

Oregon Real Estate News-Journal

Official Publication of the Oregon Real Estate Agency

Volume 62, Number 3, October 2008



Commissioner Gene Bentley

Administrative Rule Review Complete

Gene Bentley, Real Estate Commissioner

The Real Estate Agency has completed a comprehensive review of all the administrative rules under its authority. The Agency was assisted by brokers, property managers and escrow agents from all over the state.

Work groups and advisory committees reviewed the rules to make sure that they were understandable, consistent with current business practices, and protective of consumers.

The hard work of these groups resulted in proposed rules. The Agency thanks all who participated in this thorough process. (A list of participants can be found at the Agency's website at www.rea.state.or.us.)

The Agency presented the proposed rules to the Real Estate Board at its September 8th special meeting. The Board recommended that the Agency submit rules for public hearing. Notices for rulemaking hearing were filed with the Secretary of State office on September 10th.

The proposed rules are available for viewing on the Agency's website at www.rea.state.or.us, "Notices of Rulemaking Hearings." The Agency requests public comment on whether other options should

be considered for achieving the rules' goals while not economically impacting the industry.

Public hearings for all rule changes will be held at 10 a.m. on Thursday, October 23, 2008 in the Hearing Room at the Agency's office. In addition to the opportunity for public comment, the Agency will accept written testimony until 5 p.m. on the same day.

The Agency anticipates that final rules will be effective January 1, 2009.

E-mail Subscription Service Now Available

The Agency is pleased to announce a way to get up-to-date information from the Agency. A new subscription service allows interested persons to receive the Commissioner's Bulletin and administrative rule notices via e-mail.

Subscribe using the online sign-up on the Agency's website at www.rea.state.or.us.

The Commissioner's Bulletin is sent once a month. It is designed to get information out between issues of the *Oregon Real Estate News-Journal*.

Administrative rules notices are sent as needed.



Oregon Real Estate
Agency
1177 Center Street NE
Salem, Oregon 97301
(503) 378-4170
(503) 378-3256 Fax
www.rea.state.or.us

IN THIS ISSUE

Continuing Education for Real Estate Licensees	2	Administrative Actions	4
Agency Announces Staff Changes	2	Advanced Real Estate Practices: Do You Need It?	5
Advertising as a Team or Group	3	Are Clients' Trust Accounts Protected if the Bank Fails?	6
Inform Agency of Mailing Address Changes	3	Fair Booths Not Considered Branch Offices	7
Requirements for a Principal Broker License	3		

Continuing Education for Real Estate Licensees

Thirty hours of continuing education are required to renew a real estate license in Oregon. Principal brokers approve education for themselves and their affiliated licensees. Sole practitioner brokers and property managers approve their own education.

The Oregon Real Estate Agency does not approve continuing education. The Agency does not maintain a list of continuing education course providers.

Licensees who approve education decide whether a course falls within required or elective topics. OAR 863-015-0055 requires that at least 15 hours of continuing education taken by a licensee must be taken within the required topics. The rest of the hours can be in either required or elective topics.

Continuing education must be “real estate-oriented.” It must be a minimum of one hour in length.

Continuing education taken in another state may be approved if the content applies to Oregon. Online or distance education classes may also be approved.

A principal broker may let affiliated brokers use the Advanced Real Estate Practices course for continuing education. (See “Ad-

vanced Real Estate Practices: Do You Need It?” on page 5.)

Certificates of attendance must be kept by the approving licensee for six years.

Required Topics:

- Trust Accounts
- Misrepresentation
- Anti-Trust
- Rule and Law Update
- Property Management
- Commercial Brokerage and Leasing
- Real Estate Taxation
- Agency
- Fair Housing
- Contracts
- Evaluation of Property
- Brokerage Management
- Land
- Business Ethics

Visit the Agency’s website at www.rea.state.or.us, or call the Education Division at (503) 378-4170, selection 3, for more information.

Agency Announces Staff Changes

Laurie Hall was promoted to Licensing Division Manager in August. Ms. Hall previously held the Licensing Compliance Specialist position for the Agency. She has been a state employee for 24 years, including 10 years in management. Ms. Hall came to the Agency in 2006.

