

Oregon Real Estate News-Journal

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PROPERTY MANAGERS TAKE HEED: NEW TEMPORARY RULES

Scott W. Taylor, Real Estate Commissioner

For the past several months the Oregon Real Estate Agency has been working with a group composed of individuals from various sectors of the property management industry to evaluate the current rules and regulations affecting property management; OAR 863-025, et. Seq.

The goal is to simplify and modernize the rules. The group has come to consensus on several issues, and concurrently with the filing of these temporary rules, a notice of rulemaking has been filed to complete the revision of the rules.

Temporary rules were filed on September 15, and can be found on the Agency's website, www.rea.state.or.us.

These represent the issues where consensus was reached and where the Agency and the group agreed that they were of a nature that temporary rules were necessary.

The following concepts were incorporated into the temporary rules:

1. Provide a mission statement in the rules to the effect that the overall

focus of the rules should be on the property manager providing information to the Agency rather than dictating the methodology for recordkeeping and the conduct of a property manager's business. Information in the records is more important than format. However, the burden of producing records with adequate information is the licensee's. OAR 863-025-0005 and OAR 863-025-0035

2. Records Retention and Storage, Electronic Accounting Functions. OAR 863-025-0035

A. Property managers should be permitted to store all reports electronically. If servers are located outside of the state, the Agency must be provided a consent to jurisdiction and access from the property manager.

B. Allow storage of records offsite, provided that each property manager will have the responsibility of providing the Agency access to the records within certain time frames.



Commissioner Scott Taylor

3. Allow negative running balances during the course of a day for client's trust accounts, provided the balances are positive at the end of each banking day. OAR 863-025-0040

4. Specifically authorize internet banking and do not require paper

NEW TEMPORARY RULES: continued on page 2

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- NEW TEMPORARY RULES:** *continued from page 1*
- checks to evidence transactions. OAR 863-025-0040
 - 5. Other than circumstances involving missing money or misappropriation of funds, licensees should be given reasonable opportunities to cure any compliance exceptions identified in a compliance audit with no sanctions. Provide for reasonable notice for audits: Five (5) business days for compliance audits and no advance notice where the Agency suspects theft, fraudulent activity or misappropriation of funds. OAR 863-025-0080
 - 6. Repeal provisions requiring cancelled checks to be kept in chronological order. Keep relevant

- checks with bank statements. OAR 863-025-0035
- 7. Permit client trust accounts to be reconciled on separate days according to the wishes of customers provided that the property manager is able to maintain an adequate audit trail. OAR 863-025-0025(5)
- 8. Permit property managers to report to owners using accrual accounting, provided that each property checkbook remains on a cash accounting system. OAR 863-025-0025.
- 9. Eliminate the requirement that rental agreements must be initialed by the property manager after they are signed by the resi-

dent manager. OAR 863-025-0045(2)

It is important to understand these are temporary rules, which are in effect now. As they are being “test run” there could be minor revisions when they are incorporated into the larger property management rule revisions mentioned above, destined to become permanent rules.

Editor’s Note: A blackline version of the changed sections of OAR 863-025 can be found on page 6. The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division of the Secretary of State. Any discrepancies are satisfied in favor of the Administrative Order.

AGENCY STAFF CHANGES

The Real Estate Agency’s staff continues to evolve with the hiring of new employees in this third quarter of the year.

Kathleen Forstrom started with the Agency in July. As a Program Service Representative for the Land Development Section, she reviews applications for condominium development projects and verifies that unit owner association documents meet statute requirements. Ms. Forstrom most recently worked as a legal assistant for 15 years. She replaced **Coleen Oliva**, who took a position with Stoel Rives in Portland.

Danette Rozell came to the Agency in July to fill a Public Service Representative position for the Regulations Division. She will work in the Regulation Division’s phone intake room and provide assistance to the Regulation Division staff. Ms. Rozell has eight years of experience in accounting, purchasing and contracting, most recently with the Oregon

Military Department.

Richard Blommer joined the Agency in July on a job rotation from the Oregon Employment Department. He is filling a Financial/Investigator position left open through a leave of absence by **Virginia Grosso**, who is scheduled to return to the Agency in April 2007. Mr. Blommer is an auditor and status examiner with the Employment Department. He has a particular interest in property management.

Aaron Grimes joined the Agency in August as an Investigator/Auditor. Mr. Grimes was formerly a tax auditor for 4-1/2 years with the Department of Revenue, working in tobacco tax and personal income tax. He received his accounting degree from Western Oregon University.

The Agency welcomes Ms. Forstrom, Ms. Rozell, Mr. Blommer, and Mr. Grimes, thanks Ms. Oliva for her service, and wishes Ms. Grosso well in her endeavors.



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LICENSING SECTION NEWS

PROCESSING YOUR TRANSACTIONS

The Oregon Real Estate Agency switched to a new license database and payment processing system in February 2006. This has changed how licensing transactions are processed.

When your transaction is received at the Agency, first the fee is processed through our accounting section. This means your transaction is not available to licensing staff for one to two days. This makes it difficult

for us to confirm that the transaction has been received and when it is effective. If you need to confirm without delay when a transaction is effective, you may either bring the transaction into the Agency (and be provided a receipt confirming the transaction and effective date) or send it to the Agency by overnight delivery (i.e. UPS, FedEx, USPS Priority Mail), in which case when received the transaction is reviewed and noted on your record. Also, please check the License Search on the website at www.rea.state.or.us prior to calling the Agency to see if your transaction has been processed. Processed transactions will show on the website immediately upon entry.

