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POLICY, LICENSED PERSONAL ASSISTANT, AND EDUCATION REQUIREMENTS

Scott W. Taylor, Real Estate Commissioner

Since the enactment of the new license law, the Agency has received numerous questions about what affiliated licensees may and may not do under the new law in various circumstances, such as retaining licensed personal assistants. Often the answers depend upon what a particular office's policies allow. The Agency also receives calls about education requirements and deadlines for former salespersons and property managers licensed prior to July 1, 2002 who must transition their licenses.

ORS 696 and OAR 863 require written agreements and written policies in certain situations. SB 446 requires former salesperson and property manager licensees to complete transition courses within specified deadlines to retain their licenses. A brief synopsis of the requirements follows.

POLICIES

Brokerage firms are now required to have written company policies. OAR 863-015-0220 sets out the minimum requirements for company policies. Generally, the rules require

that policies contain:

- Provisions on how licensees associated with the business will comply with agency relationships. [ORS 696.840 provides that unless prohibited by ORS 696, relationships other than those described in ORS 696.800 *et. seq.* may be used with adequate written disclosure and consent. Licensees employing relationships different than those described in ORS 696.805, .810 and .815 should seek legal counsel.]
- Procedures to ensure the protection of confidential information.
- Provisions regarding supervision and control of licensees associated with the business in the fulfillment to their duties and responsibilities to their clients.
- Provisions regarding the supervision of licensed assistants. If a principal broker does not wish to allow associates to employ licensed personal assistants, it should be stated here.

The reasonableness of the principal broker's actions to carry out the policies and agreements will form the

basis to judge whether the principal broker's supervision was adequate under ORS 696.301(29). See also ORS 696.026 and 696.310.

In firms where there is more than one principal broker, written agreements must exist between them outlining their respective supervision and control responsibilities. See ORS 696.026 and 696.310.

LICENSED PERSONAL ASSISTANTS

OAR 863-015-0195 outlines requirements regarding licensed personal assistants. Temporary associate brokers who had licensed personal assistants on July 2, 2002 must obtain a principal broker's license not later than January 2, 2004. Simply put, they must complete the Associate Broker Transition Course, complete the Brokerage Administration and Sales Supervision Course; sit for and pass the Broker's exam and have been actively licensed for three years to activate the license.

Those licensees who received a broker's license on July 1, 2002 as a result of the new law and who had

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licensed personal assistants should have activated a principal brokers license on or before September 30, 2002.

If an eligible broker wishes to employ a licensed personal assistant he or she must activate a principal broker's license and enter into a written agreement with his or her employing principal broker. This agreement shall specify the supervision and control of the licensed assistants, and the written office policies must also address supervision and control of licensed personal assistants. If compensation is to be made directly to the licensed assistant by the licensee employing the assistant, this agreement must also allow for this practice, as required in ORS 696.290 (4).

ORS 696.028 provides that licensed personal assistants must op-

erate under written agreements with their employing licensees. OAR 863-015-0195 describes the requirements for licensed personal assistant agreements. At a minimum these agreements must contain the following:

- The name of the real estate business.
- The parties to the agreement.
- The duration of the agreement and a provision for its termination.
- The name of the licensee employing the licensed assistant and reference to the office policies establishing supervision and control of the assistant.
- The duties and responsibilities of the licensed assistant, including any limitations on their ability to represent clients on behalf of their employing licensee.
- How the licensed assistant is to be compensated, including reference to any authorization by the employing licensee and his or her principal broker.

It is important to note that licensed assistants must always have the same agency relationships with clients as their employing licensee.

While at first reading this seems complicated, it really is not. Simply put, the law requires principal brokers to examine their business and determine for themselves what type of operation they want, depending

upon the sophistication of their staff and their tolerance for risk, addressing the minimum requirements set out above. This may require the advice of counsel. Though the Agency is not in a position to endorse any prewritten policies, there are guidelines and frameworks for office policies that have been prepared by professional associations for licensees to use in developing these policies and agreements.

EDUCATION REQUIREMENTS

The new law and rules provide that former salespersons and property managers became temporary associate brokers and temporary property managers respectively, on July 1, 2002, but require them to complete transition courses by specific deadlines. The education requirements and deadlines for transitioning licensees are:

- Temporary property managers must complete the property manager transition course totaling 36 hours on or before June 30, 2004.
- Temporary associate brokers must complete the broker transition courses, which total 30 hours and provide certification to the Agency on or before June 30, 2005.

