



Oregon Real Estate News-Journal

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AGENCY DISCLOSURE, DESIGNATED AGENCY, DISCLOSED LIMITED AGENCY ISSUES

Scott W. Taylor, Real Estate Commissioner

We are nearly two years into the new law and from my perspective things seem to be working well. As time goes on, however, there will be issues that need clarifying. Two issues that are related come to mind.

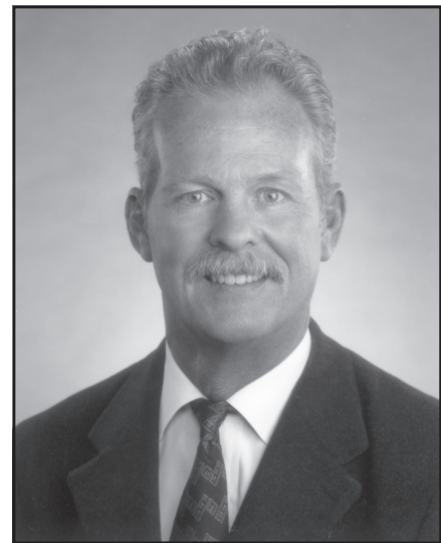
The first issue relates to the Initial Agency Disclosure Pamphlet. If a licensee representing a seller exclusively, and who will not be representing the buyer, comes in contact with a buyer expressing interest, is it necessary for the licensee to give the buyer a pamphlet if the licensee explains that he or she will only be representing the seller?

OAR 863-015-0215(2) provides that a licensee need not give the pamphlet to someone who has or can be reasonably assumed to have received a copy from another licensee. A licensee could reasonably assume that a party has already received the pamphlet if the agent knew the party was under a listing contract or buyer service agreement with another broker, for example. However, in this case the buyer does not fit the above situation.

The important thing to remember with the initial agency disclosure pamphlet is that it is intended only for in-

formational purposes and does not establish any kind of relationship in itself. It is designed as an aid for a consumer to make an informed choice about representation. Whether the agent represents the seller or not is not relevant at this point because presenting the pamphlet is about the consumer, not the agent. "Seeking representation" does not necessarily mean seeking it from the seller's agent. That the buyer could or could not get representation is not the issue. The question is, could the buyer reasonably assumed to be seeking representation from *someone*?

Because the purpose of the pamphlet is to provide information to a consumer to aid in making an informed choice, the question is more closely, "Is there any reason to know this person is not seeking representation?" Every study I've ever read has found the overwhelming majority of consumers, when asked if they want representation, answer in the affirmative. Therefore a licensee confronted with these circumstances should be thinking, "Could this person be seeking representation?" If the answer is yes, the pamphlet must



Commissioner Scott Taylor

be given. Another way of putting it might be, "When in doubt, give it out!"

The second issue relates to what has come to be known as designated agency, disclosed limited agency, and the disclosed limited agency agreements.

ORS 696.815(4) states: "In a real estate transaction in which different real estate brokers associated with the

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same principal real estate broker establish agency relationships with different parties to the real estate transaction, the principal real estate broker *shall* be the *only* broker acting as a disclosed limited agent representing both seller and buyer. Other brokers *shall* continue to represent *only* the party with whom the broker has an agency relationship *unless all parties agree otherwise in writing.*" [Emphasis added.] This has come to be known as designated agency and it is the default in the law in such situations.

Designated agency, as set out in ORS 696.815(4) will work for offices as small as two licensees where one is the principal broker or for offices as large as two thousand or more licensees. However, for various reasons some companies have chosen not to use designated agency, and are instead having all licensees involved in the transaction as well as their principal broker act as disclosed limited agents. Com-

panies with more than one licensee who choose not to use the relationships set out in ORS 696.815 (4) fall into the "unless all parties agree otherwise in writing" provision of 696.815 (4).

ORS 696.815 (1) requires the use of a disclosed limited agency agreement with full disclosure of the relationship in those transactions where licensees represent more than one client. The disclosed limited agency agreements set out in OAR 863-015-0210(3) for sellers and (4) for buyers are written to conform to the default in the law, discuss designated agency, and gain consent for the brokers to use designated agency in a transaction requiring it. As the law does not speak to situations where a company has chosen to use disclosed limited agency in transactions where the law defaults to designated agency, the form does not provide for consent for all of the involved licensees to operate as disclosed limited agents.

Pursuant to the requirement of ORS 696.815(1), OAR 863-015-0120(1) and (2)(a) through (f) set forth the requirements for disclosed limited agency agreements. Briefly, the requirements are: the agreements shall be in writing, signed and dated; the involved real estate business shall be named; any existing listing agreements or service agreements shall be identified; the names of the licensee(s)

including the principal broker who will be representing the client; use of a plain language description of the requirements of ORS 696.815; full disclosure of the duties and responsibilities of an agent representing more than one party in a transaction (which can be met by providing a copy of the Initial Agency Disclosure Pamphlet, discussing the portion of the pamphlet addressing the duties and responsibilities of an agent representing more than one client in a transaction, and incorporating the pamphlet by reference); and consent and agreement between the parties to the disclosed limited agency agreement regarding representation of the client in future transactions.

