

# Oregon Real Estate News-Journal

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Commissioner  
Steve Strobe

## Discussing Home Inspections May Be Good Risk Management

*Steve Strobe, Real Estate Commissioner*

The Oregon Real Estate Agency does not generally offer guidance on how to structure transaction contingencies, and it also does not issue legal advice to licensees. But in this column I do comment on trends we are observing, both inside the Agency and the regulatory environment across jurisdictions, to help licensees operate their businesses and best serve Oregon consumers.

To say that the real estate market is hot in many segments is not news and not an understatement. In my stakeholder engagement this past year, I have heard countless times of the challenges buyers face to get their offers accepted. Competing multiple offers, paying over list price, and waiving various contingencies have become com-

monplace in some market segments. In context, these all may be viewed as rational decisions by fully informed consumers.

For this article, I'd like to focus on waiving inspections. As a general rule, buyers' agents recommend that their clients have a home inspection contingency when possible. Additionally, real estate transaction documents typically have cautionary language to buyers about the implications of waiving that contingency. In an effort to "do whatever it takes" to get an offer accepted in this market, I'm hearing that buyers are choosing to waive inspections to make their offer as attractive as possible to sellers.

Sellers, on the other hand, may feel that not having an inspection is one way to guarantee a smoother transaction. Since *Please see **Good Risk Management** on page 2*



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### IN THIS ISSUE

Discussing Home Inspections May Be Good Risk Management .....	1	New Property Management Guide Now Available.....	5
Advertising Hot Topics: Written Permission and Alternative Names .....	3	A Brief Look at the Recent History of Residential Condominium Production in Oregon.....	6
Listing Price and Your Obligations .....	4	Administrative Actions .....	8
License Renewal Options .....	5		

## Good Risk Management

Continued from page 1

transactions often fail over what is discovered during the inspection or the inability to negotiate new terms related to repairs or price, sellers often view this waiver as a win.

I'd like to offer an additional perspective.

Real estate licensees acting as a seller's agent, buyer's agent, or agent to both buyer and seller, have obligations to parties in a transaction as defined in [Oregon Revised Statute \(ORS\) 696.800 through 696.880](#). Here at the Real Estate Agency, we routinely receive complaints from consumers after transactions close relating to "Failure to Disclose" allegations. For example, a problem is uncovered upon moving that was not disclosed on a Seller's Property Disclosure Statement. The consumer believe that the seller, the listing agent, buyer's agent — or any combination of the three — knew or should have known about a potential problem and chose not to disclose to the buyer. The consumer will allege that a licensee failed in their duties to disclose material facts that are "not apparent or readily ascertainable to a party."

If the Agency believes there was a licensing violation, we will open an investigation. Historically, many of these cases are closed without any action against the licensee for one of two reasons: the respondent (buyer's or seller's agent) provides documentation to the Agency that the buyer was able to perform their full due diligence via a method such as a home inspection, or the Agency determines that it is a civil matter between

buyer and seller and that there was no license law violation by the licensee.

When the Agency determines it is a civil matter, we will close the complaint and send a letter to the complainant that contains the following language:

*"After a review of the documents submitted by both parties, it appears that the issue addressed in the complaint is a civil matter and not within the jurisdiction of the Agency. Therefore, it is suggested that you seek legal advice."*

Although the complaint is then closed, please remember that if a court does subsequently issue an adverse decision against a licensee in a civil proceeding, Oregon Administrative Rules (OAR) require that a licensee must notify the Agency within 20 calendar days (see [OAR 863-015-0175](#) for full text).

Since the practice of waiving inspections is a product of a recently extreme tight market, it is too soon to draw conclusions about complaint trends. The Agency will track this issue to see if we see an uptick. In the meantime, listing agents may wish to share with sellers the pros and cons of allowing a buyer's home inspection — to enable the buyers to proceed to closing fully informed, even if they have to negotiate the transaction further. Risk level tolerance varies from seller to seller, so having this sensitive conversation as a part of the transaction may be considered a good risk management practice for licensees. ■

## Oregon Real Estate Board Meeting

**August 2, 2021, 10:00 a.m. by videoconference**

The public is welcome to this virtual general meeting of the Board. Learn about the Board's responsibilities and the Oregon Real Estate Agency's current efforts. More information on the [Agency's website](#).