KNOW YOUR LICENSE NUMBER

When calling the Licensing Section with a question, please have your license number available. Having your license number ready allows staff to efficiently and accurately answer your licensing questions. You can find your license number on the pocket card that is sent with your license. If you do not have your pocket card, contact your principal broker as it is probably still attached to your license. You can also find your license number through the Licensee Search available on our website at www.rea.state.or.us.

LICENSING FORMS AVAILABLE ON WEBSITE

Most licensing forms are available on the Agency website at www.rea.state.or.us under "Publications & Forms." Be sure to check that you

are using the most recent form, as we are in the process of updating many forms. Only the license applications and renewal applications are not available on the website, because these are prepared with your individual

information (i.e. name, license number) preprinted on the form.

WHAT IS A "RBN"?

On many of our forms you are asked for a "RBN" name or number. "RBN" stands for "Registered Business Name" and refers to the company name registered with the Agency under which you conduct your professional real estate activity. The number is assigned by the Agency when the name is registered. Please use this number, not the number assigned when registering with the Secretary of State Corporations Division. Since the law change in 2002, Registered Business Names are no longer "licensed" and do not need to be renewed. If you need to find your company's RBN number, you may use the Licensee Search available on our website at www.rea.state.or.us, then searching under "facility."

TWO-PAGE RENEWAL FORMS

If you have renewed your license recently, you will have noticed the renewal application is now a two-page form. This form is easier to understand and complete correctly, and provides the Agency with better information.

PUBLIC RECORDS

As a state agency, all information and records at the Agency are public records and therefore open to the public. The exceptions for licensing documents are background check information [Reference OAR 863-015-0015(5)] and Social Security Numbers. Social Security Numbers are only released for child support enforcement and tax administration purposes [Reference ORS 25.785, ORS 305.385, 42 USC § 405(c)(2)(C)(i), and 42 USC § 666(a)(13)].

THANK YOU FOR YOUR PATIENCE!

We certainly appreciate your patience and understanding as we adjust to our new database system. Remember, the staff who are answering your calls are the same staff who are working to get your transactions processed and entered into the system. More changes are coming (i.e. online renewals, simplified forms). If you have suggestions or concerns, please e-mail them to Selina Barnes, Licensing Manager, at selina.m.barnes@state.or.us.

WHAT ARE . . . LICENSING TRANSACTIONS?

Transactions are communications or activities between the Agency and licensee that require forms and fees. Transactions include initial licensing, office changes, license renewal, RBN address changes, book orders, etc.

CHECK EXPIRATION DATES ONLINE

- Need to know a license renewal date?
- Want to know when continuing education must be completed?

Use the Agency's web-based licensee search to find out the expiration date of any Oregon real estate licensee. Visit the Agency website at www.rea.state.or.us, then select "Licensee Search" from the menu on the left. Principal brokers can use the "facility search" option to pull up expiration dates for all affiliated licensees.

COURSE REQUIRED FOR NEW AND RELICENSED BROKERS

You must complete the Oregon Real Estate Agency-approved Advanced Real Estate Practices course (AP) if you:

- received your very first Oregon real estate broker license after July 1, 2002 (this does not include licensees who were required to take the Associate Broker Transition Course); or
- let a previous Oregon license expire (or otherwise lapse) and obtained a new broker license after July 1, 2002.

The AP course is a specific 30-hour course that must be completed before your first active license renewal. Your first license is valid from the date of issue for one year and then onto the last day of the month of your birthday. This means your first renewal date may be less than 13 months after obtaining your license. For example, if your first license was issued in May 2006, and your birthday is in June, your license would renew June 30, 2007.

If your license is inactive at the time of renewal, you do not need to take the AP course until you reactivate your license.

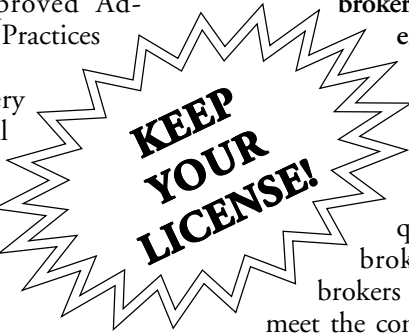
Principal brokers, sole practitioner brokers and property managers are not required to take the AP course.

Although the AP course requirement is separate from continuing education requirements, a principal broker may let affiliated brokers use the AP course to meet the continuing education requirements.

If you do not know if you need to take the AP course, please contact the Agency at (503) 378-4170.

When affiliated brokers complete the AP course, the course certificate must be given to their principal broker. The principal broker signs the licensee's renewal form stating that the course has been completed, and then keeps the certificate for six years as required by ORS 696.280(2) and (3).

A list of approved providers for the AP course can be found in the document called Approved Pre-License and Post-License Real Estate Education, which can be obtained from the Agency's website at www.rea.state.or.us, or by calling the Agency at (503) 378-4170.



Who needs to complete the AP course?

- Affiliated brokers first licensed after July 1, 2002.
- Any affiliated broker who had a license prior to July 1, 2002, let it expire, and became relicensed after July 1, 2002

Who does not need to complete the AP course?

- Affiliated brokers who got their first license before July 1, 2002. (If you had to take the Associate Broker Transition Course, you do not need the AP course.)
- Principal Brokers
- Sole Practitioner Brokers
- Property Managers

Check with the Agency's Education Section, (503) 378-4170, extension 251, if you received your license through a reciprocal license agreement.

