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Commissioner Gene Bentley

Legislative Update

Gene Bentley, Real Estate Commissioner

A number of bills from the 2009 Legislative Session that impact real estate licensees and escrow agents are now law and are referred to as “chapter laws.” A summary of important new laws are included in this article. Most of these new laws will be effective on January 1, 2010. Summaries of additional laws will appear in another legislative update in the next edition of the OREN-J.

Note: A separate article on page 6, “January 1, 2010: Sole Practitioners to be Licensed as Principal Brokers, Not Required to Supervise,” provides important information for licensees on certain provisions in Chapter 324, Oregon Laws 2009 (HB 2910).

Real Estate Agency Bills

The bills introduced for the Real Estate Agency are now Chapter 224, Oregon Laws 2009 (SB 140) and Chapter 174, Oregon Laws 2009 (SB 141).

The major provisions of Chapter 224,

Oregon Laws 2009 (SB 140) are:

- Eliminates the requirement that the Agency publish the names and addresses of applicants whose licenses were refused or the addresses of licensees who have been disciplined in the *Oregon Real Estate News-Journal*.
- Allows principal brokers to establish an entity to receive commissions.
- Provides Agency the authority to issue a limited license to a licensee.
- Authorizes the Agency to impose a civil penalty on a licensee engaged in the management of rental real estate for failure to produce records of \$1,000 per day with a \$10,000 cap.

This law is effective on January 1, 2010. Read the bill at: <http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0140.en.pdf>.

The major provisions of Chapter 174, Oregon Laws 2009 (SB 141) are:

- Establishes escrow licensing by rule.
- Requires an escrow agent to submit

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an application for changes in ownership, and requires fingerprints and criminal background check for new owners and officers prior to change.

- Allows for the suspension or revocation of an escrow license for failing to maintain a required surety bond.
- Allows the Agency to “reprimand” an escrow licensee, which is a lesser sanction than the currently allowed sanctions of suspension or revocation.
- Provides for the sanctioning of escrow licensees who commit untrustworthy acts outside the scope of conduct under the license.

This law is effective January 1, 2010.

Read the bill at: <http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0141.en.pdf>.

Oregon Association of Realtors® Legislation Amending ORS Chapter 696

The bills introduced for the Oregon Association of Realtors® that amend ORS chapter 696, the real estate and escrow licensing laws, are now Chapter 324, Oregon Laws 2009 (HB 2910) and Chapter 502, Oregon Laws 2009 (SB 640).

The major provisions of Chapter 324, Oregon Laws 2009 (HB 2910) are:

As of January 1, 2010, the category of “sole practitioner” is eliminated and the Agency will automatically license all sole practitioners as principal brokers.

- Eliminates the requirement that a principal broker must supervise real estate brokers and states that a principal broker “may” supervise.
- Allows a real estate broker to “temporarily supervise and control” the professional real estate activity of a principal broker for up to 90 days.
- Eliminates the reference to “licensed personal assistants” in law.

This law is effective on January 1, 2010.

Read the bill at: <http://www.leg.state.or.us/09reg/measpdf/hb2900.dir/hb2910.en.pdf>.

The major provisions of Chapter 502,

Oregon Laws 2009 (SB 640) are:

- *Note: This law will be effective January 1, 2011 in order for the Agency and the Board to create rules, examinations and courses.*
- Requires real estate broker or property manager applicants to have a high school diploma or equivalent.
- Requires applicant for a principal broker license to pass a state license examination.
- Changes continuing education course requirements, including a required course on changes to real estate law and rule.
- Changes certification of continuing education for all real estate licensees to self-certification.
- Requires Agency to certify continuing education course providers; establishes persons who may apply for certification as a continuing education course provider; and requires course providers to insure courses and instructors meet statute and rule requirements.
- Requires the Real Estate Board to approve a three-hour continuing education course based on changes to real estate rule and law.
- Requires the Real Estate Board to approve the required Advanced Real Estate Practices course.
- Requires the Agency to establish eligible continuing education course topics and create learning objectives for each topic by rule.

Read the bill at: <http://www.leg.state.or.us/09reg/measpdf/sb0600.dir/sb0640.en.pdf>.

Oregon State Bar Association Legislation

Chapter 136, Oregon Laws 2009 (HB 2418) was introduced for the Oregon State Bar Association. The law amends ORS 696.030 and provides a new exemption from licensing, effective January 1, 2010. The law will provide that the following individuals are exempt:

- The sole or managing member of a domestic or foreign limited liability company (LLC).

- A partner in a partnership.
- An officer or director of a domestic or foreign corporation.

All exempt entities added by the measure must be registered and operating in Oregon and must be engaged in the acquisition, sale, exchange, lease, transfer, or management of real estate in the LLC, partnership, or corporation.

Read the bill at: <http://www.leg.state.or.us/09reg/measpdf/hb2400.dir/hb2418.en.pdf>.

New Laws on Residential Rental Smoking Policies and Rental Agreements

Chapter 127, Oregon Laws 2009 (HB 2135), amends the Residential Landlord Tenant Act (ORS chapter 90). Effective January 1, 2010, the law requires a rental agreement for a dwelling unit regulated under ORS chapter 90 to include a disclosure of the smoking policy for the premises on which the dwelling unit is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the disclosure must identify the areas on the premises where smoking is allowed. Owner-occupied mobile homes and house boats are exempt from the rental agreement requirement.

