

**Oregon Real Estate Board Meeting Minutes
April 17, 2006**

MEMBERS

PRESENT: Michael Graeper
Troy Costales
Victor Kee
Arthur Kegler, arrived 10:05 a.m.
Bob La Du
Maxine Ribera-Card
Marianne Wood
John Zupan

MEMBER

ABSENT: Vada Salinas

STAFF

PRESENT: Commissioner Scott Taylor
Katie Cannon, Deputy Commissioner
Carmen Twenge, Agency Board liaison

GUESTS

PRESENT

INCLUDED: Michelle Deister, Legislative Fiscal Office
Andrea Bushnell, Oregon Association of Realtors
Susan Kidder
Chris Panaff
Dave Koch

The Oregon Real Estate Board met for its regularly scheduled meeting, Chairperson Michael Graeper presiding. The meeting was held at the Homebuilders Association of Metropolitan Portland, Lake Oswego, Oregon. Chair Graeper called the meeting to order at approximately 10:00 a.m. A quorum was present.

1. The Board approved minutes of the February 21, 2006 Board meeting as written.

2. The Board considered the following request for waiver:

- a. Penny Lee Yaw: Appeared – requesting waiver of three years experience requirement for a principal broker's license.

Discussion: Chair Graeper stated that Ms. Yaw has one year, eight months experience as a licensee. She is the owner of Steelhead Realty. Marianne Wood asked Ms. Yaw how many transactions she has completed in that time period. Ms. Yaw responded she believed seven transactions. Ms. Wood asked her how many agents she would be managing at her office. Ms. Yaw responded seven agents. Ms. Wood said that, in reviewing Ms. Yaw's resume and reference letters, it sounds like she would have some great guidance from her principal broker Doug Sisk, and that it would be good for him to be there for Ms. Yaw as she's training and getting familiar with the brokering process. She asked if Mr. Sisk has been working with her leading up to her ownership. Ms. Yaw responded yes. Ms. Wood commented that Ms. Yaw's background indicates she is a person who does things correctly and has received great comments from friends and people in the business. Ms. Wood asked if she had a policy and procedures manual at her office, and if she was familiar with the contents. Ms. Yaw said yes.

Victor Kee asked Ms. Yaw to share with the Board any extra education that she has taken; for example, CRS, GRI. Ms. Yaw said she has taken the GRI 100 course and plans to complete the series. She recently completed the Advanced Real Estate Practices course and the principal broker course, Brokerage Administration and Sales Supervision. She has also taken additional continuing education hours that are documented in her waiver submission.

John Zupan noted that Ms. Yaw attended community college for a period of time and asked her what type of courses she took. Ms. Yaw responded that she was pursuing a career as a kindergarten teacher; she took courses such as psychology, general math, physiology. Then a family health issue necessitated her to discontinue her college plans at the time.

Maxine Ribera-Card thanked Ms. Yaw for appearing before the Board to field questions. Ms. Ribera-Card stated that Ms. Yaw would be supervising seven agents. She asked if the agents did primarily residential or commercial transactions. Ms. Yaw said residential. Ms. Ribera-Card asked her about the experience level of the agents she would be supervising. Ms. Yaw said most of the agents have more experience than her. The majority has probably three years experience and could easily go off on their own; two agents are fairly new.

Mr. Graeper asked her when she purchased Steelhead Realty. Ms. Yaw responded that she just took over April 1st. Graeper asked if there was any indication that Doug

Sisk, the broker/owner prior to Ms. Yaw, would stay on longer to help her. Ms. Yaw said Mr. Sisk was planning to stay on through the end of July but he would still be available at her convenience; only a phone call away.

Mr. Zupan asked Ms. Yaw if she had any experience with personal real estate transactions or investments. Ms. Yaw responded no. Ms. Wood asked what she felt would be her biggest challenge as a managing broker over the seven agents. Ms. Yaw replied that she's been self-employed so she's confident she can handle the bookkeeping and running of the business. She felt her biggest challenge would be if one of her agents came to her with a question she didn't know. She would have to investigate and look into the rules and regulations to get an answer for them. Ms. Wood pointed out that she had a lot of resources to use, such as the Oregon Association of Realtors' Hotline, the Real Estate Agency, and Mr. Sisk. Ms. Wood noted that a concern is when there are disputes; for example, with earnest money. That's when you need to cool your heels and try to figure things out.

Ms. Wood asked if there was a system in her office to check what needs to be in the file before closing. Ms. Yaw responded yes. Ms. Wood said it's very important to have a system in place, even though your eye might not be trained just yet, because once you have contracts to review and initial and be responsible for, you can train yourself to move to the important items on each page; not just the signatures and initials. For example, once in a while Ms. Woods finds an agent who will put in "closing to be 15 days after the contingencies are removed." Ms. Woods reiterated that many resources are available to assist her.

Bob La Du expressed that if the Board were to approve Ms. Yaw's waiver request, it would be like an accident waiting to happen. He said often when the Board approves an experience waiver request, there is some compensatory experience in the applicant's background; such as a university degree in real estate or a law degree that involved practice in the general real estate field. Mr. La Du said Ms. Yaw seems like a really wonderful person who works well with people and has office management experience. However, he said, the crux of the business is handling the transactional problems that come up in the working day life of the Realtors that she would be supervising. Mr. La Du said he doesn't see the experience there yet. One of the reasons there is a three-year requirement is because that's an opportunity for the principal broker's knowledge to be transmitted to the affiliated licensee in the course of problems that arise. You don't often find this in textbooks but you get it out of the principal broker's mind. He recommended Ms. Yaw was well advised to have more experience.

Mr. Kee asked Ms. Yaw what sides she represented in her seven real estate transactions. Ms. Yaw responded that she represented the seller in two transactions, and the buyer in five transactions. Mr. Zupan agreed with Mr. La Du. Zupan said that he did not want to set precedence with this experience waiver request. He said

the Board has approved a year waiver if the applicant had a four-year degree or a lot of real estate education, or approved a waiver if the applicant has worked for a company that deals in real estate.

Motion: Mr. Zupan moved to deny Ms. Yaw's request for experience waiver for principal broker licensing. Mr. Kee seconded the motion.

Vote: Motion passed.

In favor: Troy Costales, Victor Kee, Arthur Kegler, Bob La Du,
Maxine Ribera-Card, Marianne Wood, John Zupan

Opposed: None

Chair Graeper stated that since Ms. Yaw's waiver request was denied, and if Mr. Sisk is not going to stay on as principal broker of the firm now that Ms. Yaw is the owner, she will need to employ another principal broker for the company. Mr. Graeper added that he felt Ms. Yaw would be a great principal broker in the future. He commented regarding the collective experience of the Board. He said seven members are from the real estate industry and demonstrate probably 200 years of experience so know the benefit of the practical experience of running a real estate company. And, he added, five of the seven Board members own their own firms.

Ms. Yaw asked if there were steps she could take or if she needed to just wait until she has three years experience. Mr. Zupan commented that she has until the end of the summer with Mr. Sisk and suggested trying to get him to stay on a little longer. Zupan said he is more comfortable with a six to eight-month waiver than a one year and four month waiver. He recommended Ms. Yaw come back to the Board next fall and request waiver at that time.

Mr. Kegler expressed his apologies for arriving late to the meeting. He said he has been in the real estate business for 16 years and has a new agent that has been with him for about one year. The questions that come up can still sometimes stump him. He said he very much respected what Ms. Yaw has done in getting the firm. He thought if Ms. Yaw took six months to a year, as suggested by Mr. Zupan, and come back to the Board he believed she would have a strong waiver request. Kegler said he agreed with Mr. La Du; seven transactions are like danger or an accident waiting to happen. He added that he certainly respected Ms. Yaw's application and looks forward, as does Chair Graeper, to see her back in the future.

3. Commissioner's Report

a. Scope of Board Authority

The Commissioner said Chair Graeper had requested there be some discussions on how to make the Board more proactive. The topic is listed on the agenda under Board Advice. The Commissioner thought it would be helpful to have the Agency's Assistant Attorney General Raul Ramirez come before the Board to make sure the Board has a good firm understanding of what the Board's authority is today.

Mr. Ramirez stated that he was invited to come to the meeting and will address a few items: 1) The Board's general authority that is given by statute; and 2) general conflicts of interests that may come up in the course of meetings.