STATEMENT OF OWNERSHIP, MANAGEMENT, AND CIRCULATION

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CHANGE IS EVOLUTION

Michael R. Graeper, Real Estate Board Chairperson

Change is a constant in life. We work in an industry that is driven by the changes in people's lives. The Oregon Real Estate Agency currently is under review by the legislature and may now face changes of its own. The Joint Interim Task Force for Real Estate Oversight was formed during the last legislative session to evaluate the Agency to determine if legislation is necessary to reshape it. This action could change the role, function and practices of the Real Estate Board, Commissioner and the structure of the Agency as a whole.

The Legislature initiated this review following the 2006 budget proposal and testimony submitted to the Ways and Means Committee by the Real Estate Agency in March of 2005. The Joint Interim Task Force has now met five times this year to hear testimony from interested parties. I had the opportunity to testify and provide input to the Task Force on May 2 regarding the future of the Board, Commissioner and the Real Estate Agency.

Our state is one of only three states that have the model of a Commissioner of Real Estate and an advisory board. The other two states using our model are California and Arizona. In our model, the Governor-appointed Commissioner comes from an active career in the real estate industry. The individual is knowledgeable about the practices of the real estate industry when appointed, but usually has little to no knowledge of how to run a large state agency. By the time the Commissioner has mastered the art of running the Agency they are removed from the pulse of the day-in and day-out practice of real estate.

The Oregon Real Estate Board, comprised of seven members from the real estate industry and two members from the public, has had a purely advisory role. The Board has largely been asked only to judge whether the

three-year active practice requirement be waived for a licensee to receive their principal broker license. The balance of the meetings has been dedicated to listening to the Commissioner's report. Historically, the Board has not been asked to review the current or future policies of the Agency, nor the budget of the Agency. The Board has not taken a position nor had any role in the disciplinary policy or process of the Agency.

At their Spring Governance Meeting in Salem, the Oregon Association of Realtors passed a motion to recommend to the Interim Legislative Committee on the Real Estate Agency to "create a true Commission with the Real Estate Board/Commissioners (appointed by the Governor) empowered to set policy, budgets and administrative rules, and with oversight over an agency head/administrator who would manage operations and facilitate the policy and budgetary role of the Commission." Should the Joint Interim Task Force come to the same conclusion and recommend to the Legislature that legislation be introduced to bring about such a change in the Real Estate Agency, that change could affect each and every licensee in Oregon.

Such a change could empower the

Real Estate Board with policy-making authority so that the policies of the Agency reflect the current practices of the industry. Given a role in the disciplinary process, the Board could judge the discipline given the licensee as it relates to the law and the current practices of the industry. The Commissioner could administer the running of the Real Estate Agency with all of its personnel and budget considerations. Matters that go before the legislature such as budgets and license law changes may require Board review and approval as could administrative rules.

With changes such as these, the Real Estate Agency's objectives, which are to help create a healthy real estate market atmosphere for the public and to assure that professional real estate activity is conducted with high fiduciary standards, may be benefited.

We now await the Joint Interim Task Force's recommendations and subsequent action by the Legislative Assembly of the State of Oregon to see what changes may be in store for us all.

Editor's Note: The task force's final report can be found at http://www.leg.state.or.us/comm/int_comms/jnt_realestate/home.htm.

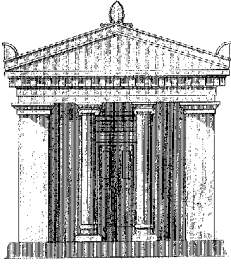
2006 OREGON REAL ESTATE BOARD MEETING DATES, LOCATIONS

- | | |
|---------------|-------|
| ■ October 23 | Salem |
| ■ December 18 | Salem |

All Board meetings scheduled for Salem are held at 10 AM at the Oregon Real Estate Agency office, 1177 Center St. N.E. Call (503) 378-4170, extension 260, for additional information on Board activities.

ADMINISTRATIVE ACTIONS

May 16, 2006 through July 31, 2006



The Agency is required by Oregon Real Estate License Law to publish disciplinary actions. A list of those actions, a brief description of the situation, and the

grounds for the Commissioner's action follows. Please note there are 60 days after the order date to file an appeal, and some of the orders listed may be within that appeal period. Please also note, there are individuals with real estate licenses that may have similar or the same names as those listed herein, or even work in the same market area. If you are in doubt if an individual listed here is someone you know or with whom you are dealing, please contact the Agency for verification.

Finally, please note that stipulated settlements do not necessarily reflect all the factual violations initially alleged by the Agency, and the sanction(s) may have been adjusted as part of the negotiation process. Such settlements may not, therefore, directly compare in severity/sanction with other cases.

SUSPENSIONS

Garza, David (Beaverton) Broker #199911004

Stipulated order dated June 12, 2006 issuing a 2-½ year suspension effective September 1, 2006. David Garza and Patricia Tellez (Tellez), who was licensed with another brokerage, discussed the possibility of Tellez moving her license to Garza's firm, Rio Realty. Tellez was concerned about losing commissions on transactions she had in progress. David Garza suggested to Tellez that Tellez write at least one earnest money agreement in the name of David Garza's brokerage and use David Garza's name as the buyer's agent. Tellez was involved in four transactions using David Garza's name and Rio Realty at a time when Tellez was licensed with another brokerage. David Garza did not physically work with the buyers, however he was aware of

Tellez's actions.

