

## Recent Ohio Court Opinion Discusses Duties Owed To Homeowner In Connection With Open Houses

by **Scott A. Johnson and Joshua S. Peterson**



A recent Ohio appellate decision provides some commentary on the duty owed by a real estate agent and broker in protecting a client's property during an open house. In *Wheatley v. Howard Hanna Real Estate Services*, the dispute began after the seller's jewelry was stolen from an unlocked safe during an open house. Before the open house, the real estate agent advised the seller to secure any valuables that were conspicuously placed around the house. The agent also walked through the house before the event to confirm that nothing of value appeared in plain sight. The seller placed the jewelry in an unlocked second-floor bedroom safe, and did not inform the real estate agent or broker about the jewelry or its location before the open house.

The seller alleged the real estate agent and broker were negligent in supervising the open house, and failed to warn her about the potential danger. The open house was primarily intended for other real estate brokers. The seller complained because the real estate agent and broker failed to inform her that members of the public may have been present, she did not take additional steps she otherwise might have. The seller, however, was home during the start of the open house and left after discovering at least one member of the general public had arrived and failed to object to his presence.

The court held a real estate agent and broker have a duty to use their best efforts to further the interests of the seller, including: (1) exercising reasonable skill and care in representing the seller and carrying out the responsibilities of the agency relationship; and (2) disclosing to the seller any material facts of the transaction of which the agent or broker is aware, or should be aware in the exercise of reasonable skill and which would not be something that the seller could be reasonably expected to timely discover on her own. The failure to warn the seller about the general public attending was ultimately immaterial as the seller was actually alerted to the public's presence before leaving and did not alter her behavior or object.

### Offices

#### Toledo Office:

One Seagate, 24th Floor  
P.O. Box 10032  
Toledo, Ohio 43699  
Phone: 419-241-6000  
Fax: 419-247-1777

#### Columbus Office:

100 East Broad St.  
Ste. 2100  
Columbus, Ohio 43215  
Phone: 614-564-1445  
Fax: 614-280-1777

#### Findlay Office:

510 South Main St.  
Findlay, Ohio 45840  
Phone: 419-424-5847  
Fax: 419-424-9860

#### Detroit Office:

615 Griswold, Ste. 1305  
Detroit, Michigan 48226  
Phone: 313-818-3040  
Fax: 313-285-9282

Ultimately, it is good practice for real estate agents to counsel sellers to lock up and/or remove from the house any items of value (including prescription medication) prior to any real estate showing an open house. Additionally, agents should tell their sellers as much information about expected attendance at open houses as possible, and in particular whether the open house will be open to the general public or only to other licensees.

For information regarding the *Wheatley* case and the duties that real estate licensees and brokers owe toward their clients, or any other questions about real estate licensure law, please feel free to contact us.

[Scott A. Johnson](#), a member of Eastman & Smith who focuses his practice in the areas of transactional real estate, business related matters, and real estate litigation. [Joshua S. Peterson](#) is an associate of who concentrates his practice in the areas of business law and real estate matters.

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