



# Oregon

Theodore R. Kulongoski, Governor

## Real Estate Agency

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## State of Oregon Real Estate Agency

### REAL ESTATE BOARD

#### Regular Meeting Minutes December 17, 2007

- MEMBERS PRESENT:** Mike Graeper, Chair  
Troy Costales, Vice-Chair  
Warren (Lee) Dunn  
Byron Hendricks  
Chris Hermanski  
Arthur Kegler (arr. 10:15 a.m.)  
Robert LeFeber  
Kimberly Medford  
Marianne Wood
- MEMBERS ABSENT:** None
- STAFF PRESENT:** Gene Bentley, Commissioner  
Dean Owens, Deputy Commissioner  
Leandra Cooley, Administrative Specialist  
Louann Rahmig, Board Liaison
- GUESTS PRESENT:** Kelly Freels, Budget Analyst  
Andrea Bushnell, Oregon Association of Realtors  
Bob Keith, Appraiser Certification and Licensure Board

### I. BOARD BUSINESS

- A. Call to Order.** Chair Mike Graeper called the meeting to order at 10 a.m. at the Real Estate Agency, 1177 Center Street NE, Salem, Oregon.
- B. Welcome to new board members.** Chair Graeper provided a brief history of his background and invited all of the board members to do the same, as well as the Deputy Commissioner, Dean Owens and Commissioner, Gene Bentley. Commissioner Bentley introduced Kelly Freels, who is with the Governor's Budget Office. Mr. Freels provided his background, which includes more than 30 years state service. This is his first assignment with the Real Estate Agency.

**C. Roll Call.** All board members were present.

**D. Approval of the Agenda and Order of Business.** Chair Graeper suggested that he run part of the meeting and the other chair nominee, Art Kegler, run part of it. The agenda was approved as submitted.

**E. Approval of the October 15, 2007, regular meeting minutes.** A question was raised by Mr. Kegler, whether or not adjournment of the meeting by departing members is appropriate. After discussion, no change was made and the minutes were approved as submitted.

**F. Election of Chair and Vice-chair for 2008.** Delayed until later in the meeting. Following the election, Mike Graeper was re-elected chair and Troy Costales as vice-chair for 2008.

**G. Meeting Procedures.** For the board's information.

**H. Date of the Next Meeting.** January 14, 2008, in Salem, Oregon (special meeting).

**II. PUBLIC COMMENT.** None.

**III. REQUESTS FOR WAIVERS**

**Waiver request log.** The log was included in the board packet. There were no waiver requests.

**IV. BOARD ADVICE/ACTION**

**V. A. Legislative concepts resulting from rule review work groups.** Commissioner Bentley requested feedback from board members on concepts developed to date. Several board members are participating on the various work groups. Mr. Kegler reported on the possibility of increasing the requirements for a principal broker and perhaps not requiring them to supervise. The intent is to upgrade the quality of the profession. Lee Dunn commented that in today's market, brokers may complete only two or three transactions during the three-year experience period. Chair Graeper explained the legislative concepts in the packet and the proposed rules will go hand in hand. The concepts are those statute changes needed to accomplish additional changes identified. Mr. Costales explained the concept submission schedule. Ms. Medford asked what is expected from the board in developing the concepts. Chair Graeper advised that at the January 14 meeting the board will be asked to "approve" the concepts developed by the licensing/brokerage work group. Commissioner Bentley stated there will also be some concepts from the property management work group. The Oregon Association of Realtors is being asked to consider carrying some of the concepts on behalf of the industry.

**B. Tenants in common/securities issue.** Ms. Medford gave a brief background of the tenants in common issues. The Securities Exchange Commission proposed some rules that are out for public comment. The National Association of Realtors will be responding. Assuming the rules take effect, if Oregon wants its licensees to be able to engage in sales in tenancies in common, there will need to be rule changes and

probably some educational requirements. Commissioner Bentley asked Ms. Medford to advise the agency if rule changes are adopted. Mr. LeFeber offered to assist.

Ms. Medford stated that she is not sure if the board should take a position on this issue. Mr. Hendricks thought this would be an industry issue rather than a board issue. The board agreed.

- C. Discuss and take action on proposed Board by-laws.** Mr. Hendricks appreciated the fact that the by-laws are short.

