

Education Advisory Council

December 01, 2010

The Oregon Real Estate Agency has formed an Education Advisory Council. The Council provides feedback and suggestions to the Agency about real estate education.

Recently, the members of the Council were asked to review Division 22 of Oregon Administrative Rule chapter 863. Responses received from the members will be used as the Agency begins to revise pre-license education guidelines.

The Agency recognizes the members of the Council and thanks them for their participation:

John Baker, Ned Baker Real Estate, Salem
Joyce Beach, Oregon Association of Realtors, Salem
Krista Bolf, Coldwell Banker Pro West, Ashland
Brenda Bryan, consultant, Beaverton
Jan Caplener, Realty Trust Group, Portland
Emily Cedarleaf, Multifamily Housing Council, Salem
Marcia Edwards, Prudential Real Estate Professional, Eugene
Gail Fisher, Coldwell Banker Barbara Sue Seal Properties, Portland
Linda Forbes, Superior Training Systems, Eugene
Paul Gold, ProSchools, Portland
Mike Graeper, Windermere Cronin & Caplan Realty Group, Keizer
Dave Hamilton, Norris & Stevens, Inc., Portland
Dyann Hamilton, CBRE Real Estate Services, Inc., Portland
Rick Harris, Coldwell Banker Pro West Real Estate, Ashland
Cliff Hockley, Bluestone & Hockley Real Estate Services, Portland
Deborah Imse, Metro Multifamily Housing Association, Portland
Dave Koch, Re/Max Equity Group, Canby
Mike Kozak, Computerized Property Management, Inc., Bend
Cindy Laurila, Shorenstein Realty Services. L.P., Portland
Steve Lucas, Oregon Realty Co., Portland
Mark Manulik, Schwabe, Williamson & Wyatt, Portland
Gerard Mildner, Portland State University, Portland
Catherine Miles, Shelter Management, Inc., Keizer
Bob Nelson, Pacwest Real Estate Investments, LLC., Eugene
Diane Peterson, Diane Peterson Seminars, Beaverton
Jan Robertson, NAI Norris, Beggs & Simpson, Portland
Gloria Rohl, Prudential Real Estate Professionals, Salem
Kevin Simrin, Re/Max Integrity, Eugene
Steve Smiley, Coldwell Banker Holman Premier Realty, Klamath Falls
Harlow Spaan, onlineEd.com, Portland
Jeremy Starr, John L Scott Eugene/Springfield, Eugene
Lorena Teer, Principle Property Management, Eugene
Lori Tydeman, Worldrelo, Inc., Lake Oswego
Brad Vincent, Portland Community College, Portland
Lorette Waggoner, Prudential Real Estate Professionals, Eugene
Mark Webb, Norman F. Webb Real Estate Courses, Salem
Elena Wells, Bluestone & Hockley Real Estate Services, Portland
Liz Zuanich, Princeton Property Management, Portland
John Zupan, Windermere/Van Vleet & Associates, Inc., Medford



Gene Bentley, Oregon Real Estate Agency Commissioner

Earnest Money Deposit Requirements for Bank-Owned Properties

December 01, 2010

Scenario: A broker is representing a buyer in a transaction involving an REO (bank-owned) property. The seller (bank/lender) requires the earnest money to be sent to an out-of-state escrow. Is this allowed under Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) administered by the Oregon Real Estate Agency?

ORS 696.241(1) provides as follows:

Each principal real estate broker shall maintain in this state one or more separate bank accounts that shall be designated a Clients' Trust Account in which all trust funds received or handled by the broker and the real estate licensees subject to the supervision of the broker on behalf of any other person shall be deposited unless, pursuant to written agreement of all parties having an interest in the trust funds, the trust funds are immediately placed in a licensed neutral escrow depository in this state.

The Agency interprets this statute to require brokers to deposit earnest money into either:

1. the principal broker's clients' trust account maintained in Oregon, **or**
2. a licensed neutral escrow depository in Oregon as agreed to in writing by all parties to the transaction.

The statute does not allow a broker who receives or handles earnest money to deposit that money in an escrow that is out of state.

If the broker deposits the buyer's earnest money into the broker's clients' trust account, then the broker must comply with applicable rules on disbursement of these funds. OAR 863-015-0255(14) provides that all funds deposited into a clients' trust account established under ORS 696.241 that are not disbursed or transferred to a neutral escrow depository pursuant to the sale agreement may only be disbursed:

1. To individuals, as directed by order of court of competent jurisdiction;
2. To individuals, as directed in writing by one or more principals; **or**
3. To the court, upon filing by the principal broker of an interpleader action for disputed earnest money funds.

The rule does not allow a principal broker to transfer the earnest money from the clients' trust account to an escrow that is out of state.

Licensed Oregon escrow agents are licensed by the Real Estate Agency and must follow statutes and rules when disbursing funds. Escrow agents must follow written, dated instructions from the principals to the transaction (ORS 696.581). ORS 696.578 requires all funds deposited into an escrow account to be deposited into a federally insured bank account in a bank authorized to do business in Oregon. OAR 863-050-0055(4) states that all funds deposited in an escrow trust account established under ORS 696.578 may be withdrawn, paid out, or transferred to other accounts as specified in the written escrow instructions of the principals to the escrow transaction directed to the escrow agent or pursuant to order of a court of competent jurisdiction.

A licensee facing the scenario above would be wise to seek legal advice on this matter. The Agency cannot give legal advice to licensees or the public. Part of the Agency's mission is to provide quality protection for Oregon consumers of real estate, escrow, and land development services. If earnest money is sent out of state, the Oregon consumer may have less access to the out-of-state escrow company and may need to look out of state for resolving complaints or disputes. The Agency does not regulate the maintenance and access to records of out-of-state escrows. Finally, Oregon escrows are subject to bonding requirements that out-of-state escrows may not be subject to, potentially depriving Oregon consumers of available remedies.

The licensee should always review the text of the actual statutes and rules and should not rely on the Agency's summary to cover all requirements. The licensee should also review the obligations of a buyer's agent under [ORS 696.810](#).

Stacey Harrison, Education Division Manager, Oregon Real Estate Agency

Agency Law and Seller Bonuses to Licensees

Byron Hendricks

December 01, 2010

These are interesting times in the real estate business to say the least. The level of activity has decreased through the third quarter after showing an increase the first part of the year. Some sellers are trying "selling office" bonuses to get the attention of licensees to show their property. Even Fannie Mae has entered into the act with its *Homepath* program that offers a \$1500 bonus to the selling broker for sales in a certain timeframe. (See www.homepath.com for full details.)

I don't know many licensees that wouldn't value having extra money added on to their compensation. But this practice, under our current agency requirements, can cause some real problems.

Selling bonuses were much more common when all licensees represented the seller in a transaction and, therefore, had fewer duties to the buyer. If the seller wished to share some of his proceeds with a licensee, that was the seller's decision and licensees could accept the bonus without violating law or rule. Even with this provision, I know many licensees that never took the bonus, feeling it cost the buyer more money.

Since Oregon has moved to agency representation for both the seller and the buyer, I believe bonuses are less effective. Licensees that don't execute on their duties to their client have more risk not only from their client but also from possible Administrative Action.

Remember that our duties as a fiduciary include sole loyalty, reasonable care and diligence, full disclosure of material facts, confidentiality, obedience to lawful wishes, and a full accounting of the transaction. (See ORS 696.800 – 696.855 for real estate specific duties.) Our duties to the other party (assuming we are not in disclosed limited agency) are full disclosure of material facts on the property and honest dealings.

If you are a fiduciary to the buyer (i.e., Buyer's Agent) the duty of full disclosure and accounting requires you to disclose any bonus you receive. While some buyers may feel you are worth it, in my opinion it will raise uncertainty in a buyer's mind on your encouragement of a certain property when they know you get a bonus for selling that property. If you don't disclose the bonus, you will have violated statutes and potentially harmed your client.

A common, yet unlawful, approach regarding selling bonuses to Buyer's Agents is to give the money to the buyer. This noble and right action unfortunately violates ORS 696.290 as an "unlawful sharing" of our fee with a non-licensed individual. (For exceptions, please read the statute.)

Licensees have dealt with this by reducing their fee from the seller, lowering the price of the home then, allowing the bonus to be paid. With full disclosure this works well. Managing this with programs like *Homepath* is likely to be difficult. The program's rigidity, lender requirements for down payment, etc., and the strict closing times for the bonus don't form a rosy picture. Watch for this and have the discussion with your client up front to avoid disappointment.

Perhaps it is time for the industry to support a change to ORS 696.290 that would allow us to share our fee with a *principal* in the transaction. Yes, there are some issues with this, but putting our client's interest first should help us in crafting the right revision.

Editor's Note: "Board Blog" features the opinions of Real Estate Board members. The views expressed are not necessarily those of the Oregon Real Estate News-Journal, Oregon Real Estate Agency or Agency staff.



Byron Hendricks, Oregon Real Estate Board member

Next Board Meeting in Hood River

The [Oregon Real Estate Board](#) will be holding its next meeting at 10 a.m. on December 6, 2010 at the historic [Columbia Gorge Hotel](#) in Hood River. The public is invited to attend.

All [Board meetings](#) are open to the public.

Sellers Must Remove Uncertified Woodstoves

As of August 1, 2010, owners selling homes with an uncertified woodstove or fireplace inserts will be required to either:

- Have the woodstove or fireplace insert certified, or
- Remove the woodstove or fireplace and have it decommissioned.

Get more information from the Oregon Department of Environmental Quality's [website](#).

Clients' Trust Accounts Required When Managing Rental Real Estate - It's All About the Money

December 01, 2010

What you don't know can hurt you. Especially when it comes to property management trust accounts. Did you know that if you manage property on behalf of a property owner, you must open and maintain at least one clients' trust

account? If you receive and hold tenant security deposits on behalf of an owner, you must open and maintain a security deposit account that is separate from the property management clients' trust account.

(See [OAR 863-025-0025](#).)

A clients' trust account is a bank account set up by a principal broker or property manager to keep clients' monies separated from the licensee's personal or business funds. The main purpose of a clients' trust account is to protect clients' funds. The trust account status provides protection from creditor attachments and other legal actions and judgments taken against the licensee.

Principal brokers and property managers who maintain clients' trust accounts are required by law to file an authorization form with the Agency in connection with their clients' trust account. The form, [Inventory of and Authorization to Examine Client Trust Accounts](#), gives the Agency permission to examine the licensee's trust accounts. The form identifies the bank, account numbers and name of the accounts. (See [ORS 696.241](#).)

To make sure everyone is in agreement, principal brokers and property managers must file with the bank, and maintain a copy of, a [Notice of Clients' Trust Account form](#). This form provides notice to the bank that the trust account has been established in the principal broker's or property manager's capacity as a fiduciary and that the money deposited belongs to persons other than the licensee. A bank representative signs the form to acknowledge receipt. (See [ORS 696.245](#).)

New copies of the above forms will have to be filed with the Agency if you open a new clients' trust account. The Agency needs to be notified if you close a clients' trust account. All forms can be found on the Agency's website at www.rea.state.or.us.

Gae Lynne Cooper, Investigator/Auditor, Oregon Real Estate Agency

New CO Alarm Rules

December 01, 2010

The Office of State Fire Marshal filed permanent rules required by the passage of House Bill 3450 (The Lofgren and Zander Memorial Act) in 2009. This act requires the installation of carbon monoxide alarms in specific residential application with a carbon monoxide source.

The [rules](#) establish minimum standards for the design, inspection, testing, placement and location and maintenance of carbon monoxide alarms in one or two family dwellings, manufactured dwellings, and multifamily housing. The permanent rules will be effective December 28, 2010.

Licensees will want to be aware of the new law and rules because of the [changes](#) that made to the Sellers' Property Disclosure Statement and Landlord and Tenant Laws.

Changes in Continuing Education Requirements

December 01, 2010

All active real estate license renewals occurring on or after January 1, 2011 will have new continuing education requirements.

Highlights of Continuing Education Requirements

Most courses completed prior to January 1, 2011, up to 27 hours, can count toward continuing education requirements for license renewals. These courses are acceptable if they are approved by the certifying licensee (principal broker or property manager) under OAR 863-020-0008. Brokers renewing for the first time on or after January 1, 2011 must take the Advanced Real Estate Practices (AP) and the 3-hour Law and Rule Required Course (LARRC). All the new Board-approved AP courses contain the 3-hour LARRC, but the Agency-approved AP courses do not.

How do you know if you have taken a "Board-approved" AP course with the LARRC?

1. Course providers with Board-approved courses are required to provide you with both a certificate of attendance and a certificate of completion.

2. The Board did not start approving AP courses until after June 30, 2010. (AP courses were approved previously by the Agency.)
3. Ask your provider if the course you took was Board-approved after June 30, 2010.

If you have already completed an AP course that was not approved by the Board, you will need to complete the separate three-hour LARRC course from a **certified continuing education provider**.

