s). The revised application includes a section for the sponsoring broker(s) to verify the applicant’s transaction history prior to submitting the application to the Division for review. Please note that the new application also requires applicants to include specific information about their transactions, including addresses. Now the Division can complete the review process in days as opposed to weeks!

Please contact our office at 614-466-4100 if you should have any questions or concerns about any of the Division’s forms.

REMINDER: Examination Applications

A Reminder for Applicants: Applications to sit for the real estate salesperson and broker exams expire 12 months after they are approved by the Division. If an applicant does not pass the exam within the initial 12 months, the applicant would need to reapply and receive a brand new candidate identification number.

A Reminder for Sponsoring Brokers: If at any time during the application process a sponsoring broker wishes to withdraw their sponsorship of an applicant, the broker may do so by notifying the Division’s Licensing Section and the applicant in writing of that decision. (The applicant would then need to find a new sponsoring broker and notify the Division of the update).

Ohio Investigators Association Names Division Employee “Investigator of the Year”

The Ohio Investigators Association (OIA) recently named Division investigator, Nick Chucales, the 2011 Investigator of the Year. He was honored for his outstanding investigative work on the growing “property flopping” trend that has been wreaking havoc in the real estate industry.

Chucales has rapidly become an expert in this area and assisted various local and federal law enforcement agencies that are working in conjunction with the Division to crack down on this unethical and costly activity. In addition, he has participated in several outreach events to educate real estate professionals about property flopping and how they can avoid becoming involved.

Chucales devoted the majority of his career as a police officer with the Columbus Police Department from which he retired in 2004. Since then, he has engaged in several private business endeavors, including as a real estate licensee. Chucales joined the Division as an investigator in the appraiser enforcement section in July, 2010.

[Click here](#) to learn more about the OIA. An article from the Division’s 2010 spring newsletter describes property flopping in more detail.

Ensuring Compliance with Real Estate License Law: The Division is Here to Help

Do I Need a Branch Office License?

A branch office is defined as a location other than a real estate company’s main address where real estate agents conduct business. The Division is often asked to assist in determining whether a brokerage needs a branch office license. Our determination is very fact dependent, but the answer is ultimately determined by how the location is being used.

The Division considers the following factors when determining whether a brokerage needs a branch office license:

- Is the location the principal place of business of one or more licensees? If a majority of a licensee’s business is conducted out of the non-licensed location (through the use of telephones, computers, mailings, meeting clients or prospective clients, executing original documents, adding to their client base, and listing the location’s phone number on advertisements), then that location would require a branch office. A broker or salesperson who merely uses the main office or branch office as a mail drop would probably need to obtain a branch office license for his/her principal place of business.

- Where are the original documents stored? The Division would also look at where the original records of all transactions are being worked on and being maintained. All original records should be kept at a licensed main or branch office. If the Division conducts an audit and original documents are at the off-site location, then that location would probably need to be licensed as a branch office.

If the business being conducted falls under the factors listed above, the Division recommends that a branch office license be obtained for that location. A branch office license can be obtained by submitting the Branch Office application and a \$15.00 fee for each branch location. You may also contact the Division at 614-466-4100 with any questions.

Once the Division approves the application, the branch office must comply with specific advertising requirements, including the branch office license and posting a sign.

For Your Information

Mineral Rights and Ohio Real Estate License Law

The Division has started receiving questions from real estate licensees about oil, gas, and mineral rights, including this one that we recently received:

“Our agent has been involved in a recent sale of land contingent upon the mineral rights belonging to the seller. I don’t see an issue with that sale; however, now we have been approached by an investment company representing a group of out-of-state speculators. The company wants to use my agent as a buyer broker on mineral rights only for other properties. There is quite a bit of a frenzy in our area, and my concern is whether we should be proceeding with laying our license on the line for such an uncharted territory.”

ORC Section 4735.01(B) defines “real estate” as “leaseholds as well as *any and every interest or estate in land* situated in this state, whether corporeal or incorporeal, whether freehold or non-freehold, and the improvements on the land, but does not include cemetery interment rights” (emphasis added).

Additionally, Ohio real estate license law provides that any person who undertakes certain activities for another for any type of compensation, or the expectation of compensation, must have an active real estate license. The laundry list of activities includes negotiating the sale, exchange, purchase, rental, or leasing of any real estate.



