

## **THE GOOD, THE BAD AND THE UGLY: THE SAGA OF YOUR LICENSE RENEWAL**

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It is a rite of passage which all real estate licensees face every 2 years ... *LICENSE RENEWAL!*

You go online at the website of the Maryland Real Estate Commission and dutifully fill in the renewal application form and remit the required fee. As part of this renewal process, you certify to the Maryland Real Estate Commission that you have completed the required number of hours of continuing education, as well as the required continuing education topics necessary for license renewal. You then complete the process and feel quite satisfied that you have extended your Maryland real estate career for two more years.

**Unfortunately, for a substantial number of real estate licensees, you are now faced with the good, the bad and the ugly.**

**The Good:** Congratulations! You have successfully renewed your real estate license for another two years.

**The Bad:** You have been notified by the Maryland Real Estate Commission that you have been selected at random for an audit to verify that you, in fact, have completed the required number of hours for continuing education and the required specific topics necessary for license renewal.

**The Ugly:** You are unable to produce hard copies of your continuing education certificates to demonstrate to the Maryland Real Estate Commission that you have completed the required number of hours for continuing education and that you have completed the required specific topics necessary for license renewal. The ugly truth is that now your license renewal is going to cost you \$1,600.

Several years ago, the Maryland Real Estate Commission implemented a policy on the honor system to rely upon a real estate licensee who renews their license to simply certify that the licensee has completed the required number of hours for continuing education instruction and has completed the required specific topics necessary under the Maryland Real Estate Brokers Act for license renewal. Subsequently, the Maryland Real Estate Commission implemented a policy which provides that 20% of all licensees who renew their license would be selected at random for an audit to ensure that the licensee, in fact, did actually complete the required number of hours of continuing education and the required specific topics necessary for license renewal.

If you are selected for such audit, you will receive a letter from the Maryland Real Estate Commission requesting that you provide to the Commission by a specified date, hard copies of your continuing education certificates in order to prove that you completed the required number of hours of continuing education as well as the specific topics necessary for license renewal.

In the event you cannot produce the appropriate hard copies of the continuing education certificates which demonstrate that you completed the number of hours required as well as the specific topics required, the next communication you receive from the Maryland Real Estate Commission will be a Complaint from the Commission against you. A copy of that Complaint will be sent to you and your broker and you will have twenty (20) business days in which to respond.

If, in your response to the Complaint, you cannot produce a hard copy of such certificates of continuing education completion which demonstrate that you have completed the required hours of instruction and the required topics, you will then receive a supplemental letter from the Commission offering you a choice.

First, you can agree to enter into a Consent Order with the Maryland Real Estate Commission wherein you admit that you are in violation of the Maryland Real Estate Brokers Act for having failed to complete the required number of hours and/or required topics for your license renewal and you will be fined the sum of \$1,500 as well as being required to pay a \$100 reactivation fee for your license.

The second choice you will have is to decline to enter into such Consent Order (including paying such fine and reactivation) and proceed to a hearing before an Administrative Law Judge based upon the Complaint filed by the Maryland Real Estate Commission against you. Following a hearing, the Administrative Law Judge will find you in violation and will recommend to the Commission that you be reprimanded, that your license be suspended or revoked, and that you pay a fine not to exceed \$5,000. However, remember, the Complainant in such case is not a member of the public or another REALTOR®, it is the Maryland Real Estate Commission. An Attorney General will be assigned to prosecute the case on behalf of the Commission and, even if the Administrative Law Judge were to impose a lesser fine (e.g., \$500), the Maryland Real Estate Commission has the full power to amend the decision of an Administrative Law Judge and to impose any fine which it deems appropriate. *Guess what that amount will be? It will be \$1,500.* So all that is accomplished by going to a hearing is that you will still be facing a fine of \$1,500, including a \$100 reactivation fee, plus incurring the cost and expense of defending yourself at a hearing before an Administrative Law Judge.