# Advertising Hot Topics: Written Permission and Alternative Names

Meghan Lewis, Compliance Coordinator, Oregon Real Estate Agency

[Oregon Administrative Rule \(OAR\) 863-015-0125\(2\)\(f\)](#) states that advertising shall be conducted only with the written permission of the property owner, or authorized agent of the owner, if for the purpose of offering real estate for sale, exchange, or lease.

[OAR 863-014-0067\(3\)](#) states that a licensee may apply to register an alternative name for the purposes of advertising under OAR 863-015-0125. To do so, a real estate licensee [submits an online alternative name registration application via eLicense](#) with documentation showing that the licensee is commonly known by the alternative name.

1. **What does it mean that advertising can only be conducted with the “written permission” of the property owner?** “Written permission” means a licensee has entered into a contract, such as the listing agreement, where the seller permits the licensee to act on behalf of the seller in advertising the real estate for sale, lease, or exchange. As a reminder, a listing agreement must be signed by all parties to the agreement.
2. **Do I need a seller’s written permission for every advertising platform or website where the real estate is advertised?** The intent of the advertising rule is that written permission is obtained from the seller at the onset of the listing agreement to advertise and promote the real estate for sale, lease, or exchange. The listing agreement will determine if the real estate may be advertised publicly (or not), and terms may include the use of a multiple listing service (MLS), internet marketing, and a lockbox, as well as the right to use the listing content, for example, property description, photos, videos, and virtual tours.
3. **I see my seller’s real estate advertised on other brokerage websites and other licensee’s social media and they do not have written permission from the**

**property owner to advertise. Is this a violation of the advertising rule?** If the listing content is shared publicly it will most likely be advertised electronically via internet marketing on numerous online sources. This includes brokerage websites, marketing emails, and licensee social media. In a listing in which the seller or property owner has agreed to advertise, publicly sharing this listing content is in the consumer’s best interest.

As long as the advertising is truthful and not deceptive or misleading, and the public is clear that the licensee is merely sharing the advertising, the Agency does not interpret this as a violation. Examples of advertising shared listing content identifies the listing broker and may include language such as, “Listing courtesy of...” or “Presented by...” to ensure the advertising is truthful and not deceptive and misleading.

4. **My MLS has their own rules regarding advertising. Are they in violation of real estate license law?** The Agency rules establish advertising requirements for licensees, which at a minimum must be met. Individual MLS or professional trade associations may create their own rules for their members regarding social media and sharing information that may be more restrictive than the requirements set forth in Oregon Administrative Rule 863-015-125, and this is allowable.
5. **What is an alternative name?** An alternative name is a name the licensee is known by publicly that is not the licensee’s licensed name. If you are known by a name other than your licensed name, you may apply to register an alternative name for the purposes of advertising under OAR 863-015-0125. If you use a registered alternative name in advertising *Please see Advertising Hot Topics on page 4*

# Listing Price and Your Obligations

Liz Hayes, Investigator/Auditor, Oregon Real Estate Agency

Unprecedented. Variant. Asymptomatic. Herd Immunity. The list goes on. These words and phrases have found a place in our homes and interactions. And, the real estate industry has had to evolve and adapt in these ever-changing times.

The Portland metro area housing market, while taking an initial COVID-hit, has bounced back with force. RMLS records show only 0.7 months of inventory in the Portland area for May 2021, down from 2.3 months of inventory in May 2020 — a decrease of nearly 70%. Demand is high and listings are few. You don't need me to tell you that this is a sellers' market.

Last year, I reviewed a transaction involving a property listed drastically under market value — a price the seller was never willing to accept. As expected in this sellers' market, the listing drew a lot of attention, and a bidding war ensued. Many offers were tens of thousands over listing price and not accepted. The seller was thrilled because they secured the price they wanted, but many buyers felt duped and frustrated with this marketing strategy.

[Oregon Revised Statute \(ORS\) 696.800\(6\)](#) defines "Listing Price" as the amount expressed in dollars, specified in the listing agreement, for which the seller is willing to sell the real property through the listing agent. The keyword here is "willing." If you list a property at a price you know the seller will not accept, you are in violation of [Oregon Administrative Rule 863-015-0125\(2\)\(b\)](#), which states that advertising by a licensee in process and substance must be truthful and not deceptive or misleading. And, it could be grounds for discipline under ORS 696.301(4) for knowingly publishing misleading advertising.

