



Ohio Association of REALTORS®

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**Leasing & Property Management – White Paper**  
License Law Provisions and Other Issues Regarding  
Property Management

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## **Introduction**

Whether it's a desire to avoid the volatility of the stock market or to the proliferation of the "get rich quick" in real estate books, more and more people are investing in real estate. Often these investors find out that managing property is not as easy as they thought and are required to bring in professionals to manage and lease their property. The company they hire must have a real estate broker's license as the management of commercial or residential property is an activity that requires a real estate license. In this White Paper, the license law provisions regarding property management will be addressed.

## **License Law Requirements For Property Management**

Ohio Revised Code Section 4735.01(A) provides a list of activities that if performed for another for a fee requires a real estate license. This list includes anyone who "operates, manages, or rents, or offers or attempts to operate, manage, or rent other than as a custodian, caretaker, or janitor, any building or portions of buildings to the public as tenants." Also included on the list of activities that require a license are any attempts to lease property, any acts directed at procuring tenants for a property, the negotiation of leases, or advertising or holding oneself out as in the business of leasing property. Under Ohio law, performing any of these acts without a license constitutes a first degree misdemeanor and subjects the offender to a civil penalty of up to one thousand dollars per violation. Each day a violation occurs or continues is a separate violation.

Because Ohio law requires a real estate license to engage in property management activities, it also requires that the property management services be conducted through the real estate brokerage. A real estate salesperson cannot manage property in his own name or in the name of a separate management company that he has formed. When a salesperson is performing acts that require a license (i.e. property management services), these acts must be performed in the name of the brokerage with whom he is affiliated. A real estate broker may also not manage property in a name other than the name that appears on the brokerage license. Nor can a broker form a separate unlicensed company for management services. Instead, the property management agreement and all property management services must be performed in the name of the real estate brokerage.

As property management is an activity that requires a real estate license all services must be performed in compliance with the requirements of Ohio license law, Chapter 4735 of the Ohio Revised Code. The provisions in Chapter 4735 with regard to property management services are discussed below.

## **Property Management Account(s)**

A property manager generally collects rents, security deposits and possibly advances from the owner to cover the property expenses. Ohio license law includes requirements for the handling of these funds. All brokerages engaging in property management must have a separate property management trust account or an account in the property owner's name on which the brokerage has signatory authority.

[Ohio Administrative Code Section 1301:5-5-11](#) requires that the property management trust account be a separate trust account in the brokerage's name and must be designated as the brokerage "property management trust account." The account must be at an Ohio depository and the name,

account number, and location of the depository must be provided to the Ohio Division of Real Estate and Professional Licensing. Security deposits, rents and money received from the owner or on the owner's behalf for payment of expenses related to the management of the property must be deposited in this account. The brokerage can maintain one property management trust account for all owners they manage for or may have several property management trust accounts (i.e. one for each owner whose property it manages).

A broker may maintain the broker's own funds in the trust account only when they are clearly identified as the broker's funds and only for the following reasons:

1. If the depository in which the account is maintained requires that a minimum balance be maintained in order to keep the account open, the broker may maintain that amount in the account and designate the amount as the broker's funds.
2. If the depository in which the account is maintained requires a service charge be paid for the account, the broker may maintain a reasonable amount to cover the service charge and designate the amount as the broker's funds.

Unlike the trust account a broker must maintain for earnest money deposits, a property management trust account may, but is not required to earn interest. Unless the owner(s) and broker agree otherwise, any interest earned must be payable on a pro rata basis to the owner(s) of the property on whose behalf monies are deposited in the property management trust account. The interest shall be paid or credited on a regular basis but in no event less than quarterly. However, the property owner(s) and broker can agree that the interest due the owner(s) can be paid in a manner other than specified above and to party(ies) other than the property owner(s). Any such agreement must be in writing and signed by the owner(s) and the broker.

In the course of managing property a property manager will usually make expenditures on the owner's behalf. This may include paying maintenance and repair bills, utility bills, mortgage payments and property taxes. If the brokerage property management trust account contains funds for more than one owner, a property manager must make sure that each owner has enough funds in the trust account to cover that owner's expenses. One owner's funds cannot be used to pay another owner's expenses. Therefore, before disbursing any funds to pay an owner's expenses the account balance for that owner must be sufficient to cover the disbursement.

