

Oregon Real Estate News-Journal

Official Publication of the Oregon Real Estate Agency

Vol.61

December 2007, Salem, Oregon

No. 4

BROKER PRICE OPINIONS

Gene Bentley, Real Estate Commissioner

The Agency has been asked for guidance in performing Broker Price Opinions (BPO). The following services can be provided without first being licensed as a real estate appraiser. Analysis of an interest in real property can be performed for ownership or collateral purposes for financial institutions, provided that the analysis is used for internal purposes only and that any loan transaction at issue is valued at less than \$250,000. Therefore, a real estate licensee can analyze real estate for purposes of a lending collateral analysis. A licensee can also perform a default collateral analysis when performed for internal use of a financial institution.

Licensees may perform these services under an exemption to the appraiser licensing law [ORS 674.100(3)(a)], but only if the service is provided for a financial institution (or its affiliate) which is defined in the statute [ORS 674.010(7)] as “an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Fed-

eral Credit Union Act.

Each individual licensee has the responsibility to verify that the request to perform a BPO, for a lending or default collateral analysis, qualifies as an exemption from the statutory requirement to hold an appraiser license. Otherwise, the licensee could be subject to penalties for unlicensed appraisal activity which are (up to) \$500 for the first offense and \$1,000 for the second and each subsequent offense.

Counsel provided the following definitions: A “lending collateral analysis” involves a real estate licensee preparing or assisting in the preparation of a real property analysis when the purpose of the analysis is for use by a lending institution in support of a loan application. A “default collateral analysis” involves a real estate licensee preparing or assisting in the preparation of a real property analysis when the purpose of the analysis is for use by a lending institution in considering its actions with respect to a loan in default.

The Agency recommends that licensees performing these services require a written statement from the



Commissioner Gene Bentley

client, who is requesting the service, verifying that the BPO requested:

- is being performed for a financial institution as defined in ORS 674.010(7),
- do not constitute a real estate appraisal,
- are either for the purposes of a lending or default collateral analysis,
- are for the internal use only of the financial institution; and
- are for a loan transaction which is valued at less than \$250,000.

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CORRECTIONS

CLARIFICATION OF CLIENTS' TRUST ACCOUNT REQUIREMENTS

In the September 2007 *OREN-J*, the Real Estate Agency published an article titled "Clients' Trust Account Audits." Although the general process information was correct, there was a reference to prior rule requirements. The last full paragraph, at the bottom of page 7, should have read:

"Clients' Trust Accounts must be labeled 'Clients' Trust Account.' If the account is being used for maintaining security deposits, it must be labeled 'Clients' Trust Account - Security Deposits.' The accounts may have additional identifying language, as well."

You may view the pertinent Or-

egon Revised Statutes [ORS 696.241 and 696.245] and Oregon Administrative Rules [OAR 863-015-0120, 863-025-0010(2) and (9) and 863-025-0025(10)] on the website by clicking on "Statutes and Rules" from the Agency's website at www.rea.state.or.us. The Agency apologizes for any confusion.

CORRECTED INFORMATION ON 2007 HOUSE BILL 2498

The legislative summary published on the Agency's website and in the September 2007 *OREN-J* contains an error in the explanation of the bill. House Bill 2498 extends exemptions from the Construction Contractors Board licensing to an owner who contracts with one or more licensed contractors to perform work on not more than three (not four as previously reported) residential structures of the owner within the same calendar year. The bill was originally introduced at four but was changed to three in the final amendments.

STAFF CHANGES

The Real Estate Agency announces the following changes in personnel:

Kate Nass, an Investigator/Auditor for the Agency, has accepted the position of Administrative Services Manager as an out-of-class work opportunity.



She will be taking over many of the duties previously performed by now Deputy Commissioner Dean Owens, including the overseeing of accounts payable, accounts receivable, and payroll.

Vitaly Putintsev was selected for the part-time, limited duration Student Worker position. Vitaly, a student at Western Oregon University, will handle transaction processing and assist the Agency's Information Systems section.