The Real Estate Agency believes that it should not design forms that go beyond the default set out in the statute, as doing so could constitute the giving of legal advice. Licensees whose office policies dictate that they not practice designated agency are advised to seek legal advice either individually or through their professional organizations before either modifying the existing forms set out in OAR 863-015-0120(3) and (4) or drafting custom forms to ensure the forms address the requirements for disclosed limited agency agreements set out in OAR 863-015-0210(1) and (2).

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Betty Reynolds, Editor
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MANUAL UPDATE AVAILABLE

The Agency's *Oregon Real Estate Manual* contains discussions of Real Estate License Law and related topics, and includes copies of real estate laws and rules. The *Manual* was updated to reflect changes to laws and rules after the 2003 legislative session. Changes include revisions to seven chapters of the *Manual*, addition of the 2003 versions of real estate-related chapters of the Oregon Revised Statutes (Chapters 696, 90, 91, 92, 94, 100, and 105), and a new *Manual* index.

The update will be available for distribution the first week of April. The Agency will distribute the updated *Manual* materials to Subscription Service subscribers for the 2003-2005 biennium, and to all purchasers of the 2003 *Manual*. The updated material

will be distributed the first week of April.

The *Manual* Update Subscription Service can be ordered for \$12 by sending in the "Publication and Videocassette Order Form," which can be found on the Agency's website at www.rea.state.or.us. The subscription service provides revisions to the text of the *Manual* along with updated real estate-related statutes and rules. The same order form can be used to order the full *Manual* for \$26. The *Manual* is also available for purchase at the Agency at the reduced price of \$20.

If you want more information about the Subscription Service, or clarification regarding the materials you will receive, please contact the Education Division at (503) 378-4170.

ADMINISTRATIVE RULE CHANGES - REAL ESTATE LICENSEES AND ESCROW

The Real Estate Agency filed proposed revisions to administrative rules related to real estate licensees and escrow and escrow agents. The revisions will be effective May 3, 2004.

Real Estate Licensing rules OAR 863-015-0015 (Application; Background Check), 863-015-0055 (Continuing Education) and 863-015-0200 (Agency Relationships) were previously amended by temporary rule. The proposed rule revisions include the permanent amendment of those rules. In addition, the proposed changes to OAR 863-015-0020 (Licensing; Examinations), 863-015-0025 (Licensing; Generally), 863-015-0050 (Licensing; Renewal), 863-015-0065 (Inactive License), 863-015-0080 (Nonresident License) and 863-015-0180 (Unlicensed Activity) are required to fix inconsistencies within the rules, among other things, promulgated subsequent to the passage of Senate Bill 206, and are necessary to further implement the policies and procedures contemplated by the legisla-

tion. The proposed change to OAR 863-001-0007 (Refunds) is to reduce to one year the time period for refunding fees.

Escrow rule OAR 863-050-0035 (Letters of Credit) was previously adopted by temporary rule effective January 14, 2004. This notice includes the permanent adoption of that rule. In addition, Escrow rules OAR 863-050-0020 (Notice of Interest) and 863-050-0115 (Records Retention) are being amended to fix inconsistencies within those rules, which were promulgated subsequent to the passage of Senate Bill 207.

You can obtain more information about the proposed rules in several ways.

- The proposed rules will be published in the Secretary of State's (SOS) *Oregon Bulletin*, April 1, 2004 which is available either in paper format by calling (503) 373-0701 or through the SOS website at <http://arcweb.sos.state.or.us>, and clicking on "administrative rules" then "current bulletin."

- An edited copy of the rules showing the current and proposed language may be viewed and downloaded at the Agency's website, www.rea.state.or.us/redline/.

- An unedited copy of the final rules may be viewed and downloaded at www.rea.state.or.us/final/.

- A hard copy of the text of the proposed rule changes may be obtained by calling 503-378-4170, ext. 239. In compliance with the Americans with Disabilities Act, the information is available in alternative formats upon request.

Information and copies regarding the rules may be viewed and obtained as described above. Written comments regarding the proposed rules may be submitted until April 22, 2004 by regular mail, e-mail or facsimile. Contact information is:

Brian DeMarco, Administrative Rules Coordinator, 1177 Center NE, Salem, OR 97301-2505, Facsimile: (503) 378-2491 E-mail: brian.a.demarco@state.or.us Telephone: (503) 378-4170, ext. 237.

AGENCY PERSONNEL, BOARD CHANGES

The Governor has appointed Vada Salinas to the Real Estate Board. Ms. Salinas is an attorney practicing in Salem, with experience in real estate and business transactions, mortgage loans, and civil litigation. The Governor also appointed Arthur Kegler to the Board. He is a Broker-owner of American West properties doing business in Boardman, Hermiston, and Umatilla. He is a President of the Columbia Basin Board of Realtors. Troy Costales, was reappointed to the Board, and Victor Kee was re-elected Chairperson in August 2003.