Violations: ORS 696.301(16), ORS 696.810(3) (2003 Edition)

Garza, Heather (Beaverton) Broker #980700099

Stipulated order dated June 12, 2006 issuing a 2-½ year suspension effective June 12, 2006. Heather Garza was the principal broker for Rio Realty. Heather Garza was aware that Patricia Tellez was using David Garza's name and writing transactions through Rio Realty rather than the brokerage Tellez was licensed to. Heather Garza allowed David Garza to act as supervising broker and review documents prepared by Tellez. Heather Garza allowed transaction documents to be written in such a manner as to deceive the lender as to who was occupying the property. One of the transactions that Tellez was involved with was a referral to another brokerage, for which Heather Garza did not maintain a file. Heather Garza allowed the referral agreement to be modified to have the commission paid to Rio Realty instead of Tellez's brokerage of record. Another broker licensed with Rio Realty conducted much of her professional real estate activity from a mortgage broker's office in McMinnville, which was not licensed as a branch of Rio Realty. Heather Garza was allowing her broker to use promissory notes in transactions, but failing to assure that the promissory notes were written correctly and that the promissory notes were collected as agreed.

Violations: ORS 696.301(1)(29); OAR 863-015-0250(1) (2003 Edition)

Hale, Tom R. (Clackamas) Broker #931000232

Stipulated order dated May 31, 2006 issuing a 45-day suspension, effective June 15, 2006. Seller complained that Hale did not clearly state the commission that was to be

charged; that Hale had advertised several features that were not present in their home; that Hale had given verbal acceptance to Buyer's agent without their knowledge; that Hale told them the wrong expiration times of the Buyer's offer; that Hale instructed them to write in false times when signing documents; that they did not receive a signed copy of a counter offer that they made; and that Hale had made false statements to the Buyer's broker when he presented the Seller's counter offer. Seller listed property with Hale on November 7, 2005. The RMLS printout indicated that the kitchen had a cook island and built-in grill. The printout also indicated that the exterior was fenced and hds a storm door and storm windows. Sellers notified Hale that these details were in error and Hale advised he would correct the information. On November 15, 2005, Buyers executed an offer to purchase. Prior to presenting the offer to the Seller, Hale advised the Buyer's agent over the telephone that the Seller had agreed to accept the offer. The same day, at approximately 3 PM, Hale contacted the Seller to set up a time to discuss the offer. Hale did not advise the Seller that he had already given verbal acceptance. Hale told the Seller that the offer expired at 5 PM that day, when it actually expired at 9 PM. Hale presented the offer to the seller at approximately 5:30 PM, which the Seller rejected. Hale instructed the Seller to adjust the time of their signatures on page 7 to 3 PM instead of 5:30 PM when it was actually signed. The Seller elected to propose a counter offer raising the sales price. Hale did not provide the Seller a copy of that counter offer. After the Seller signed the counter offer, Hale notified the Buyer's broker that there was a counter offer and that there had been more showing and there might be another offer coming in. Hale left a second message for the Buyer's bro-

ker stating that it looked like there was another offer. Hale also apologized for verbally accepting the offer. In fact, Hale had no knowledge of other offers on the property. When the Seller's counter offer was presented to the Buyer, the Buyer was upset as she thought there was an accepted offer. In frustration, Hale ripped up and threw away the signed Seller's counter offer. The Buyer verbally rejected the Seller's counter offer, and the Seller subsequently accepted the Buyer's offer minus the refrigerator.

Violations: ORS 696.301(1)(6)(12)(31) (2003 Edition)

Kelly, Karen G. (Portland) Broker #200109057

Stipulated order dated June 22, 2006, issuing a 30-day suspension effective July 1, 2006. Buyers alleged that Kelly sold them her personal residence without disclosing a material flaw in the property, a failed exterior stairwell. In August 2003, Kelly listed her personal residence through her then principal broker. RMLS and the flyer indicated that interested parties should contact the owner, Kelly. In September 2003, buyers viewed the property and made an offer, which was accepted by Kelly. The Seller's Property Disclosure did not reveal a problem with the stairwell. A home inspection was completed on the property. In the basement, there was a door and some windows to which access was blocked by Kelly's personal possessions. The inspector could not see through the windows as they were dirty. On the outside, a deck had been built over the stairwell. It was impossible to see anything through the deck. After the inspection, a list of repairs was prepared and the parties agreed on the repairs. After the buyers took possession of the property, they discovered the failed exterior stairwell. There were cracks in the wall, and untreated four by fours that braced the wall were rotting away. Kelly purchased the home in 1999 with her former husband. In that transaction,

the then owner completed a Seller's Property Disclosure that indicated there was a "cracked ext. stair wall". Kelly signed the Seller's Property Disclosure acknowledging receipt of the statement on June 20, 1999. Kelly had knowledge of the failed stairwell, but did not disclose it during the subject transaction.

Violation: ORS 696.301(1) (2003 Edition)

REPRIMANDS

Pruitt, Kenneth A. (Newberg) Broker #810202034

Stipulated order dated July 6, 2006. Licensee M filed a complaint with the Agency regarding a property being advertised by Pruitt that was listed with Licensee M. Pruitt placed a property ad on craigslist.org that included pictures from Licensee M's listing, but indicating that the property was being advertised by Pruitt. The terms in the ad on craigslist.org were not the terms authorized by the seller, and the seller did not consent to the property being advertised by Pruitt. The seller had no knowledge that the property was being advertised by Pruitt.