Brokers (not renewing for the first time), principal brokers and property managers must complete the 3-hour Law and Rule Required Course (LARRC) and at least 27 hours of acceptable continuing education. Courses are acceptable if:

1. Completed on or before December 31, 2010 and approved by the certifying licensee (principal broker or property manager) under OAR 863-020-0008, or
2. Completed on or after January 1, 2011 from an **Agency-certified continuing education provider**.

What Are the Changes to Continuing Education Beginning January 1, 2011?

Through December 31, 2010	Beginning January 1, 2011
Brokers renewing a license for the first time must take a 30-hour Advanced Real Estate Practices Course approved by the Real Estate Agency.	Brokers renewing a license for the first time must take the 30-hour Advanced Real Estate Practices Course, containing the 3-hour Law and Rule Required Course, approved by the Real Estate Board.
Principal brokers and property managers approve courses for themselves and their associated brokers.	Courses must be taken from Agency-certified continuing education providers.
Principal brokers and property managers are responsible for maintaining continuing education records for themselves and their licensees, including certificates of attendance and the Continuing Education Certification form, for six years.	Licensees are responsible for maintaining their own continuing education records, including certificates of attendance and the Continuing Education Record form, for three years after license renewal.
30 hours of continuing education are required. At least 15 hours need to be completed in required topics. The remaining 15 hours can be in required or elective real estate topics.	30 hours of continuing education are still required. 27 hours must be completed in the new required course topics. Three hours must a specific course called Law and Rule Required Course. Certified continuing education providers make sure the course covers one or more of the required topics.
Principal brokers and property managers have the responsibility of determining how many hours a course is worth and what topic(s) the course falls under.	Certified continuing education providers will provide certificates of attendance showing the number of hours earned.
Licensees who are licensed in more than one state can use continuing education hours taken in another state to meet Oregon real estate license renewal requirements.	All licensees must complete continuing education from an Agency-certified continuing education provider.
Real estate licensees who hold other real estate-related licenses, such as appraisers and accountants, can use continuing education taken for their other license to meet Oregon real estate license renewal requirements.	All licensees must complete continuing education from an Agency-certified continuing education provider.
Inactive licensees are not required to complete continuing education for inactive license renewal. Before reactivating a license, the licensee must have completed at least 30 hours of continuing education within the two years prior to reactivation.	Inactive licensees are not required to complete continuing education for inactive license renewal. Before reactivating a license, the licensee must have completed at least 27 hours of continuing education within the two years prior to reactivation that meet the new requirements and complete the three-hour Law and Rule Required Course.

Review your **specific requirements** so that your next license renewal goes smoothly.

Principal Broker License Exam Required January 1, 2011

December 01, 2010

Applicants for a principal broker license will need to take and pass the new principal broker license examination for applications received on or after January 1, 2011.

The license exam is different than the final examination required to complete the Brokerage Administration and Sales Supervision course. The principal broker license examination is administered by PSI at one of five test centers throughout the state.

If you are interested in becoming a principal broker, and you can meet all the [requirements](#), you may want to consider applying before the end of the year to avoid the principal broker examination.

Note: Some real estate companies may limit the number of principal brokers in an office. Discuss your plans with your principal broker before seeking a principal broker license.

Compliance Review for Real Estate Brokerage

December 01, 2010

The Oregon Real Estate Agency began inviting principal broker licensees this year to participate in an online self-administered compliance review for real estate brokerage.

The Agency made the decision, based on legislative input, to eliminate the in-person, one-on-one compliance reviews. Now the Agency is using an electronic compliance review in an effort to reach more licensees using fewer resources.

Participation request letters are sent out monthly to all principal broker licensees in select counties. Licensees are given one month to complete the review. Upon completion, Agency staff may contact the licensee to confirm their understanding of relevant statutes and/or rules.

Participation in a compliance review is voluntary and is intended to be educational in nature. It is designed to help real estate licensees meet the requirements of Oregon Revised Statutes (ORS) chapter 696 and Oregon Administrative Rule (OAR) chapter 863, divisions 14 and 15.

Though not an extensive and complete review, the Agency hopes that by drawing attention to any apparent areas of noncompliance, licensees will be able to implement appropriate policies and procedures to correct any potential issues in the future. Information collected will remain with the Agency's Education Division and will assist the Agency in focusing its education efforts.

If you have any questions, please contact the Agency's Education Division at (503) 378-4170, selection 3, or by e-mail at orea.info@state.or.us.

Claressa Kayman, Education Compliance Specialist, Oregon Real Estate Agency

Agency Complaint Review and Investigation Process

December 01, 2010

Licensees often ask us what happens when a complaint against them is filed with the Agency. It's a natural concern. Even if you dot every "i" and cross every "t," there may be an unhappy buyer or seller out there that didn't like something about the transaction. It could even be the broker on the other side of the transaction submitting a complaint.

Here is how the Agency's process works:

Initial Review

Every complaint received by the Agency is forwarded to the Regulations Division where an initial review of the complaint by a manager takes place. Based upon this review, the complaint may be closed or forwarded to the

licensee for a response. When the licensee's response is received there is a second review to determine whether an investigation is warranted.

This review process more often than not resolves any concerns that the agency may have. In fact in the last year, approximately 59% of the complaints filed have been closed because: (1) there was no jurisdiction; or (2) after reviewing the complaint and licensee response, there is insufficient evidence a violation occurred. Another way of looking at it is that only 41% of complaints received proceed to a full investigation.

If an anonymous complaint is received, it may be reviewed for substance. If enough information has been provided to indicate that a violation may have occurred, then the licensee **may** be contacted for a response. Most anonymous complaints are closed when they are received.

Licensee Response

A licensee response to a complaint is a key factor during the review process. When it appears from the initial review of the complaint that there may be a violation of a statute or rule, the complaint itself is forwarded to the licensee involved with a cover letter requesting a written response. At that point, the licensee needs to respond to the allegations set out in the complaint and provide any documentation that is relevant to the allegations. If you are unsure how much information to provide, err on the side of caution and provide too much rather than not enough. If something that may be relevant is not provided with the initial response, it may be assumed that you do not have the information, which could result in the complaint being assigned to an investigator.

Once the licensee's response is received, it is reviewed along with the complaint to determine whether or not a violation could have occurred. If there is no evidence of a violation, the file is closed. If there is evidence that a violation may have occurred, the file is assigned to an investigator for further investigation. At this juncture, the complainant and the licensee are advised that an investigation has been opened.

Investigation

When the investigator receives the file, additional documents may be requested and interviews conducted. After all the information is gathered, the investigator prepares an investigation report.

The investigation report is then reviewed by the Regulation Division Manager to determine if any violations have occurred. If none are noted, the file is closed. If violations are indicated, then a settlement offer letter is sent to the licensee.

Settlement Offer

The settlement offer letter outlines what violations are indicated and the sanction proposed to resolve the file. The licensee can accept or reject the offered settlement, or can request a settlement conference.

At a settlement conference, the results of the investigation are discussed in an informal setting with the licensee. The licensee may attend the conference alone or be represented by legal counsel. If a settlement is reached, documentation is prepared and sent to the licensee for signature.

Hearing

If no agreement is reached, the Agency may request a formal hearing. At this point, a notice of intent of disciplinary action is issued which allows 20 days to request a hearing. If no hearing is requested, a default order is issued. If a hearing is requested, the matter is referred to the Office of Administrative Hearings for assignment to an Administrative Law Judge (ALJ) and a hearing date is set. The Agency would be represented by an Assistant Attorney General at hearing. After the hearing, the ALJ would prepare a proposed order. The Commissioner would then issue a final order. The final order could be appealed to the Court of Appeals, if so desired.
Kris Ebelmesser, Compliance Manager, Oregon Real Estate Agency

Agency Closures

The Agency will be closed the following days to celebrate state holidays.
December 24, 2010 – Christmas Day
December 31, 2010 – New Year's Day

Agency staff will also be taking the following unpaid day off to meet the state's need to reduce costs.
March 18, 2011 – Furlough Day

Agency Staff Changes

December 01, 2010

Anna Higley joined the Administrative Services Division in October as an Operations and Policy Analyst. She has been employed by the Real Estate Agency as a Program Analyst in a temporary capacity since November 2008. Ms. Higley graduated from Portland State University with a Bachelor of Science degree in Business Administration and is currently working toward a Master of Accounting degree from Washington State University. Ms. Higley has varied professional experience in the project management and advertising fields. The Agency welcomes Ms. Higley in her new role.

Editor's note: Information on job opportunities with the Real Estate Agency can be found on the Agency's [website](#).

Agency Division Reports

December 01, 2010

Updates from the managers of each of the Real Estate Agency's divisions.

INFORMATION TECHNOLOGY DIVISION

Manager: Greg DeMaderios

Overview

The Information Technology Division is responsible for the management of the Agency's resources for communication, electronic commerce and user support. This includes managing the Agency's computer network, phone network, information assets, and security system for all technology resources.

Progress on current and future projects

The Information Technology (I.T.) division will be upgrading the Agency's Microsoft Exchange Server 2003 to Microsoft Exchange Server 2010. I.T. is busy planning a Sharepoint 2007 installation to facilitate better collaboration, document management and search capabilities across the Agency. A SharePoint Steering Committee is being formed at this time. This division continues to upgrade security and distributes software patches in a timely manner to stay up-to-date with current threats and mitigations. The Information Technology division also continues to play an integral role in the implementation of the new licensing database.

LICENSING DIVISION

Manager: Laurie Hall

Section Overview

The Licensing Division has six staff members who are responsible for public and licensee information services, real estate, property management and escrow licensing transactions and the registration of real estate business names. The staff is also responsible for reception. Workload and Activity Indicators Division staff has processed an average of over 1,800 transactions (forms and applications) each month while handling hundreds of phone calls. After the recent postcard mailing regarding the continuing education requirement changes coming on January 1, 2011, call volume has increased substantially. Staff members have worked very hard to answer all the questions while still processing transactions in a timely manner.

<u>Individuals (Persons)</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>
Broker - Total	14,177	14,118	14,013	13,880	13,733	13,584
Active	11,305	11,262	11,210	11,129	11,017	10,898
Inactive	2,872	2,856	2,803	2,751	2,716	2,686
Principal Broker - Total	6,762	6,749	6,749	6,759	6,782	6,802
Active	6,302	6,293	6,285	6,297	6,321	6,345
Inactive	460	456	464	462	461	457

ALL BROKERS Total	20,939	20,867	20,762	20,639	20,515	20,386
Active	17,607	17,555	17,495	17,426	17,338	17,243
Inactive	3,332	3,312	3,267	3,213	3,177	3,143
Property Manager - Total	739	749	753	752	750	753
Active	655	664	666	664	662	666
Inactive	84	85	87	88	88	87

Forty-three percent of renewals in September were completed online. The online renewal rate for October was 42%.

Program Changes, Future Projects, Streamlining

The Agency is working to make more of the licensing forms on our website fillable. Licensees can pull up a form online, type in the information, then print it and sign it before mailing or faxing it in.

ADMINISTRATIVE SERVICES

Manager: Erica Kleiner

Division Overview

The Administrative Services Division includes three full-time employees and several part-time, temporary employees, and acts as support to the Agency. This division manages budget preparation, accounting, purchasing and contracting, inventory control, facilities, payroll and personnel contacts, and special projects.

The division recently hired a full-time, limited-duration Policy Analyst position.

The Agency is gearing up for the 2011 Regular Legislative session. The Agency anticipates that it will give a presentation of its 2011-13 budget and a high-level agency overview to one of the subcommittees of the Ways & Means Committee. Historically, the Agency has presented to the Transportation and Economic Development Subcommittee. A work session for the Agency's budget should occur as soon as committees are ready to work budgets and move budget bills on to the opposing chamber.

A meeting of the committee that was organized to move the procurement process for a new licensing examination vendor forward was held in mid-November. The purpose of the meeting was to discuss potential ways an independent review (accreditation) of licensing exam development programs can help the Agency enhance the validity of such exams. The objective of the meeting was to come to a decision as to whether the request for proposals (RFP) process should be limited to only [Association of Real Estate Licensing and Law Officials \(ARELLO\)](#) exam accredited vendors.

LAND DEVELOPMENT DIVISION

Manager: Laurie Skillman

The Land Development Division has two staff members. It reviews and approves land development filings, including condominiums, out-of-state subdivisions, timeshares, membership campgrounds, and manufactured dwelling subdivisions. The majority of the work of the division is done for condominium filings. Land development statistics for September and October 2010 declined; however, we anticipate that by the end of 2010, the total filings for the year will match the number of filings for 2009. The economy and financing continue to negatively impact new condominium filings. Only three new condominium developments were filed from September 1 to November 15. Reviews are primarily for amendments to existing developments, disclosure statements for successor declarant banks and timeshares.

