



Oregon Real Estate News-Journal

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PURSuing EXCELLENCE IN EDUCATION

Michael R. Graeper, Chair, Oregon Real Estate Board

In the July 2006 edition of the *Oregon Real Estate News-Journal*, then Real Estate Commissioner Scott Taylor wrote an article entitled "More on Continuing Education." In that article Commissioner Taylor explained that, in response to his request, he had received feedback regarding the continuing education system for Oregon real estate licensees in addition to comments that came to him following the focus group interviews conducted in the field by the Agency.

As a result of those comments, the Real Estate Board formed two education work groups, one for real estate brokers and another for property managers. Both groups are looking at all types of required real estate education: pre-license, post-license and continuing education.

I chair the real estate broker work group, which is comprised of: Dave Koch, Re/Max Equity Group; Diane Peterson, Diane Peterson Seminars; Paul Gold, ProSchools; Marianne Wood, Board Member, Prudential Real Estate Professionals; John Zupan, Board Member, Windermere VanVleet & Associates; Art Kegler, Board Member, American West Properties; Lee Dunn, Prudential North-

west Properties; Katie Cox, American College of Real Estate and Appraisal; Carol Dozois, Prudential Real Estate Professionals; and Steve Lucas, Oregon Realty. Acting Commissioner Katie Cannon and Education Coordinator Mesheal Heyman serve as the Agency advisory staff members.

The property managers work group is chaired by Maxine Ribera-Card, Board Member, COLM Commercial Real Estate Services. Other members include: Eric Nelson, Cornerstone Realty Services; Linda Forbes, Pro-Studies; John Baker, Ned Baker Real Estate; Chris Hermanski, Mainlander Property Management, and Agency advisory staff, Becky Osborne, Regulation Division Manager and Mesheal Heyman, Education Coordinator.

The responsibility of these two work groups is to fully explore the nature of educating Oregon licensees, identify problems, create potential solutions, and develop an action plan.

Both of these work groups are in the process of completing their charge. You, as a real estate licensee, are encouraged to contribute your ideas and suggestions to any mem-



Chair Mike Graeper

ber of either work group, or send your suggestions in writing to the Real Estate Board, 1177 Center Street NE, Salem, Oregon 97301. You also can e-mail them to orea.board@state.or.us.

Your input regarding areas of concern along with your suggested solutions to any problems you identify could make a real difference to the future of real estate education for yourself and all Oregon real estate licensees.

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AGENCY TO ADOPT NEW PROCESS, RULES FOR LICENSE TRANSFERS

In 2005 the Oregon Legislature passed House Bill 2096. This bill eliminated the agency's authority to require the physical return of licenses when brokers transfer from one principal broker to another. Hence, the Real Estate Agency can no longer require that the actual paper licenses be sent to the Agency prior to processing transfers.

Specific issues have developed that prompted the Agency to review its current process for transferring licenses:

- A principal broker may not know if or when a broker has transferred

his or her license to another principal broker. Since principal brokers are held accountable for the transferring broker until the transfer is effective, this can cause various legal and ethical issues for the licensees involved.

- The principal brokers may not know what day the transfer is valid at the Real Estate Agency. Currently, Oregon Administrative Rule (OAR) 863-015-0030(3) specifies that the transfer is valid on the first business day after all required forms and fees are received in the Agency's office. It is difficult for the principal brokers and the transferring broker to know the date when the transfer legally occurs.

To address these issues, the Agency will be making the following changes to its procedures:

- A signature line will be added for the transferring broker to certify that he/she has notified the principal broker they are leaving of the transfer in writing. The transferring broker will indicate the specific date that the written transfer notice was provided to the principal broker. The date specified must be prior to the date the transfer form is received at the agency.
- Once the principal broker is notified that a broker is transferring to another real estate firm, the principal broker currently has the option of returning the transferring broker's paper license to the Commissioner. When the paper license is received at the Agency, the license change is entered into the

database on the same day it is received. At that time, the transferring broker's license is rendered inactive and the principal broker is released from accountability for licensing purposes. For a 30-day period from that date, the transferring licensee may reactivate the license by completing the forms prepared by the Commissioner and paying the transfer fee specified in Oregon Revised Statute 696.270. After the 30-day period has elapsed, the license may only be reactivated in accordance with s OAR 863-015-0065(5)(b).

- The effective date of the transfer of the transferring broker to the new principal broker is the first business day after all required forms and fees are received by the Agency [OAR-863-015-0030(3)]. A new license will be issued to the new principal broker. The principal brokers and transferring broker will have to check with the Agency to determine if the transfer is complete by calling the Agency or checking the Agency's web-based license lookup (<http://www.rea.state.or.us/REALicensedata.shtml>).

The Agency will update OAR 863-015-0065 through temporary rule to reflect the changes in the statute and provide the process required for transferring a license. The temporary rule will be posted on the agency's website. A formal rule making process will follow during the next six months to review the proposed rule and make the rule permanent.