Because there is no specific exemption or exception in Ohio law, an Ohio real estate license is required to engage in activities as a buyer’s agent when facilitating the negotiations of the purchase or lease of any aspect of the real property on which exploration, drilling or any component of fracking will take place. ORC 4735.01(I) does specifically exempt a “regular employee” of an entity from licensure when that employee is performing any of the acts or transactions in ORC 4735.01(A) when that employee is attempting to acquire real estate situated in Ohio for the entity’s own account. The term “regular employee” typically means a W-2 employee.

Based on the statutes outlined above, the Division holds that Ohio real estate license law does apply in these transactions. As an Ohio real estate professional, it is essential that you be knowledgeable of your duties and responsibilities as a licensee. All required disclosures and agency agreements need to be completed and signed by the appropriate parties to the transaction. Whether you are representing a homeowner or purchaser, as a real estate licensee, you owe your client all the fiduciary duties set forth in license law. Remember throughout the transaction who your client is and how your actions impact your client’s best interest. All parties are to be treated honestly, but your client’s interest is primary – even before your own.

If you and/or your brokerage are considering representing clients in transactions dealing with mineral rights, the Division strongly recommends that you speak with an attorney who specializes in mineral rights. The Ohio State Bar Association website has an attorney finder that may be helpful: <http://www.ohioabar.org/Pages/PublicSite.aspx>.

NOTE: If you maintain Errors & Omissions (E&O) insurance, please contact your provider to find out if your plan includes coverage for mineral rights transactions.

Meet the Real Estate Enforcement Team

The Division's Enforcement Section consists of seven investigators, one enforcement assistant, and an enforcement supervisor. This section investigates complaints against licensees as well as unlicensed real estate activity and conducts audits of real estate brokerages and continuing education courses. Investigators also act as mediators for cases where both parties request mediation.

Investigator Rae Ann Anderson has been with the Division since October 2007. Before joining the Division, Rae Ann worked as a probation officer for the Franklin County Juvenile Court. She is a graduate of The Ohio State University and also has a master's degree from Boston University in criminal justice.

Investigator Michael Banister joined the Division in 2005 and became an investigator in October 2007. Michael worked in private industry for several years joining the Division. He holds an Associate's degree from Columbus State Community College and is currently pursuing a Bachelor's degree in communications from Ohio University.

Investigator Josie Davis-Dotstry has been with the Division since October 2007. She is a graduate of Franklin University with over 28 years of state service, including positions at the Ohio Department of Development and the Department of Administrative Services.

Investigator Sandy Gagle has been with the Department of Commerce for five years. She recently joined the Division in December 2011. She comes to us from the Division of Industrial Compliance where for the last three years she was an Industry Safety Inspector. She has an associate's degree from the University of Toledo Community and Technical College.

Investigator Rod Hutton joined the Division in October 1990. Rod worked in the banking industry as a credit card fraud investigator prior to working for the Division. Rod earned a bachelor's degree in sociology at Capital University.

Investigator Larry Rector has worked in the Division since November 2008. Larry has 24 years of public service which includes several years in law enforcement as well as service at the Department of Mental Health. He is a U.S. Navy veteran and holds an associate degree in police science from Columbus State Community College.

Investigator Ed Schirtzinger became a member of the Division in May 2006. He previously worked for the Ohio Senate where he started as a page in 1976 and eventually became the Sergeant of Arms. Ed has been a licensed real estate salesperson since 1979 and is certified by the Graduate Realtor® Institute. He also attended The Ohio State University where he studied political science and pursued his real estate education at Capital University and Columbus State Community College.

Tonya Gordon is the enforcement assistant. Tonya started with the Division in November 2007 and also has held other positions within the Department of Commerce. Prior to her state service, she worked in the banking industry and for other public agencies.

Enforcement Supervisor Rick Miller began his career with the Division in January 2006. Rick has 25-plus years with the state of Ohio which also includes service with the Ohio State Highway Patrol, Department of Youth Services, and the Ohio Air National Guard. He earned a bachelor's degree in criminal justice from The Ohio State University.

And Now...A Word from Our Guest Columnist....

So What Is A Home Equity Conversion Mortgage (HECM)?

The Home Equity Conversion Mortgage (HECM) program, available since January 2009 through the FHA, is still in its infancy and most people are simply not aware that it exists. In fact, although you are a real estate professional you may not even have heard the term yet. According to a recent survey, 49% of eligible seniors said they prefer the HECM for Purchase program to conventional financing when securing their retirement dream home.

The HECM for Purchase program came about because a lot of people were buying their retirement dream home with cash and then turning around and securing a reverse mortgage to have access to that asset without a payment. That resulted in two transactions. The new process is streamlined down to just one transaction – it works like a reverse mortgage on the back end but is exactly the opposite on the front end.