Becky Osborne was selected as Regulation Division Manager. Ms. Osborne is an attorney with extensive management and administrative law experience. Most recently she

managed a staff of 25 with the Employment Department, was Deputy Chief Hearing Officer of the State's Hearing Officer Panel, Supervising Administrative Law Judge for the Employment Department, and Hearing Section Manager with the state's Insurance Division. She began her work with the State as an Investigator with the Insurance Division. Commissioner Scott Taylor said he looks forward to Becky's tenure with the Agency, "Not only is she highly skilled, she is well respected and people enjoy working with her."

Becky replaces Mark Moseley, who retired. Commissioner Taylor noted the outstanding contributions made by Mr. Moseley in setting standards

and revising procedures. He said, "We will miss Mark. He laid a strong foundation for the Agency to assure continuation of fair investigations and due process in administrative actions."

Adam Torgerson was selected to fill a vacant Investigator/Auditor position in January, 2004. Adam was previously employed by the Department of Business and Consumer Services as a Contract Compliance Specialist, and as an Assistant Budget and Policy Analyst with the Department of Administrative Services. Adam also practiced as a property manager and commercial leasing agent in Nevada, where he still holds an inactive broker license.

REQUIREMENTS TO KEEP YOUR LICENSE

Real estate license law changed July 2002. If you were licensed as a salesperson or property manager on June 30, 2002, or obtained your first real estate license after July 1, 2002, you must take action to keep your license. Here is what you must do.

If you are an active or inactive ASSOCIATE BROKER (former SALESPERSON)*, you must:

1. Take the 30-hour Associate Broker Transition Course. [For a list of schools, visit our web site at www.rea.state.or.us or call us at (503) 378-4170. The course can be used to satisfy continuing education requirements with your principal broker's permission.]
2. After finishing the course, send the following items to the Real Estate Agency at 1177 Center Street NE, Salem, OR 97301:
 - your original Associate Broker Transition Course certificate; and
 - your original associate broker license.

We will send you a broker license.

Deadline: June 30, 2005. If the Agency has not received your Associate Broker Transition Course certificate by June 30, 2005, your license will be cancelled. For more information on cancelled licenses, see below.

Note: You do not need to complete the broker licensing exam.

* These requirements apply if you were licensed as a salesperson on June 30, 2002. You automatically received a temporary associate broker license from the Agency in July, 2002. If you supervise a licensed personal assistant, additional requirements apply. Effective January 2, 2004, only principal brokers can supervise licensed personal assistants.

If you were an active or inactive PROPERTY MANAGER on June 30, 2002:

1. Take the 36-hour Property Manager Transition Course. [For a list of schools, visit our web site at www.rea.state.or.us or call us at (503) 378-4170. The course can be used to satisfy continuing requirements.]
2. After finishing the course, send the following items to the Real Estate Agency at 1177 Center Street NE, Salem, OR 97301:
 - your original Property Manager Transition Course certificate; and
 - your temporary property manager license.

We will send you a property manager license.

Deadline: June 30, 2004. If the Agency has not received your Property Manager Transition Course certificate by June 30, 2004, your license will be cancelled. For more information on cancelled licenses, see below.

If you are an active BROKER ORIGINALLY LICENSED after July 1, 2002, you must:

1. Take the 30-hour Advanced Real Estate Practices course from an approved course provider. [For a list of schools, visit our web site at www.rea.state.or.us or call us at (503) 378-4170. The course can be used to satisfy continuing education requirements.]
2. Submit proof of completion of the Advanced Real Estate Practices course to your principal broker. Your principal broker will then certify on your license renewal form that you have completed the course. *Do not send proof of course completion to the Real Estate Agency.*

Deadline: First 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. For example, if your first license was issued in March 2003, and your birthday is in April, your license would expire April 30, 2004.

If your license is CANCELLED:

If you fail to complete the required transition course within the time allowed, your license will be cancelled. If your license is cancelled, you must immediately stop conducting licensed real estate or property management activity. To obtain a license again, you would need to complete all requirements for initial licensure before applying for a license. These requirements include pre-license education, the required license exam and a background check.

If you have questions about license requirements, please contact the Licensing Section at (503) 378-4170, selection 2. If you have questions about education or examination requirements, please contact the Education Section at (503) 378-4170, ext. 251 or 260.

UPCOMING DEADLINES

Many revisions made to the Oregon Real Estate License Law, ORS 696, by the 2001 Legislature became effective July 1, 2002. However, some of the changes are phased in, giving licensees additional time to meet new requirements. Licensees affected by the changes should be aware of the following deadlines and take the steps necessary to satisfy requirements before the effective dates. Contact the Agency at (503) 378-4170, menu selection 2, for questions concerning any of the following deadlines.