The division is working with county surveyors on implementation of new condominium plat amendment statutes for the purposes of coordinating review and approval processes.

REGULATION DIVISION

Manager: Selina Barnes

Division Overview

The Regulation Division currently has ten staff members and two vacant positions. This division receives complaints and determines validity and assignment for investigation. Investigators gather facts, complete report and submit to

Manager for review. The Manager determines whether the evidence supports charging a person with a violation of Agency statutes or administrative rules.

Client Trust Account Inventory Reporting

A review of the Agency database revealed a significant number of active property manager licensees have either never reported or do not currently hold any clients' trust accounts (CTA). These licensees were mailed a CTA inventory update request in September. As of the end of October, 80% of these licensees had responded, reporting over 1,200 previously unreported CTAs. For further information regarding the CTA reporting requirements, please review the article titled "Clients' Trust Accounts Required When Managing Rental Real Estate - It's All About the Money" in this edition of the *Oregon Real Estate News-Journal*.

EDUCATION DIVISION

Manager: Stacey Harrison

Division Overview

The Education Division has three staff members. The division develops real estate educational guidelines, approves pre-license and post-license courses, certifies continuing education providers, develops and maintains exams and test items, develops informational publications and websites, and conducts compliance reviews.

Workload and Activity Indicators

Licensing exam year-to-date totals for October 2010 showed an 8% increase in the number of exams administered for the same period in 2009. From July 1 through October 31, the division received 146 certified continuing education provider applications. As of November 19, the division has certified a total of 137 continuing education providers.

Current and Future Projects

The division is responsible for the implementation of Senate Bill 640, which changes the continuing education requirements of real estate licensees and principal broker licensing requirements. The division is focused on providing education to licensees and providers on the upcoming changes through the Agency's website, publications, and presentations.

Future projects include a review of all pre-license education requirements and the development of a self-administered compliance review for property managers.

Since June 2010, the division has requested a total of 128 compliance reviews in the following counties: Hood River, Malheur, Baker, Wasco, Grant, Lake, Harney, Wallowa, Union, Morrow, Gilliam, Sherman, and Wheeler. Please see the article titled "Compliance Review for Real Estate Brokerage" for more information on compliance reviews.

Administrative Actions

The Agency is required by Oregon Real Estate License Law to publish disciplinary actions. (ORS 696.445)
Administrative actions from August 25, 2010 to November 21, 2010 are as follows:

- AmeriTitle
- Ashby, Heather Leigh
- Bisbee, Lauren Star
- Campbell, Margaret C.
- DeLapp, Alan N.
- Gardner, Nicole R.
- James, Michael T.
- Newman, Beatrix Helene
- Prescott, Michael E.
- Prescott, Michelle R.
- Presley, Temara E.
- Schulmerich, Connie D.

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Escrow Agent License of)
5) STIPULATED FINAL ORDER
6 AMERITITLE)

7 The Real Estate Agency (OREA) and AmeriTitle do hereby agree and stipulate to the
8 following:

9 FINDINGS OF FACT
10 CONCLUSIONS OF LAW

11 1.

12 1.1 At all times mentioned herein, AmeriTitle was licensed as an escrow agent in
13 Oregon.

14 1.2 On November 18, 2009, OREA received a complaint from Dan Brassard
15 (Brassard) alleging that employees of the Baker City Branch of AmeriTitle failed to perform
16 duties required of them as defined by ORS 696.534 and ORS 696.581.

17 1.3 Charles Broughton (Broughton) is a real estate licensee and owns three acres in
18 Baker City, Oregon. Broughton wanted to subdivide the property into separate lots and begin
19 developing one lot at a time for the placement of manufactured homes. Brassard and a
20 number of other investors agreed to loan Broughton \$200,000 for the construction cost for one
21 home.

22 1.4 Brassard and the other lenders decided that they wanted to hold back \$70,000
23 as security for the \$200,000 loan to Broughton. On July 21, 2007, AmeriTitle escrow file BA-
24 26913JP was closed showing the Broughton and his wife as borrowers of \$200,000 from
25 Brassard et al for property at 1290 "D" Street, Baker City, Oregon.

26 1.5 Between September 10-11, 2007, the Broughtons and Brassard et al completed
27 an AmeriTitle Holdback Instructions form in which \$70,000 was to be held for construction
28 funds. The holdback instructions further called for the \$70,000 be placed in an interest-bearing
29 account at Old West Federal Credit Union (Old West FCU) in Baker City with AmeriTitle as the
30 signer on said account. The account was to be in the name of AmeriTitle Client Trust Account

1 for Charles L. & Susan L. Broughton, with AmeriTitle to have sole custody of the account until
2 the account is closed.

3 1.6 On September 13, 2007, \$70,000 was deposited into the Old West FCU. The
4 signature card was completed with Julie Paxton (Paxton) and Claude Jenkins as authorized
5 signatories of AmeriTitle per the holdback instructions. The account was a money market
6 account in the name of Charles L. Broughton c/o AmeriTitle. The member no./account no. was
7 indicated as 603761. This is the same number assigned to an account opened by Broughton
8 in January 2007. AmeriTitle was not aware that the 603761 account number was the member
9 account number for Broughton. Paxton requested and believed that the interest-bearing
10 account was a trust account and only AmeriTitle signatories had access. The Old West FCU
11 account where the \$70,000 hold back funds were deposited was not a trust account as
12 requested.

13 1.7 Paxton did not present a copy of either the holdback instructions or the
14 instructions to set up an interest-bearing account to Old West FCU when the account was
15 opened. Paxton did not request a copy of the signature card or verify that the interest-bearing
16 account was a secure account with only AmeriTitle employees having signatory authority.

17 **Violation:** By failing to have the hold back funds deposited into an interest-bearing
18 account denominated as a "trust" or "escrow" account under ORS 696.578, AmeriTitle violated
19 OAR 863-050-0060(2) (2007 Edition, 4-13-07).

20 1.8 Old West FCU attached the signature card signed by the Broughtons from
21 January 2007 to the signature card signed by AmeriTitle in September 2007. On October 25,
22 2007, Broughton withdrew \$55,408 from the Old West FCU account leaving a balance of
23 \$14,737.34.

24 1.9 In January 2008, AmeriTitle realized they had not received a bank statement and
25 contacted Old West FCU. When AmeriTitle received the bank statements, they became aware
26 of Broughton's October 2007 withdrawal. AmeriTitle notified all the parties of the October 2007
27 withdrawal and had all parties sign an addendum regarding the withdrawal. As they had not
28 received monthly statements, AmeriTitle did not reconcile the account as required.

29 **Violation:** By failing to reconcile the Old West FCU account at least once each month,
30 AmeriTitle violated OAR 863-050-0050(2) (2007 Edition, 4-13-07).

1 1.10 New signature cards were prepared by Old West FCU to correct the account.
2 None of the parties were harmed as a result of the October 2007 withdrawal by Broughton.

3 STIPULATION & WAIVER

4 I have read and reviewed the above findings of fact and conclusions of law which have
5 been submitted to me by OREA and further, the order which follows hereafter. I understand
6 that the findings of fact, conclusions of law and this stipulation and waiver embody the full and
7 complete agreement and stipulation between OREA and AmeriTitle. I further understand that
8 if AmeriTitle does not agree with this stipulation AmeriTitle has the right to request a hearing
9 on this matter and to be represented by legal counsel at such a hearing. Hearings are
10 conducted in accordance with the procedures set forth in ORS Chapter 183 and in accordance
11 with the Rules of Practice and Procedure adopted by the Attorney General of the State of
12 Oregon. AmeriTitle freely and voluntarily waives its rights to a hearing, to representation by
13 legal counsel at such a hearing, and to judicial review of this matter.

14 AmeriTitle hereby agrees and stipulates to the above findings of fact and conclusions of
15 law and understands that the order which follows hereafter may be completed and signed by
16 the Real Estate Commissioner or may be rejected by the Real Estate Commissioner, in which
17 case an amended notice of intent may be issued in this matter. I understand that, in
18 accordance with the provisions of ORS 696.445(3), notice of this order shall be published in
19 the Oregon Real Estate News Journal.

20 ORDER

21 IT IS HEREBY ORDERED that, pursuant to ORS 696.585 and based upon the
22 violation(s) set forth above, AmeriTitle pay a civil penalty in the sum of \$3,000, said penalty to
23 be paid to the General Fund of the State Treasury by paying the same to the OREA.

24 IT IS SO STIPULATED:

IT IS SO ORDERED:

25 By Julie D. Paxton
26 JULIE D. PAXTON
27 General Manager
28 Date 10/18/10

Gene Bentley
29 GENE BENTLEY
30 Real Estate Commissioner
Date 10-19-10
DATE of service: 10-20-10

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate Broker's
5 License of
6
7 HEATHER LEIGH ASHBY
8

ORDER ON DEFAULT

9 1.

10 1.1 On August 10, 2010, the Real Estate Commissioner issued, by certified mail, a
11 notice of intent to suspend the real estate broker's license of Heather Leigh Ashby (Ashby).
12 The Real Estate Agency (OREA) sent the notice of intent to Ashby's last known address of
13 record with the OREA. The notice of intent was also mailed to Ashby by regular first class mail
14 in a handwritten envelope.

15 1.2 The certified mailing was received and signed for by Ashby on August 21, 2010.
16 The first class mailing has not been returned to OREA.

17 1.3 Over twenty (20) days have elapsed since the mailing of the notice issued in this
18 matter and no written request for hearing has been received.

19 1.4 Copies of the entire investigation file are entered into the record and made a part
20 of this order as is all information in the administrative file relating to the mailing of notices and
21 any responses received.

22 2.

23 Based upon the foregoing and upon a review of the above described investigation
24 reports, documents and files, the Real Estate Commissioner finds:

25 2.1 Ashby's last known address of record with OREA was 728 SE Fairwinds Lp,
26 Vancouver WA 98661.

27 2.2 A certified mailing of the notice of intent was mailed to Ashby at her last known
28 address of record on August 10, 2010. Ashby received and signed for the mailing on August
29 21, 2010.

30 ///

1 combo boxes on the properties. Fredericks handled the processing of the short sales through
2 NPBN in Washington.

3 3.6 On February 26, 2009, OREA received a complaint from Ron Goodman
4 (Goodman), principal broker with Windermere Realty Partners, Inc. Goodman alleged that
5 Fredericks was conducting real estate activity in Oregon without the benefit of an Oregon
6 license. As a result of this complaint, file 200902-234 was opened.

7 3.7 On April 21, 2009, OREA received a complaint from Julie Murray (Murray),
8 principal broker with Windermere Realty Partners, Inc. Murray alleged that Fredericks was
9 listing Oregon properties for sale without the benefit of an Oregon license. As a result of this
10 complaint, file 200904-316 was opened.

11 3.8 Based on the facts developed during the investigation of files 200902-234 and
12 200904-316, file 201002-151 was opened. Facts developed in the previous investigations of
13 Fredericks suggested that Ashby may have knowingly permitted an unlicensed individual,
14 Fredericks, to engage in professional real estate activity in Oregon with or on behalf of Ashby,
15 and that Ashby may not have submitted transaction documents to her Oregon principal
16 brokers.

17 4.

18 A review of transaction files for properties listed in RMLS by Ashby was conducted. The
19 following issues were discovered:

20 4.1 Ashby gave her RMLS access code to Fredericks and Jason Wilbur (Wilbur), a
21 short sale processor with NPBN, so Fredericks and Wilbur could enter information into RMLS
22 on Oregon properties. Fredericks and Wilbur did not have access to the Oregon portion of
23 RMLS as they were not licensed in Oregon.

24 **Violation:** By providing her RMLS code to Fredericks and Wilbur so they could access
25 the Oregon portion of RMLS, Ashby engaged in conduct that is below the standard of care for
26 the practice of professional real estate activity in Oregon as established by the community of
27 individuals engaged in the practice of professional real estate activity in Oregon, in violation of
28 ORS 696.301(15).

29 4.2 In five of the transactions reviewed, Ashby accepted compensation from a
30 person other than her Oregon principal broker.

1 **Violation:** By accepting compensation from a person other than the Oregon principal
2 real estate broker she was associated with at the time of the transaction, Ashby violated ORS
3 696.290(1) and is subject to sanction in accordance with ORS 696.301(3).

4 4.3 In six of the transactions reviewed, Ashby failed to sign the disclosed limited
5 agency agreement for sellers at the time the agreement was signed by the sellers.

6 **Violation:** By failing to sign the disclosed limited agency agreement for sellers at the
7 time the agreement was signed by the sellers, Ashby demonstrated incompetence or
8 untrustworthiness in performing an act for which she is required to hold a license, in violation of
9 ORS 696.301(12).

10 4.4 In six of the transactions reviewed, Ashby failed to provide a copy of the
11 disclosed limited agency agreement for sellers to the sellers at the time it was signed by the
12 sellers.