The Agency congratulates Kate and welcomes Vitaly.

OREGON REAL ESTATE
NEWS-JOURNAL
(USPS 905-220)

Official Publication
Oregon Real Estate Agency
1177 Center St. N.E. - Salem, Oregon 97301-2505
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OREGON REAL ESTATE AGENCY
Theodore R. Kulongoski, Governor
Gene Bentley, Commissioner

REAL ESTATE BOARD

- Michael Graeper, Chairperson Portland
- Troy Costales Keizer
- Warren L. (Lee) Dunn Portland
- Byron Hendricks Salem
- Christopher Hermanski Tualatin
- Arthur Kegler Boardman
- Robert LeFeber Lake Oswego
- Kim Medford Bend
- Marianne Wood Eugene

The *Oregon Real Estate News-Journal* is published four times a year by the Oregon Real Estate Agency as an educational service to all real estate licensees in the state under the provisions of Section 696.445 of the Oregon Revised Statutes. \$4.00/biennium subscription fee included in real estate license fee. All other subscriptions \$2.00 per year. POSTMASTER: Send address changes to *Oregon Real Estate News-Journal*, 1177 Center St. N.E., Salem, OR 97301-2505.

Mesheal Heyman, Editor

In Memoriam

James W. Sibbald, a former member of the Oregon Real Estate Board, passed away October 8, 2007 at the age of 59.

Mr. Sibbald was appointed to the Board as a public member in 1995, and served until 2003. Additionally, he served as president for both the American Escrow Association and the Oregon Escrow Council. He is remembered for his dedicated work in the title insurance industry, and for his love of his family.

He is survived by his wife, Glenda; his daughter, Anjalete Bundren; two sons, Jim Sibbald, Jr.; Damon DePriest; and his five grandchildren.

The Agency extends its sympathy to the family and friends of Mr. Sibbald.

GOVERNOR APPOINTS NEW BOARD MEMBERS, EXPRESSES APPRECIATION TO OUTGOING MEMBERS

At the Oregon Real Estate Board meeting in Medford on October 15th, Commissioner Gene Bentley presented a certificate and letter of appreciation from Governor Ted Kulongoski to outgoing board members **Bob LaDu, Victor Kee and John Zupan**. Also leaving the board is **Maxine Ribera-Card**, who was unable to attend the meeting.

The Governor appointed five new members to the Board to replace those outgoing members and to fill an existing vacancy.

Warren L. "Lee" Dunn, Principal Broker, Prudential Northwest Properties

Lee was born in Vancouver, Washington. He obtained his Oregon salesperson license in 1978. He is now a Vice-President and Principal Broker of Prudential Northwest Properties. He holds the GRI (Graduate, Realtor® Institute) and the CRB (Certified Real Estate Brokerage Manager) designations. He has served in numerous leadership positions in the Salem Board of Realtors®, Washington County Board of Realtors®, Portland Board of Realtors®, Portland Metropolitan Board of Realtors® and Oregon Association of Realtors®.

Current term: 10/15/07-10/14/11

Byron Hendricks, Principal Broker, Prudential Real Estate Professionals

Byron was first licensed as a real estate salesperson in 1985. He obtained his associate broker license in 1989, and his designated broker license in 1992. He is currently president and principal broker of Prudential Real Estate Professionals, which has offices throughout the state. He holds the CRB (Certified Real Estate Brokerage Manager) designation. Byron has served in leadership positions in the Oregon Association of Realtors®, as well as with Oregon Real Estate Forms, Inc.

Current term: 10/15/07-10/14/11

Christopher Hermanski, Broker, Mainlander Property Management

Christopher Hermanski founded Mainlander Property Management in Lake Oswego in 1981. He is past & current chapter president of the Greater Portland chapter of the National Association of Residential Property Managers (NARPM). He has been a member of NARPM since 1994 and has earned his RMP (Residential Management Professional) and MPM (Master Property Manager) designations and helped guide his company to its CRMC (Certified

Residential Management Company) designation. Chris has served on several Oregon Real Estate Agency committees involved in rule making and other property management related issues. He is currently a board member of the Metro Multi-Family Housing Council.