Read the bill at: <http://www.leg.state.or.us/09reg/measpdf/hb2100.dir/hb2135.en.pdf>.

Landlords Must Disclose 100-Year Floodplain to Tenant

Chapter 306, Oregon Laws 2009 (HB 2614) amends the Residential Landlord Tenant Act (ORS Chapter 90). Effective January 1, 2010, the law requires a landlord of a dwelling located in a 100-year flood plain to notify a tenant that the dwelling is in the flood plain. The law allows a tenant who did not receive notification and experienced a subsequent uninsured flood loss to recover from the landlord the lesser of the actual loss or two months rent.

Read the bill at: <http://www.leg.state.or.us/09reg/measpdf/hb2600.dir/hb2614.en.pdf>.

Landlord May Not Charge Tenant More than Landlord is Charged for Utilities

Chapter 305, Oregon Laws 2009 (HB 2613) amends the Residential Landlord Tenant Act (ORS chapter 90) and became effective on June 17, 2009. The new law prohibits a landlord from billing or collecting more money from tenants for utilities or services than the utility or service provider charges the landlord.

Read the bill: <http://www.leg.state.or.us/09reg/measpdf/hb2600.dir/hb2613.en.pdf>.

New Laws on Renovations Involving Lead-Based Paint

House Bill 2134 was signed by the Governor, but has not been assigned a chapter number. The legislation requires anyone who performs renovation of lead-based paint on target housing or child-occupied facilities to be certified by the Department of Human Services (DHS) and licensed as a certified lead based paint renovation contractor by the Construction Contractors Board (CCB). This law will become effective January 1, 2010.

The new law is in response to new regulations from the Environmental Protection Agency. Under the law, *renovation* means the modification of any existing structure, or part of a structure, that results in the disturbance of painted surfaces. The term is broadly defined and includes modifications of painted doors; sanding, scraping, or other activities that may generate paint dust; the removal of walls, ceilings, major re-plumbing and window replacement.

Target housing includes most housing constructed prior to 1978. *Child-occupied facility* means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week including day-care centers, pre-schools and kindergarten classrooms.

Real estate licensees who engage in the management of rental real estate and choose to perform renovations on target housing or child-occupied facilities, as defined, must be certified by DHS and licensed by CCB. If

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the licensee is responsible for hiring someone to perform renovations, the licensee will need to make sure the person or company has met the certification and licensing requirements.

Read the bill at <http://www.leg.state.or.us/09reg/measpdf/hb2100.dir/hb2134.en.pdf>.

Contact information for the Public Health Division of DHS can be found at <http://www.oregon.gov/DHS/ph/contact.us.shtml>. Contact information for CCB can be found at <http://www.oregon.gov/CCB/contact.us.shtml>

New Laws on Testing Wells for Arsenic

Chapter 284, Oregon Laws 2009 (SB 739), requires a seller of real estate that includes a well that supplies ground water

for domestic purposes to have the well tested for arsenic upon acceptance of an offer to purchase. This is in addition to the already required tests for nitrates and coliform bacteria. The Department of Human Services (DHS) may require the seller to have the well tested for other specific contaminants. The law is effective on January 1, 2010.

The seller is required to submit the results of the tests to both the Drinking Water Program of DHS and the buyer within 90 days of receipt of the results. The biggest change in the law is the requirement to submit the test results to the buyer. Previously, sellers were only required to send test results to DHS.

Read the bill at <http://www.leg.state.or.us/09reg/measpdf/sb0700.dir/sb0739.en.pdf>. ■

Agency Announces Staff Changes

Stacey Harrison has been appointed as the Education Division Manager. Stacey was previously working with the Agency in the Land Development Division. She has thirteen years experience in the real estate industry, eleven of those being in escrow. She has a degree in education from the University of Idaho, and holds a teaching certificate in that state.

Shari Ohmer has accepted a position as an investigator with another state agency. Shari was a Financial Investigator in the Regulation Division since March of 2007. Shari's outstanding performance and service to the agency will be missed.

The Agency welcomes Ms. Harrison in her new role and wishes Ms. Ohmer well. ■

Idaho Reciprocal Agreement Terminated

Effective June 30, 2009, Idaho terminated the reciprocal licensing agreement with Oregon. Idaho real estate licensees that hold reciprocal licenses from Oregon can keep the reciprocal license until that license's expiration date. Reciprocal licenses are ineligible for renewal. A reciprocal license holder who wishes to continue to conduct professional real estate activity in Oregon will need to exchange the reciprocal license for a regular Oregon real estate license on or before the expiration date.

To exchange a license, principal brokers and sole practitioner brokers must establish a business location in Oregon and meet Oregon's continuing education requirements for subsequent renewals.

Associated brokers who wish to exchange their reciprocal licenses must work for principal brokers who have Oregon licenses. They will be required to meet Oregon's continuing education requirement for future renewals. ■

Sharing Commissions, Paying Finder's Fees

Oregon Revised Statutes (ORS) 696.290 prohibits a real estate licensee from sharing any part of the licensee's compensation with, or paying a finder's fee to, any person who does not have a real estate license under ORS 696.022.

The following outlines when an Oregon real estate licensee can share compensation resulting from a real estate transaction or the management of rental real estate.