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VISIT WWW.REA.STATE.OR.US

- Look up licensees
- Research statutes and rules
- Download forms
- Read back issues of *OREN-J*
- Learn about continuing education requirements
- Find jobs with the Real Estate Agency

COURSE REQUIRED FOR NEW AND RELICENSED BROKERS

You must complete the Oregon Real Estate Agency-approved Advanced Real Estate Practices course (AP) if you:

- received your very first Oregon real estate broker license on or after after July 1, 2002 (this does not include licensees who were required to take the Associate Broker Transition Course); or
- let a previous Oregon license expire (or otherwise lapse) and obtained a new broker license on or after July 1, 2002.

The AP course is a specific 30-hour course that must be completed be-

fore your first active license renewal. Your first license is valid from the date of issue for one year and then onto the last day of the month of your birthday. This means your first renewal date may be less than 13 months after obtaining your license. For example, if your first license was issued in May 2006, and your birthday is in June, your license would renew June 30, 2007.

If your license is inactive at the time of renewal, you do not need to

take the AP course until you reactivate your license.

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

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.

If you do not know if you need to take the AP course, please contact the Agency at (503) 378-4170.

When affiliated brokers complete the AP course, the course certificate must be given to their principal broker. The principal broker signs the licensee's renewal form stating that the course has been completed, and then keeps the certificate for six years as required by ORS 696.280(2) and (3).

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 from the Agency's website at www.rea.state.or.us, or by calling the Agency at (503) 378-4170.



Who needs to complete the AP course?

- Affiliated brokers first licensed on or after July 1, 2002.
- Any affiliated broker who had a license prior to July 1, 2002, let it expire, and became relicensed on or after July 1, 2002

Who does not need to complete the AP course?

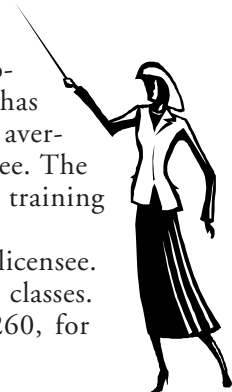
- Affiliated brokers who got their first license before July 1, 2002. (If you were required to take the Associate Broker Transition Course, you do not need the AP course.)
- Principal Brokers
- Sole Practitioner Brokers
- Property Managers

Check with the Agency's Education Section, (503) 378-4170, selection 2, if you received your license through a reciprocal license agreement.

ESCROW LICENSEES' CONTINUING EDUCATION

The deadline for escrow license renewals is June 30, 2006. The renewal process includes certification that the educational requirement for escrow staff has been met. ORS 696.511(6)(a) requires that escrow agency staff complete an average of six hours or more of training per year per permanent, full-time employee. The education requirement pertains only to escrow staff located in Oregon. The training must be in subjects that bear directly on the administration of escrows.

The type and method of education is left to the discretion of the escrow licensee. The Agency cannot specify topics, adopt rules, waive requirements, or approve classes. Please contact the Education Section at (503) 378-4170, extension 251 or 260, for more information.



RANDOM TRUST ACCOUNT AUDITS

Dustin Ball, Real Estate Agency Staff

In the fall of 2003, the Real Estate Agency began a quarterly random mail-in audit program for clients' trust accounts.

When trust accounts are not reconciled monthly, as required by Oregon Administrative Rule (OAR) 863-025-0025(5) and (6), simple errors are compounded and become harder to identify as time passes. This situation, depending on the severity, may lead to sanctions on a license, as can be seen in the last few pages of each Oregon Real Estate News-Journal.

HOW DID YOU SELECT ME?

Every quarter 100 clients' trust accounts are randomly selected from the Agency's database for audit. This is not 100 companies or licensees, but rather 100 trust accounts on file with the Agency. Accordingly, if you are a property management company that maintains 20 accounts, then you are 20 times more likely to be selected than a real estate company that maintains only one account. There is no limit to how many accounts a particular company/licensee can have selected for audit in a given quarter.

I'VE BEEN SELECTED. NOW WHAT?

After the audit selection has been made, the Agency sends out letters requesting a copy of a recent reconciliation and all supporting documentation. A response is requested within 45 days. In instances where the Agency does not receive a response to audit letters, an investigation file may be opened.

The seven items listed below are what the Agency typically requests in a mail-in audit. Remember, the general rule of thumb if you are unsure of exactly what to provide, too much information is better than too little.