DEADLINE	FOR LICENSE CATEGORY	ACTION NECESSARY
June 30, 2004	Temporary Property Managers (those licensed <i>prior</i> to July 1, 2002)	Submit verification for completion of "Property Manager Transition Course." Failure to submit verification results in termination of license. (Oregon Laws 2001, Chapter 300, Section 3)
June 30, 2005	Associate Brokers (formerly known as salespersons licensed <i>prior</i> to July 1, 2002)	Submit verification for completion of "Associate Broker Transition Course." Failure to submit verification results in termination of license. Applies to inactive as well as active associate brokers. (Oregon Laws 2001, Chapter 300, Section 2)
First renewal of active broker license	Brokers (those originally licensed <i>after</i> July 1, 2002)	Complete "Advanced Real Estate Practice" course. Failure to complete the course results in the inability to renew the license. [ORS 696.174(3) and OAR 863-015-0055(4)]

WHERE TO FIND CLASSES (UPDATED)

New courses are approved and added to the Agency's list of approved classes regularly. Check out the Agency's web site at www.rea.state.or.us for the latest list of providers approved to offer pre-license, post-license, and transition courses. You may also receive the list by mail by calling the Agency at (503) 378-4170, selection 2.

The following is a list of approved schools currently offering or scheduled to offer hard-to-find required courses:

Brokerage Administration and Sales Supervision

American College of Real Estate (503) 247-9311
 First American Title and Insurance Company (503) 219-8723
 Gloria Rohl (503) 390-6375
 onlineEd www.onlineed.com or (503) 636-4580
 ProSchools (503) 256-3645
 Quality Real Estate School (541) 389-9585

Real Estate Property Manager (pre-license)

Lane Community College (541) 463-5906
 Portland Community College (503) 977-4393
 ProSchools (503) 256-3645

Property Manager Transition Course

American College of Real Estate (503) 247-9311
 Jack Graham, P. C. (503) 364-1117
 Multifamily Housing Council of Oregon (503) 378-1912
 Portland Community College (503) 788-6260
 ProSchools (503) 256-3645

Advanced Real Estate Practices

American College of Real Estate (503) 247-9311
 onlineEd www.onlineed.com or (503) 636-4580
 Quality Real Estate School (541) 389-9585
 Real Estate Institute of Greater Portland (503) 665-6780
 Windermere Services Co. (503) 220-1145

ASSISTANCE FOR POTENTIAL HISPANIC HOMEBUYERS

The Homeowner Education Collaborative of Oregon (HECO), a non-profit organization that provides homebuyer training classes statewide, has started a new program, "Si, Se Puede: Alcazar el Sueno Dorado," or "Yes, You Can Reach the Golden Dream." The program is designed to teach Hispanics in Oregon about the process of buying a home.

According to HECO Executive Director Teri Duffy, buying a home can be very difficult for Oregon families who do not speak English or who have little experience with the real estate and financial system in the United States. HECO is sponsoring Si, Se Puede financial and homebuying fairs where participants can learn how the finance system works in the United States and learn how to handle their personal finances.

Financial and homebuying fairs are scheduled in McMinnville on Saturday, April 24 for Hispanic families in Yamhill, Washington and Polk counties; in Woodburn on Sunday, June 13 for families in Marion, Polk and Clackamas counties; and in The Dalles later this summer for families in Hood River and Wasco counties in Oregon and south central Washington.

For more information contact Lisa Della Badia, HECO's Si, Se Puede program manager, at 503-986-0961 or email her at lisa.dellabadia@hcs.state.or.us.

NEW LOAN PROGRAM FOR FIRST-TIME HOMEBUYERS

The Oregon Housing and Community Services (OHCS) recently launched a new loan program called "CashAdvantage Home Loan." OHCS is the State of Oregon's housing finance agency which provides financial and program support to help low and moderate-income Oregonians purchase their first home.

First-time homebuyers eligible to participate in OHCS's Residential Loan Program, also known as the "Oregon State Bond Loan," now have a choice between the CashAdvantage Home Loan and the RateAdvantage Home Loan. The borrower qualifications and income limits are the same for both loan alternatives. The CashAdvantage Home Loan includes 3% cash assistance and the rate is

currently only .50% higher than the RateAdvantage Home Loan.

As of February 27, 2004, borrower income eligibility limits are: \$58,600 statewide; \$67,400 in Benton County; and \$67,900 if the property purchased is located in Clackamas, Columbia, Multnomah, Washington, or Yamhill counties. The purchase price limits have also been raised for all counties in Oregon to make it easier for eligible borrowers and lenders to participate in the program.

For additional information and to view a side-by-side comparison between the two loan programs, visit OHCS's website at www.oregonbond.us or call (503) 986-2015.

CONSTRUCTION CONTRACTORS BOARD HAS NEW "DEVELOPER" LICENSE CATEGORY

A new licensing category for contractors working in Oregon was effective October 1, 2003. A "developer" is now a separate class of contractor that must be licensed with the Construction Contractors Board (CCB). This category is for developers who arrange for the construction of structures they intend to sell on property they own or in which they have an interest.

Persons are eligible for this category if they meet *all* of the following criteria:

- They engage in the business of arranging for construction work and

performing other activities associated with the improvement of real property, with the intent to sell the property;

- They act in association with one or more licensed general contractors who have sole responsibility for overseeing all phases of construction activity on the property; and
- They do not perform any construction work on the property.

For more information, visit CCB's website at www.ccb.state.or.us or call the CCB at (503) 378-4621.