The Regulation Division hired two new Investigator/Auditors in August. **Donald (Donn) Barrett** comes to the agency with 19 years experience conducting regulatory compliance reviews and audits related to the transportation industry. During the most recent three years of that time, he was a member of a special investigation unit involved in fraud investigations.

Aimee Wiley came from the accounting section of the Oregon Department of Justice. She earned a bachelor’s degree in Business Administration from Western Oregon University.

LeRoy Helton joined the Agency in August as an Information Systems Specialist. Mr. Helton earned an associate’s degree in Computer Science from Chemeketa Community College. He most recently worked as a Network Technician and Phone System Administrator at Country Coach in Junction City.

The Agency congratulates Ms. Hall, and welcomes Mr. Barrett, Ms. Wiley and Mr. Helton.

Editor’s Note: See the Agency’s website at www.rea.state.or.us for available employment opportunities.

Advertising as a Team or Group

Permanent administrative rules regulating advertising by real estate licensees became effective July 1, 2008. These rules included language that says how the terms “team” and “group” can be used in advertising.

Some licensees use these terms to denote an affiliation of persons that assist consumers in real estate transactions. This affiliation may include other real estate licensees, professionals and employees.

OAR 863-015-0125(11) says that the terms “team” or “group” can be used in real estate if:

- the term does not constitute the unlawful use of a trade name;
- the term is not deceptively similar to a name under which any other person is lawfully doing business;
- at least one member of the “team” or “group” is a real estate licensee;

- the real estate licensees in the “team” or “group” are associated with the same principal broker;
- the name of each real estate licensee in the “team” or “group” is used in the advertising;
- if the names of nonlicensed individuals are included in the advertising, the advertising clearly states which members are real estate licensees and which are not; and
- the advertising complies with all other applicable statutes and rules (Oregon Revised Statute Chapter 696, and Oregon Administrative Rule Chapter 863).

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

Contact the Education Division at (503) 378-4170, selection 3, if you have any questions. ■

Inform Agency of Mailing Address Changes

Real estate licensees are required to maintain a current mailing address with the Real Estate Agency. Oregon Administrative Rule 863-015-0062 requires that licensees submit to the Agency any mailing address changes within 10 calendar days of the change.

The Agency uses mailing addresses to send all written communications, including renewal notices and the Oregon Real Estate News-Journal. Incorrect

addresses can result in returned mail fees for the Agency and delayed notification of important information for the licensees.

Of specific concern to the licensees should be the license renewal forms. A delay in receiving a renewal form could have consequences that may cause harm to the licensee.

Contact the Licensing Division at (503) 378-4170, selection 2, with any questions. ■

Requirements for a Principal Broker License

Before the Real Estate Agency can issue a principal broker license, applicants must meet the following requirements:

- Have three years of active licensed broker experience. (Experience in another state may be accepted with certification from that state.)
- Pass the broker license examination. (There is not a separate “principal broker” examination.)
- Complete the Agency-approved 40-

hour Brokerage Administration and Sales Supervision (BASS) course.

- Have another real estate licensee to supervise. (The Agency cannot issue a principal broker license if the applicant will not be supervising another licensee.)

Please contact the Licensing Division at (503) 378-4170, selection 2, for more information. ■

Administrative Actions

July 1, 2008 through September 30, 2008

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 that may have similar or the same names as those listed herein, or even work in the same market area. If you are in doubt if an individual listed here is someone you know or with whom you are dealing, please contact the Agency for verification.

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.

REVOCATIONS

McIntyre, Andrew Joseph (Stayton) Broker #200606001
Default order dated June 12, 2008, effective June 12, 2008. McIntyre entered a plea of guilty to Theft by Extortion, a Class C Felony, while he was licensed as a limited broker.

Violations: ORS 696.301(11) and (13)

Millette, Michael T. (Bend) Broker #980100056
Stipulated order dated July 7, 2008, effective July 7, 2008, resulting in a revocation.

Violation: ORS 696.301

SUSPENSIONS

Dickerson, Jerald "Jerry" Wayne (Idaho) Reciprocal Broker #200712155
Order of Suspension dated May 1, 2008, effective May 1, 2008. The suspension is based on action of the Idaho Real Estate Commission suspending Dickerson's license. The Oregon suspension shall run concurrent with the Idaho suspension.