Mr. Ramirez said he reviewed the statutes that pertain to the Board's authority. The authority is neatly contained in a relatively small number of sections in Oregon Revised Statute (ORS) Chapter 696. He divided the authority into the following four basic categories of power: 1) Power of inquiry as to the Real Estate Agency or the Commissioner; 2) Power of advice to the Commissioner; 3) Power to confer with the Governor on real estate-related issues; and 4) Power of real estate licensing.

1) The power of inquiry is a very general statement of power that doesn't delineate very much. Ramirez said the statute gives the Board the power to inquire into the needs of real estate licensees in the state of Oregon. This means in the course of your meetings you are free to comment on any issue that affects the industry that you want to know about. The Board is also given the authority under the inquiry power to ask the Commissioner about anything that relates to the administration of the Agency; anything that relates to what the Agency does. Ramirez said the Commissioner would be well advised to respond to the inquiries as the statutes are written. That may also go into the actual business policies that the Agency carries out in its day-to-day duties.

2) Power of advice. Mr. Ramirez said this power doesn't have as much significance on its own but combined with others it does. For example, the Board has the authority to recommend any policy to the Agency to promote the welfare and progress of licensees, the public, and the real estate industry. The Board has the authority under the statute to receive any advance notice of all rules, whether they are post permanent or temporary rules that the Agency will promulgate. The Commissioner and the Real Estate Agency must consider the input the Board provides regarding those rules.

3) Power with respect to access to the Governor. Ramirez said the Commissioner is appointed by the Governor and serves at the pleasure of the Governor. The Board has

direct access to the Governor to confer and advise him as to how the Board thinks the Agency is best run or how the Agency might do things better to help protect the public or to serve the industry the Agency regulates. Mr. Ramirez pointed out this power is very significant with respect to access to the Governor.

4) Power with real estate licensing. The Board has a lot of authority with respect to review and approval of waiver license applicants. Also the Board has authority with preparation of the license exams, the grading, and the recording of those grades to the Agency.

Mr. Ramirez noted he wanted to allow the Board to comment and ask questions regarding the four powers of Board authority that he summarized, but he also wanted to speak about the issue of conflicts of interest.

Troy Costales commented that the Agency has a regulatory role. As a Board we have dealings on the licensing and testing sides; there are appeals and dealings with disciplinary actions. He believes there was a correct read on what to inform the Board when you have investigations going on because those are very much like a personnel issue, with hearings and investigations going on. Those are things going on that the Board should not have conversations and be involved with because it is an ongoing investigation. But then, at times, there are things that are closed; for example, approval of waiver applicants where the Board can sometimes get involved in the personnel side. There are times where the Board may need to do a closed session where the meeting is not open to the public or press. Costales noted the rules about when the Board can have that conversation are pretty limited. He asked Mr. Ramirez, as allowed under the law, what types of situations should the Board consider a closed meeting versus an open, general meeting.

Mr. Ramirez responded that Costales brought up a good question and he would try to answer it as specifically as possible. Although, he added, because he's not a regular attendee of Board meetings, he's not as familiar with the types of issues the Board actually sees. Ramirez stated the Board can go into executive session to consider, among other things, records that are exempt from disclosure to the public. That could be several different things; for example, if there is written advice that the Attorney General is providing, obviously that is privileged and attaches to the attorney-client communications. Ramirez said in those cases it is proper for the Board to consider an executive session with exclusion to the public. He added aside from that, the types of issues the Board would normally consider would be any time there is a contested case. There is a specific statutory provision that provides that the deliberation of a contested case does not constitute a public meeting. If there are contested cases that for some reason need to come to the Board, deliberation of those cases can be done in executive session. Ramirez said from his experience with other licensing boards, that happens. Some boards have confidentiality in all of their investigations; there are other boards that do not have that.

Ramirez responded that, as far as the personnel matters that has been mentioned, some issues dealing with staff have very specific requirements as to what things you can consider. Mr. Ramirez said he did not have that information with him but would be happy to provide those to the Board. He added there are some ways in which a board can consider a personnel matter; for example, evaluations or discipline in an executive session.

Costales stated the reason he asked the question was because during his time on the Board there has not been an executive session. It has been a transparent process with invitations for applicants to appear before the Board. Even in some cases, after hearing the definition of what an executive session could be, it could have been an executive session on a handful of requests over the past five or six years and the Board has chosen not to go into executive session. Costales stated that he wanted to put it on the record that it is an option; the Board has chosen not to and the Agency has not recommended it. Everything is put on the agenda and it is a disclosed, transparent process.

Mr. Graeper responded that Costales was correct; however, he didn't think all the Board understood the ground rules of the opportunity to have an executive session.

The Commissioner asked Mr. Ramirez if the Board has the authority to go into personnel and administrative action areas. Ramirez replied that is one of the unique aspects of that question that is probably a little uncertain. Because of that, he added, he is hesitant to provide a definitive answer. Ramirez said that on all the other boards that he deals with, the boards run the Agency. The boards have the decision-making authority for those issues; therefore, those boards can enter into executive sessions. In the case of the Real Estate Agency's structure, the Commissioner is the person who administers the Agency on its day-to-day business. Mr. Ramirez said it's unclear to him how those types of issues may end up being before the Board other than if the Board is inquiring under the authority to inquire to the Commissioner; for example, to get the status of staff turnover, those kinds of things where you might eventually have access to that information to take into executive session.

Arthur Kegler stated that the fourth power Mr. Ramirez outlined is in licensing. He said the other three powers mentioned seem to be informational and not authoritative. Mr. Ramirez said that is correct. Ramirez said he would refer to them as advisory powers. If you look at the four powers in isolation, it may not seem like there's a lot of power there. But in conjunction with each other, there is a lot of authority that you can exercise over the Agency.

Mr. Zupan stated that if the Board gives advice to the Commissioner, and he chooses not to take it, he thought there isn't anything the Board can do. He didn't realize the Board could go to the Governor. Mr. Ramirez said yes; if the Board gave advice to

the Commissioner on an issue and the Commissioner does not listen to the Board or disagrees, the Board has the authority to vote on the issue. If there is a majority vote, the Board can go to the Governor and discuss how the Board doesn't like the way the Agency is conducting business. Again, the Commissioner serves at the pleasure of the Governor.

Mr. Zupan asked if the Board has the authority to make a motion and vote. The Commissioner said the Board has done that before. Zupan said that the Board tried under rulemaking; he wanted to make a motion to make rules temporary when the rules were going to go permanent. He said he thought the Board was told they could not do that. Mr. Graeper said the minutes reflect that Zupan did make that motion. Zupan said okay. Graeper said the rules were filed as temporary rules. The Commissioner added that he thinks when Zupan made that motion, the rules had already been made temporary.

Chair Graeper welcomed the public attendees at the meeting. He added if anyone has questions of the Attorney General, this would be an appropriate time to ask those questions.

PUBLIC COMMENT

Dave Koch, principal broker Re/Max Equity Group, commented that Matt Farmer, the former associate general counsel for the Oregon Association of Realtors (OAR), did a comparable analysis of what the Board's authority is under the law. He has asked Andrea Bushnell, CEO of OAR, to get a copy of the analysis because it might be interesting for the Board to have a copy.

Mr. Ramirez handed out a conflict of interest document to the Board. He said the handout is a general summary of the Government Standards and Practices Act as it relates to the conflicts of interests for public officials. Hopefully this handout will address most of the common questions that come up in terms of each public official's responsibilities. Ramirez referred to the end of the handout; should there be a specific question you are always free to consult with his office to make sure the particular situation you are asking about is adequately addressed.

Mr. Ramirez gave a brief overview of responsibilities. He said what often comes as a surprise to board members and other agencies is that a board member is a public official by virtue of their service on a board, even though board members are involved in private practice or a public member. Based on that status, the Government Standards and Practices Act which generally addresses ethics for public officials, applies here. Ramirez said the way the Act normally comes up is through conflicts of interest. Obviously, with this Board, you have the Agency going before you asking to promulgate rules or asking about licensing or examinations. Also, you may have someone come before you that has an office next door to you.

Ramirez said the Government Standards and Practices Act divides conflicts into two categories: 1) an actual conflict of interest; and 2) a potential conflict of interest. He said the definitions of those conflicts are the same except for one word.

An “actual conflict” is any action or decision by a public official, the effect of which would be to the private pecuniary benefit or detriment of: the public official; a business with which the public official is associated; a relative of the public official; or a business with which the relative of the public official is associated. He said “relative” does not mean a second cousin.

A “potential conflict” is any action or decision by a public official, the effect of which could be to the private pecuniary benefit or detriment of: the public official; a business with which the public official is associated; a relative of the public official; or a business with which the relative of the public official is associated.