**MOTION BY BOB LEFEBER TO ACCEPT THE BY-LAWS AS SUBMITTED.** No discussion.

**MOTION CARRIED UNANIMOUSLY.**

**VI. NEW BUSINESS.** Mr. Kegler conducted the balance of the meeting.

**Feedback from board member participants on rule review work groups.**

- 1. Licensing/brokerage.** No further comments from Chair Graeper. Mr. Dunn believes there needs to be a way to test for the “practical” part of a transaction. Ms. Wood indicated that it is a very active group and it has made some great progress. It appears the “bar” is going to be raised to include concept thinking and situational testing. There was discussion about different types of testing (simulator, virtual). Mr. Dunn pointed out that accountability will shift back to the broker for submission of documents to principal brokers in specific time frames. Mr. Costales asked if the groups are thinking about how existing sole practitioners will be handled if a change occurs. Chair Graeper responded that elimination of the sole practitioner would require a statutory change. Commissioner Bentley stated there would probably be an additional educational requirement for current sole practitioners during a transition period (about one year). Mr. LeFeber stated that there is no differentiation between residential and commercial and asked if there should be some commercial components included. Mr. Dunn stated that one of the concepts discussed was an “endorsement” for commercial and possibly an endorsement for property management. Mr. Kegler stated both “endorsements” would require additional education. Mr. Graeper expanded on discussions on advertising. Commissioner Bentley stated there will be a temporary rule on advertising. The rule draft will be shared with the board. Mr. Hendricks encouraged the board members to keep in mind that when advising the commissioner, that we are a consumer protection agency.
- 2. Property management.** Mr. Hermanski provided the background of the Property Management Work Group membership. Last year’s property management work group developed some rules that are being revisited for clarification. There has been a huge issue involving records storage. Current rule requires that all of the records involving property management be within the state. This work group is interested in “raising the bar” for property managers. Ms. Medford asked who provides brokers with the contract forms they use. Chair Graeper and Commissioner Bentley provided additional clarification about the types of forms used.
- 3. Background checks.** Commissioner Bentley reported on behalf of Chair Graeper. This is a single subject group. Generally speaking, the industry believes that when the agency performs a background check and issues a license to an individual, they

have a clean record. That is not accurate as the agency is somewhat limited on the kinds of offenses that would prevent issuing a license. There are jurisdictions that deny licenses if a person has ever been a convicted felon. We are looking at different review periods for various categories of crimes.

## **VI. COMMUNICATIONS**

**Administrative Actions Summary.** Provided in the board packet. Mr. Costales offered that there has been discussion in the past about changing the board's authority on these actions. Right now the information is provided and board action is not required. Chair Graeper believes there is more consistency in actions taken now. Mr. Kegler explained how the dollar amounts are determined.

## **VII. REPORTS**

**A. Chair Graeper report on the Board's Education Work Group.** Chair Graeper talked about critical decision testing. Simulator testing is being considered as a method of testing in combination with multiple choice questions. There have been several joint meetings of the board's education work group and the OAR education work group. Chair Graeper and Deputy Commissioner Owens are inviting a PSI representative to meet with the education work group to discuss exam format alternatives. The education work group feels that the elective hours should be eliminated and all hours be related to either ORS chapter 696 or the administrative rules in OAR chapter 863. The group also feels that a certification process should be required for all distance learning classes. The Association of Real Estate License Law Officials (ARELLO) has a certification process for all distance learning classes that would be a requirement. Property management should not be a part of advanced real estate practices but be placed in its own category. Based on certain criteria established by the work group, the agency would register instructors and courses. Registration of instructors would eliminate the need for principal brokers to certify licensee continuing education at time of renewal as the instructors would be required to keep track of the students who took their course. Courses would be assigned numbers. As computerization at the agency improves, those numbers could be posted for licensees on their license. There are inconsistencies in the industry as to what principal brokers are approving. The license renewal form could be modified so that the licensee can list the courses taken.

Mr. LeFeber asked if this process would be for continuing education or initial licensing. Chair Graeper responded that it would be for pre-license, continuing education and advanced practices. Mr. LeFeber expressed concern about eliminating "electives" because real estate practice is not just about legal requirements. Education is essential in order to be a good commercial or residential practitioner. Chair Graeper responded that reading ORS chapter 696 and OAR chapter 863 would probably cover every subject and added that the agency could develop a core class requirement for all licensees to take during the two-year renewal period. Ms. Medford reported on the automated Oregon State Bar continuing education reporting method as a comparison for tracking and program development for the agency. Commissioner Bentley responded that the agency is exploring software that will meet all the agency's needs. Mr. LeFeber asked if industry expert speakers would typically qualify. The chair responded that the certification process for instructors would take

these qualifications into consideration and explained that there is a submission/accreditation process for approval of an instructor of that caliber.

**B. Commissioner Gene Bentley.**

**1. Status report on Agency rule reviews (schedule/actions for the future).**

Commissioner Bentley explained the rule review process and involvement of the advisory committee as well as the expected legislative activity. Draft rules should be available for board review at the January 14, 2008, special meeting.