Failure to meet the deadlines will result in cancellation of the license right.

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Betty Reynolds, Editor
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UPDATED MANUAL AVAILABLE

Senate Bill 446 (Chapter 300 OL 2001) resulted in substantial changes to laws and rules administered by the Agency. The *Oregon Real Estate Manual*, which is a general reference for real estate professionals and those preparing to enter the profession, was rewritten by Agency staff to reflect the changes.

Publication of the *Manual* is expected in early October. *Manual* Update subscribers for the 2001-2003 biennium, as well as recent purchasers placed on the Agency's backorder list, will receive the *Manual* shortly after the publication.

The *Manual* can be ordered for delivery by mail for \$26 by sending in the "Publication and Videocassette Order Form," which can be found on page 11 and on the Agency's website at www.rea.state.or.us. The *Manual* will also be available for purchase at the Agency at the reduced price of \$20.

The *Manual* contains discussions of many real estate topics, including Real Estate License Law, Property Rights, Landlord and Tenant Act, and Subdivision. The *Manual* also includes copies of real estate laws and rules.

2003 LEGISLATIVE UPDATE

Several bills of interest to licensees were considered during the 2003 Regular Session. The bills are described by subject below.

GENERAL

Senate Bill 206. SB 206 (Chapter 398 OL 2003) was submitted by the Governor for the Agency and becomes effective January 1, 2004. The bill makes technical changes such as reconciling discrepancies in dates from Senate Bill 446; and clarifying the definition of "Principal Real Estate Broker," the Commissioner's ability to issue a limited license, seller's agent and buyer's agent affirmative duties, and the requirement that a branch office be designated by a sign containing the name under which the broker is licensed. Another change shifts the agency relationship acknowledgement form in ORS 696.845 from the law to rule. The change was necessary because SB 446 inadvertently left the wording in statute. The rules containing the agency relationship acknowledgement forms and requirements are OAR 863-015-0210 and OAR 863-015-0215. The rules may be viewed online at www.rea.state.or.us under "Statutes and Rule Administered by Agency." Rules may also be obtained by calling the Agency at (503) 378-4170, selection 3

A significant aspect of the bill is the addition of, "to protect the public interest" to the basis for determining competence and trustworthiness for issuance of a license; and commission of an act "whether or not in the course of professional real estate activity" to the grounds for discipline of a licensee. The changes are in response to Oregon Supreme Court and Court of Appeals decisions in which

a licensee was disciplined by the Agency for criminal activities occurring outside the course of his real estate activity, and in the second case, where the licensee conducted activities that would have prevented him from receiving a license had the Agency known about the activities when he was licensed. The Agency's actions were overturned by the Courts (*Dearborn v. Real Estate Agency and Kerley v. Real Estate Agency*).

Senate Bill 515. The bill replaces the current Seller's Property Disclosure Statement with a new Seller's Property Disclosure Statement in ORS 105.465, effective January 1, 2004. The new Statement contains numerous changes, including elimination of the disclaimer provision, amendments to the exemptions, addition of an "unknown" box to many questions, and substantive changes to the items which are disclosed. The law requires that the Statement be substantially the same as the Statement contained in the statute. The new statement can be viewed at <http://www.leg.state.or.us/billsset.htm>, and clicking on "2003 Regular Session," "Measure text," "Full Text (the PDF version is more readable)," "SB 500-599" "SB 515 Enrolled," and scrolling to Section 3 of the Bill.

ESCROW

Senate Bill 207. SB 207 was submitted by the Governor for the Real Estate Agency. The bill (1) implements issuance of limited escrow licenses; (2) modifies license and renewal requirements to require 3 years of escrow experience in Oregon or similar jurisdiction; (3) adds an industry-administered continuing education requirement; (4); increases corporate surety bond amounts; (5) adds causing material loss by failing to act with neutrality to the grounds for

discipline; and (6) increases civil penalties from \$100 to up to \$3,000.

Senate Bill 43 clarifies that certain escrow industry practices are not in violation of the practice of law described in ORS Chapter 9.

House Bill 2332 permits licensed escrow agents to process support payment by electronic transfer by amending ORS 25.030 and 25.130.