Ramirez reported that, in his experience, most of the situations that come up in board business are potential conflicts of interest. He said he very rarely sees something that represents an actual conflict of interest. Aside from those definitions, there are certain exceptions that are basically necessary for most boards to discuss. The first one is where a public official is in a position where it’s required to hold a particular title or occupation in order to hold that position. For example, seven members of the Real Estate Board have to be engaged in the practice of real estate. Ordinarily, if you didn’t have this, you could have a situation where just by the fact that you engage in that business, you could have multiple conflicts with all the issues that come before you. Ramirez said the second exception is if the Board makes a decision that will affect to the same degree all of the licensees; that is not a conflict. Otherwise, if you went by the actual definition, you could be affecting whole industries’ monetary interests, one way or the other, anytime you take Board action. The third exception is being a board member on a tax exempt non-profit corporation. That is not a conflict.

Mr. Kegler said it has never been addressed, and is certainly not an issue in any manner, but he is on the executive committee for OAR, which is a non-profit, and he is also a Real Estate Board member. Ramirez said that it looks to him, without knowing more of the specifics, that Mr. Kegler probably would fit under an exception.

Mr. Ramirez added that the Government Standards and Practices Act also provides for what you, as a public official, are suppose to do when you face a potential or actual conflict. He said once you determine you have an actual conflict of interest, you must publicly announce the nature of the conflict; not participate as a public official in any discussion; and not vote on that particular issue unless your vote is necessary to meet a quorum requirement.

Mr. Kegler asked if you can you leave and join the audience to participate and make comments relative to the issue if you have that conflict and want to express an opinion. Mr. Ramirez replied if there is no correlation to being a public official and you are participating as a member of the public. He suggested if you are faced with that situation to take great care to delineate who you are speaking on behalf of. He added you should physically leave your chair and join the public and then identify yourself and say you are speaking on your own behalf and not on the behalf of anyone else. Ramirez said he felt that would be okay in most circumstances.

Mr. Kegler said his question was not so much for his Real Estate Board membership but that he sits on a county planning commission. And also, being a Realtor, he occasionally represents applicants who are in front of the planning commission. Kegler said when he leaves and goes into the audience, he does feel he's in a situation where he's representing a client of his when speaking to the planning commission. Mr. Ramirez said he probably would still be a public official as a member of the planning commission and the same rules would apply.

Mr. Zupan questioned Ramirez regarding the responsibility of a public official who has an actual conflict and must vote if the vote is needed to meet a quorum requirement. Ramirez said that is correct.

Mr. Ramirez added that if there is a potential conflict, the public official's responsibility is to only publicly announce the nature of the conflict before taking any official action on the matter. In this case, the public official is not restricted on any voting or making any decisions.

Mr. Graeper stated that, to his knowledge, the Board has pretty much followed these rules in the past whenever there has been a conflict. For example, there was an applicant for a waiver request where Graeper announced that he worked with the applicant. And, in this situation, Mr. Graeper eliminated himself from the vote and it didn't require his participation to break a tie.

PUBLIC COMMENT

Andrea Bushnell, OAR's CEO, said she reviewed the memo that OAR prepared about the Board a little over a year ago. She said one of the things that OAR thought, and the analysis is pretty similar to Mr. Ramirez, is that the Board can meet at such times and places as the Board determines. She asked Mr. Ramirez if the Board, in that environment, could also set its own agenda and delve into issues that might not have been previously set in the agenda developed by the Commissioner and staff. Ramirez said his response is not to this Board only but his general comments are, if you have a sense of what items are going to be on the agenda, you should put those items on the agenda. He said you should be cautious before going into any issues that have not been specifically identified on the agenda.

Ms. Bushnell asked if Mike Graeper, as Board Chairperson, could call a meeting and set his own agenda. Mr. Ramirez said yes, he believed so. Bushnell said if that's the case, then could the Board in fact set a series of meetings? For example, could Mr. Graeper call a meeting, it might be a public meeting, and require specific information on the Agency's use of disciplinary authority? Mr. Ramirez replied he thought so, yes, but these questions are very general. Ms. Bushnell replied she understood and knew that Mr. Ramirez did not have a chance to think about his response. Bushnell said obviously the Board can take public testimony but can the Board then take the public testimony, if they have an issue, and confer with the Governor on those issues? Ramirez responded that is specifically outlined in the statute.

Bushnell said real estate education is within the authority of this Board from what she understood. Ramirez interjected that he believed that it is just under licensing. He said it basically gets into a different part of the statute for the real estate education. Ms. Bushnell said her question goes for both continuing education as well as entry-level education. Bushnell asked what level of authority the Board has. Mr. Ramirez said he would have to look that up. Mr. Graeper asked Mr. Ramirez if he could research what authority the Board has regarding the education and perhaps report back at the next Board meeting. Mr. Ramirez said yes.

Mr. Graeper said, not that he didn't want the Commissioner here, but he recalls in 1985 the statute was changed so that the Commissioner wasn't chairman of the Board any longer. He asked Mr. Ramirez if the Board could meet without the presence of the Commissioner because it's never been clarified. In other words, can the Board call their own meeting? Ramirez said that's something he might have to look at but he will refer to the statutes that designate what the Agency is. The Agency is comprised of the Commissioner and the Board. The Board is part of the Real Estate Agency; it is not a separate entity. Ramirez said, to the extent the Board wanted to meet without the presence of the Commissioner, that would seem a little bit away from the spirit of the statute. He didn't think it was specifically addressed one way or the other.

Mr. Graeper said that Mr. Ramirez mentioned in his earlier comments that this Board is unusual in the way it is comprised as opposed to the other boards that Ramirez oversees for the Attorney General's office. Graeper said, never sitting on any other board, he's not aware of how the other boards are comprised. He is aware the Oregon Real Estate Board is one of only three states that is organized this way; that is with the Real Estate Board and the Commissioner. Graeper added he thought California and Arizona were the other two states. The Commissioner said yes, that have an advisory board and a commissioner coming out of the industry. He added it's those two things together.

Mr. Graeper asked Ramirez to explain how other boards work. Ramirez responded that he can speak about his experience with the boards that he represents and has

some knowledge of the other boards. The boards are very much like the Real Estate Board. The requirements to sit on the board are specified by statute. There are usually a specific number of individuals on the board that must be licensed to engage in that particular professional activity. Usually the remaining two members have to be members of the public. The terms that board members serve are very much stated in the same terms as this Board, although the length of service may be different. Ramirez pointed out the biggest difference is those boards are actual decision-makers; they have the authority to hire staff as they see fit. Usually they hire an executive director who administers the day-to-day running of the agency but doesn't have authority to make policy decisions unless the board delegates authority to the executive director to do certain things. For example, you are an executive director who is delegated authority to issue notices to impose discipline in certain cases, or to sign the orders, or to initiate rulemaking, those types of things. The difference is that the board itself is the entity that makes the policy decisions for the agency.

Mr. Kegler asked Mr. Ramirez to give three examples of the other boards. Ramirez listed the Board of Psychologists and Examiners, the Board of Architect Examiners, and the Racing Commission. Mr. Graeper expressed his thanks and appreciation to Mr. Ramirez for coming and addressing these issues to the Board and the public.

b. Agency Budget

The Commissioner asked Deputy Commissioner Katie Cannon to report on the 2007-2009 budget as well as the current 2005-2007 budget. Mr. Graeper said he looked at the OREA Cash Flow and Monthly Fund Balances report that was included in the Board's packet of information. Ms. Cannon said in the last legislative session, the Agency was provided a 15-month budget out of a 24-month budget. The Agency must go back to the Emergency Board (E-Board). She said it was important to include the report in the packet; the budget note says the Agency must have a report from the Real Estate Agency Oversight Task Force before going back to the E-Board to ask for the budget. She said the problem is that the report is due in September and the Agency is out of money by September, or rather out of limitation.

Mr. Graeper asked what limitation means. Ms. Cannon gave the following example: if you have a million dollars in your checking account and the Legislature is only giving you expenditure authority to spend \$800,000, you can only spend \$800,000 without going back and asking for permission to spend more. The Agency has money in its fund balance but the issue is that the Agency doesn't have the authority to spend it. The Agency is informing the Task Force of the seriousness of this; the fact that we will not have enough limitation to make it to month 15.