Violation: OAR 863-015-0080(10)

DiMartino, John J. (Salem) Broker #780500532
Default order dated July 31, 2008, issuing a 60-day suspension effective July 31, 2008. DiMartino accepted a draw on a commission before the transaction was finalized per the terms of the listing agreement.

Violation: ORS 696.301(12)

REPRIMANDS

Johnson, Kimberly A. (Portland) Broker #850300385
Stipulated order dated July 28, 2008. Johnson failed to perform a three-way reconciliation at least once a month to demonstrate

that the balances were equal, Johnson failed to maintain a receipts and disbursements record, Johnson lost the ability to track all records during a software conversion.

Violations: OAR 863-025-0025(19)(b), 863-025-0035(1) and (2)

Tripp, Bari (Portland) Broker #890200132
Hearing order dated May 27, 2008. Tripp failed to prepare an addendum to a sales agreement that included a provision for the sellers to rent back land for the use of their alpaca herd; and Tripp refused to negotiate a term for the sellers' use of their home office for a period of time after closing.

Violations: ORS 696.805(3)(a) and (c), OAR 863-015-0135(5)

CIVIL PENALTIES

Expired - OAR 863-015-0050(2) - 31-60 days - \$100

O'Malley, Kathy R. (Portland) Broker #860500141 - 48 days - 9/11/08
Stipulated Order

Expired - OAR 863-015-0050(2) - 61-90 days - \$600

Brown, Rosemary T. S. (Portland) Broker #200110208) - 89 days - 9/26/08
Stipulated Order

Expired - OAR 863-015-0050(2) - 271-300 days - \$4,100

Hmura, Dirk Edward (Portland) Broker #200305032 - 288 days - 7/16/08
Stipulated Order

Editor's Note: The complete order for each administrative action can be found as a supplement to the electronic version of the OREN-J on the Agency's website. Visit www.ora.state.or.us, and select "News-Journal" from the menu.

Advanced Real Estate Practices: Do You Need It?

Real Estate Agency Staff

If you are a new Oregon broker, you must take the 30-hour Advanced Real Estate Practices (AP) course before your first active license renewal.

You must complete the Real Estate Agency-approved AP course if you:

- received your very first Oregon real estate broker license on or after July 1, 2002; or
- let a previous Oregon license expire (or otherwise lapse) and obtained a new broker license on or after July 1, 2002.

Principal brokers, sole practitioner brokers and property managers are not required to take the AP course.

The AP course is a specific 30-hour course that must be taken from an Agency-approved course provider. A list of approved providers for the AP course can be found in the document called “Approved Pre-License and Post-License Real Estate Education,” which can be obtained by visiting the Agency’s website at www.rea.state.or.us.

Completion of the course is required by OAR 863-015-0055(4).

If your license is inactive at the time of renewal, you do not need to take the AP course until you reactivate your license.

Although the AP course requirement is separate from continuing education requirements, a principal broker may let affiliated brokers use the AP course to meet the continuing education requirements for license renewal.

When affiliated brokers complete the AP course, the course certificate must be given to their principal broker. The principal broker signs the Renewal Continuing Education Certification Form indicating that the course has been completed. The principal broker then keeps the certificate and the certification form for six years as required by ORS 696.280(2)

and (3), and OAR 863-015-0055(2)(c).

Find out if you need it:

Active broker licensees, you need to take the AP course to renew your license if:

- the license is being renewed for the very first time.
- you had an Oregon real estate license, but let it expire or otherwise lapse. You have now re-licensed as a broker by meeting the current licensing requirements. Your first license renewal since re-licensing is now coming up.

Inactive broker licensees, you need to take the AP course to activate your license if:

- you obtained your very first broker license after June 30, 2002, but it has been inactive the entire time. You have renewed your inactive license at least once, and now you wish to activate it.
- you had an Oregon real estate license, but let it expire or otherwise lapse. You became re-licensed as a broker after June 30, 2002 by meeting the current licensing requirements, but have had an inactive license since then. You have renewed your inactive license at least once, and now wish to activate it.

You do *not* need the AP course if:

- you are an affiliated broker who was licensed prior to July 1, 2002, and you have maintained your license, not letting it expire or otherwise lapse.
- you are a principal broker
- you are a sole practitioner broker
- you are a property manager
- your license is currently inactive (but you may need it to activate your license. See “Inactive Broker Licensees” above.) ■

Reciprocal Licensees:

Please contact the Agency at (503) 378-4170 if you will be renewing your Oregon license for the first time.