The other option to maintaining an owner's funds in the brokerage property management trust account is to establish a property management account in the owner's name on which the broker has signatory authority. The requirements for this account are provided in [Ohio Administrative Code Section 1301:5-5-23](#). The broker is required to have a written agreement with the owner giving the broker signatory authority to make withdrawals from the owner's property management account. This can be provided in the brokerage's property management agreement with that owner. The agreement must specify the purposes for which the brokerage may make withdrawals from the owner's account and any dollar limits that exist on the amounts the brokerage may withdraw. Any modifications to these terms must be agreed to in writing.

Ohio license law has very specific record keeping requirements for a brokerage regarding deposits and disbursements from a property management account. License law requires a separate ledger for each owner of property managed by the brokerage. Each ledger sheet must identify the following information in columnar form:

- Name and/or address of the property
- Parties to the transaction
- Amount, date, and purpose of deposit(s)
- Party from whom deposits are received
- Amount, date, check number, and purpose of disbursements
- Party to whom disbursements are made
- Running balance of funds on deposit for the particular owner of property
- Amount of interest earned on behalf of the owner(s) of the property(ies) if any

The Ohio Division of Real Estate has developed a sample property management trust account ledger form which is attached hereto as [Exhibit A](#).

Ohio license law requires all brokerages that engage in property management activities to provide an accounting to each owner of managed property on at least a quarterly basis. The purpose of this requirement is to assure that owners are regularly updated on the funds the brokerage receives and disburses on their behalf.

Brokers who engage in property management activities should make certain they understand the property management account requirements and that they fully comply with these regulations. Property management account violations are one of the most common license law violations by property managers.

## **Security Deposits**

Security deposits are routinely collected when leasing property to secure performance by the tenant of his obligation under the lease. [Ohio Administrative Code Section 1301:5-5-11\(D\)](#) provides that security deposits received by the brokerage must be deposited and maintained in the property management trust account unless the lease and property management agreement provide otherwise. A brokerage may have a separate property trust account just for tenant security deposits. Security deposits which are maintained in the property management trust account must be clearly identified and credited to the tenant.

If the owner does not want tenant security deposits to be deposited and/or maintained in the property management trust account, the property management agreement and lease must provide how security deposits will be handled. For example, the lease and property management agreement could provide that tenant security deposits will be paid directly to the owner. If the owner would like the security deposits to be deposited in the brokerage property management trust account but not maintained there (i.e. used to pay expenses of the property) the property management agreement and lease must provide for this.

## Requirements of a Property Management Agreement

Ohio Revised Code Section 4735.55 provides that all written agency agreements contain certain requirements. An agency agreement is defined as "a contract between a licensee and a client in which the client promises to pay the broker a valuable consideration, or agrees that the licensee may receive a valuable consideration from another, for performing an act that requires a real estate license under this chapter." A property management agreement would fall within the definition of an agency agreement and therefore must contain the following requirements:

1. A definite expiration date.
2. If the property management agreement is for managing residential property, the required fair housing language and logo. The required fair housing language and logo are attached hereto as [Exhibit B](#).
3. A place for the licensee and the owner to sign and date the agreement.
4. The licensee must provide a copy of the signed agreement to the owner.

## Consumer Guide to Agency Relationships

Ohio Revised Code Section 4735.56 requires brokerages to develop their own policy on agency. This policy must be titled "Consumer Guide to Agency Relationships."

The Consumer Guide to Agency Relationships is required in the following transactions:

1. The sale or lease of vacant land;
2. The sale of a parcel of real estate containing one to four residential units;
3. A residential lease where the term of the lease is more than 18 months.

A brokerage providing property management services would only be required to use the Consumer Guide if the services he is hired to perform includes the rental of a residential property where the lease could be for a term of more than 18 months. In this case, the Consumer Guide is required to be provided to the owner before the property is shown or marketed. Therefore, at the time the property management agreement is entered into.

The owner must sign acknowledging receipt of the brokerage's Consumer Guide. This acknowledgement can either be on the Consumer Guide itself or on a separate document. However language acknowledging receipt of the Consumer Guide cannot be included in the property management agreement as the receipt language may not be included in any other agreement to which the owner is a party.

The only time the Consumer Guide would be required to be provided to a potential tenant is if the tenant is looking for residential property and the lease could be over 18 months.