Cannon reported the reason the Agency will not have adequate limitation concerns two issues discussed in the last budget hearing during the session: 1) the exam services contract with PSI, and 2) the increase in the Oregon State Police (OSP)

background checks. The processing fee increased by \$16. Those two issues were discussed at the hearing but no action was taken. We were asked to come back to the E-Board. Cannon replied it's a timing issue; the Agency has to go to the Task Force in order to go to the June E-Board for the limitation even though it may be unscheduled. Unscheduled means that Department of Administrative Services will un-schedule it; you cannot spend that money until DAS gives you the authority to spend money. Cannon reported if we wait until September, the Agency has real issues with knowing whether it can continue to do business. She emphasized the timing to get the paperwork done; if the Agency gets authority, and then can't get it done in time, our positions and our funding limitation goes away September 30th.

Graeper said, from reviewing the monthly account balances, it appears the Agency will be short \$202,000. Ms. Cannon said yes, that is correct. Mr. Graeper asked who could grant the extension to be able to cover the shortfall. Cannon said the Agency must first get the authority from the Task Force to move forward to the E-Board. The Emergency Board and the Legislature are who gives the Agency the authority. She reported there are some other things coming out of the Focus Groups that the Commissioner and she have talked about that we may want to address in this particular limitation request.

Mr. Kegler asked Cannon to explain about the special E-Board in June. Ms. Cannon said during the legislative session, there are Ways and Means Committees where you present your budget that goes on for voting. In the interim, there is an Emergency Board. Agencies can come to that Emergency Board and ask for authority. In the Real Estate Agency's case, we ask for limitation because we have all the other funds; we don't have the general fund. There is an E-Board in June; then another one in September. Mr. Kegler said his question was that he didn't know the E-Board met regularly; he knew there was one in September. He didn't know there was a June opportunity. Ms. Cannon said the Legislature meets on a regular schedule for E-Board. You have to meet certain requirements, such as notification that you're going to the E-Board, and the paperwork has to be in well in advance. If you don't make those dates, you don't go to the E-Board.

Mr. Graeper commented that he assumed the revenue was from the licenses that are being renewed by real estate brokers. Ms. Cannon responded that the majority of revenue is from license renewals and new licensees. The Agency gets smaller amounts for publications and other things. Mr. Graeper pointed out the revenue doesn't end in September; the money is still coming in. Ms. Cannon said the problem is if the Agency does not have a limitation to go beyond September, the positions go away. If we can't spend the money, we can't operate. Basically we're done; there will not be licenses renewed; there will not be new licensing; there will not be testing. The Agency will cease to work.

Mr. Zupan asked if the Agency has approached the Task Force with this problem since they're not going to be done and the Agency must go back to the E-Board. Cannon said she tried to at the last Task Force but it didn't get to that part on the agenda. It will be on the agenda for the next Task Force and she has discussed it with both chairs and Representative Smith who was the chair of our Ways and Means Committee.

Zupan asked if the Agency had a feel for the Task Force's position. Ms. Cannon said she will be talking to the Commissioner this week but she believes the Task Force understands the seriousness of it. Mr. Zupan commented that this could be real serious for the industry. He said his understanding was that the Agency needed to get roughly \$200,000. Ms. Cannon said the Agency would need to get more because month 15 only gets the Agency to September. Cannon said she has been notified by DAS budget management that even if it's approved in September, the paperwork would not be done in time by the end of September. Cannon said we really need to have enough limitation through month 15; then we need to figure out what we need to do to get 16 through 24 months or some combination. But eventually the Agency needs 24 months of limitation.

Mr. Zupan asked if there was anything the Board could do to help the Agency. Ms. Cannon said the Board could always talk to the co-chairs and let them know the seriousness of this. But they do know, she added, especially Senator Johnson who has sat on many, many Ways and Means Committees. Ms. Cannon noted she has sat in front of Senator Johnson on three different occasions. She said Senator Greg Smith is also very aware of the seriousness of the situation, and she is sure that Representative Esquivel also is aware; he just hasn't sit on Ways and Means. Sometimes it's just knowing how all the pieces need to come into play. The Commissioner added obviously the Board can inquire and give advice so if you chose to do something like that, I'm sure you can.

Mr. Graeper said we have talked about this in simplistic terms; for example, if he had \$100,000 in his checkbook and he only had authority to spend \$80,000. He asked what the Agency has in reserves. Ms. Cannon replied she can't answer right off the top of her head but it's probably close to four million dollars. Graeper asked how many licensees there are. The Commissioner said about 21,000 broker licensees. Ms. Cannon said if the Board would like her to give them specific numbers she could do that. Graeper responded that it's not like the money isn't there; we just have to get the Legislature to untie it. Cannon said that's right.

Mr. Kegler said it would be the responsibility of the Task Force to authorize the June E-Board. Ms. Cannon said yes; the Task Force would need to be able to cause some action, a letter or something, that will allow the Agency to move forward to the June E-Board.

Mr. Costales stated that there are two actions. There is the current 15 month budget with the two items costing more than expected, which is the increase to the current spending authority for the first 15 months. No need for revenues; just the spending authority to capture the OSP item and the testing item. Secondly, there's the case for the Task Force which is the budget for month 16 through 24. That is not just an extension of the current budget but you have to take into account those two items that are costing more. Ms. Cannon responded right. Costales said he didn't remember if the Task Force is needed to do the two items that are of higher cost; whether the Task Force technically needs to be the one that says okay. However, he added, it is politically prudent to have the Task Force say yes we agree; it is something that needs to be done and encourage it to be brought up at the June E-Board meeting because the E-Board only meets every three months.

Mr. Graeper asked the Commissioner if there was any action needed by the Board to support the continuation of the Real Estate Agency. The Commissioner said if the Board so chose to support the continuation of the Agency, it certainly wouldn't hurt.

Motion: John Zupan moved that the Board support the Real Estate Agency with the Task Force to get the funds necessary to continue to operate as the Real Estate Agency. Bob La Du seconded the motion.

Discussion: Mr. Kegler said that he was a member of the Task Force otherwise he would have made a motion for that and he will vote in favor of the motion.

Vote: Motion passed.

In favor: Troy Costales, Victor Kee, Arthur Kegler, Bob La Du,
Maxine Ribera-Card, Marianne Wood, John Zupan

Opposed: None

c. March 23 Real Estate Agency Oversight Task Force

Mr. Graeper announced that Board members received a transcript from the Task Force meeting in their Board packet. The Commissioner said he will try to be relatively brief. The Task Force materials the Board received is what the Agency has provided to the Task Force in our presentation. He reported the Agency is about half-way through its presentation. At the next Task Force meeting, scheduled for May 2nd in Medford, the Agency will begin with the Regulations Division. The Agency has been making a presentation, as have others, relative to how the Agency operates. The Commissioner noted that the March 23 Real Estate Agency Oversight Task Force document is 33 pages long. The document prepared by Agency staff provides a good

summary of what happened at that meeting. Board members Art Kegler and Vada Salinas are members of the Task Force. The Commissioner asked Board members if they had any specific questions.

Mr. Graeper asked what the process is for developing the Agency's mission statement. Graeper referred to the Task Force document that states the Commissioner responded that the mission statement preceded him but his best guess was that it was developed in 1981, the year that the Commissioner was taken off the Board. Graeper added that it also says given how old the mission statement is, and the industry concerns, at what point do you engage your Real Estate Board to revisit and refresh the mission statement? Graeper said at this point that hasn't been done and asked if the mission statement should be a future item on the Board agenda. The Commissioner said he thinks so if that's the Board's pleasure. Graeper said yes, and requested including the mission statement as a future agenda item.

Mr. Graeper said that he concurs with the Commissioner's Task Force comment that he has made a sincere effort to involve the Board more than it has chosen to be involved in the past. Graeper said his only comment is that he appreciates the Commissioner's choice to involve the Board more in the decision-making process.

Mr. Graeper noted that the Legislative Concepts were also included in the Board's packet. It says the Board receives all rule proposals. He said he knows the Board receives rule proposals now but didn't know if the Board has in the past. The Commissioner said as far as he knew, the Board has. It is required by statute.

Graeper discussed Lindsey Ball and George Dunford from DAS's testimony. He said Dunford testified that there was no consistency in the application of the sanctions and penalties. Graeper said he went through a list of eight recommendations agreed to by the Agency and he assumed those recommendations have been implemented or are in the process of being implemented.

The Commissioner said the one area where the Agency has a problem, and he has to take the Board back to the language of the audit, is that it says administrative actions, primarily the stipulated ones, appear to be inconsistent. He noted DAS didn't go so far as to say they are inconsistent. In fact, DAS didn't review any of the files so it would have been difficult for them to do that. Under our new licensing system, the Agency will be developing a system to track administrative actions and develop something like a case law digest. So we will have that to draw on. Right now we have a big file that has every administrative action that the Agency has ever taken back to a long time ago. The Commissioner said that in general, he can remember most hearing orders that have happened during his tenure; don't ask him why he remembers something like that, but he does.