Residential Transactions

Oregon real estate principal brokers and sole practitioner brokers may share commissions with or pay a finder's fee on residential real estate transactions to the following:

- another Oregon real estate principal broker or sole practitioner broker
- an Oregon broker associated with a principal broker, but only through that broker's principal broker
- an actively licensed real estate broker in another state, provided that:
 - the state in which the out-of-state broker is licensed allows brokers to cooperate with brokers in this state; and
 - the out-of-state broker does not conduct professional real estate activity in this state
- a real estate broker in another country, provided that:
 - the country in which the out-of-state broker is a resident allows brokers to cooperate with brokers in this state;
 - the out-of-country broker does not conduct professional real estate activity in this state; and
 - if the country does not license real estate brokers, the broker must be a citizen or resident of the country and represents that the broker is in the business of real estate brokerage in the other country
- an Oregon broker whose license is inactive, but only for professional real estate activity conducted while the broker's license was active.

Nonresidential Real Estate Transactions

Oregon real estate principal brokers and sole practitioner brokers may share the commission on a cooperative nonresidential real estate transaction with a person who holds an active real estate license in another state or country provided:

- before the out-of-state licensee conducts any professional real estate activity, the licensee and the cooperating Oregon sole practitioner or principal broker must agree in writing that all professional real estate activity in this state will:
 - be subject to the supervision of the Oregon broker; and,
 - comply with all applicable Oregon laws
- the cooperating Oregon sole practitioner or principal broker must accompany the out-of-state licensee and the client for all property showings and negotiations in this state.
- all property showings and negotiations are supervised and under the control of the cooperating Oregon broker

Management of Rental Real Estate

Oregon principal brokers, sole practitioner brokers or property managers engaged in the management of rental real estate may pay a finder's fee or referral fee to:

- an Oregon property manager, principal broker or sole practitioner broker; and
- an Oregon broker associated with a principal broker, but only through that broker's principal broker

Tenant Referrals

Oregon principal brokers, sole practitioner brokers or property managers who have a written property management agreement may pay a referral fee or rent credit for tenant referrals to nonlicensed individuals who are:

- existing tenants; or
- former tenants who resided in the building or facility within the previous six months.

January 1, 2010: Sole Practitioners to be Licensed as Principal Brokers, Not Required to Supervise

Laurie Skillman, Land Development Division Manager

As of January 1, 2010, the category of “sole practitioner” is eliminated. The Agency will automatically license all sole practitioners as principal brokers with no additional requirements and no additional fee.

House Bill 2910 was proposed by the Oregon Association of Realtors® and included a provision to eliminate sole practitioners as a license category. The bill has become law with an effective date of January 1, 2010 and is now referred to as Chapter 324, Oregon Laws 2009 (HB 2910).

HB 2910 also contained a provision eliminating the requirement that a principal broker supervise real estate licensees. The new law states that a principal broker “may” supervise real estate licensees. Currently, principal brokers must change their license category from principal broker to real estate broker when they no longer supervise other licensees. Beginning January 1, 2010, individuals licensed as principal brokers, or those real estate brokers who change their license category to principal broker, will remain licensed as principal brokers.

Sole Practitioner Licensees

A licensee who holds either an active or inactive sole practitioner license on December 31, 2009 will automatically become a principal broker on January 1, 2010. A sole practitioner licensee does not need to take any action to acquire the new license. The licensee is not required to take a post-license course or pay a fee for this change. The Agency will make the change for the sole practitioner and issue the licensee a new principal broker license. The new principal broker license will be effective January 1, 2010 and will expire on the same date that the former sole practitioner license expires.

The Agency anticipates that the new principal broker licenses will be mailed out by January 31. The Agency will mail an active sole practitioner an active principal broker license. The Agency will mail an inactive

sole practitioner an inactive principal broker license.

Real Estate Broker Licensees Changing Category to Sole Practitioner

A real estate broker with three years of active licensed real estate experience is qualified to be licensed as a sole practitioner. On or before December 31, 2009, a qualified active or inactive real estate broker may change license categories to an active or inactive sole practitioner if the broker submits a “Change License Category Form” and a fee of \$10. The form is on the Agency’s website under “Forms and Publications” and detailed instructions are on the form.

The form and fee must be received by the Agency no later than December 31, 2009. The change in license category from real estate broker to sole practitioner is effective upon the Agency’s receipt of the form and fee.

A sole practitioner is solely responsible for his or her own professional real estate activities.

The licensee must be licensed as a sole practitioner on December 31, 2009 in order to automatically become licensed as a principal broker on January 1, 2010.

Real Estate Broker Licensees Changing Category to Principal Real Estate Broker

Beginning January 1, 2010, a principal broker will not be *required* to supervise other real estate licensees, but *may* supervise other licensees. After January 1, a real estate broker who was licensed as a principal broker but changed license categories because the licensee no longer supervised other licensees may change the license category back to principal broker.

A real estate broker who has been previously licensed as a principal broker may change license categories by submitting a “Change License Category Form” and a fee of \$10. The form is on the Agency’s web-

site under “Forms and Publications,” and detailed instructions are on the form.

The change in license category from real estate broker to principal broker is effective upon the Agency’s receipt of the form and fee. Because the law is not effective until January 1, 2010, a real estate broker may not

submit a change category form and fee to the Agency before January 1, 2010.

Beginning January 1, 2010, a principal broker will not need to change license category based on whether the principal broker supervises other real estate licensees.