**2. Administrative Law Judge training in Reno.** Mr. Bentley explained that one of his responsibilities as the commissioner is to be the final authority in all sanctions imposed on licensees so felt a need to understand the process of being an administrative law judge. The National Judicial College headquartered at the University of Nevada in Reno has an extensive program for administrative law judges and others in the judicial field. Mr. Bentley reported that the conference dealt with a wide range of subject matter, including licensing much like what the agency deals with.

**3. Conversation with Sen. Betsy Johnson.** Commissioner Bentley indicated that when this item was put on the agenda there was a teleconference with Sen. Johnson scheduled for December 4. However, there was a rule review work group meeting in Lake Oswego also on that date so the teleconference did not occur. Michele Deister (LFO) had requested the teleconference to discuss the agency's budget note on reconvening the task force that discussed changing the authority of the board and the commissioner. Commissioner Bentley later had a brief conversation with Sen. Johnson and they agreed to get together shortly after January 1. The commissioner explained that the 2007 SB 324 (which did not pass) proposed moving some authority from the commissioner to the board. OAR has the issue on their legislative agenda for reconsideration. Peter Cogswell has resigned from the Governor's office and a new policy analyst (Tim McCabe) was just appointed.

**4. DOJ appraiser opinion.** (taken out of order) The chair reopened the public comment period to allow Bob Keith, Appraiser Certification and Licensure Board (ACLB), to speak. Commissioner Bentley stated the issue raised was regarding one of the ACLB members having difficulty obtaining information from individual brokers about sales concessions in a transaction. The concern was that they wanted to be able to make sure that every broker or principal broker provided them with sales concessions that occurred in a transaction so they could include them in their appraisals. The ACLB sought an opinion from the Attorney General (Agenda Item No. VII.B.4. in packet) on confidentiality of information between a broker and the buyer or seller, and whether or not that information that is confidential to the transaction could be shared with an appraiser or any other third party. Commissioner Bentley read the opinion to say that basically the information can be shared, because as an individual principal instructs their agent to share information with the other party, either buyer to seller or seller to buyer, that bridges the area of confidentiality and then the individual broker can share that information with a third party if the broker so chooses. It does not make it mandatory that they share the information but they have the option without violating the confidentiality standard. It is good practice for individual brokers to check with their principals to make sure they are in fact adhering to their desires.

Chair Graeper quoted the question and short answer from the AG opinion. Mr. Costales commented that comparables used in an appraisal are from completed transactions, not deals in progress. Commissioner Bentley stated that currently statute says that price and terms in the transaction are confidential and extend beyond the closing and do not have any term. The point that the appraisers were after was that the agency is not going to sanction an individual for disclosing that information based on the DOJ ruling. Chair Graeper expressed appreciation for the shield that the DOJ ruling has given licensees and suggested to ACLB to consider changing ORS chapter 95 to modify the definition of “true and actual considerations.”

Mr. Keith expressed that ACLB in no way intended seeking the AG opinion to be construed as an unfriendly act. In the past, sales concessions were not prohibited from disclosure by real estate law. Licensees were counseled not to disclose such information, that it was not allowed by ORS chapter 696, which conflicted with their previous understanding. ACLB wanted to get clarification on what licensees can and cannot do. There may still be some other legal reasons not to disclose. Mr. Kegler thanked the ACLB for obtaining the AG opinion to clarify the whole issue. Mr. Keith indicated that their board is willing to work with this board on resolution. Chair Graeper asked if the ACLB has looked at changing statute. Mr. Keith responded that the first move was to get the AG opinion and then work with those who are developing the forms to see if some resolution could be reached on that level.

Mr. Bentley stated that the agency had received a request for additional information on brokers’ price opinions. An article will be published in the *OREN-J*.

*Public comment period was closed.*

5. **Board member orientation, visits to Agency sections.** Commissioner Bentley asked if new board members wanted to spend some time in the agency sections to become better acquainted with staff and their functions. Most of the board members felt it would be helpful. The commissioner indicated that this would be set up for the future.
6. **Governor’s Toy Drive.** Commissioner Bentley indicated that typically in the past the Governor has a toy drive. Normally the board members would be asked to be involved in some way. Unfortunately, today was the deadline. Deputy Commissioner Owens reported that the agency was able to make a significant donation to the toy drive.

### C. Deputy Commissioner Dean Owens

1. **2005-07 budget report.** The agency managers were introduced. Kate Nass presented the report explaining the agency’s spending limitation (**EXHIBIT A**). Commissioner Bentley provided the reason for the original 15-month budget and process the agency had to follow for full biennial funding. Mr. Hendricks asked about the board’s role in this budget. Mr. Bentley responded that it is mostly informational for the board at this stage. Deputy Commissioner Owens added

that the board will be more involved and informed with the current budget. Chair Graeper offered that historically the board had not been given the agency's budget information.