REAL ESTATE AGENCY WEBSITE UPDATED

The Agency's website is frequently updated with information and tools useful to licensees. Most recent changes include access to the 2003 edition of ORS Chapter 696 and related laws, the text of pro-

posed rules, links to the Agency's performance measures, and new consumer information. Several forms and brochures are also available, and can be viewed with an

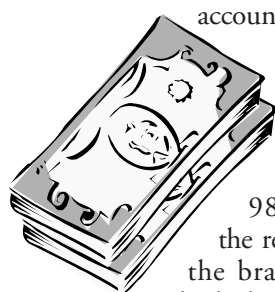
Adobe Acrobat reader and downloaded.

Please visit the Agency website at www.rea.state.or.us.



UNCLAIMED PROPERTY - A HELPFUL LAW CHANGE

John O'Leary, Investigator/Auditor



Escrow Agents, Property Managers and Principal Brokers with clients' trust accounts got some good news recently with the change made by the 2003 Oregon Legislature to ORS 98.332. This was the result of HB 3344, the brainchild of Craig Chisholm, Oregon State Counsel for Stewart Title Company.

Unclaimed property held for others by Brokers, Property Managers and Escrow agents generally takes the form of money, held in a clients' trust account, that you cannot disburse to its owners as you don't know where to find them. Often, you will have issued your trust account checks but notice them showing up on the outstanding checks list each month when you do your bank reconciliation. As trust account holders, you must consider your licensing laws as well as the abandoned property laws when dealing with the disposition of these funds. Accountability under the real estate and escrow license laws (ORS Ch. 696) requires you to make a "good faith effort" to locate these owners of trust funds, which generally means making two or even three attempts to contact the parties, regardless of the amount. However, in handling your own business accounts, only the abandoned property laws (ORS Ch. 98) apply: they require "due diligence" (i.e. at least one attempt to contact) where the amount is over \$100.00. Eventually, however, some will have not responded to your efforts and, after the statutory "dormancy" period, this money is to be forwarded to the Oregon Department of State Lands as abandoned or unclaimed property under a process commonly (if erroneously) known as "escheat". HB3344 reduced the "dormancy" period for fiduciaries, including yourselves as trust account holders, from five years to two. The existing three year dor-

mancy period for your own business accounts, however, remains unchanged.

So what is unclaimed property and what is not? And how does the process work?

It is important to distinguish between unclaimed or abandoned trust funds and disputed trust funds, as different laws apply:

The most common forms of unclaimed funds that I see are the refund or additional proceeds check issued by an escrow agent after closing or the deposit refund issued by a property manager after a tenancy ends. Some of these are quite small and thus of little consequence to the payees, who don't take them promptly to the bank for deposit. Another is the check sent to the former address of the payee (as in the moved-away seller or the moved-away tenant) where no forwarding instructions are in place or a check sent to a completely wrong address that ends up being trashed, rather than returned, by the resident. It is fairly easy to see that a little time and effort on the telephone could get a majority of these unclaimed funds claimed. Some often useful sources of contact information include directory assistance, various internet sites such as "The Ultimates" and "Quest Dex", the individual real estate licensee who represented the party or a former neighbor. Remember: at least one attempt to contact the owner of amounts over \$100 is a requirement of the Department of State Lands before the amount is reported to them, regardless of whether it is trust account funds or general business account funds.

Not to be classified as abandoned are checks to known entities such as Utility Companies, Insurance Companies or Agents, State or Federal Agencies and Vendors, paid from your trust account on behalf of others. Generally speaking, these are not folks you can't locate but folks who never received the money somehow, don't know how to apply it or had already received it from

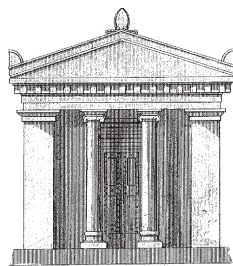
another source. In these cases, there is a problem that needs to be resolved and in most cases the check needs to be re-issued to the same payee or to the person on whose behalf you made the payment. Timely attention should be paid to your outstanding checks lists to see what is happening and why. Checks not cleared become "stale dated" after 6 months and not normally clearable by a bank through standard clearing methods. To wait that long to deal with them increases the work and sometimes the cost of following up, besides raising questions regarding the "good faith" and "diligence" of your procedures.

Nor to be treated as abandoned are funds in dispute – typically earnest money in a failed sale. Here the law differs in escrow from what applies in real estate: Escrow Agents must receive compatible disbursement instructions from all the principals or else act "pursuant to the order of a court of competent jurisdiction". This might be the result of one party taking the other to Small Claims Court or Binding Arbitration, or of an "interpleader" action by the escrow agent itself. Real Estate licensees often seek the same authorities or releases, in the name of risk management, but are expected to make transaction-based decisions they are prepared to defend when necessary.

Oregon's unclaimed property laws are administered by the Department of State Lands. Their website, at www.oregonstatelands.us provides information about how and when to file reports as a holder and how to find money and other property that might be yours! It also indicates how to contact them for any additional information or assistance you may require and posts dates for "holder" seminars conducted at various locations around the State, generally in August and September. Unclaimed property received by the Department of State Lands is held in the Common School Fund, the earnings from which are sent to Oregon's K – 12 public schools every six months.