PROPERTY MANAGERS

Senate Bill 208 was submitted by Governor for the Agency and would have required licensed property managers to deposit corporate surety bonds or other deposits satisfactory to the Commissioner. While the bill remained in Senate Committee upon adjournment, a note in the Agency's Ways and Means Committee Budget Report directs the Agency to form a task force to analyze long term solutions such as a recovery fund, an alternative state bond program for those unable to obtain bonds, overdraft notification, or other solutions, and develop legislative proposals. Updates on the work of the Task Force will be provided in future editions of the *OREN-J*.

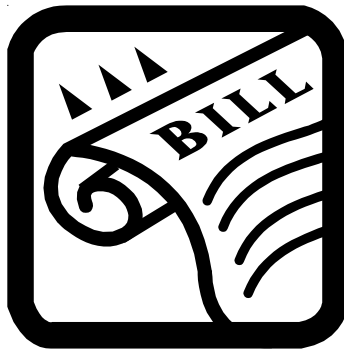
LIENS

House Bill 3539 relates to construction liens, and took effect upon signature of the Governor on September 17.

The bill directs the sellers of residential properties to provide protection for purchasers against construction liens that arise before the date of the sale of the property but that may be perfected after the sale is completed. The sellers have the option of

- providing title insurance on behalf of the purchaser;
- retaining in escrow not less than 25% of the sale price;
- obtaining a bond or letter of credit of not less than 25% of the sale price;
- obtaining waivers from all persons claiming a lien;

LEGISLATIVE UPDATE. . . : continued on page 10



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 for questions concerning any of the following deadlines.

DEADLINE	FOR LICENSE CATEGORY	ACTION NECESSARY
January 2, 2004	Associate Brokers (formerly known as salespersons <i>prior</i> to July 1, 2002) who supervise licensed personal assistants	Meet qualifications and submit application for principal broker license. Licensed personal assistants may no longer be employed by anyone in any other license category after this date. (ORS 696.028, OAR 863-015-0195)
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 from the menu.

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
 onlineEd www.onlineed.com or (503) 636-4580
 ProSchools (503) 256-3645

Advanced Real Estate Practices

Real Estate Institute of Greater Portland
 (503) 665-6780

Windermere Services Co. (503) 220-1145

Property Manager Transitions Course

American College of Real Estate (503) 247-9311

Jack Graham, P. C. (503) 364-1117

Multifamily Housing Council of Oregon
 (503) 378-1912

ProSchools (503) 256-3645

Real Estate Property Manager

Lane Community College (541) 463-5906

Portland Community College (503) 977-4393

ProSchools (503) 256-3645

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, 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) WITH A LICENSED PERSONAL ASSISTANT*, you must:

1. Take two courses:
 - a. Associate Broker Transition Course (30 hours) and
 - b. Brokerage Administration and Sales Supervision Course (40 hours).For a list of schools, visit our web site at www.rea.state.or.us or call us at (503) 378-4170. Courses can be used to satisfy continuing education requirements.
2. Qualify and apply for a principal broker license** by completing the following steps:
 - a. Complete and pass a background check.
 - b. Pass the national and state portions of the broker licensing exam).
 - c. Have three years of active licensed real estate experience.
 - d. Submit the following items to the Real Estate Agency at 1177 Center Street NE, Salem, OR 97301:
 - principal broker license application;
 - your license; and
 - original course completion certificates for the courses listed in step one.

Deadline: January 2, 2004. If you do not obtain a principal broker license by the deadline, you may not employ a licensed personal assistant until you become a principal broker. To keep your license and not supervise a licensed personal assistant, see below. If you do not complete the steps below, your license will be cancelled.

*These requirements apply if you were licensed as a salesperson on June 30, 2002 and supervised a licensed personal assistant on July 2, 2002. You automatically received a temporary associate broker license from the Agency in July 2002.

** Call (503) 378-4170, selection 2 to request the materials needed for upgrading to a principal broker license.

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. 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:
 - a. your original Associate Broker Transition Course certificate; and
 - b. your 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 supervised a licensed personal assistant, different requirements apply. See those instructions above.

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. 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.

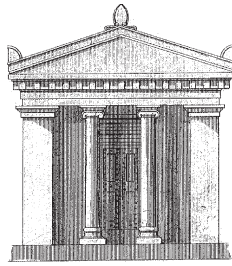
If your license is CANCELLED:

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.

ADMINISTRATIVE ACTIONS

June 1, 2003 through August 31, 2003



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.