Faxing Transactions

Since the Licensing Division increased the number of forms that are accepted by fax, the Agency has received many expressions of gratitude. To avoid delays in processing forms, the Agency asks that licensees do the following:

1. Fax in only once and please do **not** mail it in.
2. Please double-check to make sure that all the blanks on the form are filled out **completely**.
3. Make sure that the form you are faxing is accepted by the Agency via fax. Only

the forms listed below are accepted by fax. All other forms require original signatures.

- Transfer License Form
- Change License Category Form
- Exam Application
- Reactivation Exam Application
- Certified License History Order Form
- Inactivate Form
- Temporary Authorization Delegation Form
- Duplicate License Request Form

Forms can be found on the Agency’s website at www.rea.state.or.us.

What Kind of Online Services Do You Want?

The Agency is in the process of selecting a new licensing system and has created a survey to find out what online services real estate licensees want.

To participate in the survey, go to www.rea.state.or.us, and click the “Take the Survey” link under the Announcement section of the webpage.

The survey takes just a few minutes to complete, and it will help the Agency in prioritizing and implementing Agency services online.

Administrative Actions

May 1, 2009 through July 31, 2009

SUSPENSIONS

Brazil, Lora Lee (Lake Oswego) Broker #200607294

Stipulated order dated May 6, 2009, issuing a 30-day suspension effective May 22, 2009. Brazil failed to submit transaction documents to her principal broker within seven banking days; and Brazil had the buyers and sellers sign a second note and trust deed instead of amending the first note and trust deed thereby doubling the lien amount on the subject property.

Violations: OAR 863-015-0140(6), ORS 696.301(12)

REPRIMANDS

Bergler, Kerry A. (Bend) Broker #980700019

Stipulated order dated May 6, 2009. Bergler failed to verify or suggest that buyer verify the zoning and allowed usage of the subject property prior to beginning renovation.

Violations: ORS 696.810(3)(a)

Brinkman, Cindy Ann (Grants Pass) Broker #200502061

Stipulated order dated May 27, 2009. Brinkman failed to include a contingency for a final approval of a lot division; Brinkman failed to advise the buyers that the final approval for the land division had not been completed.

Violations: OAR 863-015-0135(5), ORS 696.810(3)(a)

Kramer, Stephanie L. (Bend) Property Manager #200401113

Stipulated order dated July 6, 2009. Kramer operated under the name Austin Property Management prior to registering the business name with the Oregon Real Estate Agency; Kramer used a bank account to deposit rents and security deposits that was not a clients' trust account and that allowed property owners to be signers; and Kramer deposited security deposits of \$12,485 into an account that had been set up by the property owners rather than a security deposit clients' trust account.

Violations: OAR 863-015-0095(1), 025-0025(1), 025-0030(1)

Loyd, Donald E. (Powell Butte) Broker #940100050

Stipulated order dated June 22, 2009. Loyd failed to identify himself as an Oregon real estate licensee in an assignment of contract; Loyd failed to give the buyer a copy of the underlying sale agreement; Loyd failed to advise the buyer what the terms and conditions were of the underlying sale agreement; and Loyd failed to obtain acknowledgement that Loyd was representing buyer.

Violations: ORS 696.845, OAR 863-015-0135(4)(5), 863 015-0145(1)

Pearson, Noelle L. (Hillsboro) Broker #200006139

Stipulated order dated July 7, 2009. Pearson gave a key to buyers which allowed buyers access to the property prior to transaction close without authorization.

Violation: ORS 696.810(3)(a)

Summers, Janet (Grants Pass) Broker #870200118

Stipulated order dated June 10, 2009. Summers advertised on the multiple listing service that the subject property had been approved by the county to be divided when there was no county approval; and Summers failed to assure that a contingency regarding the property division was included as part of the sale agreement.

Violations: ORS 696.301(4), OAR 863-015-0135(5)

Worth, Patricia A. (Coos Bay) Broker #200007126

Stipulated order dated May 21, 2009. Worth misrepresented the square footage of a manufactured home and shop; and Worth misrepresented that the shop could be used as a second residence.

Violations: ORS 696.301(1)

UNLICENSED ACTIVITY

Kent, Danie'l (Beaverton) Unlicensed Default order dated February 2, 2009 issuing a \$6,500 civil penalty. Kent managed property owned by someone else from September 2007 to March 2008 without a real estate or property manager license. The property owner incurred financial damage.

The Agency is required by Oregon Real Estate License Law to publish disciplinary actions. A list of those actions, a brief description of the situation, and the grounds for the Commissioner's action follows. Please note, there are individuals with real estate licenses who may have similar or the same names as those listed herein, or even work in the same market area. If you are in doubt if an individual listed here is someone you know or with whom you are dealing, please contact the Agency for verification. Finally, please note that stipulated settlements do not necessarily reflect all the factual violations initially alleged by the Agency, and the sanction(s) may have been adjusted as part of the negotiation process. Such settlements may not, therefore, directly compare in severity/sanction with other cases.

Zimmerman, Daniel R. (Newberg) Broker #780301886

Stipulated order dated June 4, 2009. Zimmerman failed to file notice of and authorize examination of all clients' trust accounts under his management; Zimmerman managed property for one owner under a property management agreement that did not contain identifying codes for the multiple properties; Zimmerman disregarded the minimum balance requirement and subsequent notification of and resolution by the owner and failed to amend the property management agreement; Zimmerman failed to post the property ledger with an accurate date for the transfer of the security deposit funds; Zimmerman did not transfer the security deposit received as part of a larger check to the clients' trust account for security deposits within the three banking days; and Zimmerman failed to ensure positive ending daily balances in all owner ledgers at all times.