**On a practical side, only the most extraordinary circumstances (*and I do mean the most extraordinary circumstances!*) would you have any defense for your failure to produce evidence satisfactory to the Commission that you have completed the required hours of continuing education instruction and the required course topics.**

For example, I have handled a number of these cases and I offer two such cases for illustrative purposes. In one case, the licensee actually completed the required 15 hours of continuing education instruction but only had 1.5 hours on Legal & Legislative Update instead of the required 3 hours. The licensee's defense was that he thought the course taken would have satisfied the required 3 hour course on Legal & Legislative Update and that he had no knowledge or intent to deceive the Commission. The Commission's response was unequivocal ... the fine is \$1,500 for the first offense, and a \$100 reactivation fee.

In the second example, the licensee was unable to recall where such classes were taken; when such classes were taken; or what courses were actually attended. The licensee had no documentation and the Commission alleged that the licensee had only completed 7.5 hours of continuing education instruction and failed to complete two of the required topics (Legal & Legislative Update and Fair Housing). The Commission's response was again swift and unequivocal ... the fine is \$1,500 for the first offense, and a \$100 reactivation fee.

There is also the opportunity for a far more serious matter. It is one thing for a licensee to have made an innocent mistake as in the example above, but it is a far different issue if the Maryland Real Estate Commission concludes that a licensee willfully, knowingly and intentionally misrepresented to the Commission on the license renewal application that the licensee, in fact, had completed the required number of hours of continuing education and the required topics. In theory, if the Commission were to conclude that a licensee deliberately misled the Commission, then the licensee could be facing the possibility of a \$5,000 fine and even suspension or revocation of license. In such instance, the theory is quite simple: if a licensee knowingly, willingly and intentionally misrepresents a fact to the Maryland Real Estate Commission, then that licensee may also be willing to do so to a buyer or seller in a real estate transaction.

The percentage of licensees, following audit, who fail to establish by the required burden of proof that they, in fact, did complete the required hours of instruction and the required course topics, is higher than one might expect. Generally, the licensee fails the audit simply because they cannot produce the required hard copies of the continuing education certificates to establish the completion of the required number of hours and the required course topics. **More problematic, the licensee has no documentation either in the day planner; checkbook; credit card statement; or any other method to determine when the course**

**was completed; the course provider; the course instructor; the course approval number; the topic; and when such course was taken.**

**And that is the ugly part! The licensee simply has no way to obtain duplicate certificates to respond to the allegation that the licensee, based upon the audit conducted, failed to complete the required number of hours and required course topics.**

While you cannot eliminate “**The Bad**” (*the random selection for audit*), you can eliminate “**The Ugly**” (*the payment of \$1,600*) by following these suggested risk reduction steps:

1. Open a file (either hard copy or electronic ... better yet - both) and label the file “Continuing Education.”
2. Place a copy of this article in your file.
3. Make a notation on the file as to your next real estate license renewal date.
4. Prepare a chart for inclusion in your file as to the number of hours required for license renewal. **In that regard, if you are a real estate licensee and you do not have a law degree or a graduate degree in real estate, you are required to completed fifteen (15) clock hours of continuing education every two years.**

For licensees who renew between January 1, 2012 and December 31, 2013, the following are the required courses necessary for license renewal:

- a) If you are a broker, manager or team leader, you are required to complete the following courses:
  - Legal & Legislative Update (3 clock hours) (Topic A);
  - Fair Housing (1.5 clock hours) (Topic C);
  - Maryland Code of Ethics and Predatory Lending (3 clock hours) (Topic D);
  - Agency - Residential (3 clock hours) (Topic H);
  - Broker, Manager and Team Leader Supervision (3 clock hours) (Topic I); and
  - Elective (1.5 clock hours) (including Topic F - Professional Enhancement or any combinations of Topic A or Topic C)
- b) For residential licensees other than brokers, manager and team leaders, you must complete the same topics as described immediately above with the

exception that you are not required to complete the 3 clock hour course on Broker, Manager and Team Leader Supervision. You would then have 4.5 clock hours of electives.

**NOTE:** For licensees who are “commercial only” or have a law degree or a graduate degree in real estate, please visit the Maryland Real Estate Commission website and on the homepage click on the tab entitled “Education” at the far top right of the home page for your precise number of hours of continuing education required and the precise topics to be completed.