Current term: 10/15/07-7/31/08

Robert LeFeber, Principal Broker, Commercial Realty Advisors NW, LLC

Bob has been licensed in Oregon since 1996. He is co-founder and principal broker of Commercial Realty Advisors Northwest, LLC (CRA) in Oregon. Bob is a board member and president-elect of the Commercial Association of Realtors® of Oregon and southwest Washington (CAR), a board member of the Commercial Real Estate Economic Coalition (CREEC), a member of Real Estate Team for the Presbytery of the Cascades, a member of the Urban Land Institute, and former state director for the International Council of Shopping Centers.

Current term: 10/15/07-10/14/11

Kim Medford, Public Member, Bend

Kimberly is an attorney with Karnopp Petersen, LLP in Bend. Prior to joining Karnopp Petersen, Kimberly practiced with Stoel Rives, LLP in Portland. She focuses her practice on corporate law, entity formation, real estate, securities, finance and mergers and acquisitions. Kimberly served as Committee Administrator to the House Committee on Trade & Economic Development during the 2003 session of the Oregon State Legislature. Prior to law school, Kimberly held several positions with the Oregon State legislature and the Oregon Youth Authority. She is a past board member of Oregon State Fair Foundation.

Current term: 9/4/07-1/31/08

OREGON REAL ESTATE BOARD INFORMATION:

The Board consists of seven real estate licensee members and two public members. The Board meets six times a year. Board members are appointed by the Governor for four-year terms; however, the members serve at the pleasure of the Governor and members' terms may be extended until the Governor replaces them.

Board duties include providing advice to the Real Estate Commissioner and the Governor's office regarding real estate industry matters, reviewing proposed rulemaking, approving experience waiver requests of real estate licensing applicants, and overseeing the license examination process. Any board member can be contacted via e-mail at orea.board@state.or.us.

Information on all members of the Board can be found at http://www.rea.state.or.us/REA/Board_Bios.shtml.

ADVANCED PRACTICES COURSE REQUIRED FOR NEW, RELICENSED BROKERS

If you are a new Oregon broker, you must take the 30-hour Advanced Real Estate Practices (AP) course before your first active license renewal. You must complete the Real Estate Agency-approved AP course if you:

- received your very first Oregon real estate broker license on or after July 1, 2002; or
- let a previous Oregon license expire (or otherwise lapse) and obtained a new broker license on or after July 1, 2002.

Completion of the course is required by OAR 863-015-0055(4). Principal brokers, sole practitioner brokers and property managers are not required to take the AP course.

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 on to 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 2007, and your birthday is in June, your license would renew June 30, 2008.

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

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 for license renewal.

If you do not know if you need to take the AP course, please con-

tact 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 Renewal Continuing Education Certi-

fication Signature Card indicating that the course has been completed. The principal broker then keeps the certificate and Signature Card for six years as required by ORS 696.280(2) and (3), and OAR 863-015-0055(2)(c).

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 by visiting the Agency's website at www.rea.state.or.us.



**REQUIRED
COURSE FOR
NEW
LICENSEES**

ACTIVE BROKER LICENSEES, you need to take the AP course to renew your license if:

- the license is being renewed for the very first time.
- you had an Oregon real estate license, but let it expire or otherwise lapse. You have now re-licensed as a broker by meeting the current licensing requirements. Your first license renewal since re-licensing is now coming up.

INACTIVE BROKER LICENSEES, you need to take the AP course to activate your license if:

- you obtained your very first broker license after June 30, 2002, but it has been inactive the entire time. You have renewed your inactive license at least once, and now you wish to activate it.
- you had an Oregon real estate license, but let it expire or otherwise lapse. You became re-licensed as a broker after June 30, 2002 by meeting the current licensing requirements, but have had an inactive license since then. You have renewed your inactive license at least once, and now wish to activate it.