REVOCATIONS

Clark-Smith, Dale L. (LaGrande) Temporary Property Manager #200203105 Default order dated August 22, 2003, effective August 29, 2003; failed to reconcile clients' trust accounts, OAR 863-010-0220(6), OAR 863-010-0245 (1999 Edition), OAR 863-025-0025(5)(6) (2001 Edition); failed to account for all checks, OAR 863-010-0215(2) (1999 Edition), OAR 863-025-0025(1) (2001 Edition); failed to deposit owner funds into the proper clients' trust accounts and held onto checks for a "buffer", ORS 696.301(4) (1999 & 2001 Editions); deposited her personal funds into the client trust account, ORS 696.301(10) (1999 & 2001 Editions); actively recruited owners who were under property management contracts with another property manager in anticipation of opening her own property management company, ORS 696.301(16) (2001 Edition); allowed the clients' trust accounts to become overdrawn, ORS 696.301(20) (1999 & 2001 Editions); moved rents from the security deposit account to the operating clients' trust account making the rents look current, showed funds were disbursed for a "deposit error" when in fact they were deposited to cover a shortage in the account, held checks when the owners believed the checks had been deposited into a reserve trust account, used tenant funds

to cover shortages, ORS 696.301(1) (1999 & 2001 Editions); failed to have proper receipts for all cash funds, OAR 863-010-0215(4) (1999 Edition), OAR 863-024-0060 (2001 Edition); disbursed funds from the tenant security clients' trust account to pay rents, OAR 863-010-0220(5) (1999 Edition), OAR 863-025-0030(4) (2001 Edition); failed to maintain a receipts and disbursements journal for the clients' trust accounts containing all entries, OAR 863-010-0215(6) (1999 Edition), OAR 863-025-0040(a) (2001 Edition); failed to post the receipts and disbursements journals each month, OAR 863-010-0215(6) (1999 Edition), OAR 863-025-0040(3) (2001 Edition); failed to maintain owner ledgers containing the owner codes, OAR 863-010-0215(2) (1999 Edition), OAR 863-025-0055(1)(2) (2001 Edition); posted the tenant ledgers as if they were owner ledgers showing many tenants on the same ledgers, making it difficult to track the charges to the proper tenant, and the ledgers do not contain the receipt numbers for cash payments or check numbers for disbursements, OAR 863-010-0215(3)(c) (1999 Edition), OAR 863-025-0050(1)(2)(3)(4) (2001 Edition); failed to prepare and maintain proper tenant rental agreements that contained the licensed name of the brokerage with many agreements signed by an unlicensed individual with no written authorization or broker review, OAR 863-010-0210(6)(7) (1999 Edition), OAR 863-025-0045(3)(4) (2001 Edition); and failed to prepare cash receipts containing the identifying designation of the ledger account of the owner on whose behalf the cash funds were received and the name of the individual who actually received the cash and prepared the receipt, OAR 863-010-0215(4) (1999 Edition), OAR 863-025-0060 (2001 Edition).

Goodrich, Judith L. (Bend) Temporary Property Manager #940800188 Stipulated order dated June 2, 2003, effective May 31, 2003; failed to give collected rents to owners, ORS 696.301(4); distributed inaccurate owner statements, ORS 696.301(6); failed to produce records, ORS 696.301(11); failed to maintain complete records, ORS 696.301(12); failed to maintain client funds on deposit, ORS 696.301(20); failed to deposit funds timely, OAR 863-010-0025(1) and OAR 863-025-0065(1); failed to assign an identifying number or code to each property management agreement, failed to include a disclosure regarding the disposition of records, and failed to have signed dated property management agreements prior to engaging in property management activities, OAR 863-010-0210(1) and OAR 863-025-0020(2); failed to maintain an account reserve balance per the property management agreement, OAR 863-010-0210(1) and OAR 863-025-0020(1); failed to prepare and maintain a tenant security deposit ledger for each tenant, OAR 863-010-0215(3)(c) and OAR 863-025-0050(1); failed to adequately identify deposits, OAR 863-010-0215(5) and OAR 863-025-0040(2)(b); failed to print out ledgers as part of the reconciliation process, OAR 863-010-0215(9)(c) and OAR 863-025-0025(5)(6); failed to reconcile her clients' trust account; OAR 863-010-0245 and OAR 863-025-0025(5)(6); failed to account to owners, OAR 863-010-0220(7) and OAR 863-025-0055(4); and used tenant security deposits to pay owner bills, sent a tenant security deposit to the tenant instead of the owner upon termination by the owner, OAR 863-010-0225(6) and OAR 863-025-0070(4)(b) (1999 and 2001 Editions).