- A copy of all owner/tenant ledgers as of the reconciliation date – This is the Agency's way of finding out to whom the money belongs. It is expected that at any given time you would be able to look at the totality of your ledgers and that this would identify the owner of every single penny in the trust account. Essentially the sum of your owner/tenant ledgers should be the exact amount of the available funds in your clients' trust account. For more information on owner and tenant ledgers, please refer to OAR 863-025-0050 and OAR 863-025-0055.
 - A copy of your receipts and disbursements journal for the audit period -When the Agency requests a photocopy of your receipts and disbursements journal, it is looking for a check register, similar to what you maintain for your personal checking account. This document should track the available funds in the trust account at any given moment. Not only does the Agency want to see that you can look to your receipts and disbursements journal for an accurate available funds balance, but it also wants to see each individual receipt and disbursement that affected the balance. For more information on what is required to be in a receipts and disbursements journal, please refer to OAR 863-025-0040.
 - A copy of your clients' trust account reconciliation with associated work papers - These documents show the Agency how the bank statement, ledgers, and receipts and disbursements journal correspond with one another while, at the same time, individually tracking your trust funds. By reconciling your trust account, you will show to the Agency that the balance on your bank statement, after considering your out-
- standing checks and deposits, equals the period end amount shown on your receipts and disbursements journal, and equals the sum of all owner/tenant ledgers. (Please note: Outstanding deposits should be very rare.)
- If there is any difference between the totals of any of these documents, the discrepancies need to be identified. This should include the source of the discrepancy as well as the corrective action you have taken. Again, the more information, the better. The Agency wants you to show you understand what happened, and what you are doing to fix it. The Agency is more likely to investigate the unexplained; for instance, an investigator would be more interested in investigating a bank reconciliation that has been "force balanced" rather than a reconciliation that already tells the investigator what happened, why it happened, and what has been done to fix it.
 - Identify whether the account is for an individual property owner or if it is an account for several property owners – The Agency asks you to identify the clients' trust account as either an account for an individual owner or as an account for several owners because OAR 863-025-0025(4) and OAR 863-025-0040(1) allow for the maintenance of either a receipts and disbursements journal or an owner ledger when a separate account is maintained for only one owner. This does offer a benefit; however, the trade off is that you then have to maintain a separate trust account for each owner and reconcile each account separately. This will likely increase the time you spend on monthly reconciliations. Please be aware that even if your clients' trust account is for an individual owner, your security
- A copy of the bank statement for the audit period

deposit account does not fall under the same provision, and you will still need to maintain both a receipts and disbursements journal as well as individual tenant ledgers.

- Identify if the account is interest bearing or uses electronic transfers - These are both common items that appear on trust account bank statements that the Agency receives. Too often we find that property managers and principal brokers do not have proper written authorizations in place from the owners. Another common situation the Agency encounters is interest bearing tenants' security deposit accounts without written authorization from the tenants. You are required to obtain authorization from all tenants to place security deposit funds in an interest-bearing account. For more information on what is required regarding interest bearing accounts and electronic transfers please refer to OAR 863-025-0025(8) and OAR 863-025-0025(10).
- Identify a contact person along with a contact phone number – The Agency wants the name and phone number of a person who can be called about questions regarding the audit. In many situations, an investigation can be avoided by making a simple phone call in which the Agency can get a better understanding of your reconciliation and/or obtain copies of missing or additional documents.

I RETURNED MY MAIL-IN AUDIT. WHAT DOES THE AGENCY DO WITH IT?

After the Agency reviews your mail-in audit submission, there are three possible outcomes.

The first is a letter from the Agency indicating that a review of your submission appears to comply with the basic requirements. If you receive one of these letters, please don't construe

it to mean that everything you are doing complies with all statutes and rules. This only means that we are satisfied with this brief overview and do not need to investigate further at this time.

The second possible outcome is a letter from the Agency, indicating that in reviewing your submission, items have been identified that may not be in compliance with statutes and rules, and now that those items have been brought to your attention, it is expected that they will be fixed within 15 days of our letter.

Finally, the last option is that an investigation file is opened. This occurs in instances where several compliance issues are identified or when we are unable to determine that a true and accurate bank reconciliation has been submitted. The vast majority of the mail-in audits the Agency receives do not lead to administrative actions; however, in instances where there are missing funds or a demonstrated inability to perform even basic accounting requirements, licenses have been suspended, and even revoked.

Here are a few items that, if they show up on your mail-in-audit, can persuade the Agency to schedule a visit to your office in the very near future:

- Negative owner/tenant ledgers
- Several outstanding deposits and/or adjustments
- Old outstanding deposits and/or adjustments
- Force balancing (making it appear that there are no reconciling items, when in fact there are)
- Bank transactions that do not have corresponding entries on your receipts and disbursements journal and/or owner ledgers

- Unexplained bank transfers
- NSF checks from your trust account

WHAT SHOULD I DO NOW BEFORE I'M SELECTED FOR AN AUDIT?

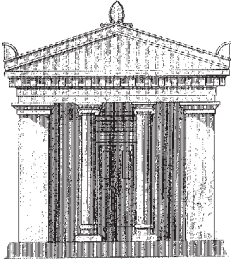
You might try the Agency's updated trust account reconciliation form, which is available on the Agency's website at www.rea.state.or.us, to assist you in keeping your records up-to-date. (For those of you who have used a past version of this form, you will notice that the line which was previously included in Part 1 labeled "Account Adjustments" has been removed. This line was removed because many people were using this as a place to list any reconciling items so that their reconciliation would appear to balance on its face, thus "force balancing" their reconciliation.)

If you take any guidance from this article, the Agency hopes that it is an understanding on the importance of thoroughly reviewing your bank reconciliations monthly when you sign and date them. There have been too many investigations where a property manager/principal broker only signs and dates the reconciliation and then, when confronted concerning compliance issues, explains that they trusted their bookkeeper, CPA, attorney, etc. The reality is that the licensee is responsible for the reconciliations, and any sanctions will be on the licensee.