13 **Violation:** By failing to provide the sellers with a copy of the disclosed limited agency
14 agreement at the time of signing by the sellers, Ashby violated ORS 696.820(2) and is subject
15 to sanction in accordance with ORS 696.301(3).

16 4.5 In four of the transactions reviewed, Ashby failed to inform the seller of the
17 seller's duties created by ORS 105.462 to 105.490.

18 **Violation:** By failing to advise the sellers of their duties created by ORS 105.462 to
19 105.490, Ashby violated ORS 696.870(1)(a) and is subject to sanction in accordance with ORS
20 696.301(3).

21 4.6 On March 9, 2008, Ashby was added as a co-listing agent on property at 5398
22 NE Port Lane in Lincoln City, Oregon. The property was originally listed by Fredericks and
23 NPBN. On June 24, 2008, Ashby advertised the property on Craigslist under NPBN. The
24 Craigslist ad does not show Eifall or Eichenberger. The Craigslist ad lists NPBN as the office
25 associated with the listing and the agent name as Frank Fredericks/Heather Ashby.

26 **Violation:** By advertising 5398 NE Port Lane in Lincoln City, Oregon for sale on
27 Craigslist as presented by NPBN when the listing was held by Eifall, Ashby violated OAR 863-
28 015-0125(3) (2008 Edition, 11-15-07) and is subject to sanction in accordance with ORS
29 696.301(3).

30 ///

1 4.7 In four of the transactions reviewed, Ashby failed to include the licensed name or
2 registered business name of her supervising principal broker in her advertising and email, as
3 well as a statement that she was licensed in the state of Oregon.

4 **Violation:** By failing to include her principal broker's licensed name or registered
5 business name in her advertising and email, and failing to include a statement that she was
6 licensed in the state of Oregon, Ashby violated OAR 863-015-0125(9)(b)(B) and (C) (2008
7 Edition, 11-15-07) and is subject to sanction in accordance with ORS 696.301(3).

8 4.8 In seven of the transactions reviewed, Ashby failed to transmit documents to her
9 supervising principal broker within three banking days.

10 **Violation:** By failing to transmit transaction documents to her supervising principal
11 broker, Ashby violated OAR 863-015-0255(3) (2009 Edition, 11-14-08) and is subject to
12 sanction in accordance with ORS 696.301(3).

13 4.9 While Ashby was licensed with Sundance, she had for sale signs placed on two
14 properties. Beatty, Ashby's supervising principal broker, stated that she had never seen the
15 advertising before and had not approved it. Ashby did not submit the advertising to Beatty for
16 her approval.

17 **Violation:** By failing to submit advertising to her supervising principal broker, Ashby
18 violated OAR 863-015-0125(5)(a) (2010 Edition, 1-1-10) and is subject to sanction in
19 accordance with ORS 696.301(3).

20 4.10 Property located at 730 SE 143rd Avenue in Portland, Oregon was listed by
21 Ashby through Sundance. Ashby presented a purchase and sale agreement to the seller, but
22 did not fill in the date and time it was presented.

23 **Violation:** By failing to fill in the date and time the purchase and sale agreement was
24 presented to the sellers, Ashby failed to maintain a written record of when the offer was
25 submitted to the sellers, in violation of OAR 863-015-0135(3) (2009 Edition, 1-1-09) and is
26 subject to sanction in accordance with ORS 696.301(3).

27 4.11 While licensed with Sundance, Ashby did not submit failed offers to her
28 supervising principal broker. Failed offers were submitted to Fredericks and kept in a file at
29 NPBN.

30 ///

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate License of)

5)
6 LAUREN STAR BISBEE)

STIPULATED ORDER OF REVOCATION

7
8 The Real Estate Agency (OREA) and Lauren Star Bisbee (Bisbee) do hereby agree and
9 stipulate to the following:

10 1. Bisbee's real estate broker's license expired January 31, 2010.

11 2. OREA has investigated Bisbee regarding her licensed real estate broker activity
12 under file No. 201003-220. Bisbee stipulates that OREA has substantial evidence in its files to
13 support, after hearing, findings of fact and conclusions of law by the Commissioner that would
14 result in the revocation of Bisbee's real estate broker license.

15 3. Based upon the evidence contained in those files, Bisbee stipulates that Bisbee
16 will never qualify for and will never apply for a real estate license in Oregon in the future.

17 4. Bisbee understands that she has the right to request a hearing before the Real
18 Estate Commissioner on this matter and to be represented by legal counsel at such a hearing.
19 Bisbee freely and voluntarily waives her rights to a hearing and judicial review of this matter
20 and to representation by legal counsel at such a hearing.

21 5. By entry of this order, Bisbee's real estate broker license is revoked, effective the
22 date of this order.

23 IT IS SO STIPULATED

IT IS SO ORDERED

24
25 
26 _____
27 LAUREN STAR BISBEE

28 
29 _____
30 GENE BENTLEY
Real Estate Commissioner

Date

8-26-10

Date

8.30.10

DATE of service:

8-31-10

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate Broker's
5 License of
6
7 MARGARET C. CAMPBELL
8

ORDER ON DEFAULT

9
10 1.

11 1.1 On March 8, 2010, the Real Estate Commissioner issued, by certified mail, a
12 notice of intent to revoke the real estate broker's license of Margaret C. Campbell (Campbell).
13 The Real Estate Agency (OREA) sent the notice of intent to Campbell's last known address of
14 record with the OREA. The notice of intent was also mailed to Campbell by regular first class
15 mail in a handwritten envelope.

16 1.2 The certified mailing was returned to OREA with the postal notations "return to
17 sender", "unclaimed", and "unable to forward". The handwritten first class mailing was not
18 returned.

19 1.3 On March 24, 2010, OREA received a request for hearing from Campbell.
20 Campbell advised that she was housed in Coffee Creek Correctional Facility and expected to
21 be released on May 17, 2010, after which time she would be available for hearing. On April 8,
22 2010, the file was referred to the Office of Administrative Hearings (OAH) and a hearing date
23 was set for September 28, 2010. On September 13, 2010, Campbell advised OAH and OREA
24 that she was withdrawing her request for a hearing.

25 1.4 Copies of the entire investigation file are entered into the record and made a part
26 of this order as is all information in the administrative file relating to the mailing of notices and
27 any responses received.

28 2.

29 Based upon the foregoing and upon a review of the above described investigation
30 reports, documents and files, the Real Estate Commissioner finds:

1 **Violation:** By failing to report the \$60,000 judgment to OREA, Campbell failed to report
2 an adverse judgment to OREA in violation of OAR 863-015-0175 (2008 Edition, 11-15-07) and
3 is subject to sanction in accordance with ORS 696.301(3).

4 3.4 On May 16, 2008, Campbell was indicted on three counts of Aggravated Theft in
5 the first degree, ten counts of Theft 1, and thirteen counts of Forgery 1. Aggravated theft in the
6 first degree is a class B felony. Theft 1 and Forgery 1 are both class C felonies. The first
7 alleged felony was a forgery charge that occurred on February 15, 2006. The second alleged
8 felony was an aggravated theft charge that occurred on August 1, 2006. After the alleged theft
9 on August 1, 2006, the incidents occurred on a frequent basis through August 6, 2007.

10 Campbell was charged with a total of twenty six-felonies alleged to have occurred between
11 February 15, 2006 and August 6, 2007. On December 8, 2008, Campbell entered a plea of
12 guilty on all twenty six-felony charges. On February 11, 2009, Campbell was convicted on all
13 twenty-six felony charges.

14 **Violation:** By pleading guilty and being convicted of twenty-six felony counts relating to
15 theft and forgery, Campbell has been convicted of felonies substantially related to her
16 trustworthiness and competence to engage in professional real estate activity, in violation of
17 ORS 696.301(11).

18 3.5 Campbell did not report the felony conviction to OREA.

19 **Violation:** By failing to report the felony convictions to OREA, Campbell failed to report
20 a criminal conviction to OREA in violation of OAR 863-015-0175 (2008 Edition, 11-15-07) and
21 is subject to sanction in accordance with ORS 696.301(3).

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

29 ///

30 ///

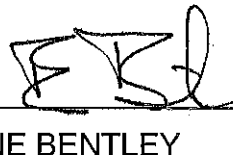
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

ORDER

IT IS HEREBY ORDERED that Campbell's real estate license be revoked, with said revocation effective the date of this order.

Dated this 22 day of September, 2010.

OREGON REAL ESTATE AGENCY



GENE BENTLEY
Real Estate Commissioner

DATE of service: 9-22-10

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service of this order. Judicial review is pursuant to the provisions of ORS 183.482.

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate Broker's
5 License of
6
7 ALAN N. DELAPP
8

}
} ORDER ON DEFAULT
}

9 1.

10 1.1 On August 10, 2010, the Real Estate Commissioner issued, by certified mail, a
11 notice of intent to revoke and levy civil penalty to Alan N. DeLapp (DeLapp). The Real Estate
12 Agency (OREA) sent the notice of intent to DeLapp's last known address of record with the
13 OREA. The notice of intent was also mailed to DeLapp by regular first class mail in a
14 handwritten envelope.

15 1.2 The notice sent in the first class handwritten envelope addressed to DeLapp at
16 his mailing address of record, 4797 Sunnyview Rd NE, Salem OR 97305, was returned to
17 OREA "not deliverable as addressed return to sender". The first class mailing to DeLapp's
18 business address of record, Axis Real Estate, 1555 12th St SE, Salem OR 97302 has not
19 been returned. Neither of the two certified letters have been returned to OREA.

20 1.3 Over twenty (20) days have elapsed since the mailing of the notice issued in this
21 matter and no written request for hearing has been received.

22 1.4 Copies of the entire investigation file are entered into the record and made a part
23 of this order as is all information in the administrative file relating to the mailing of notices and
24 any responses received.

25 2.

26 Based upon the foregoing and upon a review of the above described investigation
27 reports, documents and files, the Real Estate Commissioner finds:

28 2.1 Oregon Administrative Rule 863-001-0006 states, in part, that a notice of intent is
29 properly served when deposited in the United States mail, registered or certified mail,
30 addressed to the real estate licensee or to any other person having an interest in a proceeding

1 before the Commissioner at the licensee's or other person's last known address of record with
2 OREA.

3 2.2 DeLapp's last known address of record with OREA was 4797 Sunnyview Rd NE,
4 Salem OR 97305 and Axis Real Estate, 1555 12th ST SE, Ste 140, Salem, OR 97302.

5 2.3 A certified mailing of the notice of intent was mailed to DeLapp at his last known
6 address of record on August 10, 2010.

7 2.4 The mailing in the handwritten envelope has not been returned to OREA. In
8 accordance with ORS 40.135(1)(q), there is a presumption that the mailing properly addressed
9 and placed with the U.S. Postal Service was delivered. That presumption has not been
10 overcome by any evidence.

11 2.5 Over twenty (20) days have elapsed since the mailing of the notice and no
12 written request for a hearing has been received.

13 FINDINGS OF FACT
14 CONCLUSIONS OF LAW

15 3.

16 3.1 From March 3, 2008 until July 31, 2009 and again from September 29, 2009 to
17 the date of this notice, DeLapp was licensed as a principal broker doing business under the
18 registered business name of Axis Real Estate and its subsidiary/affiliate International Property
19 Management LLC.

20 3.2 On October 1, 2009, OREA received a complaint from Debbie Cooper (Cooper),
21 a real estate broker, alleging that DeLapp did not provide her with written notification that her
22 offer was not accepted in a short sale transaction. Cooper also alleged that DeLapp's license
23 was expired. Investigation file 200910-562 was opened.

24 3.3 On July 3, 2009, property at 2032 Summit Avenue NW in Salem, Oregon was
25 listed for sale by Axis Real Estate. The property was owned by Karyl and David Cain. Karyl
26 Cain is a real estate broker licensed with Axis Real Estate. On August 20, 2009, Cooper wrote
27 an offer to purchase the Cain property for Michael Desjarlais as the buyer. The offer included
28 a provision that buyer understood that the sale was subject to third party approval. The offer
29 expired on September 2, 2009.

30 ///

1 3.4 Cooper emailed the offer to DeLapp on August 22, 2009 and asked for
2 confirmation that the offer was received. DeLapp responded to Cooper and stated that
3 everything was forwarded to the bank. DeLapp did not note the date and time the offer was
4 presented to the Cains. DeLapp did not provide Cooper with a copy of the Cain's written
5 response to the offer.

6 3.5 On August 27, 2009 and September 7, 2009, Cooper emailed DeLapp to see if
7 there was a response to the offer. DeLapp did not respond and allowed the offer to expire.

8 **Violation:** By allowing the offer to expire, not maintaining a record of when the offer
9 was delivered to the Cains, and not providing a copy of the sellers' response to Cooper,
10 DeLapp violated OAR 863-015-0135(2) and (3) (2009 Edition, 1-1-09) and is subject to
11 sanction pursuant to ORS 696.301(3).