Violation: ORS 696.301(4)

Simonson, Randall D. (Medford) Broker #970400178

Stipulated order dated May 11, 2006. Seller C filed a complaint alleging that they were not aware that Simonson was a buyer until the day of closing. Seller C also alleged that Simonson and his partner sold portions of the property prior to a partition being completed and without their permission per written agreement. On August 31, 2003, Simonson prepared a sale agreement for a portion of the subject property between Buyer/Seller B and Buyer E. Seller C was the owner of record. Simonson did not notify Buyer E that Buyer/Seller B was not yet the owner of the property. On September 2, 2003, Simonson presented Seller C with an offer from Buyer/Seller B as buyer. Seller C listed the property with Simonson on September 7,

2003 and signed the offer from Buyer/Seller B as buyer at the same time. On September 10, 2003, Simonson opened escrow for both transactions, Seller C to Buyer/Seller B and Buyer/Seller B to Buyer E. On October 15, 2003, Simonson entered into a listing/lease agreement with Buyer/Seller B that Simonson would be the leasing agent for the property after Buyer/Seller B attained ownership. On November 24, 2003, Simonson and Buyer/Seller B entered into an agreement by which Simonson, through a corporation, became one of the buyers of the subject property with Buyer/Seller B. On November 30, 2003, Simonson, Buyer/Seller B and Seller C signed an addendum to escrow instructions that addressed Simonson's status as buyer. On December 2, 2003, the transaction closed. Simonson and Buyer/Seller B agreed that no part of the property was to be sold without Seller C's written consent or approval. On December 15, 2003, Simonson prepared a sale agreement with Simonson and Buyer/Seller B as sellers and Buyer E as buyer. This contract replaced the sale agreement Simonson previously created dated August 31, 2003. Seller C did not consent or approve of the sale. The sale closed on January 19, 2004. On January 20, 2004, Simonson wrote a sale agreement for Buyer E to purchase a second portion of the subject property from Simonson and Buyer/Seller B. That transaction closed on February 4, 2004 and no funds were disbursed to Seller C.

Violations: ORS 696.301(1)(17), 696.815(2)(a), OAR 863-015-0135(5) (2003 Edition)

Valentine, Joseph R. (Springfield) Broker #960900201

Stipulated order dated May 16, 2006. Valentine represented Buyer A in the purchase of a property in Yachats, Oregon. Buyer A advised Valentine of a desire to build a second story on the property to accommodate a view. Valentine prepared

ADMINISTRATIVE ACTIONS: *continued on page 8*

ADMINISTRATIVE ACTIONS: *continued from page 7* the offer to purchase that was contingent upon Buyer A's approval of height restrictions and zoning on subject and neighboring properties. Valentine received a copy of the preliminary title report (PTR) for the property. There was an exception in the PTR that referred to covenants, easements and restrictions (CC&Rs) imposed as the result of a recorded contract. Valentine received a copy of the CC&Rs which contained verbiage limiting the height restriction to 14'. Valentine relied on Buyer A's architect in terms of building restrictions. Valentine discussed the various title reports and Buyer A for the surrounding properties and confirmed that height restrictions were in place. The height restriction for the subject property was not specifically discussed. Buyer A removed the height restriction contingency. Valentine failed to ensure that Buyer A fully understood the CC&Rs including the height restrictions for the subject property.

Violation: ORS 696.810(3)(a) (2001 Edition)

CIVIL PENALTIES

Columbia County Title & Escrow Services, Inc. (St. Helens) Escrow agent #880900119

Stipulated order dated July 6, 2006 issuing a \$25,000 civil penalty. An audit of Columbia County Title was conducted based on the content of its annual report for year end December 31, 2004. The audit disclosed the following: For the five clients' trust accounts reviewed, two reconciliations were not done timely; none of the file copies of the reconciliations were dated and signed; nine reconciliations had either beginning or ending register balances that did not match the Control Total Report of the receipts and disbursements journal, and the Control Total Report was not made a part of the reconciliations; two reconciliations did not include the sum of all the balances of the individual escrow ledgers; on all the reviewed reconciliations, the reg-

ister balance listed was not equal to the balance from the Control Total Report, and adjusting items were not shown as adjustments to the correct balance; two trial balance reconciliations listed negative escrow balances for six escrow accounts; one reconciliation did not contain a copy of the journal for disbursement activity; on one reconciliation, the balances of each component were not equal to and reconciled with each other; an outstanding deposit appeared on several reconciliations, and it was determined that the receipt was voided and the check returned and not delivered to the bank; an escrow ledger showed a deposit by Columbia's predecessor, but the file did not contain a receipt and there was no evidence the deposit was made, which caused a shortage; a check to the Department of Motor Vehicles (DMV) appeared on several reconciliations as a reconciling item, and it was determined the check was never mailed; amounts were shown as reconciling items when these items appear to be the result of uncleared differences between the receipts and disbursements journal and the bank statement; non-sufficient funds (NFSs) were improperly handled; three-way reconciliation (bank to book to ledger totals) had not been performed for 19 months; differences (apparent shortages) grew over time without explanation, and as they were eventually reduced, documentation was not found to identify or explain steps taken; and one reconciliation had two versions, each version used the same bank balance and the same outstanding checks total, but were in different formats. Columbia has corrected all reconciliations for the audit period.

The following items relating to escrow files were noted: no written instructions for a holdback; withdrew its closing fee prior to other disbursements in 4 cases; no adequate instructions to void and reissue a check; no final accounting that included a refund; held money for reconveyance fees; and used inadequate escrow instructions in two files.

The following items relating to outstanding checks and trial balances were noted: 10 outstanding checks were identified that appeared to be for refunds of reconveyance fees; 10 balances were listed on the trial balance of non-zero accounts which were unresolved reconveyance fees; three escrow files had outstanding checks that were issued to DMV for mobile home transfer fees; and there were 25 escrow files with outstanding checks that were found to be for borrower(s) or seller(s) refunds or fees due to another party; and were part of escrow closing instructions and where Columbia did not account to the principals for the outstanding funds.