ADMINISTRATIVE ACTIONS

November 1, 2006 through January 31, 2007



The Agency is required by Oregon Real Estate License Law to publish disciplinary actions. A list of those actions, a brief description of the situation, and the

grounds for the Commissioner's action follows. Please note there are 60 days after the order date to file an appeal, and some of the orders listed may be within that appeal period. Please also 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

Heil, Jon L. (Portland) Property Manager #951100174

Order on Default dated December 28, 2006, effective January 29, 2007. As the result of a random audit in April of 2006, OREA opened an investigation file. Heil, through his attorney, provided documentation requested regarding his clients' trust accounts (CTAs). Some requested information, i.e., receipts and disbursements journal for the security deposit CTA, the security deposit CTA bank reconciliations, and copies of several specific checks, were not provided. In addition, written explanations on specific items requested by the OREA were not provided. A review of the documentation submitted revealed: (1) that reconciliations Heil provided for the operating CTA show a negative balance ranging from -\$978.42 to -\$23,900.55; (2) the

information Heil recorded on the receipts and disbursements journal does not identify each individual owner for whom each receipt or disbursement is associated; (3) Heil did not maintain records that tie the deposits shown on the receipts and disbursements journal to specific deposits shown on the operating CTA bank statement; (4) Heil did not provide adequate information on the tenant ledgers to track the security deposits on hand; (5) Heil did not provide supporting documentation for the operating CTA reconciliations; (6) Heil established ledgers identified as "housekeeping" and "clearing account" into which he posted receipts and disbursements that were not connected to any particular owner's account or ledger; (7) Heil used a check card to make a debit purchase as well as set up automatic payments for a water bill from the operating CTA; (8) Heil used two different check sequences for the operating CTA; (9) Heil reconciled the operating CTA to a negative balance and the reconciliation did not balance the individual owner ledgers to the check register or record of receipts and disbursements, and equal the reconciled bank balance of the CTA; (10) Heil billed owners for work that Heil performed as repair/maintenance to the various properties he managed. Heil charged owners \$15 per hour for his time, plus materials. Heil did not actually track his time as work was done but at a later time estimated the time spent. Heil did not break down the charges by materials and labor and only estimated a total charge that he then billed to the owner's account. Heil did not retain information sufficient to explain the amount for the entries in the owner ledger; (11) Heil's receipts and disbursements journal show checks being paid to Jon Heil Labor Co., but the checks were actually written to other payees such as Beverly Heil or "NBM";

(12) Heil's owner ledgers show checks being paid to Jon Heil Labor Co., but the checks were actually written to other payees; (13) Heil's wife signed checks drawn on the operating CTA. Heil was unable to produce the written authorization for his wife to be a signor on the CTA; (14) Beverly Heil accessed the QuikBooks accounting program and made changes to previous entries. Heil is not able to produce accurate accounting records in part because of the changes made by his wife; (15) Heil withdrew management fees which caused a negative balance or withdrew management fees when there was already a negative credit balance on the owner ledger; and (16) Heil was unable to account for checks or provide an explanation to the Real Estate Agency for certain checks that the Agency requested. On October 11, 2006, the Agency requested additional documentation and explanations from Heil's attorney needed to complete the investigation. Heil's attorney advised that Heil was unable to provide a substantive response to the Agency as requested as Heil's accountant was working on the bookkeeping records. The Inventory of and Authorization to Examine Clients' Trust Accounts form on file with the Agency indicated that North Bank Management has only notified the Agency of its operating CTA, and has not notified the OREA of its security deposit CTA. Supplement to 3/07 OREN-J.

Violations: OAR 863-025-0025(1)(3)(a)(f)(i)(5)(7), 025-0035, 025-0040(2)(e), 025-0065(4), 025-0050(4), 025-0025(5), 025-0055(2)(f)(4); ORS 696.280(3) and 696.241(2)(3)

Kopf, Julie E. H. (Ashland) Broker #200401014

Order on Default dated January 18, 2007, effective January 18, 2007. Kopf indicated on her renewal appli-

cation that she had been convicted of a criminal offense since her last renewal. On November 16, 2006, Kopf pled guilty to charges resulting from three incidents: (1) August 24, 2006 arrest for Assault 4 and Physical Harassment; (2) August 27, 2006 arrest for Possession of Heroin, and (3) September 11, 2006 arrest for Possession of Heroin. Oregon Judicial Information Network records showed criminal incidents involving Kopf prior to the August and September 2006 incidents. On November 21, 2006, Kopf was arraigned for a July 17, 2006 charge of possession of heroin. On November 30, 2006, Kopf was lodged in jail for new charges.