Are Clients' Trust Accounts Protected if the Bank Fails?

Brenda Bryan, Property Management Consultant

Editor's Note: As of October 3, 2008, Congress temporarily raised the FDIC limit to \$250,000 through December 2009.

With the recent failure of IndyMac, and front page news reporting on bad loans made by some of our community banks, everyone is questioning the stability of their own financial institution. This includes property managers concerned about the clients' trust accounts they maintain.

It is difficult to determine if a bank is nearing failure. This information does not become public until the bank actually closes its doors. Consideration must be made to ensure that the clients' trust accounts are properly insured by the FDIC in the event of a bank failure.

The first step is to verify that your bank is insured by the FDIC. If insured, they should have the FDIC insignia at each teller's window. You can also access the FDIC website to confirm that your bank is listed. The website is found at www.fdic.gov. Click on the "Deposit Insurance" tab at the top and then click on "Find Bank."

Currently the FDIC limit is \$100,000. A common misunderstanding is that each bank account is insured up to this limit. In fact, all accounts for an individual at the same bank are combined, and that total is insured up to the FDIC insurance limit. A property manager should inform everyone having an interest in his clients' trust account as to the bank holding the accounts. This will allow the opportunity to make decisions regarding other accounts they may have at the same bank as they relate to the FDIC insurance limit.

Terry Costello, Property Management Specialist with Bank of America, reminds property managers of the importance in acquiring and maintaining a Notice and Acknowledgement of Clients' Trust Account form for each bank account as required in 696.245 of the Oregon

Statutes. This form notifies the bank that the account is a clients' trust account and should be administered as such. The form should be signed by a bank representative and then maintained at the office of the property manager. A sample of this form can be found on the Oregon Real Estate Agency's website under Forms and Publications.

The FDIC requires that the identity and balance in the client's trust account "must be ascertainable by the records maintained in good faith and in the regular course of business" by the property manager. Oregon Administrative Rules (OAR's) have been written to instruct property managers on the details needed for this recordkeeping. Property managers should refer to chapter 863 division 25 of the OAR's for proper instruction.

The OAR's include instruction on proper three-way reconciliation of a client's trust account. The three-way reconciliation requires identification of balances for each owner (or each tenant for the security deposit clients' trust account) in Part III. The clients' trust account may not be properly insured if these reconciliations are not completed timely and accurately. The reconciliation must include all necessary supporting documentation prepared at the time of reconciliation.

"Regular course of business" requires all appropriate ledgers be updated immediately as transactions occur. This allows identification of funds by owner or tenant at any time during the month. The ledger detail that should be maintained is also defined in the OAR's chapter 863 division 25.

One of the consequences of ignoring the required recordkeeping and identifying information of each individual is that the clients' trust account will be com-

bined with any other accounts the property manager may have at the bank, and all the funds will only be insured up to the \$100,000 limit.

Mr. Costello encourages property managers to go to the FDIC website www.fdic.gov and become educated on FDIC insurance for identifying each individual for example:

- Name of the owner (or tenant for security deposit clients' trust accounts)
- Date of birth
- Current address
- Federal identification number (social security number, EIN number)

The Oregon Administrative Rules may

seem that they were written to create more work for the property manager. The intent is to protect both the property manager and his clients. This is just another example of the importance and advantages in complying with Oregon Real Estate Laws and Administrative Rules.

Editor's Note: The content and opinions expressed in this article do not necessarily reflect the views of, nor are they endorsed by, the Oregon Real Estate Agency. Ms. Bryan is not an employee nor representative of the Agency. Ms. Bryan can be reached at (971) 678-2829 or by e-mail at Brenda@brendabryan.com.

Fair Booths Not Considered Branch Offices

Agency staff recently reviewed the statutes and rules in regards to the registration of real estate companies' booths at fairs.

After discussion of the advantages and disadvantages of this requirement, Commissioner Bentley has decided that a booth at a fair would fall under an exemption in ORS 696.010(4)(b), which states that "Model units or temporary structures used solely for the dissemination of information

and distribution of lawfully required public reports shall not be considered branch offices..."