SUSPENSIONS

Bowers, Bobbi F. (Grants Pass)
Temporary Associate Broker
#900600177

Stipulated order dated August 1, 2003 for a 90 day suspension effective August 4, 2003; drafted an earnest money agreement when she knew or should have known that it did not reflect the actual agreement of the parties, that payments would not be made on the second note and trust deed, that funds would be disbursed to the buyer at closing from the loan proceeds, and that this information would have been material to the lender, ORS 696.301(1) (1999 Edition).

Eoff, Richard K. (Newberg)
Property Manager #200210030
Order of Suspension dated July 14, 2003, effective July 14, 2003; failed to provide the Commissioner with satisfactory proof that he has completed the required property manager course prior to July 1, 2003, OAR 863-015-0045(8).

Hauck, Bonnie J. (Eugene)
Principal Broker #930200045
Stipulated order dated August 4, 2003 issuing a 30 day suspension effective September 2, 2003; approved a transaction and allowed her salesperson to participate in a transaction that did not fully disclose the complete agreement of the buyer and seller to the ultimate lender, had an inflated value, and was written to accommodate a loan with little or no down payment, ORS 696.301(28) and (29) (1999 Edition).

Mastrud, Scott L. (Bend) Property Manager #200205304
Order of Suspension dated July 14, 2003, effective July 14, 2003; failed to provide the Commissioner with satisfactory proof that he has completed the required property manager course prior to July 1, 2003, OAR 863-015-0045(8).

McIntosh, Jennifer L. (Springfield)
Principal Broker #890500134
Stipulated order dated August 5, 2003

issuing a 30 day suspension effective August 22, 2003; participated in a transaction where she knew or should have known that the earnest money agreement the lender would receive did not reflect the true agreement of the parties and that the seller carried second mortgage would not be paid, ORS 696.301(1) (1999 Edition).

Reyes, Elizabeth F. (Salem)
Temporary Associate Broker
#980300236

Default order dated June 9, 2003 issuing a 60 day suspension effective June 30, 2003; failed to disclose her buyer's true credit history and qualifications to the sellers or sellers' agent, ORS 696.301(1); by failing to disclose the buyer's poor credit history, Reyes represented to the seller and the sellers' agent that the buyer was pre-approved and qualified for 100% financing, ORS 696.810(3) (1999 Editions).

Smith, Stephen N. (Eugene)
Temporary Associate Broker
#931100285

Stipulated order dated June 2, 2003 issuing a 30 day suspension effective June 16, 2003; participated in a transaction where he knew or should have known that the earnest money agreement the lender would receive did not reflect the true agreement of the parties and that the seller carried second mortgage would not be paid, ORS 696.301(1) (1999 Edition).

REPRIMANDS

Cirigliano, Daniel F. (Bandon) Principal Broker #860300216

Stipulated order dated August 20, 2003; knew or should have known that a garage was not large enough to accommodate two full-size cars adequately when he represented the property as including a two-car garage, and he did not make the buyers fully aware of the potential limitations on the use of the garage, ORS 696.301(28).

Crilly, Robert T. (Portland) Broker
#780303954

Stipulated order dated June 30, 2003; failed to transmit to his real estate bro-

ker any of the documents he wrote and received while engaged in three separate real estate transactions, OAR 863-010-0025(2) (1999 Edition).

Hittenberger, Shawn H. (Eugene)
Principal Broker #980500010

Stipulated order dated July 3, 2003; permitted a licensee to engage in professional real estate activity while unlicensed and failed to ensure that licensees with the company renew licenses timely, ORS 696.301(29).

Irving, Curtis R. (Eugene) Principal Broker #780301871

Stipulated order dated July 3, 2003; permitted a licensee to engage in professional real estate activity while unlicensed and failed to ensure that licensees with the company renew licenses timely, ORS 696.301(29).

Johnson, Jess R. (Portland) Principal Broker #950800118

Stipulated order dated July 29, 2003; participated in a transaction that did not fully disclose the complete agreement of the buyer and seller to the ultimate lender, had an inflated value, and was written to accommodate a loan with little or no down payment, ORS 696.301(28) (1999 Edition).