Violations: ORS 696.241(2)(3), OAR 863-025-0020(4), 863 025-0025(11), 863 025-0030(2), 863 025-0040(3)

CIVIL PENALTIES

Expired — Late Renewals — Civil penalties are computed using each 30-day period as a single offense. The civil penalty for the first 30-day period can range from \$100-\$500, with each subsequent 30-day period ranging from \$500-\$1,000. ORS 696.990

Eckstine, Marsha Kae (Bend) Broker #200502141

Default order dated April 9, 2009 issuing a \$2,100 civil penalty for five 30-day periods.

Torres, Dorianth Yahaira (Beaverton) Broker #200505072

Default order dated April 9, 2009 issuing a \$4,100 civil penalty for nine 30-day periods.

Unlicensed Activity:

Hamilton, Tina M. (Ashland) Stipulated Order dated July 28, 2009 issuing a \$2,500 civil penalty. Hamilton conducted professional property management activity without the benefit of a license.

Violation: ORS 696.020 ■

Do You Need A Manufactured Structures Dealer License?

A real estate licensee may represent a client in a transaction involving a manufactured structure. A real estate license only authorizes the licensee to engage in "real estate" activity. In some cases, the licensee will need to obtain a Manufactured Structures Dealer (MSD) license. Here is how to determine if you need one:

- If you are selling a manufactured structure **separate** from land, this is considered a *personal property transaction* and requires an MSD license.
- If you are selling a manufactured structure and land **together** in a single transaction, it is considered a *real estate transaction* which requires a real estate license, but not an MSD license.

Information on how to obtain an MSD license and applicable statutes and rules can be found on the Division of Finance and Corporate Securities website at http://www.cbs.state.or.us/dfcs/manufactured_structures_dealer.html. To apply for an MSD license

you will need to submit an application form, a surety bond in the amount of \$40,000 and the required fee of \$542. The license is valid for three years from the date of issue.

Titling, registration and regulation of manufactured structures moved from DMV to the Building Codes Division of the Department of Consumer and Business Services on May 1, 2005. On December 1, 2006, the Department of Consumer and Business Services transferred the licensing of manufactured structures dealers from the Building Codes Division to the Division of Finance and Corporate Securities (DFCS). DFCS licenses and regulates manufactured structures dealers under Oregon Revised Statute chapter 446 (446.661- 446.756) and Oregon Administrative Rules chapter 441, division 446.

According to ORS 446.995(2) the Department of Consumer and Business Services

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may impose a civil penalty in an amount not to exceed \$5,000 for each manufactured structure improperly sold, brokered or exchanged, or offered or displayed for sale, against a person that:

- violates a provision of ORS 446.666 to 446.756 or a rule adopted by the department relating to the sale of manufactured structures if the person does not possess a license required by ORS 446.671 or by rule pursuant to

ORS 446.666; or

- violates a rule adopted by the department relating to the sale of manufactured structures if the person is exempt from licensing under ORS 446.676.

For more information on manufactured dealer licensing, please call Betty Keppinger from DFCS at (503) 947-7387 or visit

<http://www.cbs.state.or.us/dfcs/manufactured> ■

Understanding Your Agency

By Art Kegler, Oregon Real Estate Board Chairperson



Art Kegler

We never think of the Oregon Real Estate Agency as the agency of the licensees; however, it is. We always think of it as the “State Agency” similar to the State Patrol on the highways. Well, in some ways it is similar, but the Agency basically only responds to complaints the way the State Patrol responds to an emergency or an accident.

The Agency has two primary functions

- Consumer Protection
- Regulation of the Real Estate Industry

The area of consumer protection is to see that the public is treated fairly in a real estate transaction, that they are adequately informed of all material facts, and not misled. For this to happen, legislation and rules have been established guiding the practice of real estate. It is the responsibility of the Agency to enforce the guiding legislation. The rules are only an extension of what the legislature has mandated for the practice of real estate.

For the Agency to accept this responsibility, they must require the licensees to be educated. Thus, 150 hours of initial education is required to obtain a license and, as the playing field changes, 30 hours of continuing education is required to understand the new guidelines. The educational requirements are under review; in fact, the Oregon Asso-

ciation of Realtors had legislation passed that will improve the education system.

Another protection of the consumer is the background check. An applicant for a license must demonstrate trustworthiness and character to obtain a license.

Sometimes confusion surfaces. There are those who think the Agency should instruct on the business of Real Estate. Not so. The responsibility of the Agency is to set the parameters for the practice of real estate and try to communicate this to each licensee on an ongoing basis.

Each legislative session the Agency recommends legislation to clarify or establish parameters to help in the practice of real estate. Following the legislative session is the rulemaking period to setup implementation of new legislation.

Now why with all this legislation and rules do I say this is your Agency?

The structure for guiding Agency policy is licensee-based. The Commissioner and seven members of the Oregon Real Estate Board are licensees. Two members of the Board are representatives of the public. When there is a taskforce formed, members are practicing licensees (YOU). For example, there is new legislation regarding continuing education. The plans are to form a workgroup to advise the Agency in its policies to implement the new requirements. That workgroup will be “YOU”.