5. When you complete each course and have received your continuing education certificate from the education provider (e.g., local college or university; approved post-secondary education provider; local Board or Association of REALTORS®; or the Maryland Association of REALTORS®), place the certificate in your file by hard copy and/or scanning.
6. On your list of required courses, check off the completion of each course for which you have a continuing education certificate and indicate the date of the program; the education provider; the course topic; and the course topic designation (either A, C, D, F, H or I).
7. **Continuing Education Certificate:** When you receive your continuing education certificate from the education provider, **please review it carefully!** Ensure the certificate includes the following information:
  - the name of the education provider;
  - the title of the course;
  - the topic identification (either Topic A, C, D, F, H or I);
  - the number of hours of the program (1.5 hours or 3 hours);
  - the course approval number as issued by the Maryland Real Estate Commission; and
  - the signature of the continuing education provider.

**If any of the above information is missing from your continuing education certificate, contact the education provider and have it corrected.**

**NOTE:** Only courses taken during your last license renewal until the next date of your next license renewal may be counted toward the completion of your continuing education requirements. There is no “carrying forward” of excess continuing education hours from your prior license renewal period.

**FURTHER NOTE: You may not obtain credit for attending the same course which contains the same course approval number as set forth in your certificate.**

8. If you register online for continuing education classes, include your online registration confirmation form in the file. If you pay by check or credit card, include a copy of your credit card statement or your bank statement with respect to such continuing education class payment. If you pay by cash at the door, ask for a receipt at the time of the program. Additionally, why not include a copy of your course outline in the file as well?
9. **Please Note:** Under the rules of the Maryland Real Estate Commission, you are required to keep copies of your continuing education certificates for five (5) years.

By following the steps set forth above, you will accomplish two important objectives.

**First,** you will have in one central location, at a glance, the number of hours and specific topics you are required to complete; how many hours you have completed to date; the topics you have completed to date; which topics you are still required to complete; originals of your continuing education certificate; registration forms; proof of payment; and the date, time, subject matter, topic designation, instructor, location and course approval number of each course which you have satisfactorily completed.

**Second,** you will also have in one place, at a glance, all of the information you need, including proof of payment, for your federal and state tax returns as bona fide business deductions for continuing education.

In the very near future, the audit will disappear!

The Maryland Real Estate Commission is now in the process of developing procedures and guidelines to require education providers to notify the Commission, by electronic means, the identity of all attendees at all classes, as well as information regarding the course and course approval number. Once this system is implemented, the Maryland Real Estate Commission will eventually be able to automatically determine from the database of the Commission as to whether a licensee has or has not completed the required number of hours or the required topics and will no longer be relying upon the “honor system” of the licensee or the random audit.

**All the more reason to follow the guidelines set forth above! It is not difficult to understand that with electronic communication there can be mistakes made (e.g., the wrong spelling of your name or your license number) and missing or erroneous data**

**entry could result in your name or course number not being provided to the Maryland Real Estate Commission, in which case you will continue to have the burden of proof to show that you completed the required course of instruction and required hours for license renewal. The only way to do that under the new electronic system is to have a hard copy of your continuing education certificate.**

The goal is to eliminate “**The Ugly.**” That burden rests entirely upon yourself to carefully track and maintain the appropriate documentation to prove that you have completed the required number of clock hours for license renewal, as well as the required topics for renewal. Whether under the “honor system” currently in place or the electronic notice system to be implemented in the near future, you must still be able to produce the documents, if necessary, to avoid the \$1,500 fine and \$100 reactivation fee.

For those of you who are obsessive compulsive on matters like this, you may want to be very careful to backup your electronic data file. My best recommendation is that if you maintain an electronic file that you still maintain a hard copy file. For those who are extremely obsessive compulsive, I would recommend that you make copies of your hard copy file from time to time and send those to your mother or close friend for retention!

*(By Alvin C. Monshower, Jr., Esq., Monshower, Miller & Magrogan, LLP. This article is intended to be a general discussion of the topic. As with all legal matters, the reader should consult with competent legal counsel regarding any actual situations or questions.)*

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