Violations: ORS 696.535(1)(g)(h), 696.581(2); OAR 863-050-0025(1), OAR 863-050-0050(1)(2)(a)(b)(c)(e)(f), OAR 863-050-0055(1)(2)(5)

Kauffman, Kathy Jo (Prineville) Broker #200402284

Stipulated order dated May 16, 2006 issuing a \$100 civil penalty. Kauffman failed to renew her real estate license for 30 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2).

Mackaness, Ben (Portland) Broker #200006055

Stipulated order dated June 2, 2006 issuing a \$100 civil penalty. Mackaness failed to renew his real estate license for 50 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2).

McGhehey, Steven E. (Sisters) Broker #780301759

Stipulated order dated July 17, 2006 issuing a \$600 civil penalty. McGhehey's renewal application was received at the Agency 129 days after his license expired; however, McGhehey was out of the country and not conducting professional real estate activity for 53 days during that

time. McGhehey did conduct professional real estate activity for 76 days before renewing late.

Violation: OAR 863-015-0050(2)

Nored, Scott G. (Eugene) Broker #200202136

Stipulated order dated July 19, 2006 issuing a \$100 civil penalty. Nored failed to renew his real estate license for 46 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2).

Sanchez, Jorge (McMinnville) Unlicensed #200509282

Stipulated order dated June 20, 2006 issuing a \$200 civil penalty. Sanchez is employed as a mortgage broker. Sanchez would assist friends with the sale of their homes by showing property to prospective buyers in anticipation of attracting mortgage business.

Violation: ORS 696.020(1)

Slay, Michael D. (Klamath Falls) Broker #200204362

Stipulated order dated June 20, 2006 issuing a \$100 civil penalty. Slay failed to renew his real estate license for 42 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2).

Ticor Title Insurance Company/Key Title Company (Portland) Escrow Agent #850600240

Stipulated order dated June 12, 2006 issuing a \$40,000 civil penalty. Each licensed escrow agent is required to file an annual report with the Commissioner. The content of Ticor's 2002 annual escrow report indicated that there might be accounting and accountability problems. There were a number of uncashed checks to the Department of Motor Vehicles (DMV) and to insurance companies or agents. An audit was undertaken that covered files from 11 counties,

including closing escrow files, collection escrow files, contract servicing trust accounting, and client trust accounts. A substantial number of the files reviewed contained problems that remained from the purchase of Key Title Company in April of 2003. The audit revealed that either Key or Ticor was in violation of the statutes and rules as follows: (a) 73 violations of either ORS 696.535(1)(g) and/or ORS 696.535(1)(h); (b) 30 violations of ORS 696.581(2); (c) 11 violations of OAR 863-050-0055(2) and five violations of OAR 863-50-055(5) (1997 Edition); (d) three violations of OAR 863-050-0015; (e) one violation of ORS 696.581(1), and one violation of ORS 696.581(1) (1997 Edition); (f) two violations of OAR 863-050-0065(3); (g) 10 violations of OAR 863-050-0025(1); (h) four violations of OAR 863-050-0055(4); (i) one violation of ORS 696.581(4); (j) two violations of OAR 863-050-0050(1)(a); (k) one violation of OAR 863-050-0020; and (l) seven violations of ORS 696.578(1) and/or OAR 863-050-0050. The above violations are from the 2001 Edition of the Oregon Revised Statutes and Oregon Administrative Rules, unless otherwise noted.

OTHER

Walker, Cheryl Ann (Portland) Applicant #990800129

Hearing order dated May 17, 2006 denying Walker's property manager license application. In 1989, Walker pleaded guilty to six counts of Forgery 1. Walker admitted to writing checks to herself on her employer's account in the approximate amount of \$6,000. Walker did not disclose that she had been convicted of DUI in 1984, 1990 and 1993. Walker submitted letters of recommendation from five people. None of those individuals were aware of Walker's previous convictions for forgery.

Violation: ORS 696.301(26) (2003 Edition)

CONTINUING EDUCATION APPROVAL

Thirty hours of continuing education is required to renew a real estate license in Oregon. Principal brokers approve education for themselves and their affiliated licensees. Sole practitioner brokers and property managers approve their own education. **The Oregon Real Estate Agency does not approve continuing education.** Therefore, the Agency does not maintain a list of course providers.

Licensees who approve education decide whether a course falls into the required or elective topics. OAR 863-015-0055 requires that at least 15 hours of continuing education must fall within the required topics (see below). The rest of the hours can be either required or elective.

Continuing education taken out-of-state may be approved if the content applies to Oregon. Online or distance education classes may also be approved.

A principal broker may let affiliated brokers use the Advanced Real Estate Practices course (See "Courses Required for New and Relicensed Brokers," page four) for continuing education.

See the Agency's website at www.rea.state.or.us for more information, or call the Education Section at (503) 378-4170, extension 251.

Required Topics:

- Trust Accounts
- Misrepresentation
- Anti-Trust
- Rule and Law Update
- Property Management
- Commercial Brokerage and Leasing
- Real Estate Taxation
- Agency
- Fair Housing
- Contracts
- Evaluation of Property
- Brokerage Management
- Land
- Business Ethics

TEMPORARY PROPERTY MANAGER RULES, BLACKLINE VERSION

The following is a blackline version of the Oregon Administrative Rule 863, Division 025 showing the changes made by temporary rules effective September 15, 2006. Only the sections with changes have been reprinted. ~~Strikethrough~~ indicates deleted text, underline indicates added text.

The official copy of these Oregon Administrative Rules is contained in the Administrative Order filed at the Archives Division of the Secretary of State. Any discrepancies are satisfied in favor of the Administrative Order.