You do not need the AP course if:

- you are an affiliated broker who was licensed prior to July 1, 2002, and you have maintained your license, not letting it expire or otherwise lapse.
- you are a principal broker
- you are a sole practitioner broker
- you are a property manager
- your license is currently inactive (but you may need it to activate your license. See "Inactive Broker Licensees" above.)

Call the Agency if:

- you have a reciprocal broker license.

AG ISSUES OPINION ON SALES CONCESSIONS

The Appraiser Certification and Licensure Board recently asked the following question to the Attorney General's office:

"Do concessions or allowances made by a seller to a buyer in a residential real estate transaction (i.e., one to four units) qualify as "confidential information" that real estate licensees are prohibited from disclosing under ORS 696.800 through 696.870 and ORS 696.301(3)?"

The Attorney General's office

concluded that:

"The existence and details of proposed sales concessions qualify as 'confidential information' under ORS 696.800 for the purpose of a real estate licensee's duty under ORS 696.800 to 696.870 to maintain confidential information until a seller instructs his licensee to disclose that information to the buyer. Once a real estate licensee has been instructed to disclose that information to the other party to the transaction,

the information loses its confidential status . . . [however], no law requires them to disclose it."

What does this mean? The Real Estate Agency suggests that real estate brokers talk with their client before disclosing any information about sales concessions with people not part of the transaction, including real estate appraisers. Any decision to release information should be made with client's preferences in mind.

RULE REVIEW WORK GROUPS

The Real Estate Agency has convened several work groups to assist in the review of administrative rules under the Agency's authority.

The Licensing/Brokerage and the Property Management Rule Review Work Groups are meeting regularly to review the current administrative rules in Divisions 15 and 25 and to

develop rule and legislative concepts.

The Background Check Rules Work Group is assisting the Agency in developing new rules to implement 2005 House Bill 2157 authorizing criminal background checks on license applicants. The Agency is currently limited in the crimes it can consider in denying a license. The

new rules will clarify the types of offenses and the periods of time that various criminal offenses can be considered in determining trustworthiness for licensing.

Notices of the meetings and a list of work group participants are posted on the Agency's website at www.rea.state.or.us.

UNITED STATES POSTAL SERVICE® (All Periodicals Publications Except Requester Publications)

Statement of Ownership, Management, and Circulation

1. Publication Title: Oregon Real Estate News-Journal

2. Publication Number: 9 0 5 2 2 0

3. Filing Date: 10/1/07

4. Issue Frequency: Four times a year

5. Number of Issues Published Annually: 4

6. Annual Subscription Price: \$2.00

7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state, and ZIP+4®): 1177 Center St. NE, Salem, Marion, Oregon 97301-2505

Contact Person: Mesheal Heyman (Telephone (include area code) (503) 378-4170 x251)

8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer): 1177 Center St. NE, Salem, Marion, Oregon 97301-2505

9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank):
 Publisher (Name and complete mailing address): Oregon Real Estate Agency, 1177 Center St NE, Salem, Marion, OR 97301-2505
 Editor (Name and complete mailing address): Mesheal Heyman, Oregon Real Estate Agency, 1177 Center St NE, Salem, Marion, OR 97301-2505
 Managing Editor (Name and complete mailing address): Mesheal Heyman, Oregon Real Estate Agency, 1177 Center St NE, Salem, Marion, OR 97301-2505

10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)

Full Name: Oregon Real Estate Agency
 Complete Mailing Address: 1177 Center St. NE, Salem, OR 97301-2505

11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box None

Full Name: N/A
 Complete Mailing Address:

12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one)
 The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes:
 Has Not Changed During Preceding 12 Months
 Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)