Violation: ORS 696.301(14)

Kuehl, David M. (Shady Cove) Property Manager #990600152

Order on Default dated November 20, 2006, effective November 20, 2006. As the result of a random audit in January of 2004, the Real Estate Agency opened an investigation file. Kuehl submitted documentation requested regarding his clients' trust accounts (CTA). A review of the information provided revealed: (1) that 9 of the owner's accounts had a negative balance; (2) Kuehl did not maintain a running balance check register; (3) Kuehl's property management CTA reconciliation did not include a total of the owners' ledgers, and the receipts and disbursement journal was not balanced to the bank account; (4) Kuehl's security deposit CTA reconciliation did not include a total of the tenants' ledgers, and the receipts and disbursement journal was not balanced to the bank statement; and (5) multiple checks and debits were listed payable to Kuehl to reimburse Kuehl for payments he made for repairs or cleaning, but none of the service providers were identified and recorded.

Violations: OAR 863-025-0025(3)(e)(h), (5), (6), 863-025-0040(2)

Momeni, Moji (Beaverton) Property Manager #200111027

Order on Default dated January 18, 2007, effective February 9, 2007. On October 5, 2006, Momeni was found guilty on two counts of Sex Abuse in the Second Degree and one count of Sex Abuse in the Third Degree. Momeni was sentenced to 45 days in jail, and five years formal probation, and is required to register as a sex offender. The subject victim was a tenant in one of the units managed by Momeni.

Violations: ORS 696.301(26) (2003 Edition), OAR 863-015-0175 (2005 Edition)

Pleites, Samuel A. (McMinnville) Broker #950600080

Order on Default dated December 28, 2006, effective December 28, 2006. On February 5, 2004, a task force was formed to investigate allegations of various persons falsifying loan documents, receiving money from victims for various escrow, loan and home inspections, and not depositing funds with their principal brokers or to escrow. Subject individuals allegedly focused on Hispanics who had limited understanding of the English language and/or did not speak or read English at all. The Real Estate Agency was included in this task force. Pleites was one of the real estate licensees named by victims, and real estate and personal documents were seized from Pleites' residence and reviewed. More victims came forward and documents were obtained from real estate and escrow offices. Pleites was arrested and charged with first-degree theft and the case was subsequently dismissed because a critical victim moved out of state.

Renter C rented a room at 1744 SW Almont Ct., in McMinnville, Oregon from owner L. Owner L was losing property to foreclosure. Renter C and Owner L contacted Pleites for assistance. Owner L listed the property with Pleites in March 1999 for \$126,000. Renter C could not qualify for a loan on his own, so Pleites

suggested Renter C obtain a co-signer. Friend J agreed to be a co-signer. Renter C and Friend J executed an earnest money agreement to purchase the property for \$121,000 with \$500 earnest money evidenced by a promissory note. The promissory note was to be redeemed on or before March 15, 1999, but was not redeemed until March 31, 1999. Pleites did not provide the transaction documents to his designated broker. The transaction closed on April 13, 1999, Owner L moved out of the house and Renter C, now Buyer C, could not afford the mortgage payments. Buyer C contacted Pleites for advice. Pleites suggested that Buyer C stay in the house for a year. Buyer C couldn't make the payments and wanted to sell. In January 2000, Friend J signed a quitclaim deed releasing his interest in the property to Buyer C. On April 17, 2002, Buyer C signed a quitclaim Bargain & Sale Deed, deeding the property to Pleites. After Buyer C signed the Bargain & Sale Deed, Pleites had Buyer C sign a quitclaim deed on April 17, 2002. Pleites gave Buyer C a check for \$500 dated April 17, 2002. Both deeds were written with no consideration. Neither deed was recorded. Pleites made some payments on Buyer C's mortgage. In September 2002, Buyer C's mortgage went into default. Pleites wanted to sell the property to Buyer M. Buyer M's lender required that Pleites had been in title for 12 months. Pleites provided Buyer M's lender with a quitclaim deed signed by Buyer C showing it was dated July 18, 2001, instead of April 17, 2002, and it was recorded on July 18, 2002.

Violations: ORS 696.301(1), (31); OAR 863-10-025(2) (1997 Edition)

Trunk, George J. (Newberg) Broker #780303940

Order on Default dated November 27, 2006, effective December 29, 2006. The Real Estate Agency received a complaint from Seller U **ADMINISTRATIVE ACTIONS:** *continued on page 8*

ADMINISTRATIVE ACTIONS: *continued from page 7* leging various instances of misrepresentation and fraud by Trunk in acting as a broker for Seller H regarding property owned by Sellers U and H. Sellers U and H have been friends for approximately 40 years. Sellers located some property on Grand Island, Oregon which Seller U purchased and agreed that Seller H would farm the land. About 10 years ago, Seller U sold the farm to Seller H through a trust deed. There was no written contract regarding the sale. About four years ago, Seller H told Seller U that Trunk had a buyer for the property and that Seller U would be paid off soon. The transaction was to be a 1031 exchange, so Seller U gave Seller H a warranty deed. Seller U instructed Seller H to record the warranty deed when the property sold to Trunk's buyer. In December 2004, Seller H recorded the deed even though the property had not sold. In mid-2005, Seller U returned to the country and Seller H informed Seller U that Trunk's buyer was a California trust, that everything about the sale was "top secret" and that "high government officials" were involved. Seller U discovered that Seller H had recorded the warranty deed. On December 12, 2005, Seller H executed a warranty deed transferring the property back to Seller U. Seller U alleged that Trunk influenced Seller H to record the Seller U to Seller H warranty deed and that Trunk was unduly influencing Seller H in a real estate transaction involving Seller U's property. On July 27, 2006, Agency investigators met Trunk at his office and served Trunk with a subpoena requiring the production of transaction documentation. On August 10, 2006, Trunk and Seller H appeared at the Agency and were interviewed; however, Trunk did not produce the requested documentation. Trunk admitted that there was a failed purchase attempt but that details remained secret.