OAR 863-025-0005 Application and Purpose

(1) OAR 863-025-0010 to 863-025-~~00700080~~ apply to the activities of a real estate property manager in the property management of ~~residential and non-residential~~ rental real estate. For purposes of this rule, "residential real estate" means real property that constitutes "dwelling units" and "premises", as those terms are defined by ORS 90.100 and "non-residential real estate" means real estate other than residential real estate.

(2) The purposes of OAR 863-025-0010 to 863-025-0080 are:

(a) To specify requirements for the management of rental real estate as defined in ORS 696.010(9);

(b) To protect owners and tenants of rental real estate; and

(c) To make the real estate property manager responsible for establishing a system of recordkeeping that

(A) Provides the Agency with access to the records of the real estate property manager, and

(B) Complies with OAR 863-025-0010 to 863-025-0080 and ORS Chapter 696.

(3) The goal of the Agency is to encourage real estate property managers to comply with the applicable statutes and rules through education and, if necessary, through the use of progressive discipline as defined in OAR 863-015-0230.

(4) Section (3) of this rule does not limit the Agency's authority to reprimand, suspend or revoke a real estate property manager license under ORS 696.301.

OAR 863-025-0025 Property Management Client Trust Account Requirements

(5) **Reconciliation — Property Management.** A property manager shall prepare and reconcile all property management clients' trust accounts at least once each month. Property Managers with more than one property management Client Trust Account ~~shall~~ may reconcile ~~all of the~~ property management Client Trust Account ~~as of the same day.~~ Accounts on different days if the reconciliations maintain an adequate audit trail. The property manager shall preserve the bank statements and monthly reconciliations and file the bank statements and monthly reconciliations in monthly sequence. The total of the balances of the individual owners' ledgers shall equal the balance as shown in the check register or record of receipts and disbursements and shall also equal the reconciled bank balance of the property management client trust account. The property manager must date and sign the reconciliation upon its completion.

OAR 863-025-0035 Records; Generally Required Records; Maintenance; Production

(1) ~~A property manager shall maintain within this state records of all property management activity.~~ Records of property management activity will be considered complete and adequate if it contains they contain, at least, the following:

(a) ~~A legible copy of an the executed Property Management Agreement~~ property management agreement, and legible copies of all subsequently executed documents pertaining to that Agreement; ~~maintained~~ agreement, for each owner which shall ~~comply~~ complies with all provisions of OAR 863-025-0020.

(b) ~~Client Trust Account records maintained for all funds handled by a property manager on behalf of an owner or owners.~~ The Client Trust Account shall comply that complies with ORS 696.241, OAR 863-025-0010, 863-025-0025 and 863-025-0030.

(c) ~~An Owner's Ledger~~ owner's ledger maintained for each property management agreement. ~~The Owner's Ledger shall comply~~ that complies with OAR 863-025-0055.

(d) ~~A Record of Receipts~~ record of receipts and ~~Disbursements~~ disbursements maintained for each property management agreement. ~~The Record of Receipts and Disbursements shall comply~~ that complies with OAR 863-025-0040.

(e) ~~A legible copy of Tenant Agreements~~ tenant agreements maintained for each property management agreement. ~~Tenant Agreements shall comply~~ that complies with OAR 863-025-0045.

(f) ~~A Tenant's Ledger~~ tenant's ledger maintained for each tenant of real property managed by the property manager. ~~A Tenant's Ledger shall comply~~ that complies with all provisions of OAR 863-025-0050.

(g) ~~A record of cash receipts.~~ The record of cash receipts shall that complies comply with OAR 863-025-0060.

(h) ~~Records of the reconciliation of each client's trust account.~~ The record of monthly reconciliations shall comply that complies with OAR 863-025-0025. A property manager shall maintain cancelled checks with the bank statements to which the checks pertain.

(i) ~~A record of deposits.~~ The record of deposits shall comply that complies with OAR 863-025-0065.

(2) When a property manager uses a computerized system for the production and maintenance of records and reports required in the property manager's licensed activity:

(a) ~~The computerized system shall comply with OAR 863-015-0260.~~ At the time of any reconciliation least once each month, the property manager shall print out the Record of Receipts back up any data that is stored in the computerized system; and Disbursements, owner and tenant's ledgers and all supporting data. The property manager shall preserve and file such printed documents pursuant to section (3) below.

(b) At least once each month, the property manager shall back up any data that is stored in the computerized system that was not printed out and preserved under subsection (a) of this section. The back up data shall be made available to the Commissioner or to the Commissioner's authorized representatives on demand;

(c) Posting of owner ledgers, record of receipts and disbursements, tenant ledgers and manipulation of information and documents shall be maintained in

a format that will readily enable tracing and reconciliation.

(3) A property manager shall maintain ~~and store required~~ all records of property management activity as follows:

(a) ~~Legible copies of all agreements, records and supporting data shall be filed and maintained by the property manager in the property manager's licensed business location required under section (1) of this rule for a period of six years following the date on which such agreement or document is superseded, is terminated or has expired, or otherwise ceased to be used in property management activities.~~

(b)

(4) A property manager may ~~store inactive~~ maintain all records required to be maintained under OAR 863-025-0020 to 863-025-0065 in a single ~~section (1) of this rule within this state at a~~ location other than the property manager's licensed business location, if the property manager first:

(A) ~~a. Notifies the Commissioner in writing of the intended removal of such records from the property manager's licensed business location, including and states the address of the new location for such records; and the date the records will be relocated; and~~

(B) ~~Gives~~ (b) Provides written authorization to the Commissioner to inspect such records at the new location. Such authorization shall include that includes the name and telephone number of any necessary contact person and the means of gaining access to the records for an inspection. The property manager shall notify the Commissioner of any change in the contact or means of access within ten days after such change occurs.