One other point regarding “YOUR AGENCY:” The operating funds are generated by the licensing fees collected. The Real Estate Agency does not receive money from the State General Fund and therefore was not a discussion subject during the recent budget negotiation in the Legislature.

The meetings of the Oregon Real Estate Agency are coming to your town and are open to the public. We recently held meet-

ings in Baker City on June 2, and Portland on August 3 and we will be going to Hood River on October 5 (Contact Mid Columbia Board of Realtors for location).

In December, we will be back in Salem at the Agency’s office.

I have been asked about the number of licensees, etc. Please find the June statistics below for your review. ■

2009 License Type Totals Including Active and Inactive Status

Individuals (Persons)	Jan	Feb	Mar	Apr	May	Jun
Broker-Total	17,106	16,955	16,840	16,681	16,578	16,418
Active	13,703	13,478	13,430	13,351	13,273	13,187
Inactive	3,403	3,477	3,410	3,330	3,305	3,231
Broker-Sole Practitioner-Total	2,375	2,378	2,408	2,413	2,438	2,450
Active	2,110	2,113	2,138	2,135	2,147	2,157
Inactive	265	265	270	278	291	293
Principal Broker-Total	3,265	3,258	3,265	3,280	3,283	3,279
Active	3,147	3,135	3,136	3,147	3,151	3,148
Inactive	118	123	129	133	132	131
ALL BROKERS Total	22,7456	22,591	22,513	22,374	22,299	22,147
Active	18,960	18,726	18,704	18,633	18,571	18,492
Inactive	3,786	3,865	3,809	3,741	3,728	3,655
Property Manager-Total	710	716	724	724	727	733
Active	631	634	640	638	640	646
Inactive	79	81	84	86	87	87
MCC Salesperson	47	56	44	42	37	33
MCC Broker	2	1	1	1	1	1
Total Individuals	23,505	23,354	23,282	23,141	23,064	22,914
Active	19,640	19,408	19,389	19,314	19,249	19,172
Inactive	3,865	3,946	8,893	3,3827	3,815	3,742
Facilities (Companies)						
REMO	5	5	5	5	5	5
Registered Business Name (RBN)	3,571	3,575	3,591	3,586	3,597	3,602
Registered Branch Office (RBO)	710	716	683	682	691	686
Escrow Organization	51	51	51	51	51	51
Escrow Branch	179	169	169	169	170	170
MCC Operator	25	25	25	25	25	26
Total Facilities	4,541	4,541	4,524	4,519	4,539	4,537
Total Individuals & Facilities	28,046	27,895	27,806	27,660	27,603	27,451

The Oregon Real Estate Agency Division Reports

Editor's note: This section will provide updates from the managers of each of the Real Estate Agency's divisions, and will appear regularly in the Oregon Real Estate News-Journal.

EDUCATION DIVISION

Manager - Stacey Harrison

Division Overview

The Education Division has three staff members and develops real estate educational guidelines, approves pre-license and post-license courses, develops informational publications and websites, provides customer service via phone and electronic mail, and conducts compliance reviews and mail-in audits.

The division is responsible for the implementation of Chapter 502, Oregon Laws 2009 (Senate Bill 640), which will become effective January 1, 2011. SB 640 has a number of requirements pertaining to continuing education. In order for continuing education hours to be eligible for license renewal, courses must be taken from a certified continuing education provider. The division is in the process of developing the certification procedure and drafting administrative rules. Division staff will meet with workgroups comprised of real estate professionals and educators in the upcoming months and plan to have certification procedures in place by the summer of 2010. Please check our website for updates over the next 18 months.

The last printed update to the *Oregon Real Estate Manual*, renamed the *Oregon Real Estate Reference Guide*, was distributed in August 2009. The purpose of the *Real Estate Reference Guide* is to provide a guide for real estate licensees to navigate the statutes and rules relating to the regulation of professional real estate activity. References to specific statutes and rules are provided in each chapter.

The *Oregon Real Estate Reference Guide* is now available online which will allow the Agency to quickly update content and provide links to documents and websites while providing access to information for all licensees and the public.

LICENSING DIVISION

Manager - Laurie Hall

Division Overview

The Licensing Division has five staff members who are responsible for public and licensee information services, real estate, property management and escrow licensing transactions and the registration of real estate business names.

In March the Licensing staff fielded 2,370 incoming phone calls and in April fielded 3,009. While handling this large amount of phone calls, the Division processes an average of 3,100 transactions in the database system per month.

Mailing Addresses

We are experiencing a large amount of returned mail, especially after the *Oregon Real Estate News-Journal* is mailed out. Please make sure that the brokers working for you are aware of the requirement that the Agency be notified of any changes to their mailing address within **10 days**.

LAND DEVELOPMENT DIVISION

Manager - Laurie Skillman

Division Overview

The Land Development Division has two staff members and reviews and approves land development filings, including condominiums, out-of-state subdivisions, timeshares, membership campgrounds and manufactured dwelling subdivisions. The majority of the work of the division is done for condominium filings.

Marjorie Fernando will begin work September 1 as the Land Development Specialist. She comes from the Oregon Judicial Department where she worked in the Court Programs and Services Division. Prior to that, Marjorie worked with Wachovia Mortgage and was a real estate broker. She brings a great deal of industry knowledge.