Violation: ORS 696.280(3)

SUSPENSIONS

Kirstein, Gerald L. (Medford) Broker #800200071

Hearing Order dated December 4, 2006 issuing a nine-month suspension effective January 2, 2007. The Real Estate Agency received a complaint from Tenant G that Kirstein presented himself as a rental agent and rented property to Tenant G that had already been rented to someone else. Tenant G further alleged that Kirstein personally cashed the \$600 rental deposit check. The Agency received another complaint from Seller T that Kirstein would not remove property owned by Seller T from the Southern Oregon Multiple Listing Service (SOMLS) despite Seller T's request to do so. Seller T also alleged that Kirstein had no listing for the property. Both complaints involve the same property. Seller T, along with Kirstein and Investor H purchased two properties as investments. One property was quickly resold. The second property is the subject of the complaints. Seller T believed she was working with Kirstein as a fellow investor rather than as a real estate broker. The subject property was held in Seller T's name only. The subject property was purchased in March 2005. Kirstein was to obtain a zoning change. The property was to be rented until the zoning change was complete. On May 25, 2005, Kirstein placed the property in SOMLS showing the listing broker as Pacific Northwest Commercial Investments Real Estate. On June 12, 2005, Kirstein executed a rental agreement with Tenant G. Tenant G gave Kirstein a \$600 rental deposit check subject to owner approval. The payee name on the check was left blank. Tenant G was to provide the balance of \$1,000 two weeks later. Kirstein did not consider Tenant G to be a strong candidate. On June 14, 2005, Kirstein showed the subject property to Tenant H, who had seen the property advertised as a rental. Tenant H signed a rental agreement on June 14, 2005, paid \$1,600 deposit, and moved into the

property on June 15, 2005. Kirstein deposited Tenant G's check into his personal checking account on or about June 16, 2005. Kirstein did not maintain property management records for either Tenant G or Tenant H. The zone change was approved on June 23, 2005. Kirstein placed a for sale sign outside subject property in July 2005. Kirstein's sign and business cards used the business name Pacific Northwest Commercial Investments Real Estate. After the property was listed with Kirstein, Seller T and Investor H decided they did not want Kirstein representing the property and requested the listing be withdrawn. Kirstein objected and said he had a buyer for the property. Kirstein was given until August 10, 2005 to sell the property or withdraw the listing. The property did not sell by August 10, 2005 and Kirstein would not withdraw the listing. On September 23, 2005, Kirstein received an earnest money agreement. Seller T informed the prospective buyer that she was representing herself in the sale and that Kirstein was not the listing agent. Kirstein's real estate license was being suspended for four months based on a previous complaint, effective September 30, 2005. Kirstein granted power of attorney to another licensee to sign an accepted offer submitted by another real estate agent for the subject property. Kirstein stated in the power of attorney that he had an ownership interest in the property. On October 31, 2005, Kirstein filed an action entitled Suit to Quiet Title Specific Performance in Circuit Court against Seller T. That matter is unresolved at the time of the order.

Kirstein was conducting business in the name of Pacific Northwest Commercial Investments Real Estate when he knew his registration of the business name had lapsed and was being used by another party.

In November 2004, Kirstein completed a renewal application for his broker's license. Kirstein listed his address as 1425 Pleasant Street,

Medford, Oregon 97504. Kirstein's previous business address was 711 Medford Center Box 355, Medford, Oregon 97504. The Medford Center address is a UPS Store, which is considered a mailing address rather than a physical location.

Kirstein did not report to the Agency adverse results he received in three cases filed in Jackson County Circuit Court or a judgment entered against him in Jackson County.

Violations: ORS 696.301(4), (8) and (17), ORS 696.241(1), OAR 863-025-0020, OAR 863-025-0035, OAR 863-015-0095 (2003 Editions), and OAR 863-10-120 (1997 Edition)

REPRIMANDS

Crafton, Jerry L. (Prineville) Broker #790800171

Stipulated order dated December 18, 2006. The Real Estate Agency received a complaint from Seller P complaining that Crafton failed to perform and to exercise reasonable care and diligence; that Crafton worked for more than one person in the transaction without the knowledge or written permission of all parties; that Crafton did not provide agency disclosure statements; that Crafton was negligent in representing multiple parties to a convoluted transaction; that Crafton incorrectly prepared legal documents intended to secure performance of one of the parties to the detriment of the other; that Crafton failed or refused to record documents intended to protect one party against the other and encouraged a real estate transaction for a client that was contrary to the client's expressed desires.