If the rental property is residential and the lease could be over 18 months, a licensee is required to provide the potential tenant with the Consumer Guide to Agency Relationships before the earliest of the following events:

- Pre-qualifying the tenant;
- Requesting specific financial information;
- Showing property (other than at an open house);

- Discussing the making of an offer to lease; or
- Preparing an offer to lease

Whichever of the above events occurs first will trigger a licensee's obligation to provide the Consumer Guide to a potential tenant. When a transaction requires use of the brokerage's Consumer Guide with a tenant, the tenant must sign the Consumer Guide or a separate document acknowledging receipt of the brokerage's Consumer Guide. Language acknowledging receipt of the Consumer Guide cannot be included in the lease as the receipt language may not be included in any other agreement to which the tenant is a party.

The Consumer Guide is not required for residential leases 18 months or less or commercial, industrial, or retail leases of any duration.

### **Agency Disclosure Statement**

The Agency Disclosure Statement is a state form which was developed to disclose to buyers, sellers, landlords and tenants who the licensee(s) represent in the real estate transaction. The requirements for use of the Agency Disclosure Statement are provided in Ohio Revised Code Section 4735.58. As with the Consumer Guide to Agency Relationships, a licensee is not required to use the Agency Disclosure Statement for residential leases of 18 months or less. However, the Agency Disclosure Statement is required for commercial, industrial or retail leases of any duration and all residential leases over 18 months. On those leases licensees working directly with a tenant, whether as a tenant's agent or the landlord's agent, must provide the tenant with the Agency Disclosure Statement no later than the time the tenant is ready to make an offer to lease the property. After completing the appropriate sections of the form the licensee is required to ask the tenant to sign the form. Once the form is signed the licensee can begin discussions with the tenant regarding his offer to lease the property. The tenant signed Agency Disclosure Statement must be given to the landlord prior to him being presented with the tenant's offer to lease. The landlord should also be asked to sign the form.

### **Maintaining Property Management Records**

Brokers engaging in property management deal with an array of paperwork. These documents can include the property management agreements with owners, Consumer Guide to Agency Relationships, tenant leases, Agency Disclosure Statements, work orders, security deposit disbursements, invoices for work done on the property and receipts for bills paid, property management trust account records, to name just a few.

Ohio Revised Code Section 4735.18(A)(24) requires brokers to keep complete and accurate records of all transactions for a period of three years. Therefore brokers engaged in property management must keep all documents relative to the management of property for three years.

### **Residential Rental Property – Licensure Exemption**

A common question of brokers engaged in property management is what duties their unlicensed staff can perform. For example: Can an unlicensed employee show an apartment? Can the receptionist collect rent checks or provide information over the phone regarding rental properties? Ohio licensure law contains a rule which answers these questions for residential property management.

[Ohio Administrative Code Section 1301:5-5-07](#) provides a list of activities that an unlicensed person can and cannot perform with regard to residential property management. This rule creates an exemption from the licensure requirement for certain activities performed by people working in residential property management. The licensure exemption does not apply to commercial, industrial or retail property management or in real estate sales of any type. The rule also provides that the exemption only applies to individuals working under the supervision of a broker and whose compensation for service is primarily on a salaried or hourly basis.

The duties an unlicensed employee can perform when working with residential rental property are the following:

- maintenance
- clerical or administrative support
- collect or accept rents and/or security deposits which are made payable to the owner or real estate brokerage
- exhibit or show residential rental units to prospective tenants
- furnish published information regarding the property
- supply applications and leases
- receive applications and leases for submission to the owner or broker for approval

The rule also provides that an unlicensed employee may not perform the following duties:

- negotiate contracts or leases
- deviate from the rental price and/or other terms and conditions previously established by the owner or broker when providing information to prospective tenants
- approve rental applications or leases
- settle or arrange the terms and conditions of a lease on behalf of the owner or broker
- offer inducements to prospective tenants unless they are previously advertised or arranged with the owner or broker
- interpret or provide their opinion concerning the terms or conditions of a lease
- indicate to the public that he is in a position of authority which has the ultimate managerial responsibility of the rental property

This rule clarifies what duties unlicensed employees of the brokerage can perform with regard to residential rental properties. Clearly unlicensed employees can provide information to prospective tenants, show units and supply and accept tenant applications and leases. However, unlicensed employees are not the decision makers. They cannot set the terms of a lease or management agreement or sign a lease or property management agreement on behalf of the brokerage. These are activities that require a license.