The Agency understands competition is fierce, and we support your efforts to find creative and innovative ways to earn new busi-



Image by [Paul Brennan](#) from [Pixabay](#)

ness. However, you must ensure you remain in compliance with Agency rule and statute, even if you believe you are only looking out for your client's best interest.

To deal honestly and in good faith, present all written offers and other written notices and communication, and disclose known material facts; these are the affirmative duties you owe to all parties involved in a real estate transaction. While Zoom meetings may be part of the new normal, your agent obligations remain the same. ■

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## Advertising Hot Topics

*Continued from page 3*

- ing, you are required to include your real estate license number.
6. **Can I register a "team" or "group" name as an alternative name?** No. A registered alternative name is for individual licensees only. You may advertise using the term "team" or "group" only if you comply with [OAR 863-015-0125\(7\)](#). Make sure that the registered business name is immediately noticeable on all advertising. ■

# License Renewal Options

When it's time to renew your Oregon real estate license, you have choices depending on your personal circumstances.

## On Time Active Renewal

To renew your license active and continue to conduct professional real estate activity, complete your required continuing education and renew your active license in eLicense, including paying the \$300 fee, no later than your license expiration date.

## On Time Inactive Renewal

You can renew your license inactive to keep rights to your license while you don't conduct professional real estate activity. Renew your license inactive in eLicense, including paying the \$150, by your license renewal date. Remember, while your license is inactive, you cannot conduct professional real estate activity.

If your license is inactive for more than 2 consecutive years, you must take and pass a reactivation exam to be eligible to reactivate your license.

When you are ready to reactivate your license, you will apply to reactivate in

eLicense and pay the \$150 fee.

## Late Renewal

If your license expires, you have one year to renew the license late. You cannot conduct professional real estate activity until the license is active again.

To renew an active license late, complete your required continuing education and then renew your license in eLicense. The fee is \$300 plus a \$150 late fee.

You can renew your inactive license late with a \$150 fee and \$150 late fee. If your license is inactive for more than 2 consecutive years, you must take and pass a reactivation exam to be eligible to activate your license. When you are ready to reactivate your license, you will apply to reactivate in eLicense and pay the \$150 fee.

If you do not renew your license within one year of your license expiration date, your license will lapse. This means you lose all rights to the license. If you wish to be licensed again, you must start the process for a new license, including background check, examination, and, depending on the timeframe, pre-license education. ■

# New Property Management Guide Now Available

The Oregon Real Estate Agency released a new publication to guide licensees managing rental real estate.

[Welcome to Property Management in Oregon](#) was written in user-friendly language to outline the requirements of property management, including:

- Entering into Property Management Agreements
- Opening Clients' Trust Accounts
- Reconciling Clients' Trust Accounts
- Maintaining Records
- Terminating Property Management Agreements

A Spanish language version is coming soon. ■





# A Brief Look at the Recent History of Residential Condominium Production in Oregon

Michael Hanifan, Land Development Manager, Oregon Real Estate Agency

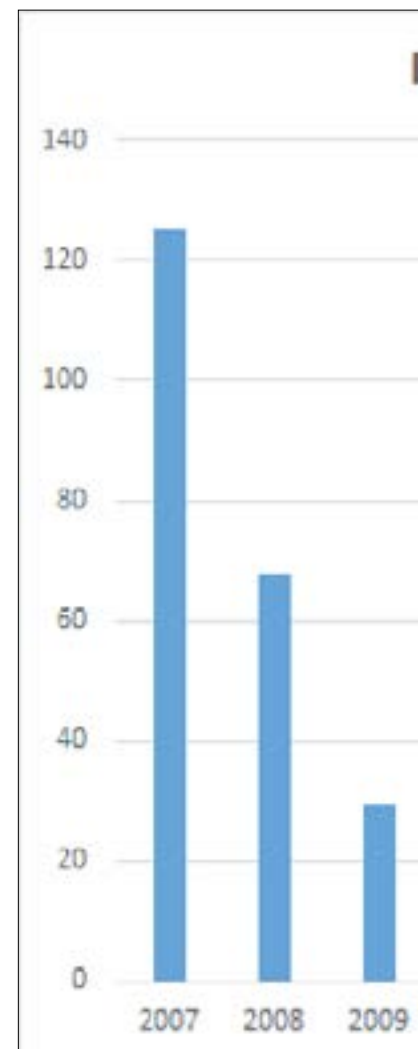
It's not news that Oregon is currently experiencing a shortage of housing. What some may not be aware of is that, in addition to the regulation of licensees, the Real Estate Agency is home to the Land Development Division, which is responsible for review and approval of all new condos within the state. Although a small fraction of overall housing available on the market each year, condos are an option for those looking for a home, and members of the public (and brokers) are often curious about how many condominiums are being created each year. With that in mind, this article is a quick overview of the recent history of condo projects in Oregon, influences on development, and potential effects of recent legislation on future condominiums.