The program offers a creative way to secure more senior clients aged 62 years or older and although it, at first, sounds like a program that falls under the “too good to be true” category, it may be THE answer to some senior borrowers’ needs.

How Does the HECM For Purchase Program Work?

First and foremost, the program is insured by the federal government and the rules allow seniors to buy their retirement dream home for as little as 30% down, NEVER making a single payment. In order to qualify the borrower(s) must be at least 62 years of age and the property must be maintained as the borrower’s primary residence. The maximum purchase price with this program is \$625,500 and there is no minimum.

The amount required to bring to closing is based on the youngest borrower’s age and the purchase price of the property. For example, a 70-year-old purchasing a \$200,000 property would bring \$74,000 to closing. If the youngest person was 62 and purchasing a \$200,000 property, they would bring \$86,000 to closing. This amount is determined on a sliding scale – the older the borrower, the less required for down payment.

Who Owns the House, the Borrower or the Bank?

In a HECM mortgage, title to the property remains in the homeowner’s name, just like with a conventional mortgage. In addition, the homeowner is responsible for property taxes, homeowner’s insurance/condo dues and general upkeep/maintenance of the home.

With a traditional mortgage, the homeowner secures a mortgage and makes payments to the lender each month based on an amortization schedule. As you know, the traditional mortgage, paid under the original terms of the loan, costs the borrower about 2 ½ - 3 times the amount of the original mortgage balance or \$250,000-\$300,000 on a \$100,000 mortgage.

The Two Big Problems Seniors Face

The HECM program is designed to address two major issues seniors face in retirement: monthly cash flow and liquidity/preservation of assets.

In a HECM loan, the borrower only brings 30% - 50% down to the closing; the remaining balance is in a mortgage that NEVER requires a payment. The interest not paid monthly is simply added to the loan balance and the loan balance grows over time. The loan balance doesn’t become due and payable until the house is sold (or when the last borrower vacates the home).



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So What is a HECM continued...

In at typical market, at approximately 15 years, the mortgage balance WILL grow beyond the value of the property. The beauty of the program is that the homeowner, nor their heirs, will EVER be responsible for any deficit. This is a mortgage for which the borrower is not personally liable.

What Happens to the House When It's Sold?

If the house is sold for MORE than what is owed, the homeowner keeps the profit. If the house sells for LESS than the mortgage balance, the homeowner does not have to come up with the deficit. FHA pays the lender the difference. The homeowner participates in the upside but not the downside.

Seniors with HECM loans don't have their monthly cash flow tied up in a mortgage payment and they don't have all their cash tied up in "bricks and mortar." Conversely, conventional loans require cash which ties up a chunk of your liquid assets, doesn't grow and isn't accessible.

Stay Informed

PREPAYMENT PENALTY ADJUSTMENT
BASED ON THE ANNUAL PERCENTAGE CHANGE IN THE CONSUMER
PRICE INDEX (CPI)
Revised Code 1343.011(C) (2) (b)
Effective January 1, 2012

Revised Code 1343.011(C) (2) (a) provides that no penalty may be charged for the prepayment or refinancing of a residential mortgage obligation of less than \$75,000 that is made or arranged by a mortgage broker, loan officer, or non-bank mortgage lender, as those terms are defined in section 1345.01 of the Revised Code, and that is secured by a mortgage on a borrower's real estate that is a first lien on the real estate.

Revised Code 1343.011(C) (2) (b) states that the loan amount limit is to be adjusted annually on January 1st by the annual percentage change in the Consumer Price Index for all urban consumers, Midwest Region, all items, (CPI) as reported on June 1st of the year preceding the adjustment.

During the period of June 1, 2010 to June 1, 2011 the CPI increased by 3.9%. As a result, effective January 1, 2012, no penalties may be imposed on prepayment or refinancing of a residential mortgage loan of less than \$83,894.

Answers to Questions Received from the Division's Core Law Course

Q1: May client/transaction files be maintained by the broker and salesperson electronically?

A1: Yes, you can maintain records in an electronic format so long as the electronic copies are true copies of all the original documents.

Q2: During a merger of two real estate brokerages, what should the buying/acquiring broker/company do if a salesperson from a company being purchased is not available to sign the transfer form?

A2: On the multiple transfer/reactivation form the Division will accept a scanned or faxed copy of the form with the

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Answers to the Questions the Division Received During the Core Law Course continued...

salesperson's signature. If the salesperson is unable to sign the form then that salesperson's license will need to be placed into an inactive status.