2. **Presentation on agency travel policies.** Ms. Nass distributed **EXHIBIT B** and briefly explained the types of expenses that are reimbursable.
3. **2008 legislative session update.** Commissioner Bentley explained that the session will begin February 4 with a planned adjournment date of February 29.
4. **2009 legislative session concept submission schedule.** Information provided in the board packet.

#### **D. Agency section/division reports**

1. **Land Development Section.** Laurie Skillman distributed information on 2007 legislation that made some changes affecting condominium filings (**EXHIBIT C**). She also reported on the number of filings received per month. The low was in June (29) and high (91) in May. Since 2004 there has been a 154 percent increase in condo filings. The workload has increased due to revisions needed based on new statutes effective September 27, 2007. Chair Graeper asked if there is a way to communicate through the Oregon State Bar about all the statute changes. Ms. Skillman responded that it is incumbent on attorneys to know the current statutes. The agency is creating a land development data base to replace the current one that will provide information for statistical reports. The new database will automate preparation of various letters to filers. All condo filings are reviewed at \$46 per hour beyond the initial \$100 filing fee. We review and approve out-of-state subdivisions and manufactured park conversions to subdivisions at a \$100 flat fee.
2. **Licensing Section.** Laurie Hall reported for Selina Barnes and described the duties of the section. As of October 31, 2007, there were just under 25,000 licensees (active and inactive), a reduction of about 1,000 from the end of 2005. Online renewals were launched in March. The agency's goal was to have 20 percent renew online and are already at 40 percent. There are about 20 open files on background checks. The section is working with the rule review work groups on licensing rules and background check rules. A major project that needs to be addressed is to delete all past and current credit card information on file to deal with security issues. The agency is looking into a new phone system to help better manage workload, gather statistical information and provide more functionality. Mr. Hendricks asked about the turnaround time on state police processing of fingerprint cards. Ms. Hall responded that the initial background investigations are taking about four to six weeks. The agency recommends that applicants deal with the background check portion of the licensing process first. Mr. Hendricks asked what percent of the checks go to review. Ms. Hall responded that maybe seven percent. Chair Graeper inquired if the problem with changing addresses online had been improved and how the agency was doing in collecting licensee e-mail addresses. Deputy Commissioner Owens clarified that current software won't allow changes to be made other than at the time of renewal. E-mail addresses are being collected as people are renewing online. Commissioner Bentley commented that the agency wants a new software package that will provide ability to make changes at any time.

3. **Education Section.** Deputy Commissioner Owens distributed **EXHIBIT E** on behalf of Mesheal Heyman. The section also produces the *OREN-J* and the Commissioner's Bulletin. Mr. Bentley was approached to contribute to the Salem Business Journal on a monthly basis. Since the board didn't think this would be necessary, Commissioner Bentley will decline.
4. **Regulation Division.** Becky Osborne distributed **EXHIBIT D** reflecting the section's statistics. There were 33 opened investigations based on 62 complaints received in November. The Regulations Division also issues "educational letters of advice" to licensees. Ms. Osborne reviewed the report and answered questions. The performance measure goal is to close cases within 100 days. Closure of very old cases skews the numbers. Chair Graeper asked how many investigators are on staff now. Ms. Osborne responded that there are 11 positions, two of which are vacant. Ms. Wood asked if there are any recurring issues in complaints received. Ms. Osborne answered that they are seeing quite a few in unlicensed activity. Chair Graeper asked if the agency keeps a list of the types of complaints received in the phone room. Ms. Osborne offered that the agency hopes to be able to capture that information through a new data base on the new phone system. Discussion took place regarding the recent auction in the Portland area and the issues that had to be dealt with regarding proper licensing for the activity.
5. **Administration/Information Systems Sections.** Deputy Commissioner Owens reported for Rick Leventhal and distributed **EXHIBIT F**. The agency is updating the phone system that will be linked to the computer system. The Department of Administrative Services is paying the bulk of the cost. Discussion took place regarding the software package that will capture information

### VIII. ANNOUNCEMENTS

Special board meeting 10 a.m., January 14, 2008, in Salem, Oregon to discuss proposed legislative concepts for the 2009 session.

### IX. ADJOURNMENT

Respectfully submitted:

GENE BENTLEY  
COMMISSIONER

Respectfully submitted:

MICHAEL R. GRAEPER  
BOARD CHAIR

Exhibits distributed:

- A. OREA Limitation and Expenditures, 2005-2007, *Agenda Item No. VII.C.1.*
- B. Board Member Travel, *Agenda Item No. VII.C.2.*
- C. Land Development Section Report, *Agenda Item No. VII.D.1.*
- D. Statistical Reporting – Regs, *Agenda Item No. VII.D.4.*
- E. Education Section Report, *Agenda Item No. VII.D.3.*
- F. Information Technology Report, *Agenda Item No. VII. D.5.*