King, Eloise J. (North Bend)
Temporary Property Manager
#990700100

Stipulated order dated July 29, 2003; (a) received application fees from prospective tenants and late fees from existing tenants, deposited said funds into her business account, did not post the amounts on the tenant or owner ledgers and did not forward the funds to the owner; (b) failed to notify the owners of the need for repairs on their property in direct violation of the terms of the management agreement; (c) failed to enact written company policies; (d) failed to include a provision in her management agreement with respect to the disposition of required records and failed to notify the owners she may destroy required records after six years; (e) failed to keep receipts and disburse-

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ments journals for her clients' trust accounts; (f) disbursed a tenant forfeited security deposit to two different owners, both disbursements being made from the same clients' trust account but in different months; (g) maintained incomplete owner ledgers; and (h) failed to reconcile her clients' trust accounts, ORS 696.301(28) There was, however, no verified loss of client funds.

Lee, Ronny J. (Salem) Broker #199912062

Stipulated order dated July 8, 2003; closed a personal transaction as seller and failed to provide the buyer with a complete detailed closing statement showing the amount and purpose of all receipts, adjustments and disbursements, ORS 696.301(23); failed to transmit \$5,000 down payment from the buyer on his personal transaction to his principal broker, ORS 696.301(24); assigned a commission that was due his principal broker without authority to Commission Express thereby receiving more commission than he was due, ORS 696.301(28); and failed to conduct his personal transaction under the supervision and did not transmit all documents and funds through his principal broker, OAR 863-015-0145(3).

Mintey, Burton L. (Grants Pass) Broker #960200039

Agreed order dated August 4, 2003; failed to determine the true construction date of the subject property, ORS 696.301(28) (1999 Edition).

Overlin, Rebecca R. (Salem) Temporary Associate Broker #200007124 Stipulated order dated August 13, 2003; knowing the buyer needed to sell property to be able to complete the transaction but failed to disclose this material fact to the seller at the time of the offer or to recommend a contingency be made part of the offer, ORS 696.810; failed to promptly transmit to her principal broker documents received by her during professional real estate activity including the first version of Addendum A, Adden-

dum C, the Rescission of Earnest money Agreement and Release of Earnest money, and seller's letter to her, OAR 863-015-0255(2).

Peterson, Russell E. (Portland) Principal Broker #880800228

Stipulated order dated August 4, 2003; sent a check to a tenant on a closed account, failed to return all overpaid rents to a tenant, charged a tenant for two cleaning fees, failed to post a tenant ledger with all rents paid, allowed a reconciliation to be force balanced by making inappropriate adjustments, allowed a clients' trust account to be overdrawn, allowed checks and wire transfers to be issued from a clients' trust account when there were no funds available, and failed to post wire transfers in the same manner as other receipts and disbursements, ORS 696.301(28). There was, however, no verified loss of client funds.

Schmitt, James L. (McMinnville) Broker #871000151

Stipulated order dated July 31, 2003; as seller, failed to disclose to his agent or buyers that he was selling the properties for less than what he had them encumbered for when he knew or should have known that his actions could have, and did, create a cloud of title on the properties, ORS 696.301(1).

Stellato, Carmelita M. (Gresham) Temporary Associate Broker #780403117

Stipulated order dated June 3, 2003; permitted one seller to accept an offer without making the acceptance subject to the written consent of the other seller, failed to address the short sale in writing, failed to obtain an extension for acceptance, failed to determine that the promissory note had not been redeemed, and failed to deliver the transaction documents to her principal broker in a timely manner, ORS 696.301(28).

Sutton, Robert R. (Portland) Broker #870700071

Stipulated order dated June 2, 2003;

failed to disclose to a buyer the existence and findings of a roof-inspection report he had solicited on her behalf, and allowed his buyer to close the transaction without having been made aware of the report, ORS 696.810(2) (1999 Edition).

Whitman, Kathleen B. (West Linn) Principal Broker #990800003

Stipulated order dated June 9, 2003; failed to create an addendum to extend the closing date, negotiated the reduction of her commission in an addendum, and gave the keys to the buyers without first securing an agreement for early occupancy, ORS 696.301(28).

CIVIL PENALTIES

American Title Group, Inc. (Eugene) Escrow Agent #930800117

Stipulated order dated August 14, 2003 issuing a \$1,500 civil penalty; accepted and deposited funds into an escrow account without obtaining instructions to do so, ORS 696.581(1); disbursed funds from an escrow account without obtaining instructions to do so, ORS 696.581(2); and disbursed funds from an escrow account without sufficient credit balance to cover the check, OAR 863-50-055(1).