13. Publication Title: Oregon Real Estate News-Journal

14. Issue Date for Circulation Data Below: June 2007

15. Extent and Nature of Circulation

		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)		23,812	25,000
(1)	Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	23,454	24,717
(2)	Mailed In-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	0	0
(3)	Free Distribution Outside the Mails including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®	0	0
(4)	Paid Distribution by Other Classes of Mail Through the USPS (e.g. First-Class Mail®)	0	0
c. Total Paid Distribution (Sum of 15b (1), (2), (3), and (4))		23,454	24,717
(1)	Free or Nominal Rate Outside-County Copies included on PS Form 3541	0	0
(2)	Free or Nominal Rate In-County Copies included on PS Form 3541	0	0
(3)	Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g. First-Class Mail)	4	4
(4)	Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	80	37
e. Total Free or Nominal Rate Distribution (Sum of 15d (1), (2), (3), and (4))		84	41
f. Total Distribution (Sum of 15c and 15e)		23,538	24,758
g. Copies not Distributed (See Instructions to Publishers #4 (page #3))		274	242
h. Total (Sum of 15f and g)		23,812	25,000
i. Percent Paid (15c divided by 15f times 100)		99.6%	99.8%

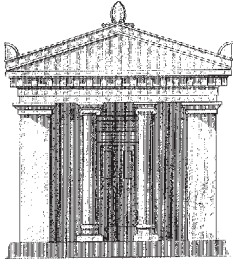
16. Publication of Statement of Ownership
 If the publication is a general publication, publication of this statement is required. Will be printed in the **December 2007** issue of this publication.
 Publication not required.

17. Signature and Title of Editor, Publisher, Business Manager, or Owner
 Mesheal Heyman, Editor
 Date: 9/28/07

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

ADMINISTRATIVE ACTIONS

June 1, 2007 through November 20, 2007



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 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.

REVOCATIONS

Baronian, Deborah D. (Gresham) Property Manager #970300128 Default Order dated July 9, 2007, effective August 1, 2007. Baronian failed to provide monthly statements to owner, did not obtain approval from owner to place their funds in an interest-bearing clients' trust account, did not obtain prior written approval from tenants to put security deposits in an interest-bearing clients' trust account, failed to maintain adequate property management records, deposited personal funds into the clients' trust account, did not know how much money she should have on deposit for owner, could not determine how much money she had on deposit for owner, and failed to maintain records adequate enough to track income and expenses.

Violations: OAR 863-025-0055(3), OAR 863-025-0025(8), OAR 863-025-0035(1), OAR 863-025-0065(3), ORS 696.301(12)

Dillard, Carvel Gordon (Medford) Broker #890500246 Default order dated June 20, 2007,

effective June 20, 2007. Gordon was convicted of Sexual Abuse 2, a Class C. Felony; Prostitution, a Class A Misdemeanor; and Tampering with a Witness. Dillard did not report his convictions to the Agency.

Violations: ORS 696.301(26), OAR 863-015-0175(3) (2003 Edition)

Johnson, Betty Lou (Medford) Property Manager #970900117 Stipulated order dated November 16, 2007, effective December 1, 2007. The Agency has substantial evidence in its files to support, after hearing, findings of fact and conclusions of law that would result in the revocation of Johnson's license.

Piacentini, Susan M. (Portland) Broker #200105043 Default order dated August 23, 2007, effective August 23, 2007. This order related to four transactions involving Piacentini. In the first transaction Tonya Shirk, a former licensee whose license was revoked by the Agency on May 9, 2006, introduced buyers to Piacentini. Piacentini allowed Shirk to show the property to the buyers and prepare the transaction documents. In this transaction, Piacentini: (1) failed to transmit transaction documents to her principal broker; (2) failed to deliver to seller two addenda; (3) failed to deliver seller's property disclosure to the buyer; and (4) allowed Shirk to conduct professional real estate activity in a transaction that Piacentini was ultimately shown as the broker representing the buyer and seller.