12 3.6 DeLapp's license had expired on July 31, 2009 and was not renewed until
13 September 29, 2009. Between August 1, 2009 and September 28, 2009, DeLapp was not
14 licensed to conduct professional real estate activity.

15 **Violation:** By conducting professional real estate activity between August 1, 2009 and
16 September 28, 2009 without an active license, DeLapp conducted professional real estate
17 activity without benefit of a license in violation of ORS 696.020(2) and is subject to sanction
18 pursuant to ORS 696.301(3) and 696.990(4) and (8).

19 3.7 When DeLapp completed the form to renew his real estate license, he answered
20 "no" to the question asking if he had conducted any professional real estate activity while his
21 license was inactive. DeLapp did conduct professional real estate activity while his license
22 was inactive by representing the Cains in their sale transaction.

23 **Violation:** By answering "no" on his renewal license application when he had in fact
24 conducted professional real estate activity without an active license, DeLapp committed an act
25 of fraud or engaged in dishonest conduct substantially related to his fitness to conduct
26 professional real estate activity in violation of ORS 696.301(14).

27 3.8 During the investigation of file 200910-562, multiple attempts were made by
28 OREA to access DeLapp's records of the subject transaction. Specifically, attempts were
29 made to obtain the listing agreement and applicable addenda, the fax confirmation of the offer

30 ///

1 being sent to Chase, and Chase's written rejection of the offer. DeLapp did not allow OREA
2 access to his records.

3 3.9 In an interview with OREA, DeLapp stated that he did not maintain "dead deals",
4 files of transactions that did not close.

5 **Violation:** By failing to allow OREA access to your records of professional real estate
6 activity and by failing to maintain "dead deals" as required, DeLapp violated ORS 696.280(1)
7 and (3) and is subject to sanction pursuant to ORS 696.301(3).

8 4.

9 4.1 On November 3, 2009, OREA received a complaint from David Hilgemann
10 (Hilgemann), attorney for Elvira Moriconi (Moriconi), against DeLapp and International Property
11 Management LLC (IPM). DeLapp managed properties owned by Moriconi. Hilgemann alleged
12 that DeLapp failed to provide Moriconi with a monthly statement of income and expenses for
13 the months of May and June 2009, failed to forward Moriconi rents received for the months of
14 May and June 2009, and failed to provide Moriconi with a copy of the fully executed property
15 management agreement. On July 7, 2009, Moriconi terminated her management agreement
16 with IPM. Investigation file 200911-598 was opened.

17 4.2 DeLapp, through IPM, managed Moriconi's properties for two years prior to
18 Moriconi terminating the relationship on July 7, 2009. DeLapp did not provide Moriconi with
19 owner statements for May and June 2009.

20 **Violation:** By failing to provide Moriconi with owner monthly statements for May and
21 June 2009, DeLapp violated OAR 863-025-0055(4) (2009 Edition, 1-1-09) and is subject to
22 sanction pursuant to ORS 696.301(3).

23 4.3 DeLapp did not provide Moriconi with rents received for Moriconi's properties for
24 May and June 2009.

25 **Violation:** By failing to provide Moriconi with funds belonging to Moriconi within 60
26 days from the termination of the management agreement, DeLapp violated OAR 863-025-
27 0070(2) (2009 Edition, 1-1-09) and is subject to sanction pursuant to ORS 696.301(3).

28 4.4 DeLapp did not provide Moriconi with a fully executed copy of the property
29 management agreement.

30 ///

1 **Violation:** By failing to provide Moriconi with a fully executed copy of the property
2 management agreement, DeLapp violated OAR 863-025-0020(7) (2009 Edition, 1-1-09) and is
3 subject to sanction pursuant to ORS 696.301(3).

4 4.5 During the investigation, DeLapp advised OREA that he was cooperating with
5 Morconic's attorneys when in fact he was not.

6 **Violation:** By advising OREA that he was cooperating with Moriconi's attorneys when
7 he was not, DeLapp committed an act of fraud or engaged in dishonest conduct substantially
8 related to his fitness to conduct professional real estate activity in violation of ORS
9 696.301(14).

10 4.6 DeLapp, through IPM, received funds in the conduct of his property management
11 activity. DeLapp did not identify the client trust account(s) or authorize OREA to examine the
12 client trust account(s) used for his property management activity.

13 **Violation:** By failing to file a form identifying his client trust account(s) and authorize
14 OREA to examine the client trust account(s) used in his property management activity,
15 DeLapp violated ORS 696.241(2) and (3) and is subject to sanction pursuant to ORS
16 696.301(3).

17 4.7 During the investigation, DeLapp advised OREA that he had moved his records
18 off site and that they may be with his bookkeeper. DeLapp failed to previously notify OREA
19 that he was moving his records and failed to authorize OREA to inspect the records at the new
20 location.

21 **Violation:** By moving his records to a new location and failing to authorize OREA to
22 inspect the records at the new location, DeLapp violated OAR 863-015-0260(1)(b) (2009
23 Edition, 1-1-09) and is subject to sanction pursuant to ORS 696.301(3).

24 4.8 Multiple attempts were made by OREA to access DeLapp's property
25 management records, specifically Moriconi's property management agreement, bank
26 statements, and ledgers. DeLapp failed to produce records to OREA.

27 **Violation:** By failing to produce records to OREA, DeLapp violated ORS 696.280(3)
28 and OAR 863-025-0035(2) (2009 Edition, 1-1-09) and is subject to sanction pursuant to ORS
29 696.301(3).

30 ///

1 4.9 On March 11, 2010, a judgment was entered against DeLapp and IPM in the sum
2 of \$2,270.00 plus attorney fees of \$1,871.75 and court costs of \$185.00. This judgment was
3 the result of a law suit filed by Moriconi regarding the management of her properties by IPM.
4 DeLapp did not report this judgment to OREA as required.

5 **Violation:** By failing to notify OREA of the entry of an adverse judgment within 20
6 calendar days of receiving written notification of the judgment, DeLapp violated OAR 863-015-
7 0175 (2009 Edition, 1-1-09) and is subject to sanction pursuant to ORS 696.301(3).

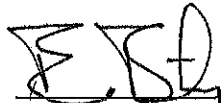
8 ORDER

9 IT IS HEREBY ORDERED that DeLapp's real estate broker's license be revoked with
10 said revocation effective on the 1st day of September, 2010.

11 IT IS FURTHER ORDERED that ORDERED that pursuant to ORS 696.990(1) to (9)
12 and based upon the violation set forth above, DeLapp pay a civil penalty in the sum of \$500,
13 said penalty to be paid to the General Fund of the State Treasury by paying the same to the
14 OREA. The civil penalty is computed in accordance with ORS 696.990(4) and (8) in that each
15 30-day period of unlicensed activity is considered one violation. In this instance, there was
16 one 30-day period of unlicensed activity.

17
18 Dated this 31st day of August, 2010.

19
20 OREGON REAL ESTATE AGENCY

21
22 

23 _____
24 GENE BENTLEY

25 Real Estate Commissioner

26
27 DATE of service: 8-31-10

28 NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by
29 filing a petition for review within 60 days from the date of service of this order. Judicial review
30 is pursuant to the provisions of ORS 183.482.

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER

3 In the Matter of the Real Estate Broker's
4 License of
5
6 NICOLE R. GARDNER
7

MODIFIED FINAL ORDER

8 WHEREAS, Nicole R. Gardner's (Gardner) real estate license expired on February 20,
9 2010 and was not renewed until June 2, 2010. Gardner continued conducting professional
10 real estate activity after her license expired and before it was renewed; and

11 WHEREAS, on July 29, 2010, OREA sent a letter to Gardner offering to settle the
12 matter with an \$1,100 civil penalty. Gardner did not respond to the settlement letter; and

13 WHEREAS, on August 24, 2010, OREA issued a notice of intent to Gardner for her
14 unlicensed activity which included a civil penalty range of \$1,100 to \$2,500. Gardner did not
15 respond to the notice of intent or request a hearing; and

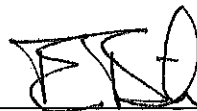
16 WHEREAS, on September 20, 2010, OREA issued an Order on Default to Gardner for
17 a \$2,500 civil penalty, and

18 WHEREAS, on September 28, 2010, Gardner contacted OREA and stated that she
19 understood that she needed to respond only if she wanted a hearing in the matter, and that
20 she was willing to accept the offered \$1,100 civil penalty.

21 NOW THEREFORE, IT IS HEREBY ORDERED that Gardner's civil penalty be reduced
22 to \$1,100 for violation of ORS 696.020. Said penalty is to be paid to the General Fund of the
23 State Treasury by paying the same to OREA.

24 Dated this 29 day of September, 2010.

25 OREGON REAL ESTATE AGENCY

26
27 

28 GENE BENTLEY
29 Real Estate Commissioner

30 DATE of service: 10-4-10

1 NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by
2 filing a petition for review within 60 days from the date of service of this order. Judicial review
3 is pursuant to the provisions of ORS 183.482.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate Broker's
5 License of
6
7 NICOLE R. GARDNER
8

ORDER ON DEFAULT

9 1.

10 1.1 On August 24, 2010, the Real Estate Commissioner issued, by certified mail, a
11 notice of intent to levy a civil penalty on Nicole R. Gardner (Gardner). The Real Estate Agency
12 (OREA) sent the notice of intent to Gardner's last known address of record with the OREA.
13 The notice of intent was also mailed to Gardner by regular first class mail in a handwritten
14 envelope.

15 1.2 The notice of intent mailed to Gardner by certified mail at her address of record
16 was returned to OREA with the postal notations, "return to sender", "unclaimed", and "unable
17 to forward." The first class mailing in the handwritten envelope has not been returned. The
18 notice of intent was also mailed by certified mail as well as first class mail in a handwritten
19 envelope to Gardner at her licensed address of record, Windermere Realty Group, 9755 SW
20 Barnes Rd, Ste 255, Portland OR 97225. The certified mailing was received at Gardner's
21 licensed address August 25, 2010. The first class mailing in the handwritten envelope has not
22 been returned.

23 1.3 Over twenty (20) days have elapsed since the mailing of the notice issued in this
24 matter and no written request for hearing has been received.

25 1.4 Copies of the entire investigation file are entered into the record and made a part
26 of this order as is all information in the administrative file relating to the mailing of notices and
27 any responses received.

28 2.

29 Based upon the foregoing and upon a review of the above described investigation
30 reports, documents and files, the Real Estate Commissioner finds:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

ORDER

IT IS HEREBY ORDERED that, pursuant to ORS 696.990(1) to (9) and based upon the violation set forth above, Gardner pay a civil penalty of \$2,500, said penalty to be paid to the General Fund of the State Treasury by paying the same to OREA. The civil penalty is computed in accordance with ORS 696.990(4) and (8) in that each 30-day period of unlicensed activity is considered one violation. In this instance, there were three 30-day periods of unlicensed activity.

Dated this 20 day of September, 2010.

OREGON REAL ESTATE AGENCY



GENE BENTLEY

Real Estate Commissioner

DATE of service: 9-20-10

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service of this order. Judicial review is pursuant to the provisions of ORS 183.482.

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate Broker's
5 License of
6
7 MICHAEL T. JAMES
8

STIPULATED FINAL ORDER

9
10 The Real Estate Agency (OREA) and Michael T. James (James) do hereby agree and
11 stipulate to the following:

12 FINDINGS OF FACT
13 CONCLUSION OF LAW

14 1.

15 1.1 At all times mentioned herein, James was licensed as a principal broker with
16 Oregon Group Realty LLC.

17 1.2 On December 3, 2009, OREA received a complaint from Levi Hermann
18 (Hermann) alleging that James registered Hermann's business name as his own with the
19 Oregon Secretary of State in an attempt to avoid Hermann's ability to pursue due process.
20 Hermann is President of UC Home, Inc. Hermann alleged that he was unable to respond to
21 opportunities presented by three other brokers due to the situation with James.

22 1.3 On June 15, 2009, Herman listed property he owned at 1173 Silver Lake in
23 Bend, Oregon with Oregon Group Realty LLC through James. On June 22, 2009, Hermann
24 entered into an Exclusive Buyer Service Agreement, on behalf of UC Home, Inc., with James
25 and Oregon Group Realty LLC. Also on June 22, 2009, Herman, on behalf of UC Home, Inc.,
26 entered into a Consulting Agreement with James.

27 1.4 On June 24, 2009, James informed Hermann about a property on Murphy Road
28 in Bend, Oregon that would be sold at a trustee sale. Hermann purchased the Murphy Road
29 property and obtained title in the name of UC Home, Inc. On June 28, 2009, James listed the
30 Murphy Road property for Hermann.


1 the provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real
2 Estate News Journal.