Chapter 641, Oregon Laws 2009 (SB 963), which will become effective January

1, 2010, amended a significant number of provisions in the Condominium Act (ORS chapter 100). As a result of these changes, the division is reviewing and updating the condominium filing forms and information packages for developers and their attorneys who file condominium documents for Agency review and approval. The goals of this project include: providing forms online, ensuring that all forms contain all statutory requirements, providing information on various types of filings (initial filings, material changes, amendments, supplemental declarations, etc.) and citing specific statutes on the forms. The first documents and forms will be available in the early fall.

The number of condominium developments filed with the division has decreased in 2009 from a comparable period in 2008 due to a general decline in new construction and the financing challenges faced by developers.

ADMINISTRATIVE SERVICES DIVISION

Manager - Kate Nass

Division Overview

The Administrative Services Division manages budget preparation, accounting, information technology, purchasing and contracting, inventory control, facilities, payroll and personnel, and special projects. The division includes five full-time and two part-time employees.

New Biennium

With the 2007-2009 biennium ending on June 30, 2009, the division is wrapping up the end of biennium reporting and preparing for the 2009-2011 biennium. Projects budgeted for this biennium include: implementing a new online licensing system and database, implementing SharePoint to improve online options within the agency, upgrading exchange to allow for mobile access, and updating agency software and hardware.

Also, the legislature has asked the agency to explore options and cost-savings for transitioning from hard copy publications to online documents and subscriptions. Agency publications include the *Oregon Real Estate News-Journal* and other brochures and information packets.

Licensing System Update

The division is continuing work with the consultant to develop the business case

and requirements for a new online licensing system and database. The consultant has wrapped up work documenting current business processes and is analyzing information gathered from other states who have implemented online licensing systems.

Additionally, the agency has posted a survey on the website asking licensees what type of transactions would be most useful to have available with an online licensing system. Please take a few minutes to complete the survey and help the Agency to prioritize services to offer via the new system.

REGULATION DIVISION

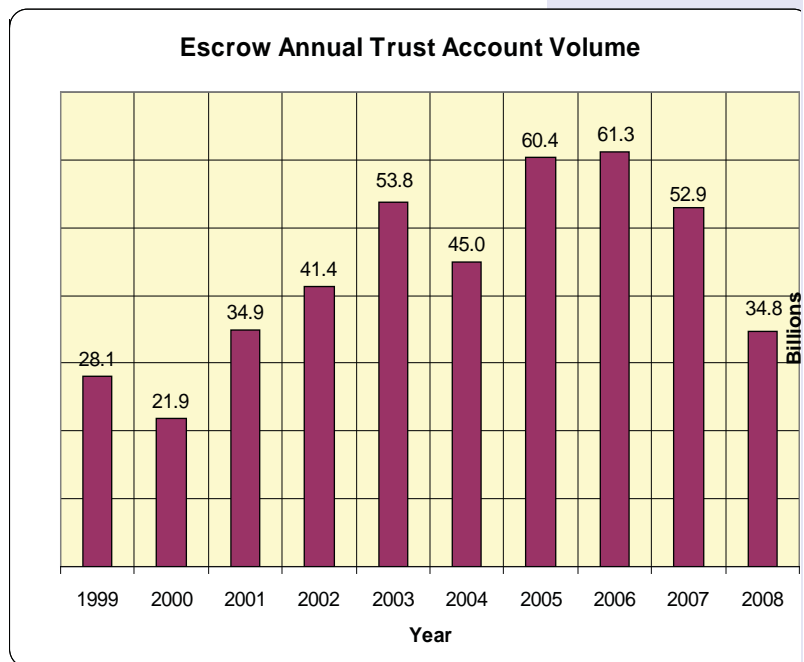
Manager - Selina Barnes

Division Overview

The Regulation Division has twelve staff members. This division receives complaints and determines validity and assignment for investigation. Investigators gather facts, complete reports and submit to the Manager for review. The Manager determines whether the evidence supports charging a person with a violation of the statutes or administrative rules administered by the Agency.

Escrow Agent Financial Statement Review

The review of the annual reports submitted by escrow agent licensees is nearly completed. The graph below indicates the trust account activity reported by escrow agents in Oregon for the years 1999– 2008.



HAPPY BIRTHDAY, OREGON!

To celebrate the state's sesquicentennial, the Real Estate Agency offers this final Oregon Real Estate News-Journal article of the series, highlighting the implementation of real estate license law in Oregon.

First in the Nation: Real Estate Licensing in Oregon

By Katie Archambault, Real Estate Agency Staff

During the mid-nineteenth century, the Oregon Real Estate Department continued to establish a foundation for itself in the industry, creating a division of state government to protect the interests of prospective buyers of real estate in Oregon. In order to accomplish this goal, changes were enacted and new laws were implemented to address the growing professionalism demanded by consumers.

In 1955, House Bill 465 was introduced that made eleven major changes to Oregon Real Estate License Law. One provision of the new law increased the annual renewal fee to \$25 for brokers and \$15 for salesmen. The revenue generated by this increase made possible the employment of a Chief Field Examiner and four assistants. Their duty was to carry out periodic compliance audits of real estate offices to ensure they were adhering to the professional standards expected of licensed brokers.

Another important change made by the 1955 legislation was the increase in the required time that a salesman must be licensed before becoming eligible for a broker license to two years. The goal was to ensure that salesmen were prepared and knowledgeable enough to conduct real estate to their utmost potential and with the best interest of the consumer in mind at the time of their transition to broker.