Crafton represented Buyer M in the sale of Buyer M's property. Buyer M wanted to build a specialized duplex for home care. Seller P owned a large parcel of land. Crafton proposed to Seller P that Seller P sell a portion of the large parcel to Builder M to build the specialized duplex for Buyer M. The large parcel had not been formally partitioned. Crafton wrote an offer for Buyer M to pur-

chase a parcel of land to be carved out of the larger parcel owned by Seller P for a \$35,000 purchase price. The \$1,000 promissory note was made payable on or before December 12, 2003, which was the closing date. Seller P accepted the offer. Closing was contingent upon Buyer M's property closing and Seller P having the lot partitioned with sewer and water to the lot. Crafton represented both seller and buyer. Crafton did not obtain a Disclosed Limited Agency Agreement from Seller P. Crafton wrote an addendum for Buyer M to deed the property to Builder M at closing. Escrow was opened with Seller P and Buyer M. Buyer M paid \$34,165, the balance of the purchase price, to escrow. Although there was no documentation changing the buyer from Buyer M to Builder M, escrow requested that Buyer M state in writing that the \$34,165 paid was a gift to be applied toward the purchaser's funds for the transaction between Seller P and Builder M and that any refund would be made payable to Builder M. Crafton advised Buyer M to sign the "gift" escrow instructions. Escrow instructions and closing statements showed Seller P as the seller and Builder M as the buyer and showed that the property being purchased was the entire parcel, before partitioning, for a sale price of \$35,000. Crafton had Builder M sign a trust deed and promissory note in favor of Seller P, so that after the property was partitioned, Seller P would be in title. The trust deed was never recorded and Crafton allowed the transaction to close without any assurance that Seller P would retain title to the balance of the large parcel after partitioning.

Crafton wrote an offer for Buyer M to purchase the lot and duplex from Builder M. Crafton did not obtain Builder M's signature. Prior to beginning construction, Crafton pointed out the property corners to Builder M. Later, a survey determined that the duplex built by Builder M encroached on the remain-

ing parcel owned by Seller P. In October 2005, the duplex was completed, there was no sewer and water to the lot and no street in place, which was required to obtain approval of the lot partition. The road was completed in October 2006.

Violations: ORS 696.301(1), 696.810(3)(c), 696.815(5)(b); OAR 863-015-0135(5), and 015-0210(1) (2003 Edition)

Jacobson, Rae Ann (Lake Oswego) Broker #940200161

Stipulated order dated December 7, 2006. Buyer complained that Jacobson failed to disclose known dry rot issues in the condominium complex prior to Buyer purchasing a condominium. In November 2004, Buyer purchased a condominium from the Seller who was a builder and had not occupied the condominium. Jacobson represented both the Seller and Buyer. Approximately one month after the purchase, Buyer learned of a dry rot problem that had been in existence for some time. Buyer realized she did not have a Seller's Property Disclosure Statement. Jacobson failed to inform Buyer that Buyer was entitled to review a Seller's Property Disclosure Statement, failing to inform Buyer of buyer's rights under ORS 105.462 to 105.490.

Violation: ORS 696.870(2) (2003 Edition)

LaMeres, Michael Lisa (Eugene) Broker #200104153

Stipulated order dated January 12, 2007. After LaMeres moved her license to a new principal broker, her former principal broker complained that LaMeres worked on files belonging to the former principal broker. A dispute arose over whether or not LaMeres had the permission of her former principal broker to continue working on the former principal broker's files. LaMeres stopped working on her former principal broker's files when she received a letter from her former principal broker stating

ADMINISTRATIVE ACTIONS: continued on page 10

ADMINISTRATIVE ACTIONS: *continued from page 9* that LaMeris was to cease working on the files.

Violation: ORS 696.301(3) (2003 Edition)

CIVIL PENALTIES

Carter, Anna M. (Myrtle Creek) Broker #780401360

Stipulated order dated November 13, 2006 issuing a \$100 civil penalty. Carter failed to renew her real estate license for 37 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2)

Coutoumanos, Steven Clarence (Bend) Broker #200404388

Stipulated order dated December 7, 2006 issuing a \$3,100 civil penalty. Coutoumanos failed to renew his real estate license for 211 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2)

Crowe, Lois (Dallas) Broker #970600072

Stipulated order dated December 11, 2006 issuing a \$100 civil penalty. Crowe failed to renew her real estate license for 51 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2)

Darrow, Amy J. (West Linn) Broker #970500108

Stipulated order dated December 11, 2006 issuing a \$600 civil penalty. Darrow failed to renew her real estate license for 77 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2)

Favret, Michael J. (Eugene) Broker #821000024

Stipulated order dated December 4, 2006 issuing a \$1,100 civil penalty. Favret failed to renew his real

estate license for 92 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2)

Jackson, Joni (Portland) Broker #950600214

Stipulated order dated January 9, 2007 issuing a \$1,100 civil penalty. Jackson failed to renew her real estate license for 94 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2)