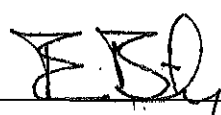
3 ORDER

4 IT IS HEREBY ORDERED that James be, and hereby is, reprimanded.

5
6 IT IS SO STIPULATED:

IT IS SO ORDERED:

7
8 
9 _____

8 
9 _____

10 MICHAEL T. JAMES

10 GENE BENTLEY
11 Real Estate Commissioner

12 Date 10/11/2010
13 _____

12 Date 10.20.10
13 _____

14 DATE of service: 10-22-10
15 _____

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate Broker's
License of

BEATRIX HELENE NEWMAN

}
} FINAL ORDER
}

On June 10, 2010, the Real Estate Agency (Agency) filed a Motion for Summary Determination and supporting exhibits.

On July 1, 2010, Robert L. Goss, Administrative Law Judge (ALJ), Office of Administrative Hearings, issued a Ruling on Motion for Summary Determination and Proposed Order. The time for either party to file exceptions to the Proposed Order has lapsed with no exceptions filed.

The Commissioner has reviewed the Proposed Order and adopts and incorporates the Proposed Order as the Final Order as set forth below:

HISTORY OF THE CASE

On April 12, 2010, the Real Estate Agency (Agency) issued a Notice of Intent to Levy Civil Penalty to Beatrix H. Newman (Respondent). Respondent timely requested a hearing.

On May 11, 2010, the Agency referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) Robert L. Goss was assigned to the case.

On June 10, 2010, the Agency filed a Motion for Summary Determination and supporting exhibits. In the motion, the Agency provided to Respondent information for filing a response, pursuant to OAR 137-003-0580(10). Respondent did not file a response to the Motion and did not submit any documents.

ISSUES

1. Whether Respondent engaged in professional real estate activity without an active license. ORS 696.020(2) and 696.301(3).
2. If a violation has been proved, whether the Agency's assessment of a civil penalty of \$100 is appropriate. ORS 696.990(9).

EVIDENTIARY RULING

Exhibits A through C, offered by the Real Estate Agency, were considered as the evidentiary record. Respondent did not submit any exhibits.

FINDINGS OF FACT

1. Prior to February 1, 2010, Respondent was licensed as a principal broker with Yamhill Realty. That license expired on January 31, 2010. (Ex. A.)
2. Respondent submitted a license renewal application to the Agency on March 5, 2010 and the license was renewed on March 8, 2010. Question number 11 on the renewal application states, "During any period of time when your license has been inactive or expired, have you conducted professional real estate activity?" Respondent answered "Yes" to the question. (Ex. B.)
3. On March 10, 2010, the Agency requested Respondent to submit a written explanation of the professional and real estate activity she referred to in the earlier renewal application. (Ex. C.) On March 15, 2010, Respondent submitted a letter to the Agency detailing the professional real estate activity she conducted during the 36 days that her real estate license was expired (February 1, 2010 to March 7, 2010). Those activities included:
 - (a) Receiving a commission of \$4,808.50 on February 9, 2010.
 - (b) Initiating a transaction, commission on 2.5% minus concessions, on February 6, 2010.
 - (c) Initiating a transaction, commission 2.5% minus concessions and repairs, on February 12, 2010.
 - (d) Initiating a transaction, commission 2.7% minus concessions, on February 15, 2010.

(d) Activities concerning initiating and closing transactions from January 31, 2010 to March 11, 2010. (Ex. C.)

CONCLUSIONS OF LAW

1. Respondent engaged in professional real estate activity without an active license.
2. Respondent shall be assessed a civil penalty of \$100.

OPINION

OAR 137-003-0580 addresses motions for summary determination. It provides in relevant part:

6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

Pursuant to OAR 137-003-0580(6)(a), in making this ruling, I considered the Agency's motion and documents it submitted with that motion: Exhibit A (Agency Licensee Information Screen), Exhibit B (Agency License Renewal Application dated March 5, 2010 and Exhibit C (Agency License Renewal Additional Information Request and Response.) Respondent did not respond to the Motion.

I have reviewed the evidence in the light most favorable to Respondent, the non-moving party, and I have determined that there are no genuine issues as to the material facts of the Agency's determination that are relevant to the resolution of the legal issues.

The issues in this case are whether Respondent engaged in professional real estate activity without an active license, and if that violation is proved, whether a \$100 civil penalty is an appropriate exercise of the Agency's discretionary power.

1. Engaging in professional real estate activity without a current license.

ORS 696.020(2) prohibits an individual from engaging in, carrying on, advertising or purporting to engage in or carry on professional real estate activity within Oregon unless the individual holds an active real estate license.

"Professional real estate activity" is defined in ORS 696.010(15) as:

[a]ny of the following actions, when engaged in for another and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation, by any person who:

- (a) Sells, exchanges, purchases, rents or leases real estate;
- (b) Offers to sell, exchange, purchase, rent or lease real estate;
- (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
- (d) Lists, offers, attempts or agrees to list real estate for sale;
- (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any administrative or judicial proceeding regarding the value of real estate for taxation, except when the activity is performed by a state certified appraiser or state licensed appraiser;
- (f) Auctions, offers, attempts or agrees to auction real estate;
- (g) Buys, sells, offers to buy or sell or otherwise deals in options on real estate;
- (h) Engages in management of rental real estate;
- (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real estate;
- (j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;

- (k) Assists or directs in the negotiation or closing of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;
- (l) Except as otherwise provided in ORS 696.030 (1)(L), advises, counsels, consults or analyzes in connection with real estate values, sales or dispositions, including dispositions through eminent domain procedures;
- (m) Advises, counsels, consults or analyzes in connection with the acquisition or sale of real estate by an entity if the purpose of the entity is investment in real estate; or
- (n) Performs real estate marketing activity as described in ORS 696.600.

The Agency has alleged and Respondent has admitted to conducting professional real estate activity during the time her license was expired, between February 1, 2010 to March 7, 2010. Specifically, when completing her March 5, 2010 license application renewal, Respondent answered "Yes" to the question asking "During any period of time when your license has been inactive or expired, have you conducted professional real estate activity?"

On March 10, 2010, the Agency requested a written explanation of the professional real estate activity disclosed by Respondent in the earlier application. Respondent sent a letter to the Agency detailing the professional real estate activity she conducted during the 36 days her license was expired, February 1, 2010 to March 7, 2010. Those activities included:

- (a) Receiving a commission of \$4,808 on February 9, 2010.
- (b) Initiating a transaction, commission 2.5% minus concessions, on February 6, 2010.
- (c) Initiating a transaction, commission 2.5% minus concessions and repairs, on February 12, 2010.
- (d) Initiating a transaction, commission 2.5% minus concessions, on February 15, 2010.
- (e) Activities concerning initiating and closing transactions from January 31, 2010 to March 11, 2010.

All of Respondent's admitted activities constituted "professional real estate activity" within ORS 696.010(15), including selling, offering to sell, negotiating and listing real estate for another for compensation or the expectation of a commission. There is no genuine issue of material fact as to a violation of ORS 696.020(2) and the Agency has proven that violation.

2. Civil Penalty

ORS 696.990 states, in relevant part, that:

(4) Any person that violates ORS 696.020(2) may be required by the Real Estate Commissioner to forfeit or pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner of not less than \$100 nor more than \$500 for the first offense of unlicensed professional real estate activity."

* * * * *

(9) For the purposes of subsection (4) of this section, any violation of ORS 696.020(2) that results from a failure of a real estate licensee to renew a license within the time allowed by law constitutes a single offense of unlicensed professional real estate activity for each 30-day period after the expiration of the license during which the individual engages in professional real estate activity.

The \$100 proposed civil penalty is the minimum civil penalty allowed by ORS 696.990(4)(a) for a single offense of engaging in one 30-day time period of unlicensed activity for purposes of ORS 696.990(9). As such, there is no genuine issue of material fact regarding the discretion of the Agency to impose that civil penalty or its appropriateness.

There being no genuine issue of material fact as to the violation or the proposed penalty, the Agency is entitled to a favorable ruling on its Motion for Summary Determination as a matter of law.

Under OAR 137-003-0580(12), if an ALJ's ruling on a Motion for Summary Determination resolves all the issues in a contested case, the ALJ shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling. As all the issues presented in this contested case have been resolved in favor of the Agency, a proposed order granting the Agency's requested sanction against Respondent is appropriate. A prehearing conference in this matter was set for July 9, 2010, however, based on this ruling, the prehearing conference is cancelled and no further hearing will be scheduled.

RULING AND PROPOSED ORDER

The Agency's Motion for Summary Determination is GRANTED.

I propose the Real Estate Agency issue the following order:

The Real Estate Agency shall levy a civil penalty against Beatrix Helene Newman in the amount of \$100.

Robert L. Goss

Senior Administrative Law Judge
Office of Administrative Hearings

FINAL ORDER

IT IS HEREBY ORDERED that, , pursuant to ORS 696.990 and based upon the violation set forth above, Beatrix H. Newman pay a civil penalty in the sum of \$100, said penalty to be paid to the General Fund of the State Treasury by paying the same to OREA.

Dated this 4th day of August, 2010.

OREGON REAL ESTATE AGENCY



GENE BENTLEY
Real Estate Commissioner

DATE of service: 8-4-10

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service of this order. Judicial review is pursuant to the provisions of ORS 183.482.

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate Broker's
5 License of
6
7 MICHAEL E. PRESCOTT
8

}
} ORDER ON DEFAULT
}

9 1.

10 1.1 On August 9, 2010, the Real Estate Commissioner issued, by certified mail, a
11 notice of intent to revoke the real estate broker's license of Michael E. Prescott (Michael
12 Prescott). The Real Estate Agency (OREA) sent the notice of intent to Michael Prescott's last
13 known address of record with the OREA. The notice of intent was also mailed to Michael
14 Prescott by regular first class mail in a handwritten envelope.

15 1.2 Both the certified mailing and the first class mailing in the handwritten envelope
16 have been returned to OREA with postal notations that Michael Prescott moved and left no
17 forwarding address.

18 1.3 Over twenty (20) days have elapsed since the mailing of the notice issued in this
19 matter and no written request for hearing has been received.

20 1.4 Copies of the entire investigation file are entered into the record and made a part
21 of this order as is all information in the administrative file relating to the mailing of notices and
22 any responses received.

23 2.

24 Based upon the foregoing and upon a review of the above described investigation
25 reports, documents and files, the Real Estate Commissioner finds:

26 2.1 Oregon Administrative Rule 863-001-0006 states, in part, that a notice of intent is
27 properly served when deposited in the United States mail, registered or certified mail,
28 addressed to the real estate licensee or to any other person having an interest in a proceeding
29 before the Commissioner at the licensee's or other person's last known address of record with
30 OREA.

1 3.6 Dong provided OREA with a Disclosed Limited Agency Agreement for Sellers
2 that was signed by Michelle Prescott on June 20, 2007. The Agreement shows Michelle
3 Prescott and Michael Prescott as the listing agents. The form is not signed by the sellers.

4 **Violation:** By failing to have the sellers sign the Disclosed Limited Agency Agreement,
5 Michael Prescott violated OAR 863-015-0210(1) (2007 Edition, 4-13-07) and is subject to
6 sanction pursuant to ORS 696.301(3).

7 3.7 Dong provided OREA with an unsigned listing to be effective June 22, 2007 and
8 to expire on December 22, 2007. The property address, firm name of Missing Link, effective
9 dates, and listing price were the only blanks filled in.

10 **Violation:** By failing to have the sellers sign the listing agreement and failing to provide
11 a copy of the signed listing agreement to the sellers, Michael Prescott violated OAR 863-015-
12 0130 (2007 Edition, 4-13-07) and is subject to sanction pursuant to ORS 696.301(3).

13 3.8 Dong provided OREA with an addendum indicating that the siding on the
14 Milwaukie property may be a man-made product. The addendum was signed only by Michelle
15 Prescott on June 20, 2007. Dong also provided OREA with an unsigned Seller's Property
16 Disclosure Statement, an unsigned Competitive Market Analysis Disclaimer, and an unsigned
17 Lead-Based Paint Disclosure Addendum.

18 **Violation:** By failing to have sellers sign the siding addendum, Seller's Property
19 Disclosure Statement, Competitive Market Analysis Disclaimer, or Lead-Based Paint
20 Disclosure Addendum, Michael Prescott engaged in conduct that is below the standard of care
21 for the practice of professional real estate activity in Oregon in violation of ORS 696.301(15).

22 3.9 Dong stated that at the time of the listing, he did not know how much he owed on
23 the property, but his payments were current and he felt he had quite a bit of equity in the
24 Milwaukie property. Michelle Prescott completed a comparative market analysis on the
25 Milwaukie property and advised Dong that, because of the economy, he owed more on the
26 property than what he could sell it for.