Choi, Seung Ji (Eugene) Temporary Associate Broker #980700106

Stipulated order dated July 3, 2003 issuing a \$3,000 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).

Coria, Leonel R. (Salem) Temporary Associate Broker #980600153

Stipulated order dated July 3, 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 863-15-0050(2).

Evergreen Land Title Co. (Springfield) Escrow Agent #850800132

Stipulated order dated July 7, 2003 issuing a \$1,000 civil penalty; failed to use documents deposited in escrow,

a note and second trust deed, in accordance with the dated, written escrow instructions, OAR 863-050-0015(1).

Fidelity National Title Company of Oregon (Salem) Escrow Agent #850600354

Stipulated order dated June 18, 2003 issuing a \$1,000 civil penalty; prepared and used instructions that were intended for use in real property transactions instead of personal property transactions, ORS 696.581(2); failed to deliver title transfer documents to DMV in a timely manner, ORS 696.535(1)(h); did not notify buyer of the delay in forwarding the title transfer documents to DMV, ORS 696.535(1)(e); and took its escrow fee before the closing service was completed, OAR 863-050-0055(5).

Fidelity National Title Company of Oregon (Portland) Escrow Agent #850600354

Stipulated order dated June 24, 2003 issuing a \$1,000 civil penalty; used inadequate instructions to administer and close a transaction by failing to reference the properties being encumbered, by incorrect reference to a title report, by incorrectly identifying the title insurance company to be used, by failing to reference the lender's instructions, by failing to properly date the documents, ORS 696.581(2); failed to deliver documents as a condition for delivery of funds, ORS 696.535(1)(h); and since the lender and its funding source were not principals, under ORS 696.505(4)(b), and their instructions were not incorporated by reference into those of the borrower, the failure to abide by those instructions in the furnishing of original documents, copies and other things of value, the questionable dating of certain documents and the late recording of the trust deed — absent amending instructions, of record, from the lender — constitute failure to account to persons entitled thereto for documents or other things of value, in violation of ORS 696.535(1)(g).

Godinez, Jennifer M. (Corvallis) Temporary Associate Broker #200103027

Stipulated order dated August 19, 2003 issuing a \$450 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).

Hinsvark, Gerald W. (Silverton) Broker #950200034

Stipulated order dated June 4, 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).

Newmark, Miles R. (Portland) Broker #840700096

Stipulated order dated August 4, 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).

Patterson, Allen C. (Portland) Temporary Associate Broker #790500226

Stipulated order dated August 12, 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).

Western Pioneer Title Co. of Lane County (Eugene) Escrow #850600222

Stipulated order dated August 12, 2003 issuing a \$500 civil penalty; accepted and held a tax refund check made payable to a seller with delivery to seller conditioned upon instructions of the buyer and buyer's agent and without dated, written escrow instructions from the seller, ORS 696.581(1).

OTHER

Weidman-Clarke, Georgia (Medford) Broker #901000079

Stipulated order dated July 11, 2003 issuing a 60 day suspension which was stayed for 6 months; failed to advise her sellers that the buyers' lender was a

private investor or any terms of the first mortgage even though she knew or should have known that the high interest rate and term of the first mortgage would have been material information for the sellers in making an informed decision as to whether to carry back a second mortgage, ORS 696.301(1); failed to make clear to the sellers that the earnest money note had not been redeemed as per the sale agreement, ORS 696.805(2); wrote the listing to expire "at conclusion of offer", OAR 863-010-0015(2)(a); and failed to include in the earnest money agreement or any addenda that the sellers were to credit the buyers \$3,030 but then instructed escrow to debit the sellers' closing statement and credit the buyers' statement each \$3,030, OAR 863-010-0020(5) (1999 Editions).

REMINDER: WEBSITE IS PACKED WITH INFORMATION...

The Agency's website is frequently updated with current information useful to licensees. For example, the complete text of the newly adopted administrative rules, effective August 1, 2003 is published on the website. Other useful information includes:

- Upcoming licensing deadlines
- Approved schools, and where to find classes
- Order form for publications, videos and brochures
- An initial agency disclosure pamphlet, and disclosed limited agency agreements
- Frequently Asked Questions

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

SUBDIVISION LOT SALES

Brian DeMarco, Manager, Land Development and Policy Coordination

It is amazing how many inquiries I receive from licensees asking when during the subdivision process is it permissible to enter into binding agreements for the sale of a subdivision lot. This article is a primer on when to enter into binding sales agreements for subdivision lots for the licensee, novice or experienced. First, read and study Chapter 14 of the *Oregon Real Estate Manual*, "Selling Subdivided and Partitioned Property." It succinctly explains the subdivision process and the difference between a partition and a subdivision.. Second, familiarize yourself with the subdivision requirements and procedures of the local jurisdiction. Each jurisdiction has its own set of ordinances to govern this process. Contact the local jurisdiction directly for detailed information.