(c) As used in this rule, "inactive records" means:

(A) Materials that were received or created at least two years prior to transfer to off-site storage; and

(B) Agreements that were superseded, terminated or had expired at least two years prior to the transfer to off-site storage.

(5) A property manager may maintain records required under section (1) of this rule outside this state if the property manager first executes an agreement, in a form approved by the Commissioner:

(a) Affirming that the Agency retains jurisdiction over the records;

(b) Stating that the property manager intends to remove such records from the property manager's licensed business location to a location outside this state;

(c) States the address of the new location and the date the records will be relocated; and

(d) Authorizes the Commissioner to inspect such records at the location and states the name and telephone number of any necessary contact person and the means of gaining access to the records.

(6) A property manager shall produce required records of property management activity for inspection by the Agency as follows:

(a) When the Agency makes a request for production of property management records, the property manager shall provide such records within no less than five business days; and

(b) If the Agency has reasonable ground to believe that funds of an owner or tenant may be missing or misappropriated or that the property manager is engaging in fraudulent activity, any records demanded or requested by the Agency must be provided to the Agency immediately; and

(c) Failure to produce such records within the timelines stated in subsection (a) or (b) of this rule is a violation of ORS 696.301.

OAR 863-025-0040 Record of Receipts and Disbursements

(1) A property manager shall prepare and maintain, at least monthly, a ~~chronological~~ record of receipts and disbursements or a check register for each client's trust account in which the manager must record each receipt of funds and each disbursement of client trust account funds made by the manager under a property management agreement. If a property manager maintains a separate client's trust account for a property management agreement involving only one owner, the property manager may maintain either a Record of Receipts and Disbursements or an Owner's Ledger.

(2) When there is more than one property in a client trust account, each entry for a receipt or a disbursement shall be identified with the applicable owner's identifying code assigned by the property manager to the corresponding property management agreement with the owner and shall set forth the following information:

(a) Date of deposit;

(b) Amount of deposit and identify from whom deposit received;

(c) Date of each related disbursement;

(d) Check number of each related disbursement;

(e) Amount and identity of payee for each related disbursement;

(f) If applicable, the dates and amounts of interest earned and credited to the account; and

(g) A balance after posting each entry.

(h) ~~A written record of the running~~ daily balance shall be made available to the Commissioner or to the Commissioner's authorized representatives ~~on demand~~.

(4) In maintaining a ~~chronological~~ running balance for each record of receipts and disbursements, the property manager may aggregate receipts and disbursements affecting the balance of the record on a daily basis. The property manager may adjust the balance in the record reflecting the change in the balance from the aggregated individual receipts and disbursements. If the property manager posts the record using an aggregated total of receipts and disbursements, the property manager shall maintain account detail in another report showing the nature and amount of each receipt and disbursement as otherwise required, and make such detail available to the Commissioner or the Commissioner's authorized representatives upon request. The property manager shall preserve the record detail as required records of the property manager's licensed activity.

(5) ~~Notwithstanding OAR 863-025-0025, a negative balance in a Client Trust Account may occur during the course of the day if, except in the case of a check returned for insufficient funds, the account is not negative at the close of the day.~~

(6) A property manager shall retain all paid bills and receipts explaining the amount of and purpose for the receipt or disbursement entered in the record of receipts and disbursements.

(7) A property manager may engage in electronic banking transactions, including the use of the Internet or by telephone, if a record of the transaction, sufficient to establish an audit trail, is created and maintained by:

(a) Printing a copy of the Internet transaction that includes the date, time, and nature of the transaction; or

BLACKLINE RULES: continued from page 11

- (b) Making a written notation of the telephone transaction including the date, time, and nature of the transaction; or
(c) Creating an electronic document that readily relates to the transaction containing the information in (a) or (b) of this section.

OAR 863-025-0045 Tenants Agreements

(2) Residential and Non-Residential. The property manager shall file and maintain legible copies of all tenant's rental or lease agreements for the time period required by these rules. A property manager shall review each tenant's rental or lease agreement generated by the property manager within five days after execution of the agreement by the tenant for compliance with the property management agreement covering the rented or leased property. The property manager shall initial and date the tenant's rental or lease agreement to memorialize the manager's approval and acceptance of the agreement on behalf of the owner, as permitted by the property management agreement. As, however, a property manager may authorize in writing another individual who is licensed to or employed by the property manager to review and approve and accept tenants' rental and lease agreements on behalf of the property manager. In case of such authorization, the property manager remains responsible for each tenant's rental and lease agreement approved or accepted by such real estate licensee or employee. The property manager must produce the written authorization at the request of the Commissioner or the Commissioner's authorized representative.

OAR 863-025-0080 Audits and Compliance Reviews

(1) Unless the Agency has reasonable grounds to believe that the funds of an owner or tenant are missing or have been misappropriated, the Agency shall provide a property manager with at least five business days' written notice before the agency conducts a compliance review and audit of the property manager.

(2) After a compliance review and audit of a property manager under section (1) of this rule, if the Agency determines that a property manager is not in compliance with ORS 696.010 to 696.495, ORS 696.600 to 696.785, ORS 696.800 to 696.870, or OAR Chapter 863, the Agency shall allow the property manager at least 30 days to cure the noncompliance without sanction unless the Agency has reasonable grounds to believe that the funds of an owner or tenant are missing or have been misappropriated.