27 3.10 In September 2003, a trust deed was recorded for the Milwaukie property in the
28 amount of \$76,500. In November 2005, a line of credit trust deed was recorded for the
29 Milwaukie property in the amount of \$113,000 for a total of \$189,500. The Clackamas County
30 tax assessed value on the property for the year 2006-07 was \$283,432. From June 22, 2007

1 to December 23, 2007, the multiple listing service showed the Milwaukie property listed for
2 \$375,000.

3 **Violation:** By advising Dong that he owed more on the Milwaukie property than it could
4 be sold for when that was not the case, Michael Prescott created a reasonable probability of
5 damage or injury by making a material misrepresentation in a matter related to professional
6 real estate activity, in violation of ORS 696.301(1); or, in the alternative, Michael Prescott failed
7 in his affirmative duties to the seller to deal honestly and in good faith, in violation of ORS
8 696.805(2)(a) and is subject to sanction pursuant to ORS 696.301(3).

9 3.11 The Milwaukie property wasn't selling and in order for the Dongs to purchase the
10 Colton property, Michelle Prescott advised the Dongs that they needed to put together a deal
11 with investors. Michael Prescott agreed to become the property manager for the Milwaukie
12 property. Michelle Prescott gave Dong several options, but suggested that Dong obtain and
13 first and second mortgage on the Milwaukie property and then use the money to purchase the
14 Colton property. Michelle Prescott told Dong that the Milwaukie property could be rented and
15 then eventually subdivided into two lots.

16 3.12 Dong stated that Michael Prescott was going to rent the property in order to
17 make Dong's first and second mortgage payments. The Prescotts told Dong that they knew
18 some investors who would be able to subdivide the property. The Prescotts told Dong that
19 when the property was subdivided, that Dong would be able to sell the property and pay off the
20 first and second mortgage as well as the investors. Michelle Prescott told Dong that the
21 investors were putting money up front to actually get the property subdivided. Dong asked
22 Michelle Prescott about meeting the investors, and Michelle Prescott gave him one excuse
23 after another. Dong never met the investors.

24 3.13 Michael Prescott placed a renter, Natasha Murdock (Murdock), into the
25 Milwaukie property. Michael Prescott advised Dong that if the renter did not make the rent
26 payment, then the investors would supplement the rent. The Prescotts told Dong to go ahead
27 and move into his new home in Colton and they would take care of the rest.

28 ///

29 ///

30 ///

1 3.14 On January 1, 2008, a property management agreement was entered into
2 between Jason Pavelka (Pavelka), Trustee for the C and C Dong Living on SE Westview
3 Home Trust, and Missing Link Realty. Pavelka was paid by the Prescotts to perform certain
4 duties, but was not considered an employee of Missing Link Realty. The agreement, among
5 other things, called for Missing Link Realty to pay the owners' monthly rent of \$1,842.78. From
6 the rents received, Missing Link Realty was to pay all operating expenses and such other
7 expenses as requested by the Trustee, including the payment of mortgages, sanitary and other
8 taxes. All monies collected by Missing Link Realty were to be deposited into Missing Link
9 Realty bank account or accounts as required by Trustee.

10 3.15 The property management agreement did not address when compensation
11 would be earned and paid to Missing Link Realty.

12 **Violation:** OAR 863-025-0020(2)(f) (2008 Edition, 11-15-07) and is subject to sanction
13 pursuant to ORS 696.301(3).

14 3.16 The property management agreement did not contain a description of the
15 monthly statements of accounting that Missing Link Realty would provide the owner.

16 **Violation:** OAR 863-025-0020(2)(g) (2008 Edition, 11-15-07) and is subject to sanction
17 pursuant to ORS 696.301(3).

18 3.17 The property management agreement did not address the disposition of the
19 property manager's records of the management of the owner's rental real estate after
20 termination of the agreement.

21 **Violation:** OAR 863-025-0020(2)(h) (2008 Edition, 11-15-07) and is subject to sanction
22 pursuant to ORS 696.301(3).

23 3.18 The property management agreement did not contain a statement that the
24 property manager will disclose to the owner, in writing, the property manager's planned use of
25 any employees or a business in which the property manager has a pecuniary interest to
26 provide services for the owners' property.

27 **Violation:** OAR 863-025-0020(2)(i) (2008 Edition, 11-15-07) and is subject to sanction
28 pursuant to ORS 696.301(3).

29 ///

30 ///

1 3.19 The property management agreement did not contain an identifying code.

2 **Violation:** OAR 863-025-0020(2)(k) (2008 Edition, 11-15-07) and is subject to sanction
3 pursuant to ORS 696.301(3).

4 3.20 The property management agreement did not contain signatures of the owners.
5 County records show the owners of the Milwaukie property as Cory and Cheryl Dong.

6 **Violation:** OAR 863-025-0020(2)(L) (2008 Edition, 11-15-07) and is subject to sanction
7 pursuant to ORS 696.301(3).

8 3.21 Murdock and her fiancé moved into the Milwaukie property in January 2008.
9 Murdock paid rent of \$1,050 per month in cash to Michael Prescott. Within a few months after
10 moving into the property, Murdock began receiving mail addressed to the Dongs from the
11 bank. Murdock received a foreclosure notice on her door. Murdock provided the mail and
12 foreclosure notice to Michael Prescott. Murdock later learned that the Dongs had no idea that
13 a foreclosure was taking place on the Milwaukie property. Murdock moved out of the property
14 in June or July 2009 when the foreclosure took place.

15 3.22 During the investigation, Dong provided copies of many unsigned documents
16 relating to the Milwaukie property: trust deeds, purchase and sale agreements, land trust
17 agreements, and many other legal documents. Michael Prescott never advised Dong to seek
18 legal advice regarding the multiple legal documents involved with the Milwaukie property.

19 **Violation:** By failing to advise Dong to seek legal advice regarding the many legal
20 documents involved with the Milwaukie property, Michael Prescott violated ORS
21 696.805(3)(a)(c)(e) and is subject to sanction pursuant to ORS 696.301(3).

22 3.23 Dong furnished OREA with a Declaration of Trust and Land Trust Agreement and
23 Memorandum of Real Estate Transaction. The documents were dated January 1, 2008 and
24 showed the Dongs as grantors/beneficiaries and Pavelka as trustee of C and C Dong Living on
25 SE Westview Home Trust, Land Trust. The documents also included Keith W. Griffen, John
26 Cochran, Christopher Schwindt, Eric Borger, CITI Trustee Services LLC, Jim Lewis, Michelle
27 Prescott, Michael Prescott, as successor trustees. The documents were notarized by Roger
28 Newton (Newton). Newton was a real estate broker formerly associated with Missing Link
29 Realty. The documents are purported to be signed by Cory and Cheryl Dong and Pavelka.
30 Cory and Cheryl Dong as well as Pavelka deny signing such documents.

1 3.24 It appears that the Declaration of Trust and Land Trust Agreement and
2 Memorandum of Real Estate Transaction would transfer title of the Milwaukie property to the C
3 and C Dong Living on SE Westview Home Trust and out of the name and control of the Dongs.

4 **Violation:** By using the Declaration of Trust and Land Trust Agreement and
5 Memorandum of Real Estate Transaction with forged signatures, Michael Prescott violated
6 ORS 696.301(1), (12), (14), and (15).

7 3.25 Dong received only one foreclosure notice, and when he was able to contact
8 Michael Prescott, Michael Prescott assured Dong that it was a mistake and that he would take
9 care of it. Michael Prescott assured Dong that the bank was getting paid and that it was all a
10 mistake. By the time that Dong became aware that the foreclosure proceedings on the
11 Milwaukie property were taking place because the mortgage payments were not being made, it
12 was too late to stop the foreclosure from occurring. The Milwaukie property was sold at the
13 Clackamas County Courthouse on March 9, 2009.

14 3.26 Christopher Schwindt (Schwindt), an attorney, was one of the successor trustees
15 listed on the Declaration of Trust and Land Trust Agreement. Schwindt met Michelle Prescott
16 years before and gave her a listing from time to time. Michelle Prescott brought the Milwaukie
17 property to Schwindt's attention, but Schwindt was not interested. Schwindt said that he did
18 not sign or draft any legal documents where he was a trustee or investor to the Milwaukie
19 property, but that he may have some documentation pertaining to the property.

20 3.27 On May 5, 2010, Schwindt emailed OREA with, among other documents, a
21 Purchase and Sale Agreement between Westview PDP, LLC and Cory and Cheryl Dong for
22 the Milwaukie property. Michelle Prescott and Michael Prescott are the individuals behind
23 Westview PDP, LLC. Prescott drafted the Purchase and Sale Agreement.

24 3.28 Dong subsequently lost the Milwaukie property. The second mortgage on the
25 Milwaukie property with Chase Home Finance LLC in the amount of \$40,500 was not forgiven.

26 ///

27 ///

28 ///

29 ///

30 ///

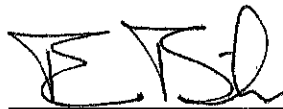
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

ORDER

IT IS HEREBY ORDERED that Michael Prescott's broker's license be revoked with said revocation to be effective on September 1, 2010.

Dated this 31st day of August, 2010.

OREGON REAL ESTATE AGENCY



GENE BENTLEY
Real Estate Commissioner

DATE of service: 8-31-10

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service of this order. Judicial review is pursuant to the provisions of ORS 183.482.

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate Broker's
5 License of
6
7 MICHELLE R. PRESCOTT
8

}
} ORDER ON DEFAULT
}

9 1.

10 1.1 On August 9, 2010, the Real Estate Commissioner issued, by certified mail, a
11 notice of intent to revoke and levy civil penalty to Michelle R. Prescott (Michelle Prescott). The
12 Real Estate Agency (OREA) sent the notice of intent to Michelle Prescott's last known address
13 of record with the OREA. The notice of intent was also mailed to Michelle Prescott by regular
14 first class mail in a handwritten envelope.

15 1.2 Both the certified mailing and the first class mailing in the handwritten envelope
16 have been returned to OREA with postal notations that Michelle Prescott moved and left no
17 forwarding address.

18 1.3 Over twenty (20) days have elapsed since the mailing of the notice issued in this
19 matter and no written request for hearing has been received.

20 1.4 Copies of the entire investigation file are entered into the record and made a part
21 of this order as is all information in the administrative file relating to the mailing of notices and
22 any responses received.

23 2.

24 Based upon the foregoing and upon a review of the above described investigation
25 reports, documents and files, the Real Estate Commissioner finds:

26 2.1 Oregon Administrative Rule 863-001-0006 states, in part, that a notice of intent is
27 properly served when deposited in the United States mail, registered or certified mail,
28 addressed to the real estate licensee or to any other person having an interest in a proceeding
29 before the Commissioner at the licensee's or other person's last known address of record with
30 OREA.

1 **Violation:** By failing to have her records open for inspection by the Commissioner,
2 Michelle Prescott violated ORS 696.280(3) and is subject to sanction pursuant to ORS
3 696.301(3).

4 **Violation:** By failing to maintain a complete and accurate record of all professional real
5 estate activity, Michelle Prescott violated OAR 863-015-0250 (2009 Edition, 1-1-09) and is
6 subject to sanction pursuant to ORS 696.301(3).

7 **Violation:** By failing to produce property management records for inspection by the
8 Commissioner, Michelle Prescott violated OAR 863-025-0035(2) (2009 Edition, 1-1-09) and is
9 subject to sanction pursuant to ORS 696.301(3).

10 3.5 Prior to February 2009, Missing Link Realty's licensed address of record was
11 8196 SW Hall Blvd, Suite 301, Beaverton OR 97008. On February 23, 2010, the directory
12 board in the office building at 8196 SW Hall Blvd, Beaverton OR shows Missing Link Realty in
13 Suite 301.

14 **Violation:** By failing to ensure that Missing Link Realty's name was removed from the
15 building directory when the business location changed, Michelle Prescott violated ORS
16 696.200(5) and is subject to sanction pursuant to ORS 696.301(3).

17 3.6 On February 24, 2010, an email address, mprescottc21@gmail.com, was
18 identified as belonging to Michelle Prescott. The February 9, 2010 letter was sent to the
19 identified email address. Michelle Prescott responded to the email indicating that she was out
20 of town until March 5, 2010 and would send OREA the requested documentation as soon as
21 she returned. Michelle Prescott gave her home address as 10600 SW Kable Street, Tigard,
22 OR 97224. Michelle Prescott indicated that Missing Link Realty no longer had a business
23 location. Michelle Prescott also indicated that her phone number was (503) 810-4257.
24 Several attempts were made to contact Michelle Prescott at that number, but were
25 unsuccessful. Michelle Prescott did not furnish the requested records.

26 3.7 On March 8, 2010, an email was sent to Michelle Prescott asking her to contact
27 OREA regarding the investigation and requesting copies of the broker and property
28 management files involving the complaint. Michelle Prescott responded that she was mailing
29 the files the following day and that she would call and schedule an interview.