In the second transaction, Piacentini listed a property in Estacada had been listed by Tonya Shirk when Shirk was licensed. The listing for the Estacada property was still in effect with Shirk's prior principal broker when Piacentini listed the property. At least three transaction documents that

were signed when the property was listed with Shirk, had been altered to show Piacentini's name and brokerage. The cancellation form submitted to the multiple listing service (MLS) had signatures that appeared to be cut and pasted from another document. In this transaction, Piacentini: (1) failed to transmit the listing agreement to her principal broker; (2) listed the subject property when it was already listed with another brokerage; (3) allowed the transaction to proceed when she knew or should have known that three of the documents had been altered; and (4) allowed the use of the cancellation addenda when she knew or should have known that the documents had been altered.

In the third transaction, a property in Oregon City had been listed by Tonya Shirk when Shirk was licensed. After the Shirk listing expired, Piacentini listed the Oregon City property with her brokerage using Shirk's listing that was altered to show Piacentini and Piacentini's brokerage as the listing brokerage. Three other transaction documents were altered in the same manner. In this transaction, Piacentini: (1) failed to transmit the listing agreement to her principal broker; and (2) allowed the transaction to proceed by using a document that she knew or should

DID YOU KNOW . . .

The complete order for each administrative action can now be found as a supplement to the electronic version of the *OREN-J* on the Agency's website at
www.rea.state.or.us/REA/EDU/news_journals.shtml

have known had been altered.

In the fourth transaction, Piacentini wrote an offer for buyer to purchase a property in Portland. Buyer had been a client of Tonya Shirk when Shirk was licensed. Shirk showed buyer the Portland property and discussed "flipping" the property. Shirk explained to buyer that she was showing the property on Piacentini's behalf. Shirk conducted all the professional real estate activity in this transaction on Piacentini's behalf. The listing agent gave Piacentini a written disclosure for buyer, but Piacentini did not provide it to the buyer. The transaction was terminated and the buyer's signature on the termination was affixed by cutting and pasting his signature from another document. In this transaction, Piacentini: (1) failed to transmit transaction documents to her principal broker; (2) allowed the use of a termination agreement that she knew or should have known had been altered; and (3) allowed Shirk to conduct professional real estate activity in Piacentini's name.

Violations: OAR 863-015-0255(2); ORS 696.805(3)(a) & (c), ORS 696.810(2)(b) & (3)(a) & (c), ORS 696.301(7), (12), (14), & (15)

SUSPENSIONS

Clark, Susan L. (Fairview) Broker #890500145

Default order dated September 21, 2007. Clark's real estate license is suspended until the Oregon Department of Revenue has certified that Clark is in good standing.

Violation: ORS 305.385(4)(c)

Driggers, Betty L. (LaGrande) Broker #870700062

Stipulated order dated September 11, 2007, issuing a 90-day suspension, effective November 1, 2007, followed by a limited license. In July 2005, the Agency received a complaint from a former bookkeeper alleging that Driggers failed to reconcile her clients' trust account and maintained a separate set of books. On August 15, 2005, the Agency began an audit, which noted multiple

violations involving clients' trust accounts (real estate and property management), receipts, property management agreements, deposits, and property management activity in general.

Violations: ORS 696.241(8); ORS 696.301(4)(20); OAR 863-015-0275; OAR 863-025-0020(2)(a) through (g) & (4); OAR 863-025-0025(1), (3)(d) through (g), (5), (6), (7), & (10); OAR 863-025-0040(1)(a) through (g), (2)(a) through (g), (3), & (4); OAR 863-025-0045(4); OAR 863-025-0055(4); OAR 863-025-0060; OAR 863-025-0065(4) & (5); OAR 863-025-0070 (2003 Edition)

Guyer, Rebecca (Portland) Broker #200301131

Default order dated August 23, 2007, issuing a six month suspension effective September 10, 2007. In the subject transaction, Guyer was purchasing a home from the complainants. Guyer failed to disclose her license status, in writing, on the first written document of agreement. Guyer wrote an insufficient funds (NSF) check for earnest money. Guyer advised sellers that she was terminating the transaction within the inspection period when she knew or should have known that no inspections had been done. Guyer refused to sign a termination agreement until the sellers released claim on the earnest money.