The Commissioner said that House Bill 2604 points us to some areas that he thinks helps the Agency to do that. He noted many of those things the Agency has done in the past, but now it is set out so that you can see it. Hopefully between all those things, we can get that to where it's more easily understandable for everyone. Mr. Graeper asked if the tracking system to be developed was with Access. The Commissioner said yes. Another thing being done is laying out the stipulated orders differently in the News-Journal. It used to be difficult to tell what was going on. The Agency is taking a different approach by not concentrating so much on the statutory violations as we are on the story. So hopefully licensees can learn what went wrong with somebody else so they can avoid the same situation. That takes a lot more paper, and it takes a lot more time but hopefully that will be worthwhile. Mr. Graeper responded excellent.

Mr. Graeper noted that in the Commissioner's testimony, the Commissioner said he'd like to see more in depth discussion from the Board concerning many of the issues we deal with. The Commissioner said absolutely.

d. Preliminary Feedback on Focus Groups – Standards of Customer Service Delivery and Evaluation of Current and Desired Services

The Commissioner reported that as a result of the DAS audit, the Agency has engaged in focus groups throughout the state. The Commissioner asked Deputy Commissioner Cannon to discuss the Focus Groups and then move onto the customer service standards, which the Board received at their last meeting.

Ms. Cannon reported that the Agency has conducted five of the six Focus Groups around the state. The Agency is using HMH of Portland; an independent facilitator conducts the Focus Groups. Cannon said that, with the exception of the Portland group that was not asked, the Focus Groups have been asked if she could stay and listen. Cannon said she would only listen to the group, not participate because she didn't want anyone to feel inhibited. She said the Focus Groups have been really helpful for her and has given her general categories of issues. There is not a final report yet because there is one more Focus Group scheduled.

Cannon reported that the areas the Agency is seeing some common issues in are the educational area. That probably gets into internal education for our staff, making sure there is consistency in the answers across the board. Also with our investigators, we have some auditors, and we have some people that have strict real estate backgrounds. It is very hard to find candidates that have both. The Agency is going to have to do cross training. She explained you can get a Realtor that can't do an in depth financial audit and you can get auditors that don't understand the day-to-day real estate.

Cannon said comments have been consistent from different Focus Groups. They want more education; they want higher quality education in both the pre-license, post-license and continuing education. She said she has heard a lot about continuing education – feeling that the quality or consistency is not there. Comments include having the Agency teach the classes to having the Agency certifying the classes, so there is a lot of work that can be done there.

Cannon reported another area is the customer service area for the front counter which, in her mind, needs to deliver a little higher level of customer service. She believes it gets back to the three areas: 1) making sure we have the right people in those positions; 2) making sure we have them well trained with customer service techniques; and 3) making sure they are very knowledgeable in the areas of licensing. She feels this is an area the Agency needs to work on to make sure that they are communicating well.

Cannon said there have been a few other comments come through that aren't necessarily consistent. The web is an area that we need to expand our services. She thinks the Agency can provide a lot of education and communication through the web. She reported that she had a gentleman in Umatilla that told her to "get into this century; the Agency needs to move forward". Cannon said the Agency will be working on that. Those are the main themes she has seen. The groups want the Agency to be better educated.

Mr. Graeper commented that he looked through the Standards of Customer Service Delivery and also reviewed the minutes. He said there was one word, "pleasant", that he recommended be inserted. He believes that would do a lot and he realizes that sometimes it's difficult to interact with licensees in a pleasant manner. Ms. Cannon said that the copy on her computer has the word inserted and that she hasn't forgotten. She apologized the hard copy given to the Board didn't have the revision and agreed with Mr. Graeper.

Cannon reported another issue in the Licensing area is staffing. When you don't have enough people for coverage, then people aren't as pleasant because they are rushed on time and can't take the time with the customer. Right now the Agency has only three full-time people to answer phones and do data input. Ms. Cannon said one of the employees has left and moved to another position so there are only two employees. If you factor in breaks, lunches, that sort of thing, most of the time there is only one person. She said in the overall request, she is going to go back and request a limited duration position for the Licensing section so there are four full-time employees and not less than two employees at any time.

Mr. Graeper asked about the report on the telephone room. He said, as he recalled, only three out of 13 investigators had real estate experience. Ms. Cannon responded that she thought there was a couple more. Graeper replied there were a couple people

who had escrow experience but only three people that had maintained licenses in the past. He said he thought a lot of the questions that would come up in the phone room would be regarding standards of practice; and if you've never been in the business, how in the world could you answer the standards of practice? Graeper added that he didn't mean to tell the Agency how to run their business but it seems if you had people who had practical experience in the real estate business, it would be easier for them to address some of those issues. Cannon responded that she didn't disagree. Graeper and Cannon discussed the possible monetary differences between employment as a real estate licensee versus an Agency employee.

Ms. Cannon said that the Agency has the investigators take half a day a week or so and go in and work the phone room. First of all, she said, she doesn't know that's a good method because you get an inconsistency of answers. Additionally, the financial investigator position requires an auditing background in that classification. The state structure is not overly flexible; you have to meet certain minimum qualifications or you don't get passed on to the interview. Cannon said she knows there is one gentleman who applied that has a very good real estate background; he was looking for an 8 to 5 job, five days a week so that he could spend time with his kids. He didn't qualify. That's part of the issue with the financial investigator.

She said the Agency is recruiting right now for a PSR 4 (public service representative) position that will be half-time in the phone room. It is a lower classification so money may be an issue. But the position doesn't require a solid auditing background so the Agency is looking for someone that has a real estate background. She said her hope is eventually the Agency will be able to put two PSR 4s in the phone room. The objective is to have someone that is knowledgeable in real estate because she believes Mr. Graeper is right in stating that those are the types of questions the phone room receives. Cannon added those employees need to be trained on when the Real Estate Agency's authority stops and then be able to refer the caller to the appropriate agency. Cannon summarized that money and the qualifications are the two issues the Agency faces when filling the positions.

Mr. Kegler commented regarding the position's need to have financial understanding. He said that is business practices, not license law. Kegler gave an example: if you're coming into my agency and telling me about my financial operation, you're not really doing anything relative to real estate. You're operating my business for me. He said that's where there have been some problems with investigations and with drawing the line. When you tell me that you can't hire people because they don't have that financial background, somehow you need to explain that to the Legislature or to somebody or you need to make a rule. He said he didn't know what way to handle it but you need to separate, in his opinion, the financial and the real estate law operation. Kegler said he thinks there is a significant difference when you come in and tell a real estate broker how to run his business; what he can debit and credit.

Ms. Cannon replied that she didn't disagree with Mr. Kegler. The dilemma is that there are only certain classifications that the Agency can pick from. It has been the investigators that have been working in the phone room, which requires an auditing background to meet the minimum qualifications. Cannon said that's one reason why the Agency took the PSR 4 positions for the phone room. It is in a lower class; it's going to be paid less but it gives the Agency some flexibility on hiring based on an applicant's background. Cannon added it is not the Agency making a rule; it is the state classification system that the Agency has to work with. It is a problem to get someone the Agency can pay comparable to what someone would pay out in the real estate field.

The Commissioner commented regarding the Agency's challenge in getting a competitive salary level to be able to recruit out of the real estate business. For about six years, the state went through a job analysis project. The category that the Agency's investigator/auditors were in was discontinued. He said because of that, and to keep the positions at a level that the Agency felt they could recruit from, we had to adopt some other things.

The Commissioner commented regarding Mr. Kegler's issue about going in to offices to tell someone how to run their business. He said he sincerely hopes investigators are not doing that because they should be looking at compliance with the statute and rules. The Commissioner said SB 446 pretty much got the Agency out of the business of telling people how to run their business. He added that before SB 446 the statute, which was very old, did have a lot of that in it.

Mr. Kegler agreed with the Commissioner. He said one of the issues that he was addressing was the requirement of hiring an employee that had to be financially capable of auditing. Kegler said he thought that was a very low priority for an employee of the Agency. The Commissioner responded that one of the challenges the Agency has, and this may reflect a bias of his, is we want someone who can do a good investigation and has the moxie to do that kind of a skill. Secondly, particularly with property management and trust accounts, they have a financial ability to deal with that. Third, the challenge for getting real estate licensees is to filter through whatever bias they may have to make sure that the Agency gets someone who is going to go out and do investigations and not follow a personal mission. Kegler said he wasn't speaking in the venue of property management and he understands the necessity there.

