

# 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.