Generally speaking, condo projects track other residential development over time. In the boom just before the 2nd Great Recession, more than 125 condominiums were created in 2007 alone. As that recession started in early 2007, that large number really reflects the pipeline of projects that were committed in 2006, but nevertheless demonstrates the furious pace of condo creation during that timeframe. As the chart to the right demonstrates, the condo market has been recovering largely in step with the rest of the economy, with 2010 through 2014 acting as a reset phase before developers began to ramp up production again.

Interestingly, the market post-2007 is actually much stronger than it appears. While 2007 was a year of record condominium creation, the actual number of condominiums built was significantly less than what we've seen over the last couple of years. Of the 125 condominiums created in 2007, only 46 were "new starts", the other 79 being condominium conversions. By contrast, in 2019 there were 79 "new starts" with no true condo conversions (there were a total of 14 ADU-type conversions<sup>1</sup>). Over the

last five years (2016 thru 2020) the state has generated an average of 720 new residential units. The disparity between 2007 and 2019 is the result of several changes occurring in the 2007 timeframe. The first was a legislative change. In response to the flurry of conversions that were taking place, the 2007 Oregon Legislature passed HB 3186, which implemented some tenant protections and added other requirements onto the condo conversion process. The second change was a decrease in availability of rental projects that could be easily converted to condominiums.

Post 2007, the emphasis has been on new construction infill condominium projects. The overwhelming majority of new condominiums filed over the last couple of years have been between 2 and 4 units. The pace of development had increased year over year between 2015 and 2019. 2020 was likely to continue that trend, but the pandemic halted then slowed construction. On top of construction woes,



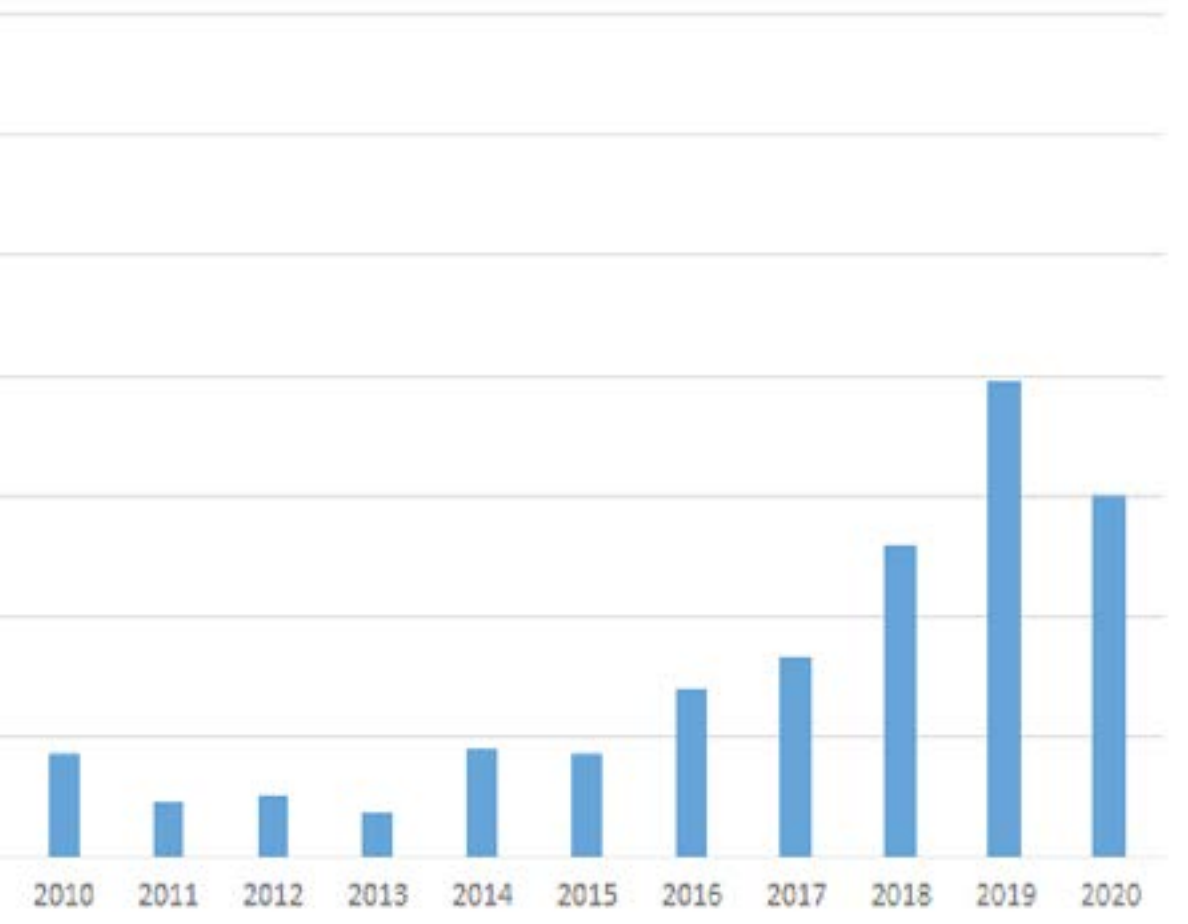
there was some concern about living in a condo that had a common entry area, or living in an urban setting in close proximity with others. However, the smaller projects located in suburbs seem less affected by those concerns.