Mr. Zupan asked what the salary level was for the PSR 4 position. Ms. Cannon replied that it's considerably less than the financial investigator position. Financial investigator is a 27 range and the PSR 4 is a 19. Cannon said she tried to get it higher; when she outlined the duties that the PSR 4 was going to do, she was unable to make it a higher level position. She explained that when the Agency puts a position together, it includes a description of the responsibilities. The Agency then

submits it to DAS. DAS then determines what classification the position is in. Cannon said if she wanted to make it a higher level, she would have to include higher responsibilities.

Mr. Costales said a general ball park figure for salary range 19 is probably not going to exceed \$3,000 a month by much; salary range 27 tops out at about \$5,000 or \$5,200 a month. Costales added that the starting salary 27 is what the salary 19 will top out at after eight or nine years on the job.

PUBLIC COMMENT

Dave Koch, principal broker Re/Max Equity Group, stated that he was responsible for over 1,000 agents in Oregon. He is also licensed in Washington and responsible for approximately 300 agents there. Mr. Koch said he gets a pretty close-up look at the educational areas. In his view, he would not want to go to a Washington system, although it does have some benefits, because it is an administratively onerous business. He said the biggest failing he sees in Oregon is not because there isn't an outline of a good educational process and requirements; it's a lack of accountability. Mr. Koch said Oregon needs to find some accountability mechanism that will work and not impose a huge, onerous burden upon the Agency. He reported that his staff audits the training certificates for his 1,000 agents as they come in. Sometimes he doesn't see a high level of accountability, particularly with principal brokers who are generally quite new and have the responsibility under the new system for supervising their assistants.

Another problem Koch reported are title companies easily issuing certificates that sometimes have no credibility. As he recalled, he hasn't seen any audits from the Real Estate Agency in a number of years. Although, he added, recently there was an audit request for an agent that had left him and gone to another company and failed to renew.

Koch suggested there be a design in place where the Agency could, without a huge administrative overload, provide some auditing so there was assurance of accountability for the training that was supposed to be occurring. Koch gave an example: if he was an agent and he knew that there's going to be accountability for the hours, he's going to make sure they are pretty good hours. On the other hand, if there is no accountability, he might tend to get those hours any old way he can.

Mr. Graeper responded that Mr. Koch has a great idea and said it might be as easy as having the principal broker sign off on the fact that the agent has completed their hours and identified required and elective hours. Graeper added the reason for that wouldn't be for someone who turns in 60 required hours but for someone who turns in just 15 required hours; you better be sure that those are required hours. He said it would also put a bigger onus on the broker to make sure they know what topics they are signing off on.

Mr. Koch said one thing Washington does that might be a fruitful idea is to have proctors for the training hours. The proctors have to sign off and monitor attendance. He said the problem with Oregon's training is that anything goes, depending on the level of individual accountability and responsibility the broker feels about what they're signing off on.

Mr. Zupan said that's a good point. He said he didn't know if the Agency could come up with some type of a rule but he knows his local Association has a three-hour class once a month that in most cases are core hours. You have to sign off when you get there and sign out when you leave or you don't get your hours.

Mr. Koch said there are very good courses available in Oregon; every bit as good as what you can get in Washington with their onerous system. But, he added, these courses are not what people are taking sometimes because that's not the easy way out.

e. Housekeeping Rulemaking

The Commissioner reported the Agency will be promulgating some housekeeping rules. Unfortunately they are not yet drafted so the hearing date may have to be put off. The Agency is still working on HB 2604. Secondly, he reported, prior to the legislative session we began working on some property management rules that got tabled for a while. Work is now starting up again with collaborative rulemaking to try to resolve some of the issues and get some rules that will work for property managers in the 21st century. The Commissioner reported that Maxine Ribera-Card has been asked to be on that committee. Another time-consuming task for Laurie Skillman, the Agency's administrative rules coordinator and land development manager, is the condo filings. The filings have more than doubled in a little more than a year. He said she is buried in condo filings; the Agency gets in excess of 40 a month. Ms. Skillman has a statutory period of time in which she must review each "thick" filing. The Commissioner said he will keep the Board updated on the housekeeping rules.

Legislative Concepts

The Commissioner reported on the legislative concepts that were included in the Board's packet. There are three concepts; one is slightly more than housekeeping, the other two are housekeeping. These are just concepts at this time and don't have statutory language attached to them.

1) The first one involves the clients' trust account disputed funds that included property managers. The Agency has introduced some legislation to fix that; 2) The second one has to do with status of licensees. The Commissioner said if you look at our statute, you'll find a myriad of inconsistencies about licensees' license status. The

Agency is trying to find a common word across the statute for terms such as “unlicensed”, “nonlicensed”, and “expired”. The statute has been this way for years and just needs to get fixed; and 3) The third concept, as the statute is worded right now regarding escrow law, involves adding a provision for escrow licensees to renew late. There is a provision for real estate licensees to renew late but no provision in the statute for escrow licensees to renew late. If the escrow licensee has not yet sent the Agency a renewal on June 30, the licensee basically ceases to exist.

Mr. Graeper referred to the February 2006 minutes regarding the rule update discussion. The Agency said it will revise the rule regarding advertising. The Commissioner responded that rule was one of them. The Commissioner said the advertising rule is being enforced with the interpretation the Board suggested. Mr. Graeper asked if anyone had communicated with Mr. Mistler, who included Graeper’s name as Board Chairperson on a letter he sent out to licensed brokers in the state of Oregon. The Commissioner said yes, on more than one occasion.

f. HB 2604 Rules Update

The Commissioner reported that the Agency met with Oregon Association of Realtors’ task force last Monday. He said “progressive discipline” is signed off on. However, Representative Ackerman raised some issues regarding letters of concern. The Commissioner sent those to the Attorney General’s office for a response. The Commissioner said letters of concern are used by many, many agencies. The actual language was given to the Agency by the AG’s office.

The Commissioner reported that we are down to one issue with “investigative procedures”. He said he would take the blame for that; after the last meeting with OAR he was suppose to ask the AG about one issue relative to the settlement offer letters, the “stip” letters. The concern is about overpleading or overcharging. The Commissioner said the AG has told the Agency not to overcharge something where we couldn’t find sanction of that level under HB 2604. The AG felt it both violated the letter and the spirit of the law. But, we’re trying to come to some resolution to what we can do rule wise to allow the Agency to do it’s job, as well as provide comfort for the industry that we’re not going to be going out there beating people over the head with these things. The Commissioner added that he has put the question to the AG after the last session on April 10, and he’s waiting for the answer.

On the disputed funds, the Agency proposed the idea of a note at the bottom that in essence said if you are in property management take a look at the Landlord-Tenant before you decide whether you’re going to use this form. The Commissioner said in the discussions last Monday, we may have said that too soft so the idea is to make it stronger to say basically it doesn’t work. The question then became whether it should be a new rule, a note or an additional subsection of the existing rule. He said he has asked the AG this question; the Agency will go with whatever the AG’s response is.

The Commissioner added that he would get these to the Board as soon as he has something.

g. Update on License 2000 and Impact on Disciplinary Outcome Tracking

Deputy Commissioner Cannon reported that License 2000 is the new licensing system that the Agency is migrating to. It has some features that will allow the Agency to track the compliance and administrative actions. She said the License 2000 report is kind of "high level" so the Agency is going to take it one step further and develop an Access program. The Access program will be easier to manipulate; if you want certain information then we'll be able to go in and select the data. The Agency is moving forward but it's at a snail's pace so we are behind. The Agency's intent is to have it up and going real soon.

Along that line, Cannon said, we have My License which will allow licensees to renew their license online. That is also taking a little longer time because DAS is trying to make the system work globally for all agencies that are using My License. Every agency does their licensing and accounting a little bit different. Eventually the whole system will roll into the FSMS system, the state accounting systems. Cannon said when licensees renew their license online, they'll enter their credit card number and it will automatically go into our accounting system. She added that it's moving forward but not as fast as she'd like to see. The Commissioner stated the Agency is a "beta". Cannon explained the Real Estate Agency is the lead agency. There are other agencies that have License 2000 but the Real Estate Agency, with My License and online renewals, is the first one out of the shoot with IRMD (Information Resources Management Division).