Brokers engaged in property management must understand what activities their unlicensed employees can perform. Brokers must be able to provide clear guidance to their employees regarding the duties they are permitted to perform under Ohio law. It is the broker's responsibility to make sure that their employees do not cross over this line and perform activities limited to only licensed agents.



## Advertising Requirements

Ohio license law contains several advertising requirements which apply to brokerages, including those engaged in property management and leasing. Advertising is defined in Ohio Administrative Code Section 1301:5-1-02. Advertising includes any means by which a licensee makes known to the general public properties for sale or lease or any services for which a real estate license is required. The method used to convey the advertising may include newspapers, magazines, radio, television, signs, internet websites, unsolicited mail, voicemail, e-mail, facsimile transmissions, social networking sites, blogs, business cards or a property listing database service. Advertising does not include forms of private communication between a licensee and a client, customer or prospective client provided such communications are initiated at the request of the client, customer or prospective client.

Any promotional materials that go out to the general public regarding the brokerage or a property is considered advertising. The promotion may be distributed by print, radio or display and may include business cards, stationary, yard and office signs, personal brochures, newsletters, calendars and fliers.

All advertising must include the brokerage name and indicate that they are a licensed broker. The brokerage name in the ad must be the same as it appears on the brokerage license unless one of the following exceptions apply:

- If the broker has been granted approval to use a "dba", then that trade name as it appears on the license is the name that must appear in all ads.
- Words or abbreviations included in the licensed name that indicate the legal framework under which the licensee conducts business, such as "Inc." or "Co.", are not required to appear in the ads.
- The words "Realty" or "Real Estate" or the authorized use of a trade name or insignia indicating membership in a real estate organization (i.e. "Realtor" or "R") may be included by broker's even though not part of the broker's licensed name.

Any licensee's name appearing in an advertisement must consist of his name as it appears on his license with the following exceptions:

1. A licensee may use a commonly accepted derivative of their first name;
2. The licensee's first name abbreviated as an initial with the licensee's full middle name as it appears on the license;
3. The licensee's first and middle name as it appears on the license abbreviated as an initial;
4. A nickname in parenthesis or quotation marks with the full licensed name.

Ohio Revised Code Section 4735.16(B)(3) requires that the brokerage name be displayed in equal prominence with the salesperson's name. Therefore, the name of the salesperson cannot be displayed more prominently than the brokerage name. In determining prominence, the type size, color and style will be considered as well as location of the names on the advertising piece.

Ohio Administrated Code Section 1301:5-1-02(I) provides the only exception to the requirement that the brokerage name be displayed in equal prominence with the salesperson's name. The equal prominence requirement does not apply if the advertising, including any website, is not within the ownership or control of the licensee or his brokerage and the terms of use or the format of a website or other advertising medium does not allow the licensee to control the size and prominence of the brokerage and salesperson's names.

Ohio Revised Code Section 4735.18(A)(21) provides that a licensee can be disciplined by the Ohio Real Estate Commission if the licensee publishes advertising which is misleading or inaccurate or in any way misrepresents any properties, terms, policies, or services of the business conducted by the brokerage. To warrant disciplinary action, it is not necessary to find that the inaccurate information was included intentionally or even knowingly. It need only be shown that the advertising was incorrect or misleading. Therefore, all ads should be reviewed for errors or typographical mistakes.

Ohio Administrative Code Section 1301:5-1-02 provides additional requirements specific to internet advertising. With the exceptions noted below, all internet advertising must disclose the brokerage name on every viewable page of the website. A web page is defined as one that may or may not scroll beyond the borders of the screen.

The two exceptions to the requirement that the brokerage name be included on every page is as follows:

1. When advertising in electronic messages of limited characters, a licensee must provide a direct link to a display that includes the brokerage name.
2. When advertising on a website not owned or controlled by the licensee or his brokerage and the website's terms of use limit the licensee's ability to include the brokerage name, the licensee must provide a direct link to a display that includes the brokerage name.

Information on a website maintained by a licensee which becomes outdated or expired, must be updated within fourteen days of the information becoming outdated or expired. Each website maintained by a licensee must disclose the date upon which the information contained on the site was most recently updated. If a licensee's website is maintained on the licensee's behalf by a third party, the licensee must provide to the third party written notice of any updates to outdated or expired information so that the site can be updated in a timely manner. A licensee who provides such timely notice will not be in violation of the license law if the third party fails to make the change as notified.