We are watching for possible growth in condominium production starting near the end of 2021 or early 2022 as a result of both the continued strong demand for housing and HB 2001. The law, passed by the 2019 Oregon Legislature (the “middle housing” bill) provides for construction of multiple dwellings, such as duplexes or triplexes, on land zoned single-family residential. This provides additional flexibility for developers, which should translate into more construction opportunities. Another bill with potential impact on condominium creation is SB 458 (2021 Regular Session). This bill is a sequel

to HB 2001, allowing the middle housing construction under HB 2001 to be separated into individual lots. This obviously provides developers an alternative to creating a condo when creating middle housing, which should reduce the volume of condos resulting from HB 2001. However, not every lot or parcel is conveniently divided and, therefore, we expect a portion of the construction resulting from HB 2001 to be directed into condo development.

<sup>1</sup> An ADU conversion is shorthand for situations where an ADU is built and then the two dwellings are made into a condominium. The primary dwelling is actually considered the conversion because it was previously occupied. ■

## New Residential Condominiums in Oregon



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Mesheal Heyman, Editor  
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# Administrative Actions

The Oregon Real Estate Agency is required by law to publish disciplinary actions. The final order for each action can be viewed by clicking on the individual names listed below.

Please note that there are individuals with real estate licenses that may have the same or similar names as those listed below, even in the same market area. If you are in doubt if an individual listed here is someone you know or you are working with, please contact the Agency for verification.

Stipulated settlements do not necessarily reflect all the factual violations initially alleged by the Agency. Sanctions may have been adjusted as part of the negotiation process. Such settlements may not, therefore, directly compare in severity or sanction with other cases.

## Reprimand

[Ade, Michael](#) (Ruidoso, New Mexico) Principal Broker 201227272, Stipulated order dated April 21, 2021.

[Farhoud, Farrah](#) (Portland) Property Manager 201215170, Stipulated order dated April 15, 2021.

[Hamley, Joel](#) (Happy Valley) Principal Broker 200411095, Stipulated order dated June 17, 2021.

[James, Brian](#) (Grants Pass) Broker 201227644, Stipulated order dated April 1, 2021.

[Leiner, Jason Scott](#) (Portland) Principal Broker 200907119, Stipulated order dated May 21, 2021.

[Robbins, Sean](#) (Newport Beach, California) Principal Broker 201206043, Stipulated order dated June 6, 2021.

[Walsh, Abraham](#) (Clackamas) Property Manager 201213877, Stipulated order dated June 15, 2021

## Revocation

[Lappin, Melissa](#) (Beaverton) Property Manager 201210106, Final default order dated May 18, 2021.

## Civil Penalty

[Mahon, Brian T.](#) (Pottsville, Pennsylvania) Unlicensed, Final default order dated May 18, 2021, issuing a cease and desist order and a \$500 civil penalty. ■