4. Board Advice

a. E-mail Board Survey Results

Chair Graeper asked Deputy Commissioner Cannon if she had looked at Zoomarang. He said it's another survey tool and the one that OAR uses that works well. Cannon said she was amazed at how easy it was to develop a survey. She said she has market research in her background. The Agency is doing a survey with DAS Progress Board on customer service. The Progress Board directed her to SurveyMonkey. Cannon reported that she and the Commissioner discussed Board authority and felt it would be good to see where Board members think they are. That is the intent of this survey. Cannon explained the survey results given to the Board which included additional comments made by members, if any. There were only seven respondents; the respondents are not identified.

Question 1) Fifty-seven percent said they would be willing to submit agenda items; only 43% said they would prefer a general category of Board input on the agenda.

One comment was received that said “I might from time to time submit agenda items, as I understand I have always been able to do.”

Question 2) Are you satisfied with the type and depth of discussions that occur during the Board meetings. If no, please provide suggestions. Seventy-one percent said they are satisfied; almost 29% said no, they’d like to see the discussions go into more detail. There were two comments: “I believe that in depth discussion should take place regarding policies of the REA and examination of budgets.” And “The items that we have on the agenda are adequately discussed, however we do not have items of substance.”

Question 3) The Board minutes are being processed in more detail. Do you find this helpful? Eighty-six percent said yes; 14% said no. Comments were “The minutes have been very detailed. I have been impressed by the accurate collection of details given the volume of the discussions and the number of people commenting. Great job!” and “Typical board minutes chronicle actions taken, not the specific discussions that eventuate in the decisions. After the fact, what purpose does all of the detail serve?”

Question 4) One of the responsibilities of the OREA Board is to inquire into the needs of the real estate licensees of Oregon. Is the Board currently being effective in this responsibility? Two people indicated yes; three said no. Comments received were: “To my knowledge this question has not been on the agenda”; “I don’t think most board members actively inquire from licensees. Most communication is done if a licensee calls a board member with a problem”; “It would not hurt the Board to continue to develop systems, like surveys, to keep our fingers on the pulse of the needs of licensees, which is always changing”; “I don’t believe the Agency really asks the licensees for their opinions or problems. Also the licensees are intimidated for fear of being a target. Keep quiet and stay unnoticed”; and “The Board should be pro-active in soliciting input as to the “needs” from licensees.”

Question 5) The OREA Board has the authority to inquire into the functions of the real estate department and the matter of the business policy. How would you rate the exchange of information concerning the functions and business policy between the Commissioner and the Board? One person indicated the exchange of information is excellent; three indicated good; one indicated fair; and two indicated poor. This was an average of 2.57.

Question 6) If you answered “fair” or “poor” to question number five, please provide suggestions as to how this communication could be improved. Comments received were: “Ask the question at the meeting or have the question be a permanent part of the agenda”; “The Agency needs to be more forthcoming with policies for board discussion”; and “I believe the subject matter presented is thin and not the basis of the basic operations of the agency.”

Question 7) The OREA Board has the authority to confer and advise with the governor as to how OREA may best serve the state and licensees. Rate the Board's interaction with the governor and his staff. One individual said they have contact with the Governor on a regular basis; one individual makes contact when necessary or desired; one individual said rarely has contact; four indicated they have never contacted the Governor.

Question 8) The OREA Board is to make recommendations and suggestions of policy to the Real Estate Commissioner as the Board deems beneficial and proper for the welfare and progress of the licensee and the public and the real estate business in Oregon. How can this best be achieved? Cannon said all seven respondents indicated that both the Board and the Commissioner bring topics forward for the Board agenda. Comments received were: "Ask in the OREN-J for licensees' ideas"; and "This is a new thought."

Question 9) The Board is to reflect the desires, issues and concerns of the general public and the industry as a whole. How can communication and involvement from the Board be encouraged so they can communicate the desires, issues and concerns? There were five responses: "Have an article in the OREN-J from the Board"; "The board should know they are encouraged to provide input. It is up to the individuals to do so. You could remind everyone at every meeting, but it would be redundant"; "In reference to the industry, I feel members could be encouraged to communicate their desires to the Board by advertising in the OREN-J and perhaps through OAR. The general public will be a harder task"; "Didn't know we should, will now"; and "A yearly report/survey to pertinent entities sharing the activity of the OREA and soliciting input." Mr. Graeper thanked Ms. Cannon for reviewing the survey results with the Board.

b. Suggestions to Make Board More Proactive

Mr. Graeper commented that the survey results include a number of suggestions that can be worked on. He asked how to take the good suggestions from the survey and implement them; such as the comment to have the Board write an article for the News-Journal. The Commissioner said he likes that suggestion. Graeper said another suggestion was to solicit ideas from OAR or the licensees through the OREN-J. Graeper suggested making a list of the suggestions made by Board members and submit them to the Board so that they can be acted upon. Mr. Zupan said he thought the survey was excellent. Mr. Graeper agreed.

Zupan commented about Board members' terms of service. When he became a Board member he was given a Board handbook but he probably spent the first year just trying to figure out what was going on. He thought the Board just did the experience waiver requests and then the Commissioner gave his report and that was

it. He suggested implementing a new system for new Board members to train and get them up to speed. Zupan said perhaps the Chairperson or the Agency could work with the new member and let them know what the Board can and can't do. Zupan added he thought this would help the Board become more proactive and get better discussion. Mr. Graeper agreed. There are current Board members whose terms have or will be expiring soon. Graeper said maybe we could come up with something together to have a format to educate a new member; such as what the Board's charge is, and what are conflicts of interest.

Mr. Kegler said he'd like to see encouragement to the general populous of Realtors to get more opportunity for feedback. They will not call the Agency for fear of being a target. Kegler suggested there be a phone number, perhaps directed to the Board Chair. Chair Graeper expanded on that to include phone numbers and e-mail addresses of every member of the Board. Kegler said his point is that there should be encouragement for members to call Board members if they have concerns because members shy away from calling the Real Estate Agency. Graeper agreed.

Ms. Cannon suggested the Agency set up e-mail addresses for Board members that can be put on the website and in the News-Journal. That way, Board members' personal phone numbers and e-mail addresses would be protected. The e-mails could come to the Agency and then be sent on to the Board members. The Board felt that was a good idea and Mr. Graeper asked Cannon to please set it up. Ms. Cannon said we could also have a bio on each Board member that at least included geographic area and background. She also suggested for new Board members to spend some time in various sections of the Agency. Graeper said that wouldn't hurt for old members as well. Cannon said she would be happy to schedule that. Graeper suggested a course of action: with the next new Board member we could have the entire Board down at the Agency together to go through the whole process.

Mr. La Du mentioned that the first thing the Board member is required to do is attend the meeting put on by the Governor's office. He said that is where the conflict of interest is first laid out so that's something we wouldn't have to do, especially within the Agency. He added that it's important for new members to attend that meeting. Graeper responded that he thought so too; good idea.

The Commissioner reported the Association of Real Estate License Law Officials (ARELLO) has an educational DVD that explains what you do as a Board/Commission member. ARELLO now sends this to all new Board/Commission members. If Board members do not have that, please let him know. He said there is no training for real estate commissioners. When the Commissioner came to the Agency and went to the first Board meeting, he did not have a clue either. He said you learn by what the Board is doing. Today Raul Ramirez outlined that the Board really has a lot more power than what has been exercised. The Agency has had some discussions with the Governor. The Commissioner said should the Board decide that

it needs more power, he'd be more than happy to pass on what the Governor would and would not be interested in; including what those different types of models can do in terms of the power and responsibilities and exposure of the Board. The Commissioner said, from his standpoint, he can see both advantages and disadvantages to the current Board structure. Also he can see advantages and disadvantages with a policy-setting Board although, he stated, he didn't want to pass his bias on to the Board. But in terms of a resource for information for the Board, he said we're more than happy to do that. The Commissioner's thought is that at the next meeting, the Board can take up that discussion and maybe come to some conclusion on their own where they might want to be.

Mr. Graeper said Commissioner Taylor is past president of ARELLO. He said the Commissioner has some resources that the Board doesn't have. Board members are real estate practitioners or members of the public, with one public member being a government employee. Graeper asked if the current Board model is the best model; and if it's not, how can the model be changed to make it the best model for the public and for the licensees in the state. Graeper said it was pointed out at a meeting recently that Oregon is one of three states that have this model. The Commissioner has been in his position for 11 years now. At the very least, the Board members have to reflect more to the Agency what is going on in the industry and how the Agency can work better with licensees to make it a better system. He added he felt the Board owes that obligation to the licensees and to the public.