While the Agency has historically required a Branch Office Registration form for a booth at a fair, effective July 15, 2008, this will no longer be a requirement.

If you have any questions, please contact the Licensing Division at 503-378-4170 selection 2.

Editor's Note: The United States Postal Service requires the following information concerning circulation of the Oregon Real Estate News-Journal be published annually in the OREN-J.

1. Publication Title: Oregon Real Estate News-Journal. 2. Publication No.: 905-220. 3. Filing Date: 10/6/2006. 4. Frequency of Issue: Four Times Per Year. 5. No. of Issues Published Annually: 4. 6. Annual Subscription Price: \$2.00. 7. Known Office of Publication: 1177 Center Street NE, Salem, Oregon 97301-2505. 8. Headquarters of General Business: Same. 9. Names, Address of Publisher, Editor, Managing Editor: Oregon Real Estate Agency, Same; Mesheal Heyman, Same; Mesheal Heyman, Same. 10. Owner/Address: Oregon Real Estate Agency, Same. 11. Known Bondholders, Mortgagees, and Other Security Holders: None. 12. Tax Status: Not applicable. 13. Publication Title: Oregon Real Estate News-Journal. 14. Issue Date for Circulation Data Below: July 2008. 15. Extent and Nature of Circulation: A. Total No. Copies: Average no. copies each issue during preceding 12 months: 24,844 (No. copies of single issue published nearest to filing date: 24,725.) B.

Paid Circulation: 1. Paid/Requested Outside-County Mail Subscriptions: 23,605 (average), 23,160 (single issue). 2. Paid In-County Subscriptions: 980 (average), 1292 (single issue). 3. Sales through dealers and carriers, street vendors and counter sales: 0 (average), 0 (single issue). 4. Other classes mailed through the USPS: 0 (average), 0 (single issue). C. Total Paid Circulation: 24,585 (average), 24,452 (single issue). D. Free Distribution by Mail: 1. Outside County: 0 (average), 0 (single issue). 2. In-County: 0 (average), 0 (single issue). 3. Other classes mailed through the USPS: 3 (average), 4 (single issue). E. Free Distribution Outside the Mail: 75 (average), 82 (single issue). F. Total Free Distribution: 78 (average), 86 (single issue). G. Total Distribution: 24,663 (average), 24,538 (single issue). H. Copies not distributed: 181 (average), 187 (single issue). I. Total: 24,844 (average), 24,725 (single issue). J. Percent Paid and/or Requested Circulation: 99.7% (average), 99.6% (single issue). 16. This statement of ownership will be printed in the October 2008 issue of this publication. 17. I certify that the statements made by me above are correct and complete, (signed) Mesheal Heyman,

OREGON REAL ESTATE NEWS-JOURNAL, SALEM, OREGON 97301
Periodicals Postage Paid at Salem, Oregon

OREGON REAL ESTATE
NEWS-JOURNAL
(USPS 905-220)

Official Publication
Oregon Real Estate Agency
1177 Center St. N.E.
Salem, Oregon 97301-2505
Telephone: (503) 378-4170
Facsimile:
(503) 378-3256 Licensing
(503) 373-7153 Regulation
(503) 378-2491 Administration
Web Page:
<http://www.rea.state.or.us>

OREGON REAL ESTATE
AGENCY
Theodore R. Kulongoski,
Governor
Gene Bentley, Commissioner

REAL ESTATE BOARD
Michael Graeper, Chairperson,
Portland
Troy Costales, Vice Chairperson,
Keizer
Warren L. (Lee) Dunn,
Portland
Byron Hendricks, Salem
Christopher Hermanski,
Tualatin
Arthur Kegler, Boardman
Robert LeFeber, Lake Oswego
Kim Medford, Bend
Marianne Wood, Eugene

The Oregon Real Estate News-Journal is published four times a year by the Oregon Real Estate Agency as an educational service to all real estate licensees in the state under the provisions of Section 696.445 of the Oregon Revised Statutes. \$4.00/biennium subscription fee included in real estate license fee. All other subscriptions \$2.00 per year. POSTMASTER: Send address changes to *Oregon Real Estate News-Journal*, 1177 Center St. N.E., Salem, OR 97301-2505.

Mesheal Heyman, Editor
Vol. 62, No. 3
October 2008
Periodicals postage paid at
Salem, Oregon