Violations: OAR 863-015-0145(1) and ORS 696.301(31) (2003 Edition)

Howlett, Lee V. (Portland) Broker #871000062

Default order dated October 3, 2007, issuing a 90-day suspension effective October 22, 2007. Howlett suggested to a seller that the seller cancel their listing agreement with another real estate brokerage in order to work directly with Howlett and save \$2,630 in commissions. Howlett also failed to notify the Agency of his change of business location for approximately eight months.

Violations: ORS 696.301(16),

ORS 696.200 (2003 Edition)

Parker, Bruce A. (Coos Bay) Broker #900300249

Stipulated order dated November 20, 2007, issuing a 30-day suspension effective November 30, 2007. As a listing broker, Parker advertised and represented that the roof was new, when in fact it was not. Parker represented to the buyer that the home warranty would provide full coverage for one year, when that was not the case.

Violation: ORS 696.301(1) (2003 Edition)

REPRIMANDS

Cuarisma, Rhonda Gayle (Reedsport) Broker #200412024

Stipulated order dated November 16, 2007. Cuarisma allowed her seller to accept an offer without accepting it in a back-up or second position when the seller already had an existing agreement in place with another buyer with a 72-hour contingency agreement.

Violation: ORS 696.805(3)(a)

Tkachev, Boris V. (Portland) Broker #200603200

Default order dated June 20, 2007. The Agency received a complaint that Equity Investments, LLC advertised property for sale on craigslist.com before to obtaining ownership of the property. Tkachev was the owner of Equity Investments, LLC. Tkachev held a real estate broker license and did not provide his principal broker transaction documentation in three transactions involving Equity Investments, LLC.

Violation: OAR 863-015-0145(3)

CIVIL PENALTIES

Expired - OAR 863-015-0050(2) - 1-59 days - \$100:

Colucci, Ann Marie (Bend) 37 days, #200505096 - Stipulated Order 11-8-07

Irving, William A. (Hood River) 42 days, #200308171 - Stipulated Order 8-23-07

ADMINISTRATIVE ACTIONS: continued on page 8

ADMINISTRATIVE ACTIONS: *continued from page 7*

Expired - OAR 863-015-0050(2) - 60-119 days - \$1,100:

Stephens, Richard H. (Portland) 105 days, #911000154 – Stipulated Order 9-25-07

Expired - OAR 863-015-0050(2) - 150-179 days - \$2,100

Bass, Jennifer L. (Tigard) #970600291 – Stipulated Order 11-5-07

Expired - OAR 863-015-0050(2) - 180-209 days - \$2,600

Klontz, Ryan M. (Redmond) #200209020 – Default Order 6-21-07

Expired - OAR 863-015-0050(2) - 330-359 days - \$5,100

Brown, J. Steve (Portland) #970700203 – Hearing Order 6-18-07

Unlicensed - ORS 696.020 - The amount of civil penalty depends on the amount of professional real estate activity conducted:

Hartman, Gloria J. (Klamath Falls) Broker #971100174 – Stipulated Order 9-19-07 for \$1,000 civil penalty

Webster, Leah (Milton-Freewater) Unlicensed – Stipulated Order 9-24-07 for \$1,000 civil penalty

Young, Thomas (Portland) Unlicensed – Stipulated Order 10-17-07 for \$1,000 civil penalty.

OREGON REAL ESTATE BOARD 2008 MEETING SCHEDULE

- | | |
|--------------------|----------|
| ■ February 4, 2008 | Salem |
| ■ April 7, 2008 | Eugene |
| ■ June 2, 2008 | Florence |
| ■ August 4, 2008 | Salem |
| ■ October 6, 2008 | Salem |
| ■ December 1, 2008 | 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.

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