The license law internet advertising requirements only apply to websites within the licensee's ownership or control. A licensee is not responsible for the accuracy of information taken from his website or advertising and placed on a website or in advertising not within the licensee's ownership or control.

Real estate licensees who own rental properties are often uncertain how to advertise their own property for lease. A licensee advertising to lease real estate that he owns must be identified in such ads by his name and indicate that the property is agent owned. The name of the brokerage with whom the licensee is affiliated would only be required to appear in the ads if the property is listed with the brokerage. Ohio license law does not require licensees to list their property for sale or lease with the brokerage with whom they are licensed. They can sell or lease their own property on their own as any other owner of real estate can do. However, handling a licensee's own property through the brokerage may be a condition of affiliation with that brokerage.

### **Division Compliance Audits**

Brokers engaged in property management are subject to compliance audits by the Division of Real Estate and Professional Licensing as any other licensed brokerage. The purpose of a compliance audit is to provide education and awareness of real estate law and to ensure compliance with all license law requirements. The goal of the Division is to audit each brokerage every three to five years.

The compliance audit entails a thorough review of the brokerage documents. Some of the information investigators review during an audit includes the following:

- Real Estate Licenses: The brokerage license must be prominently displayed in the main office and any affiliated salespersons' licenses must be available for inspection.
- Advertising: Examples of brokerage advertising, which may include office and yard signs, newspaper and magazine ads, fliers, newsletters, business cards, stationery and envelopes.
- Brokerage Contract and Required Forms: This may include the Property Management Agreement, Tenant Leases, Consumer Guide to Agency Relationships, Agency Disclosure Statement and the Brokerage Company Policy as required by Ohio Revised Code Section 4735.54.
- Fair Housing Sign/Pamphlet: In each brokerage office a fair housing sign must be displayed in the same area as the brokerage license is displayed. Pamphlets with the same fair housing information must be available to the public. The fair housing sign and pamphlet are attached as [Exhibit C](#) and [Exhibit D](#).
- Transaction Files: Random checks may be conducted of property management and leasing files.
- Property Management Account(s): The investigator will review the most recent bank statement(s), deposit tickets and the required columnar ledger (see [Exhibit A](#)). Property management account balances must reconcile.

If the investigator determines that the brokerage is not in full compliance with the license law requirements, the broker will be notified of any deficiencies and asked to correct those issues. The broker should promptly rectify any non-compliance issues as the Division requests.

### **Licensure Exemption – Regular Employee of Owner**

A real estate broker's license is required to manage property owned by another, for a fee or other valuable consideration. However, Ohio Revised Code Section 4735.01(I) provides an exception for an individual who qualifies as a "regular employee" of the owner of the property. The Division of Real Estate and Professional Licensing detailed in their Fall 1998 Newsletter (attached as [Exhibit E](#)) the factors that will be considered to determine if an individual is a regular employee of the owner. The article lists the following factors:

- The employee is paid via a W-2 versus a 1099
- The employer pays all taxes
- The employer pays unemployment and worker's compensation insurance
- The employer schedules the hours

If an individual qualifies as a regular employee of the owner, the individual can manage property for that owner without holding a real estate license. Otherwise, a real estate license is required.

### **Finder/Referral Fees**

Ohio Revised Code Section 4735.01(A) provides a list of activities that if performed for another for a fee or other valuable consideration requires a real estate license. One of the activities listed is directing or assisting in the procuring of prospects for the sale or lease of real estate. It is this license law provision that prohibits a broker from paying a finder's fee to an unlicensed person for referring prospective tenants to the broker. This provision also prohibits giving a free month's rent to a tenant

who refers prospective tenants to the broker. A real estate license is required to be compensated for referring tenants to a property manager or owner. Therefore, an unlicensed person or tenant may not legally accept a finder's fee or free month's rent and a licensed agent or broker may not pay an unlicensed person for such conduct.

### **Licensee's Role in Evictions**

Licensees who engage in property management may be faced with the situation where a tenant must be evicted. This usually occurs for non-payment of rent. In Ohio the eviction process is called "forcible entry and detainer" and the procedures are governed by Ohio Revised Code Chapter 1923.