Q3: Can I advertise HUD properties on Craigslist or other sites?

A3: Please remember that when advertising properties on any websites, you need to meet all real estate license law advertising requirements. The Division recommends that you contact your local HUD office with any HUD-specific questions.

Q4: Do I have to get permission from the listing brokerage before conducting a repeat showing on a vacant property?

A4: Yes, you should always obtain permission from the listing brokerage to conduct a showing.

Q5: I own the property and am handling the sale through my brokerage. If I can't act as the dual agent, can the buyer be unrepresented?

A5: It is a buyer's decision whether or not they want to be represented by a real estate licensee during a transaction. The buyer may find another real estate agent to represent their interest or the buyer may choose to not have a real estate licensee represent them.

Q6: May agents buy leads from out-of-state, unlicensed companies?

A6: An Ohio real estate licensee may not pay unlicensed companies or individuals for leads that may result in the sale or leasing of property.

Q7: In regards to property management, do you need to be licensed if you are managing property for a relative?

A7: A person that owns a property may manage his or her property without having a real estate license; however, there is not a similar exception for managing a relative's property. Therefore, an individual must be licensed, if there is a fee, commission, or any other valuable consideration given in exchange for the property management of a relative's property.

Q8: Do licensed real estate professionals have to keep records for transactions that didn't close?

A8: Yes, Ohio Revised Code Section 4735.18(A)(24) requires all real estate salespeople and brokers to maintain complete and accurate records of their transactions for three years from the date of the transaction. Failure to comply is a violation of Ohio real estate license law and may result in sanctions against your license.

Licensees often ask the Division if they can keep electronic files of their records as opposed to hard copies. Electronic record keeping is permissible so long as the records are true copies of the original documents and can be produced when requested. The Division encourages licensees to also maintain hard copies of original primary documents at the broker's main office location for added security and to ensure absolute compliance with Ohio license law. Examples of primary documents include listing agreements, purchase contracts and earnest money receipts. Please remember that if you send your documents to a third party for any reason, you must keep a copy of those records for your files.

Q9: When may a licensee list a foreclosed property without violating the advertising statute?

A9: A licensee should not enter into a listing agreement with the purchaser of property from a sheriff sale prior to the confirmation of the sale. However, a listing agreement could be signed after the confirmation of the sale, but prior to the issuance of the deed.

Q10: I want to open a holding company. No licensees affiliated with my company will be actively listing houses for sale. Do I need to have a trust account?

A10: Ohio license law does not legally define "holding" companies. All licensed real estate companies must meet licensing requirements including having an active broker and having a trust or special account as required by law. Although the intent of a licensee placing their license with this type of company is to merely accept referral fees, the company holds an active license which would permit that licensee to engage in all activities that require a real estate license. In addition, all licensees affiliated with that company are required to comply with license law.

To see all the questions and answers received during the Core Law classes, please click [here](#).

Appraiser Alley

New Appraiser Rules Allow Applicants More Education Options

The Ohio Real Estate Appraiser Board has recently modified some of its rules affecting real estate appraisers. These rules went into effect on January 1, 2012. Some of the significant changes pertain to appraiser education. Previously, qualifying education required to become a registered, licensed, or certified appraiser could only be completed in a classroom setting. However, the new rules allow applicants the option to satisfy their qualifying education requirements via distance education course (online) or in person.

The distance education offering must be one of the required classes which have been approved by the International Distance Education Certification Center (IDECC) and the course approval program (CAP) through the Appraisal Qualifications Board of the Appraisal Foundation. Likewise, the seven-hour continuing education class in Uniform Standards of Professional Appraisal Practice (USPAP) may also be completed through distance education provided the offering has been IDECC and CAP approved. The Division will accept distance education completed after January 1, 2012, for qualifying education and the seven-hour USPAP update class.

To see all of the appraiser rules, please see <http://codes.ohio.gov/oac/1301:11>.

National Registry Fee Increase Coming Soon

As reported in a prior Division newsletter, the Appraisal Subcommittee (ASC) voted unanimously on October 13, 2010, to increase the National Registry Fee of certified or licensed appraisers from \$25 to \$40. The increase will become effective on January 1, 2012.

This marks the first increase in the National Registry Fee since the ASC's inception. The Dodd-Frank Act gave the ASC explicit authority to increase the fee to "no more than" \$40 immediately. Additionally, the Dodd-Frank Act requires the ASC to reconsider the fee every five years and permits increases to a maximum of \$80 per credential with the approval of the Federal Financial Institutions Examination Council.