Graeper said the Commissioner, and himself to some degree through the National Association of Realtors, are in the capacity of analyzing the different models to find the pluses and the minuses. Graeper said he'd like to see board models as an agenda item at the next meeting but unfortunately he won't be in attendance. He said he'd love to see preliminary information regarding the different models so he and the Board could study the pros and cons of each model.

The Commissioner reported that he was at the ARELLO meeting a couple weeks ago. ARELLO has hired legal staff counsel; she came from North Carolina Real Commission's legal staff. That Commission has several attorneys on their staff. The Commissioner said he's been thinking perhaps the Agency could use her services to look at the different models. He'd have to contract with ARELLO to do it. If you look at the models throughout the country, for example, there are about eight or nine advisory commissions. There are three that have Oregon's situation. Washington is an advisory commission; they are inside an umbrella that is a civil servant type agency that is under a bigger agency. He said there is a wide spectrum. The Commissioner believes the ARELLO legal staff counsel could take a look at the models and pick out three to five models in a spectrum to give everyone an idea as to what they do. The Commissioner asked if that makes sense.

Mr. Graeper said yes, that's makes a lot of sense. He asked Board members if they felt it made sense. Graeper said he didn't think any of the Board members know how other states worked so it would be very interesting to see the different models and learn what they are like. Graeper added the ARELLO legal staff person would have no axe to grind either way. The Commissioner said no and that's exactly why he thought of doing this. Plus, he added, she has better access. The Commissioner could do it through ARELLO administrators and get certain people to respond; but it would not give a good in depth analysis.

Mr. Graeper stated there is also a license law committee at NAR and the Commissioner chaired that committee in the past. Graeper suggested asking NAR to provide some information too. The Commissioner replied if that committee has changed because it didn't really go there. Of course, he added, it was eight years ago that he served on the committee. Mr. Graeper said he would ask OAR to contact NAR to see if they could come up with some different models to look at as well.

Mr. Costales spoke in regards to engaging the Board to become more proactive. He suggested having the Board Chair submit a quarterly news item for the OREN-J. The news item could address what the Board is doing and solicit input. Secondly, Costales said he believes the perception of the Real Estate Board is very different than what the Board is actually charged with. He sees this as part of the conflict. There is a sense that this Board is the controlling organization that hires and fires, approves any and all rulemaking, all license fees, and is involved with the budget. Costales said there is a pretty good chunk of the various industries related to this Agency that think that's what we are. He feels that's part of the misperception. There is some negative thrown at the Agency; such as you're not engaging the Board enough, you're out there doing this all on your own. But it doesn't have to come to the Board unless we ask because the Board only has the authority of advisement and inquiry, not of control.

Costales commented regarding the Board survey. He would like to see similar questions and answers solicited from the 21,000+ licensees. He suggested asking licensees what they think the Board is and what the Board does; and ask licensees what they think they need in relationship to communication with the Board. Costales said just nine Board members are not going to cover it, nor necessarily will OAR cover it. He feels there is a wide spread of opinion of who the Board is and what the Board is responsible for.

Mr. Graeper asked if another SurveyMonkey for 22,000 licensees should be done. Ms. Cannon responded that she only gets so many surveys free a month; after that, it's fifty cents a respondent. She said she needs to check first but we could probably do a random sample by taking every 100th person, for example. One problem is that the Agency doesn't have licensees' e-mail addresses. Cannon said she could go through and gather e-mail addresses the Agency does have but then the survey would

not be random. Graeper asked if e-mail addresses will be requested on the new license application. Cannon said yes. Discussion occurred on the frequency that people change their e-mail addresses. Graeper commented that license renewals are sent out every two years so addresses would be updated at that time.

Graeper said he had a few comments that the Board may have for future agenda items. He asked about the process and timing for legislation introduced by the Real Estate Agency; from identifying the need to the legislative concept to enactment.

The Commissioner said he could address his question now but may be off a little on the dates. He reported that state agencies have to have legislative concepts in by April 3. The Commissioner said, as he recalled, the Agency has until the end of June to get the concepts to a certain verbiage. Part of the process is that the Governor has to approve it. Then, at some point it becomes introduced. The Commissioner added that he thought there was someplace later on where the Agency can actually make some modifications to the statutory language before it becomes a bill. Mr. Graeper asked if the Commissioner could get a chronology of the concepts timeline to the Board. The Commissioner said sure.

Graeper said he was really concerned, and was not aware until after he went through the investigators' backgrounds that were included in the interim task force material included in the Board's packet, about the investigators' lack of real estate experience. Graeper said he read all the investigators' bios and only identified three out of 13 that had active real estate experience. He added there were some escrow people. The Commissioner said there are actually four investigators; the experience was left off one bio. Mr. Graeper said he didn't think it was the Board's function; it's the Agency's function he believes. Graeper said he made a note to review the investigative function of the Real Estate Agency, including turnover criteria and process. He said he didn't know how the Board can help in that regard. Graeper said the investigators have been an area of concern in the industry.

The Commissioner said, not to pick on anyone, but since he's been at the Agency every complaint he personally has received about investigative staff being over zealous, etc. is concerning staff that has had a real estate license. He added that's why he has the concern about determining someone's bias when they join the Agency. The Commissioner said the issue is do you want to hire an experienced person and train them out of their bad habits, or do you want to hire someone new and try to train them right? There is good and bad to both. Mr. Graeper replied that was a good point. Mr. Zupan said he could see that happening; maybe someone's career didn't go well in real estate so they may be somewhat jealous of someone whose career is going great. So, Zupan added, you might be better off getting someone who has the auditing experience.

Ms. Cannon stated that the Agency has recently hired three new investigators. If those investigators don't have a real estate background, they have been paired up with a mentor who has a real estate background and has experience. Then, if those investigators have questions they have a resource. She said the issue gets back to training. She didn't believe we'd ever be able to say all 13 investigators are going to have real estate backgrounds. The Agency also makes sure mentoring involves auditors training real estate licensees and licensees training auditors.

Mr. Graeper said it might be good for Agency investigators to go through an education program the real estate companies provide for their new licensees. It might be interesting for your investigators to go through the program to see what the industry is like through the eyes of a new licensee. Ms. Cannon replied that she has thought about asking an office in Salem if they'll let the Agency investigators come and work for a day. But, she added, if there are already programs that are set up, that would be great. Mr. Graeper said he would check to see if this would be a possibility.

Mr. Kegler commented that he felt this was a very good meeting that had a lot of substance and opportunity for discussion. He said he looks forward to continuing this structure in the future.

5. Other Business

Mr. Costales said today's meeting includes guests that are normally beyond what's usually at the Board meetings. If the Board looks at, and the Agency does adopt, some minimum standards for education or recertification classes or all the way to providing the classes themselves, there is always going to be people on either side of that decision no matter where you slide on that continuum. Earlier the Board heard a presentation from a gentleman that talked about the fact there are a lot of loose ends and there are some classes that don't warrant being certified. Costales said it cannot be solely the Agency that comes out and makes that comment. The Association also needs to say it like it is, in a much more public venue when the time comes when there are standards being done on the education piece or recertification. Because somebody is going to get the complaints. If the Agency is reacting to setting some things out there because the industries want it, the industries have to go along in partnership and say this is because there are things that are not working or don't need to be out there. Costales said the Board shouldn't leave the Agency out there hanging and neither should the Association.

Mr. Graeper responded that he had some influence on future leaders from the OAR. He said perhaps the Board could talk to OAR's leadership to address this educational component need that the Agency has. Graeper added it would be to see what is broken and how it could be better fixed and get OAR's recommendations as to how to go about that. Mr. Zupan asked if Mr. Graeper, as Board Chairperson and with the blessing of the Commissioner, could put together a study group or a task force that is

made up of OAR members and Board members to do research on this. Graeper said yes, that's a possibility. He said he will work with OAR leadership to see how to accomplish that. Mr. Kegler agreed.

Chair Graeper asked the public members remaining if they would like to identify themselves. Grafton Sterling, broker/owner of Oregon First Hillsboro branch, said he was a member of OAR and a key constituent too. He said he's working to help make some of the concerns be presented in a softer manner so that the Agency and all the Realtors can go forward and continue to put the consumer first. He added that spells success for Realtors and for the Agency.

Chris Panoff stated he was just a curious public member and an attorney by training with nothing related to real estate.

Andrea Bushnell, executive officer for OAR

Susan Kidder, American College of Real Estate and Appraisal, who attended for educational purposes.

Next Board Meeting

June 12, 2006

Respectfully Submitted,