Before starting an eviction proceeding, a landlord is required to give the tenant a three day notice to vacate and to put the tenant on notice of the landlord's intent to initiate the forcible entry and detainer process. Notice can be served by certified mail, by hand delivery, by leaving it at the premises from which the tenant is being evicted or the tenant's usual place of abode. The notice must contain the following language printed or written in a conspicuous manner:

"You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance."

If so instructed by the landlord a property manager is able to assume the responsibility for delivering or posting the three day notice for the landlord. However, if the tenant fails to vacate the premises the next step is for the landlord to file a legal complaint. Because this involves a legal proceeding, the landlord must either represent himself or be represented by an attorney. A licensee who manages the property for the landlord cannot legally prepare the complaint or appear in court for the landlord. Instead if the landlord wants assistance in this area the property manager must refer them to an attorney.

### **Federal Law Protects Tenants in Foreclosed Property**

A federal law was enacted to protect tenants residing in foreclosed properties from eviction. The Protecting Tenants at Foreclosure Act was enacted on May 20, 2009 to protect residential tenants who became victims of their landlord's foreclosure.

In Ohio, when a property is foreclosed upon, the successful bidder at the sheriff's sale becomes the owner of the property after the sale is confirmed by the court. Prior to the federal law, if the property was a rental property, the new owner could terminate the tenant's right to occupy the property even if the tenant was in full compliance with the terms of their lease. In some instances, the first time the tenants learned their landlord was losing the property through foreclosure was when they were asked to vacate the premises.

The Protecting Tenants at Foreclosure Act addresses this problem by requiring that tenants in foreclosed properties be given a 90 day notice prior to eviction and in some cases provides tenants with the ability to stay in the property for the term of their lease.

The federal law requires the new owner (the successful bidder at the sheriff's sale) to provide a bona fide tenant with a 90 day notice prior to the tenant being evicted. A bona fide tenant who has an

existing lease on the property has the right to continue as a tenant for the remainder of the lease term, with two exceptions.

The first exception allows a purchaser at a sheriff's sale who will reside in the property with the right to terminate the tenant's occupancy upon 90 day notice. This exception could also be used by a lender or investor who buys a home that is tenant occupied at a sheriff's sale and then sells the home to a buyer who will live in the property. The tenants could be given the 90 day notice and their right to occupy the home would terminate on the date of the sale to the owner occupied buyer.

The second exception is that the new owner of the property may terminate the tenant's right to occupy the unit if the tenant does not have a lease (a month to month tenancy) or if the lease is terminable at anytime upon notice. Again, the 90 day notice to the tenant is required.

The rights provided by this law apply to bona fide tenancies or leases. A lease or tenancy is considered bona fide only if:

- 1) the tenant is not the mortgagor;
- 2) the lease is the result of an arms-length transaction, and
- 3) fair market rent is being paid for the unit.

While this federal law provides certain rights to tenants of foreclosed properties, it does not terminate any obligations of the tenants under the terms of their lease or Ohio's landlord tenant laws. This includes the tenant's obligation to continue to pay rent to the new owner of the property during the term of his tenancy. If the tenant stops paying rent he can be evicted.

The Protecting Tenants at Foreclosure Act does not affect the requirements for termination of any federal or state subsidized tenancy or any state or local law that provides longer time periods or other additional protections for tenants. The federal law and its protections expires on December 31, 2014.

Ohio does not have a state law specifically addressing tenant rights in a foreclosed property. Local regulations should be reviewed to determine if they provide additional protections to tenants.

### **Registration of Residential Rental Property Owner's Contact Information**

Ohio law requires owners of residential rental property located in a county with a population of more than 200,000 to register their contact information with the Auditor of the county in which the property is located. The purpose of this law is to ensure that cities and counties could locate the owners of these rental properties when housing code complaints were filed, violations were found and clean-up and repairs were necessary. Even though it is the property owners who are required to register their contact information, a property manager may assume that responsibility.

Residential rental property is defined as property on which is located one or more dwelling units leased or otherwise rented solely for residential purposes, or a mobile home park or other site at which lots are leased or otherwise rented for the parking of a manufactured home, mobile home, or recreational vehicle that is used solely for residential purposes.

The counties with a population of more than 200,000 include: Butler, Cuyahoga, Franklin, Hamilton, Lake, Lorain, Lucas, Mahoning, Montgomery, Stark, Summit and Trumbull. Owners of residential

properties in counties with populations less than 200,000 are not subject to this registration requirement. However, such a requirement may be imposed by local ordinance.