Generally, the time sequence for subdividing is the same: (1) a subdivider makes application; (2) the plat is given tentative plan approval by the local jurisdiction with certain conditions that have to be met within a

certain time period; and (3) when the conditions have been completed, final approval is given and the final plat is recorded. Between the time a subdivider makes an application for subdivision and until a tentative plan is approved, a person may not "negotiate to sell any lot in a subdivision[.]" ORS 92.016(1). The term "negotiate" includes advertising, soliciting or promoting. ORS 92.010(4). However, during this time prior to approval of the tentative plan, the licensee may obtain non-binding, fully-refundable without condition "reservation" agreements. Only when the subdivision has been granted tentative plan approval, may the licensee enter into binding sale agreements but these agreements must be specifically conditioned upon final subdivision plan approval. Please feel free to contact me, should you require additional information, have any questions or need clarification. Brian DeMarco, Manager, Land Development and Policy Coordination (503) 378-4170 ext. 237.

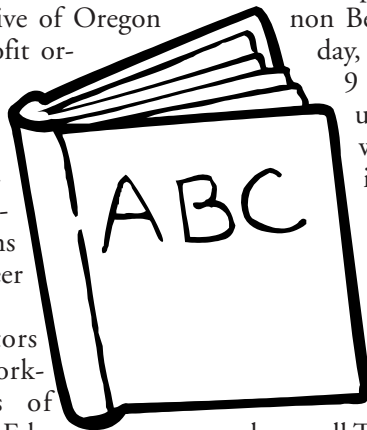
ABC'S OF TEACHING HOMEBUYING

A number of tools are available for the first time homebuyer, one of which is training. The Homeowner Education Collaborative of Oregon (HECO) is a non-profit organization which offers the course "The ABC's of Homebuying" statewide through twenty-five local organizations and over 400 volunteer instructors.

Volunteer instructors first complete the workshop, "The ABC's of Teaching Homebuyer Education." While the number of volunteers in the Portland Metropolitan area is currently sufficient, there is a

need for volunteers in other parts of the state. An upcoming "Teaching" workshop is scheduled in Cannon Beach, Oregon on Tuesday, October 7, 2003 from 9 a.m. to 4 p.m. for volunteers who work and want to teach in Washington, Columbia, Clatsop and Tillamook counties.

The teaching workshop is free and lunch is provided. If you would like to register for the workshop please call Teri Duffy, HECO's Executive Director at (503) 284-5569 or send her an e-mail at orhome@easystreet.com.



LEGISLATIVE UPDATE . . . : continued from page 3

- closing the sale after the deadline for perfecting the liens; or
- obtaining a waiver from the purchaser.

The bill requires sellers to complete a Construction Contractors Board form specifying the method the seller used to comply with the requirements of the new law. The forms will be available on the Construction Contractors Board website (<http://www.ccb.state.or.us>) under "What's New."

There are civil penalties and fines for sellers who violate provisions of the law, but real estate licensees might not be liable for failure of the seller to comply with the law.

ADDITIONAL INFORMATION

You may view the full text and the history of the bills at: <http://www.leg.state.or.us/billsset.htm>.

Additional information about compliance with the laws will be provided in the December 2003 edition of the *OREN-J*. If you have any other questions, please contact Brian DeMarco, Manager, Land Development and Policy Coordination, at 503-378-4170, extension. 237.

VIDEOCASSETTES DISCONTINUED

Two continuing education videocassettes offered by the Agency – *Misrepresentation* and *Administrative Hearings* – were discontinued in August 2003. The Agency will no longer distribute the videocassettes because the content became outdated after changes in statutes and rules which became effective August 1. The Agency will continue to distribute its *Update 2002* videocassette collection.

The Agency's Publications Order Form has been revised to reflect the changes. A copy of the form is available on page 11, or may be downloaded from the Agency's website at www.rea.state.or.us.