Knighton, Paul Richard (Hillsboro) Broker #200411088

Stipulated order dated December 1, 2006 issuing a \$100 civil penalty. Knighton failed to renew his real estate license for 41 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2)

Merck, Richard M. (Portland) Broker #780303283

Stipulated order dated December 1, 2006 issuing a \$600 civil penalty. Merck failed to renew his real estate license for 69 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2)

Murphy, Betty Eileen (Portland) Broker #200411090

Stipulated order dated November 20, 2006 issuing a \$1,100 civil penalty. Murphy failed to renew her real estate license for 98 days while continuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2)

Nesting, Gregory R. (Portland) Broker #890900047

Stipulated order dated November 26, 2006 issuing a \$1,100 civil penalty. Nesting failed to renew his real estate license for 97 days while con-

tinuing to conduct professional real estate activity.

Violation: OAR 863-015-0050(2)

OTHER

Sawyer, Tami (Bend) Broker #900400230

Stipulated order dated December 29, 2006 issuing limitations of supervisory oversight upon the license of Tami Sawyer.

This matter is in response to a complaint that the Real Estate Agency received from Seller S that alleged that Sawyer failed to perform and to exercise reasonable care and diligence in a transaction where Seller S would be the seller and a company solely owned by Sawyer would be the buyer. Seller S's property was subject to a foreclosure action at the time that Sawyer's company made an offer.

After appropriate management approval, the investigation revealed three additional transactions that were similar to that of Seller S. The stipulated order recites the following violations that occurred in one or more of the transactions:

- Failed to note the time of acceptance of the offers, in violation of OAR 863-015-0135(3) pursuant to ORS 696.301(27) (2003 Edition).
- Made the earnest money promissory notes payable on or before closing, not on acceptance of the offer by the seller or payable within a stated time after seller's acceptance in violation of OAR 863 015 0135 (5), pursuant to ORS 696.301(27) (2003 Edition).
- Failed to adequately disclose in the offers that Sawyer was a licensed real estate associate broker and a member of the buyer company. Rather, Sawyer stated "One of the members of Starboard LLC is an Oregon Licensed Real Estate Associate Broker" in violation of OAR 863-015-0145(1)(5) pursuant to ORS 696.301(27) (2003

- Edition).
- Failed to prepare an addendum extending the closing date and failed to include all the terms and conditions of the transaction in violation of OAR 863-015-0135(5), pursuant to ORS 696.301(27) (2003 Edition).
- Provided listing agreements to her principal broker but failed to provide her principal broker with certain transaction documents after the deal was dead. Sawyer's assistant failed to follow company policy, and, therefore, Sawyer inadvertently conducted professional real estate activities outside the scope and control of her principal broker, in violation of OAR 863-015-0145(3) pursuant to ORS 696.301(27) (2003 Edition)
- Failed to have Sawyer's company sign the \$1,000 earnest money promissory note, putting the seller in a position of possible harm, in violation of ORS 696.805(3)(c) pursuant to ORS 696.815(2)(a) and ORS 696.301(33) (2003 Edition).
- Represented Starboard LLC as a seller prior to the company actually being in title, in violation of ORS 696.301(1) (2003 Edition).
- Failed to produce a termination agreement, in violation of OAR 863-015-0135(5) pursuant to ORS 696.301(27) (2003 Edition).
- Submitted to escrow an original and a revised first page of an earnest money agreement showing two different purchase amounts and terms demonstrating negligence in performing an act for which the licensee is required to hold a license in violation of ORS 696.301(28) (2003 Edition).
- Failed to produce a written Disclosed Limited Agency Agreement in violation of OAR 863-015-0210 pursuant to ORS 696.301(27) (2003 Edition).
- Made the \$1,000 earnest money promissory note payable to AmeriTitle South when the transaction escrow was set up to close at First American Title, in violation of ORS 696.815(2)(a) and ORS 696.301(33) (2003 Edition). (NOTE: In any circumstance, promissory notes should be made payable to the seller or the seller's broker—not to escrow).
- Failed to disclose to the potential buyer that the property was in foreclosure, that Sawyer was attempting to negotiate a short sale, and that the underlying sale needed to close before Sawyer could complete the sale to the potential buyer, in violation of ORS 696.815(2)(a) and ORS 696.301(33) (2003 Edition).
- Failed to produce a written Disclosed Limited Agency Agreement in violation of OAR 863-015-0210 pursuant to ORS 696.301(27) (2003 Edition).

In mitigation of these violations, the Real Estate Agency acknowledges the licensee's efforts to improve processes, manage risk, and improve communication with her clients. She also has willingly agreed to submit to additional supervision to assure future transactions do not incur the same difficulties.

2007 REAL ESTATE BOARD MEETING DATES AND LOCATIONS

- April 16, 2007 Salem
- June 18, 2007 Salem
- August 20, 2007 Astoria or Lincoln City
- October 15, 2007 Medford
- December 17, 2007 Salem

All Board meetings scheduled for Salem are held at 10 AM at the Oregon Real Estate Agency office, 1177 Center St. N.E. Call (503) 378-4170, extension 260, for additional information on Board activities.

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