The information that is required to be filed with the County Auditor's office is as follows:

1. The owner's name, address, and telephone number. If the residential rental property is owned by a trust, business trust, estate, partnership, limited partnership, limited liability company, association, corporation, or any other business entity, the name, address and telephone number of the following:
  - A trustee, for a trust or business trust.
  - The executor or administrator, for an estate.
  - A general partner, for a partnership or a limited partnership.
  - A member, manager or officer, for a limited liability company.
  - An associate, for an association.
  - An officer, for a corporation.
  - A member, manager or officer, for any other business entity.
2. The street address and parcel number of the residential rental property.
3. An owner of residential rental property who resides outside the state shall designate an individual who resides in the state to serve as the owner's agent for the acceptance of service of process on behalf of the owner in any legal action or proceeding in the state, unless the owner has already designated a statutory agent for the service of process with the Secretary of State as a condition of being authorized to do business in Ohio. An owner who designates an agent shall file in writing the name, address and telephone number of the agent. An owner who has already designated a statutory agent with the Secretary of State shall provide a certified copy of the document filed with the Secretary of State that contains the designation.

In those counties with a population over 200,000 the County Auditors must notify rental property owners of the requirement to file their contact information. The notice will be included in the tax bill that the Auditor sends to residential property owners and upon conveyance it will be sent to the purchaser of the residential rental property when the conveyance is endorsed. The property owner has 60 days following receipt of the notice to comply.

The information required to be filed with the County Auditor's office is considered a public record and is maintained on the tax list or the real property record. An owner of residential rental property is required to update any information required to be provided to the County Auditor's office within 60 days after any change in the information occurs. The Auditor's notice regarding the owner's duty to register will also inform the owner of this requirement.

The County Auditor may impose upon any person who is in violation of the rental property registration requirements a special assessment on the property of \$50-\$150. The special assessment may be appealed to the County Board of Revision.

## **Conclusion**

Every real estate broker who provides property management services must have a thorough understanding of the license law requirements and other property management issues discussed in

this paper. These requirements apply whether the broker manages one property or thousands. As some of these requirements are very specific and demanding a broker considering offering property management services must be willing to invest the time and effort required to properly manage real estate. Specifically, a broker must make sure he can meet the record keeping and bookkeeping demands imposed by the law to protect property owners and tenants. A broker must also be cautious in his delegation of management duties to salespersons and unlicensed staff. It is the broker who has ultimate responsibility for compliance with the license law requirements. Proper oversight by the broker of the property management business is essential to a successful real estate management company.

RECORD OF FUNDS RECEIVED & DISBURSED IN THE MANAGEMENT OF REAL PROPERTY.  
 THIS RECORD IS IN COMPLIANCE WITH SECTION 1301: 5-5-11 OF THE OHIO ADMINISTRATIVE CODE.

BROKER	
TRUST ACCOUNT #	
INSTITUTION	

OWNER	
ADDRESS	
CITY/STATE	

TENANT'S NAME	
PROPERTY ADDRESS	
CITY/STATE	

Monies Received From:	Amount:	Date:	For the Purpose of:	Amount Disbursed:	Date:	Check #:	Disbursed to Whom:	Purpose of Disbursement:	Owner's Running Balance:	Interest earned:



## Fair Housing Statement

It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing law, 42 U.S.C.A. 3601, as amended, to refuse to sell, transfer, assign, rent, lease, sublease or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.

It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

## Fair Housing Logo





**It Is Illegal To Discriminate Against Any Person  
Because of Race, Color, Religion, Sex, Familial  
Status, National Origin, Military Status, Disability  
or Ancestry**

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services

**Blockbusting is also illegal.**

The Broker and Sales Associates are licensed by the Ohio Department of Commerce, Division of Real Estate & Professional Licensing. The division may be contacted for inquiries and complaints and for information on the Real Estate Recovery Fund (Section 4735.12 of the Revised Code) as a source of satisfaction for unsatisfied civil judgments against a licensee.

**Ohio Department of Commerce  
Division of Real Estate &  
Professional Licensing**

77 S. High Street, 20<sup>th</sup> Floor  
Columbus, OH 43215-6133  
(614) 466-4100

[www.com.ohio.gov/real](http://www.com.ohio.gov/real)

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Effective 3/25/2008



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# 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.



Established in 1910



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