ADMINISTRATIVE ACTIONS

December 1, 2003 through February 26, 2004



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.

REVOCATIONS

Haug, Timothy L. (Salem) Temporary Property Manager #970600038
Default order dated February 6, 2004, effective February 6, 2004; failed to file the statutory forms with the Agency identifying the bank name, account number and account name of each CTA maintained in his professional real estate activity, ORS 696.241(2)(3); did not allow REA staff to examine his property management records, ORS 696.301(11); allowed owner accounts to become overdrafted, ORS 696.301(20); failed to obtain a property management agreement that clearly and fully described the duties and responsibilities of the property manager and the owner, containing a disclosure regarding the disposition of the required records after termination of the agreement, OAR 863-010-0210(1); failed to open and maintain a CTA for the deposit of funds received on behalf of owners of property managed under property management agreements labeled "Clients' Trust Account - Property Management" and a second CTA for funds accepted on behalf of ten-

ants labeled "Clients' Trust Account - Property Management - Security Deposits", OAR 863-025-0025(1)(2); failed to deposit tenants' security deposits received by him in a CTA, OAR 863-025-0030(1); issued checks from his CTA prior to the existence of a sufficient credit balance in the owner's ledger against which the checks were issued, OAR 863-010-0220(3)(a)(d) and OAR 863-025-0025(3)(a)(e); withdrew management fees when there were insufficient funds available in the owner's accounts, OAR 863-010-0220(3)(f) and OAR 863-025-0025(3)(f); and failed to reconcile his CTA at least monthly, with the total of the balance of the Receipts and Disbursements Journal equaling the reconciled bank balance and which equaled the total of the balances of the individual owner or tenant ledgers, OAR 863-010-0220(6) and OAR 863-025-0025(5) (1999 & 2001 Editions).

SUSPENSIONS

Losco, Anthony "Tony" (Eugene) Broker #200102073
Stipulated order dated December 1, 2003 issuing a 30 day suspension, effective December 1, 2003; drafted an offer for his buyer which included an escalator clause after he had made an agreement with another agent to develop the best offer for their individual clients agreeing that neither would use escalator clauses, ORS 696.301(31); failed to keep a written record of the date and time of each tender, the responses of the offeree to the written offer and to provide a true copy of the offer and response to the offeror, OAR 863-010-0020(3); and failed to promptly transmit four offers to his designated broker, OAR 863-010-0025(2) (1999 Edition).

REPRIMANDS

Brenneke, Thomas B. (Portland) Principal Broker #841100010
Stipulated order dated December 8, 2003; by and through his authorized personnel: (1) issued checks from the tenant security deposits to tenants for whom Guardian did not hold funds, ORS 696.301(20); (2) ordered work and charged supplies to the apartment accounts when there was an insufficient credit balance in the owner's ledger account at the time the checks were issued, OAR 863-010-0220(3)(a); (3) transferred funds between owner ledgers without the owner's express written authority to do so, OAR 863-010-0220(3)(c); (4) transferred tenant security deposits to his operating accounts and used those funds to pay Guardian management fees and/or maintenance bills, OAR 863-010-0225(6); and (5) failed to perform reconciliations on his CTAs in accordance with OAR 863-010-0245 (1999 Editions).

Caprotta, Federico A. (Portland) Principal Broker #900900097
Stipulated order dated December 4, 2003; failed to have a promissory note redeemed timely; secured a check redeeming the promissory note that was less than the amount of the note; failed to inform his seller that the note had not been fully redeemed, and failed to remove references to a "team" from his web site during periods of time in which he had no other real estate licensees associated or working with him, ORS 696.301(28).

Dawell, Charles C. (Lake Oswego) Broker #780402491
Stipulated order dated December 12, 2003; prepared a competitive market analysis and price opinion letter for a former appraisal client and charged a fee for a property in

which he was not pursuing the listing, ORS 696.301(28); produced a competitive market analysis and price opinion letter that did not contain complete disclaimers, OAR 863-015-0190(3)(g) and (h).

Dillard, Carvel Gordon (Grants Pass) Broker #890500246
Stipulated order dated February 3, 2004, which also requires the successful completion of certain education; failed to instruct the seller to provide a lead-based paint disclosure statement to the buyers as required, ORS 696.805(1)(a); failed to keep copies of the earnest money checks he received from the buyers, ORS 696.301(12); failed to instruct the seller as to his duties to provide a seller's property disclosure or disclaimer statement under ORS 105, ORS 696.301(28); failed to ensure that the dates used on Addendum B and the earnest money checks written by the buyer accurately reflected the actual dates the instruments were signed, ORS 696.301(28); and failed to notify the Agency of a change of business location when he moved his real estate business, ORS 696.200(2).

Middleton, Richard A. (Coos Bay) Broker #990600148
Stipulated order dated December 16, 2003; failed to obtain a schedule of rents and deposits for the property he listed, failed to verify the rents and deposits at closing with the property manager when asked to do so by escrow and failed to tell the escrow officer that he had not verified the rents and deposits, and failed to verify the accuracy of the rents and deposits shown on the settlement statement, ORS 696.805(2); and allowed escrow to credit a referral fee to the sellers, who were not real estate licensees, ORS 696.290(1).