Under federal law, Ohio and other state appraiser regulatory agencies are required to collect the National Registry fees and pass the payments along to the ASC. Licensed and certified appraisers in Ohio pay this fee when first credentialed and with each annual renewal.

APPRAISER ENFORCEMENT SECTION FURTHER DEVELOPS THEIR SKILLS

The Division's Appraiser Enforcement Section staff received extensive training to further develop their skills in performing appraiser investigations.

The Appraisal Foundation and the Association of Appraiser Regulatory Officials recently trained all Section staff members at no cost. The Division's staff completed level one training which offered general Uniform Standards of Professional Appraiser Practice (USPAP) instruction and suggested investigative techniques and methods. After level one training, the staff successfully completed the 15-hour National USPAP course. The level two course provided a more in-depth examination of USPAP and focused on report writing using case studies.

"This training further enhances the strong skills of our Appraiser Enforcement staff," Superintendent Anne Petit said. "We are always looking for new opportunities to improve our staff's skills so they can perform their jobs even better."

For new appraiser applicants, the fee increase is required for all new credentials with an effective date of January 1, 2012, or after. For appraisers who are renewing their credential, the fee increase is required for all appraisers having a credential expiration date on or after January 1, 2012.

Real Estate Disciplinary Actions

Listed below are the Real Estate Disciplinary Actions for September 2011 to November 2011. Details of each action can be found on the website at: <http://www.com.ohio.gov/real/docs/Fall11REdiscipline.pdf>

REVOCATIONS/PERMANENT SURRENDER/RESIGNATIONS

Bradley Bartlett	Broker	Saint Marys
Kevin Beaver	Salesperson	Lakewood
Randy L. Young	Salesperson	New Carlisle

SUSPENSIONS, FINES, EDUCATION and REPRIMANDS

William E. Baker	Salesperson	Clyde
Ike Childress	Broker	Bedford Heights
Craig Cohen	Broker	Beachwood
Dave Culberston	Broker	Mount Vernon
Kim Cunningham	Salesperson	Salesville
Robert Deis	Broker	Cincinnati
Candice Eberhardt	Salesperson	Akron
Herbert Erwin	Broker	West Union
Monica Fry	Broker	Cambridge
Parul Jain	Salesperson	Pepper Pike
Christopher Lotte	Salesperson	Pickerington
Shawn Marlatt	Salesperson	Byesville
Pierce Newland	Salesperson	Urbana
Edward Nuby	Salesperson	Dayton
Stanley Stein	Broker	Mason
Gary Stouffer	Broker	Pepper Pike

Appraiser Disciplinary Actions

Listed below are the Appraiser Disciplinary Actions for September 2011 to November 2011. Details of each action can be found on the website at: <http://www.com.ohio.gov/real/docs/Fall11appraiserdiscipline.pdf>

REVOCATIONS/PERMANENT SURRENDERS

Gerald Spuzzillo	Licensed Residential Appraiser	Chesterland
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SUSPENSIONS, FINES, ADDITIONAL EDUCATION AND REPRIMANDS

Paul Cerba	Certified Residential Appraiser	Fairview Park
Gary Dufort	Certified Residential Appraiser	Pickerington
Thomas Knecht	Licensed Residential Appraiser	Lancaster
Joseph Pietro	Certified Residential Appraiser	Macedonia
Kevin Smith	Certified Residential Appraiser	Twinsburg
Stephen Richie	Licensed Residential Appraiser	Dayton
Paul Steffen	Licensed Residential Appraiser	Lebanon

Division Employees Helping Those In Need

The Division employees, along with the Department of Commerce's seven other divisions, continue to support many of the statewide charitable campaigns. The Combined Charitable Campaign (CCC) ran from September 7 – October 21, 2011. Through our employees' generosity, Commerce was able to surpass our goal of \$60,000 by 128%, raising \$87,195. All of the money collected was applied to roughly 2,000 different charities throughout Ohio that support a variety of causes.



Appraiser Enforcement Section staff Nick Chucales, Shannon Drawns, and Quiana Taylor led the Division's efforts.

Commerce also participated in the 2011 Holiday Food Basket program in late November. The Division employees helped raise funds and collected food items to ensure those who were less fortunate would have a nice holiday meal. Commerce as a whole collected \$4,015.05 and 1,259 pounds of food.



Department of Commerce

Division of Real Estate & Professional Licensing

State of Ohio
Department of Commerce
Division of Real Estate and Professional Licensing
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Terry Hankner, Vice President
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Don Leto
Ted McKinnis
Vacant

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