In 1959, the Oregon Legislature once again amended the real estate license law. This change reflected the social conditions in American society. The new amendment was specifically aimed at curtailing prejudiced practices such as blockbusting, racial steering and redlining. It made discrimination

on the account of race, color, religion or national origin a violation of law. This was later superseded by the federal Civil Rights Act of 1968.

In 1963, the Real Estate Department lost its independent status and was absorbed into the Department of Commerce, becoming the Real Estate Division. Under the reorganization, the appointment of the Real Estate Commissioner shifted from the Governor to the Director of the Department of Commerce.

In 1971, the Oregon Real Estate Division became the first real estate regulatory agency in the nation to put in place continuing education requirements for real estate licensees. Nine hours of continuing education were expected to be completed every year. In 1975, continuing education hours were increased to twenty-four hours every renewal period, which was every two years.

The size of the Real Estate Board was expanded in 1971. The board of four members grew to six when two public members were added. Another significant change to the composition of the Board came in 1970 when the Commissioner ceased to be the Board chair. From that point on, the chair was elected from the pool of Board members, by the Board members. Today, there are a total of nine board members. Arthur Kegler is the current chair.

The Commerce Department was dissolved in 1987 and the Real Estate Division again became an independent state entity called the Oregon Real Estate Agency.

More changes were implemented to improve the efficiency as well as increase the professionalism of the Agency. For

instance, in 2005, computer-based license exams were made available. In 2007, online license renewals became an efficient option for licensees renewing their licenses. More recently, as of January 2009, the Agency has sought to further improve service by accepting some Agency forms via fax.

As for the future, the Agency has a forward-looking agenda with the ever-consistent goal of improving efficiency and providing the best service to licensees and consumers.

Many licensees use the Internet as part of their normal business activities. The Agency is currently looking for a new software system that would allow the Agency to provide more online services such as applying for a background check, scheduling an examination, changing a license status, transferring companies, and monitoring continuing education credits.

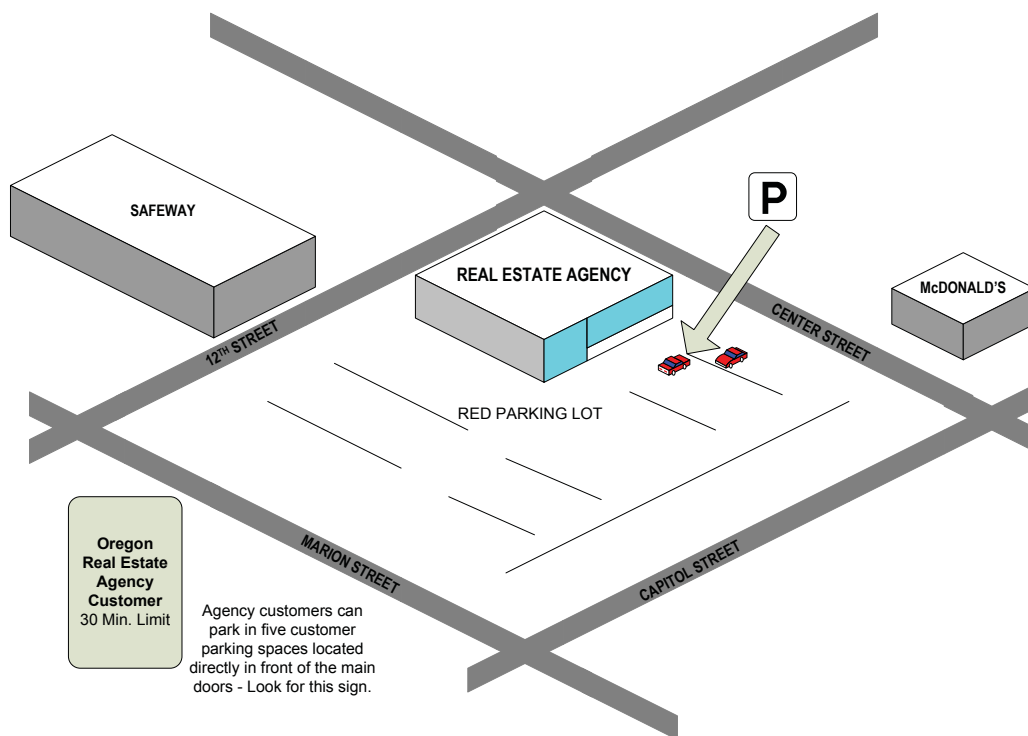
The Agency's Regulation Division plans to have each investigator complete the Association of Real Estate License Law Officials

(ARELLO) training and earn the designation of a Certified Real Estate Investigator. This training program is updated annually to provide information on the most current regulatory issues, as well as advanced training in areas such as interviewing, investigation techniques, report writing, and auditing.

Ninety years ago, in 1919, there were 1,537 licensed real estate brokers in the state of Oregon who paid an annual renewal fee of \$5; as of June 2009 there were 22,914 real estate licensees who pay a biennial renewal fee of \$230. With the passage of time comes change. But, according to Commissioner Gene Bentley, the one thing that remains constant is people's desire to talk to someone who is knowledgeable about real estate license law, no matter what advances with which technology may surprise us. Therefore, the Real Estate Agency will continue to aid in the licensing process and ensure consumers are assisted and protected throughout their real estate ventures.

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- Oregon Department of Commerce Real Estate Division, *History: Oregon Real Estate Department (Oct. 1964)*, 14. by William Healy
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Mesheal Heyman, Editor
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