Moore, Jeanie (Rogue River) Broker #830100066
Stipulated order dated February 3,

2004; failed to verify that the subject property abutted BLM land before advertising that it did, ORS 696.301(28) (1999 Edition). In June 2001, Moore listed acreage property in Gold Hill, Oregon. The listing referred to the property as being adjacent to BLM land, and was signed by the seller. The prior marketing of the property by the seller indicated the property was adjacent to BLM land. Moore reviewed the Jackson County Assessor's maps of the property and the adjacent section to the south. Based on that review in conjunction with the seller information, Moore believed the subject property was adjacent to BLM land. The assessor's maps of the subject property and of the adjacent section to the south, that Moore relied upon, are of widely different scales, show zoning information, parcel dimensions and size, and tax lot numbers, but do not show ownership of the parcels. Moore did not obtain information establishing ownership of the adjacent parcels. Moore stated to the buyers that the subject property was adjacent to BLM land. After closing, the buyers discovered their property did not border BLM land. Although Moore relied on the seller and assessor's maps to make this determination, assessor's maps were not authoritative and the seller was in error. Moore did not qualify her reliance on the seller's statement that the property was adjacent to BLM land as such but instead made it her own unqualified statement of fact.

Nelsen, Raymond C. (Coos Bay) Broker #950200313
Stipulated order dated December 9, 2003; failed to obtain a schedule of rents and deposits for property he listed, failed to verify the accuracy of the rents and deposits shown on the settlement statement, and having his seller sign the settlement statement even after she questioned the accuracy of the rents and deposits listed, ORS 696.805(2);

allowed escrow to credit a referral fee to the sellers, who were not real estate licensees, ORS 696.290(1).

Sapp, Timothy N. (Florence) Principal Broker #911200216
Stipulated order dated January 2, 2004; failed to verify that escrow had been given a schedule of rents and deposits for a property, and failed to verify the accuracy of the rents and deposits shown on the settlement statement, ORS 696.810(2)(b); credited a portion of his commission to the buyers who were not real estate licensees, ORS 696.290(1).

Stennick, John F. (Rainer) Principal Broker #931100106
Stipulated order dated February 19, 2004; failed to adequately communicate to his client the risks involved in permitting the buyer to occupy the property without a signed occupancy agreement, ORS 696.301 (28). On May 31, 2002, sellers listed their home with Stennick. The listing price was \$157,500. It was a combination 1973 manufactured home/stick-built home. The listing clearly described the house as a manufactured home with addition. On July 20, 2002, buyers made a full price offer on the property. Buyers had a loan pre-approval letter endorsing financing for a home costing up to \$180,000 subject to an acceptable appraisal and other conditions. Buyers were relocating to Oregon from Maryland. Sellers accepted the offer and closing was to occur on or before August 21, 2002. Buyer was to take possession by 5:00 PM on the closing date. Closing did not occur on August 21, as the appraisal had been held up. An extension to extend the closing date was not done as the earnest money agreement allowed for 10 business days after August 21 to close. On August 22, sellers agreed to move out of the house prior to closing so buyers could move in. Although

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Stennick mentioned to seller and the buyer's agent of the need for an occupancy agreement and prepared an addendum incorporating such an agreement and sent it to the buyer's agent, he failed to insist that the occupancy agreement be signed before the keys were given to the buyer. Buyers moved into the property without signing the addendum. On or about August 30, the lender declined to loan on the property. Buyer was unsuccessful in finding financing to purchase the subject property and the sale failed. Buyers occupied the property until the end of September. Sellers allege the property was damaged by the buyers and their dog, during their occupancy.

Tomas, Sandra D. (Coos Bay) Principal Broker #921000102 Stipulated order dated January 21, 2004; failed to deposit an earnest money check until 30 days after the offer was written and 22 days after the offer was mutually accepted, OAR 863-015-0255(3).

Trotter, Frank G. (Eugene) Broker #860900076 Stipulated order dated January 28, 2004; failed to report an adverse decision in an arbitration, OAR 863-010-0120; and failed to promptly transmit to his broker money and documents in a transaction, OAR 863-010-0046 (1999 Edition).

CIVIL PENALTIES

Austin, Linda A. (Roseburg) Temporary Associate Broker #200203305 Stipulated order dated December 2, 2003 issuing a \$350 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-015-0050(2).

Breese, Vikki (Prineville) Temporary Associate Broker #200111002

Stipulated order dated December 19, 2003 issuing a \$900 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-015-0050(2).

Cellucci, Gene A. (Salem) Temporary Associate Broker #910400277

Stipulated order dated January 23, 2004 issuing a \$2,500 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-15-0050(2).

Cyphers, David R. (Ashland) Temporary Associate Broker #870900061

Stipulated order dated December 8, 2003 issuing a \$500 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-015-0050(2).

Fechtler, Delean G. (Redmond) Temporary Associate Broker #981100044

Default order dated December 15, 2003 issuing a \$1,100 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-015-0050(2).

First American Title Company of Columbia County (St Helens) Escrow Agent #880900119

Stipulated order dated December 9, 2003 issuing a \$1,000 civil penalty; failed to submit complete required financial information to the Agency within 120 days from its tax or accounting year.

First Oregon Title Company (Madras) Escrow Agent #950400299

Stipulated order dated December 15, 2003 issuing a \$750 civil pen-

alty; failed to submit complete required financial information to the Agency within 120 days from its tax or accounting year.

Key Title Company nka Ticor Title Company of Oregon (Salem) Escrow Agent #850600240

Stipulated order dated January 21, 2004 issuing a \$1,500 civil penalty; failed to obtain prior written approval by all the principals to a transaction before placing the buyer's earnest money into an interest-bearing account, OAR 863-050-0060(1); and failed to obtain dated, separate escrow instructions in writing from the principals to a transaction adequate to close escrow or disburse funds in the following instances: (a) Addendum B that included funds being held back in escrow; (b) instructions for a partial release of escrow holdback to buyer; and (c) release of repair funds in escrow, ORS 696.581(2).

Keyser, Beth L. (Newberg) Broker #200205088

Stipulated order dated December 30, 2003 issuing a \$1,500 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-015-0050(2).

McMullen, Kevin M. (Portland) Temporary Property Manager #981100121

Stipulated order dated February 3, 2004 issuing a \$2,500 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-15-0050(2).

LandAmerica Lawyers Title (Portland) Escrow Agent #200008033

Stipulated order dated December 29, 2003 issuing a \$500 civil penalty; failed to submit complete required financial information to the Agency within 120 days from its

tax or accounting year.

Nelson, Carolyn A. (Boring)
Temporary Associate Broker
#200205178

Stipulated order dated December 30, 2003 issuing a \$600 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-015-0050(2).

Stewart Title of Oregon, Inc.
(Portland) Escrow Agent
#991100004

Stipulated order dated December 5, 2003 issuing a \$1,000 civil penalty; failed to submit complete required financial information to the Agency within 120 days from its tax or accounting year.

Stringer, Rhonda L. (Lake Oswego)
Temporary Associate Broker
#200205175

Stipulated order dated January 2, 2004 issuing a \$750 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-15-0050(2).

Svensen, Jacqueline I. (Seaside)
Broker #951000092

Stipulated order dated February 9, 2004 issuing a \$2,000 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-15-0050(2).

Transnation Title Insurance
Company (Portland) Escrow Agent
#990700017

Stipulated order dated December 9, 2003 issuing a \$750 civil penalty; failed to submit complete required financial information to the

Agency within 120 days from its tax or accounting year.

OTHER

Alfano, Susan J. (Portland) Tem-
porary Associate Broker
#200111041

Stipulated order dated January 5, 2004 issuing a 30 day suspension that is stayed for 6 months; while representing the buyer only and mistakenly believing she had the consent of the listing agent, made direct contact with the seller and entered into verbal agreements with the seller, on behalf of the buyer, regarding work on the seller's property, ORS 696.301(18); allowed her buyer client to sign and date a sale agreement and a buyer's counter offer in which the documents did not make reference to each other and creating contract terms and conditions that may have been in conflict; failed to determine that persons, including herself, were properly licensed as contractors before they began performing repairs or painting the property; ORS 696.301(28); wrote an offer on behalf of her buyer client that included the condition that the buyer be allowed access to the subject property to paint, but then she arranged for additional work to be performed on the property without obtaining the buyer and seller's written permission, OAR 863-015-0135(5). The sale ultimately failed.

Corey, Michael A. (Newberg)
Property Manager #990400105

Stipulated order dated December 30, 2003 issuing a 60 day suspension that is stayed for 6 months; failed to obtain a written, dated and signed property management agreement with an owner in the name of Chehalem Property Man-

agement that clearly and fully specified the duties of the owner and the property manager, and included all forms and amounts of compensation allowed, OAR 863-010-0210(1)(2) and OAR 863-025-0020(1)(2); failed to open and maintain a clients' trust account under ORS 696.241 for the deposit of funds received on behalf of owners of managed properties, OAR 863-010-0215(1) and OAR 863-025-0025(1); deposited rental funds received from tenants into his property management operating account, ORS 696.301(10); failed to prepare and maintain a tenant ledger for a tenant account showing the tenant's name, the property address, and posting an entry for each receipt of funds from the tenant, OAR 863-010-0215(3)(c) and OAR 863-025-0050(1)(4); failed to prepare and maintain an owner's ledger for an owner containing all funds received and disbursed, including the source of funds, names of payees, check numbers, and with a balance after posting each entry, OAR 863-010-0215(2) and OAR 863-025-0055; knew or should have known that he did not have a proper management agreement with an owner and did not have authority to charge her for late charges and court costs which should have been paid by the tenant, ORS 696.301(28) (1999 & 2001 Editions).

Stiles, Douglas M. (Klamath Falls)
Temporary Associate Broker
#950400338

Stipulated order dated December 16, 2003 issuing a 30 day suspension that is stayed for 6 months; failed to adequately counsel the sellers of the potential risks in accepting barter credits for the entire sales price, ORS 696.815.





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