30 ///

1 for which she is required to hold a license, in violation of ORS 696.301(12); or, in the
2 alternative, Michelle Prescott committed an act of fraud or engaged in dishonest conduct
3 substantially related to her fitness to conduct professional real estate activity, in violation of
4 ORS 696.301(14).

5 4.4 In June of 2007, the Milwaukie property was listed or advertised by Missing Link
6 Realty. Michelle Prescott did not furnish OREA with any of the requested documentation.

7 4.5 Dong provided OREA with a Disclosed Limited Agency Agreement for Sellers
8 that was signed by Michelle Prescott on June 20, 2007. The Agreement shows Michelle
9 Prescott and Michael Prescott as the listing agents. The form is not signed by the sellers.

10 **Violation:** By failing to have the sellers sign the Disclosed Limited Agency Agreement,
11 Michelle Prescott violated OAR 863-015-0210(1) (2007 Edition, 4-13-07) and is subject to
12 sanction pursuant to ORS 696.301(3).

13 4.6 Dong provided OREA with an unsigned listing to be effective June 22, 2007 and
14 to expire on December 22, 2007. The property address, firm name of Missing Link, effective
15 dates, and listing price were the only blanks filled in.

16 **Violation:** By failing to have the sellers sign the listing agreement and failing to provide
17 a copy of the signed listing agreement to the sellers, Michelle Prescott violated OAR 863-015-
18 0130 (2007 Edition, 4-13-07) and is subject to sanction pursuant to ORS 696.301(3).

19 4.7 Dong provided OREA with an addendum indicating that the siding on the
20 Milwaukie property may be a man-made product. The addendum was signed only by Michelle
21 Prescott on June 20, 2007. Dong also provided OREA with an unsigned Seller's Property
22 Disclosure Statement, an unsigned Competitive Market Analysis Disclaimer, and an unsigned
23 Lead-Based Paint Disclosure Addendum.

24 **Violation:** By failing to have sellers sign the siding addendum, Seller's Property
25 Disclosure Statement, Competitive Market Analysis Disclaimer, or Lead-Based Paint
26 Disclosure Addendum, Michelle Prescott engaged in conduct that is below the standard of care
27 for the practice of professional real estate activity in Oregon in violation of ORS 696.301(15).

28 4.8 Dong stated that at the time of the listing, he did not know how much he owed on
29 the property, but his payments were current and he felt he had quite a bit of equity in the
30 Milwaukie property. Michelle Prescott completed a comparative market analysis on the

1 Milwaukie property and advised Dong that, because of the economy, he owed more on the
2 property than what he could sell it for.

3 4.9 In September 2003, a trust deed was recorded for the Milwaukie property in the
4 amount of \$76,500. In November 2005, a line of credit trust deed was recorded for the
5 Milwaukie property in the amount of \$113,000 for a total of \$189,500. The Clackamas County
6 tax assessed value on the property for the year 2006-07 was \$283,432. From June 22, 2007
7 to December 23, 2007, the multiple listing service showed the Milwaukie property listed for
8 \$375,000.

9 **Violation:** By advising Dong that he owed more on the Milwaukie property than it could
10 be sold for when that was not the case, Michelle Prescott created a reasonable probability of
11 damage or injury by making a material misrepresentation in a matter related to professional
12 real estate activity, in violation of ORS 696.301(1); or, in the alternative, Michelle Prescott
13 failed in her affirmative duties to the seller to deal honestly and in good faith, in violation of
14 ORS 696.805(2)(a) and is subject to sanction pursuant to ORS 696.301(3).

15 4.10 The Milwaukie property wasn't selling and in order for the Dongs to purchase the
16 Colton property, Michelle Prescott advised the Dongs that they needed to put together a deal
17 with investors. Michael Prescott agreed to become the property manager for the Milwaukie
18 property. Michelle Prescott gave Dong several options, but suggested that Dong obtain a first
19 and second mortgage on the Milwaukie property and then use the money to purchase the
20 Colton property. Michelle Prescott told Dong that the Milwaukie property could be rented and
21 then eventually subdivided into two lots.

22 4.11 Dong stated that Michael Prescott was going to rent the property in order to
23 make Dong's first and second mortgage payments. The Prescotts told Dong that they knew
24 some investors who would be able to subdivide the property. The Prescotts told Dong that
25 when the property was subdivided, that Dong would be able to sell the property and pay off the
26 first and second mortgage as well as the investors. Michelle Prescott told Dong that the
27 investors were putting money up front to actually get the property subdivided. Dong asked
28 Michelle Prescott about meeting the investors, and Michelle Prescott gave him one excuse
29 after another. Dong never met the investors.

30 ///

1 4.12 Michael Prescott placed a renter, Natasha Murdock (Murdock), into the
2 Milwaukie property. Michael Prescott advised Dong that if the renter did not make the rent
3 payment, then the investors would supplement the rent. The Prescotts told Dong to go ahead
4 and move into his new home in Colton and they would take care of the rest.

5 4.13 On January 1, 2008, a property management agreement was entered into
6 between Jason Pavelka (Pavelka), Trustee for the C and C Dong Living on SE Westview
7 Home Trust, and Missing Link Realty. Pavelka was paid by the Prescotts to perform certain
8 duties, but was not considered an employee of Missing Link Realty. The agreement, among
9 other things, called for Missing Link Realty to pay the owners' monthly rent of \$1,842.78. From
10 the rents received, Missing Link Realty was to pay all operating expenses and such other
11 expenses as requested by the Trustee, including the payment of mortgages, sanitary and other
12 taxes. All monies collected by Missing Link Realty were to be deposited into Missing Link
13 Realty bank account or accounts as required by Trustee. OREA records do not show any
14 client trust accounts for Missing Link Realty.

15 **Violation:** By failing to open and maintain at least one clients' trust account as defined
16 in OAR 863-025-0010, Michelle Prescott violated OAR 863-025-0025 (2008 Edition, 11-15-07)
17 and is subject to sanction pursuant to ORS 696.301(3).

18 **Violation:** By failing to maintain one or more separate accounts designated as client
19 trust accounts in which all trust funds received or handled by the licensee shall be deposited,
20 Michelle Prescott violated ORS 696.241(1).

21 **Violation:** By failing to file with OREA a statement identifying the name of the bank or
22 banks, account number or account numbers, and name of account or accounts for each client
23 trust account maintained, Michelle Prescott violated ORS 696.241(2) and is subject to sanction
24 pursuant to ORS 696.301(3).

25 **Violation:** By failing to authorize OREA to examine any client trust account by a duly
26 authorized representative of OREA, Michelle Prescott violated ORS 696.241(3) and is subject
27 to sanction pursuant to ORS 696.301(3).

28 4.14 The property management agreement did not address when compensation
29 would be earned and paid to Missing Link Realty.

30 ///

1 **Violation:** OAR 863-025-0020(2)(f) (2008 Edition, 11-15-07) and is subject to sanction
2 pursuant to ORS 696.301(3).

3 4.15 The property management agreement did not contain a description of the
4 monthly statements of accounting that Missing Link Realty would provide the owner.

5 **Violation:** OAR 863-025-0020(2)(g) (2008 Edition, 11-15-07) and is subject to sanction
6 pursuant to ORS 696.301(3).

7 4.16 The property management agreement did not address the disposition of the
8 property manager's records of the management of the owner's rental real estate after
9 termination of the agreement.

10 **Violation:** OAR 863-025-0020(2)(h) (2008 Edition, 11-15-07) and is subject to sanction
11 pursuant to ORS 696.301(3).

12 4.17 The property management agreement did not contain a statement that the
13 property manager will disclose to the owner, in writing, the property manager's planned use of
14 any employees or a business in which the property manager has a pecuniary interest to
15 provide services for the owners' property.

16 **Violation:** OAR 863-025-0020(2)(i) (2008 Edition, 11-15-07) and is subject to sanction
17 pursuant to ORS 696.301(3).

18 4.18 The property management agreement did not contain an identifying code.

19 **Violation:** OAR 863-025-0020(2)(k) (2008 Edition, 11-15-07) and is subject to sanction
20 pursuant to ORS 696.301(3).

21 4.19 The property management agreement did not contain signatures of the owners.
22 County records show the owners of the Milwaukie property as Cory and Cheryl Dong.

23 **Violation:** OAR 863-025-0020(2)(L) (2008 Edition, 11-15-07) and is subject to sanction
24 pursuant to ORS 696.301(3).

25 4.20 Murdock and her fiancé moved into the Milwaukie property in January 2008.
26 Murdock paid rent of \$1,050 per month in cash to Michael Prescott. Within a few months after
27 moving into the property, Murdock began receiving mail addressed to the Dongs from the
28 bank. Murdock received a foreclosure notice on her door. Murdock provided the mail and
29 foreclosure notice to Michael Prescott. Murdock later learned that the Dongs had no idea that

30 ///

1 a foreclosure was taking place on the Milwaukie property. Murdock moved out of the property
2 in June or July 2009 when the foreclosure took place.

3 4.21 During the investigation, Dong provided copies of many unsigned documents
4 relating to the Milwaukie property, trust deeds, purchase and sale agreements, land trust
5 agreements, and many other legal documents. Michelle Prescott never advised Dong to seek
6 legal advice regarding the multiple legal documents involved with the Milwaukie property.

7 **Violation:** By failing to advise Dong to seek legal advice regarding the many legal
8 documents involved with the Milwaukie property, Michelle Prescott violated ORS
9 696.805(3)(a)(c)(e) and is subject to sanction pursuant to ORS 696.301(3).

10 4.22 Dong furnished OREA with a Declaration of Trust and Land Trust Agreement and
11 Memorandum of Real Estate Transaction. The documents were dated January 1, 2008 and
12 showed the Dongs as grantors/beneficiaries and Pavelka as trustee of C and C Dong Living on
13 SE Westview Home Trust, Land Trust. The documents also included Keith W. Griffen, John
14 Cochran, Christopher Schwindt, Eric Borger, CITI Trustee Services LLC, Jim Lewis, Michelle
15 Prescott, Michael Prescott, as successor trustees. The documents were notarized by Roger
16 Newton (Newton). Newton was a real estate broker formerly associated with Missing Link
17 Realty. The documents are purported to be signed by Cory and Cheryl Dong and Pavelka.
18 Cory and Cheryl Dong as well as Pavelka deny signing such documents.

19 4.23 It appears that the Declaration of Trust and Land Trust Agreement and
20 Memorandum of Real Estate Transaction would transfer title of the Milwaukie property to the C
21 and C Dong Living on SE Westview Home Trust and out of the name and control of the Dongs.

22 **Violation:** By using the Declaration of Trust and Land Trust Agreement and
23 Memorandum of Real Estate Transaction with forged signatures, Michelle Prescott violated
24 ORS 696.301(1), (12), (14), and (15).

25 4.24 Dong received only one foreclosure notice, and when he was able to contact
26 Michael Prescott, Michael Prescott assured Dong that it was a mistake and that he would take
27 care of it. Michael Prescott assured Dong that the bank was getting paid and that it was all a
28 mistake. By the time that Dong became aware that the foreclosure proceedings on the
29 Milwaukie property were taking place because the mortgage payments were not being made, it

30 ///

1 was too late to stop the foreclosure from occurring. The Milwaukie property was sold at the
2 Clackamas County Courthouse on March 9, 2009.

3 4.25 Christopher Schwindt (Schwindt), an attorney, was one of the successor trustees
4 listed on the Declaration of Trust and Land Trust Agreement. Schwindt met Michelle Prescott
5 years before and gave her a listing from time to time. Michelle Prescott brought the Milwaukie
6 property to Schwindt's attention, but Schwindt was not interested. Schwindt said that he did
7 not sign or draft any legal documents where he was a trustee or investor to the Milwaukie
8 property, but that he may have some documentation pertaining to the property.

9 4.26 On May 5, 2010, Schwindt emailed OREA with, among other documents, a
10 Purchase and Sale Agreement between Westview PDP, LLC and Cory and Cheryl Dong for
11 the Milwaukie property. Michelle Prescott and Michael Prescott are the individuals behind
12 Westview PDP, LLC. Michelle Prescott drafted the Purchase and Sale Agreement.

13 4.27 The Purchase and Sale Agreement did not contain a Final Agency
14 Acknowledgement.

15 **Violation:** OAR 863-015-0200 (2008 Edition, 11-15-07) and is subject to sanction
16 pursuant to ORS 696.301(3).

17 4.28 The earnest money deposit is shown as \$100, but the type of earnest money is
18 not specified.

19 **Violation:** OAR 863-015-0135(5) (2008 Edition, 11-15-07) and is subject to sanction
20 pursuant to ORS 696.301(3).

21 4.29 The closing date is shown as the first day of January 2008, which is prior to the
22 date of acceptance of March 25, 2008.

23 **Violation:** ORS 696.301(12), (14)

24 4.30 Buyer was to select closing attorney or title company, but no closing attorney or
25 title company was named in the Purchase and Sale Agreement.

26 **Violation:** ORS 696.301(12), (14)

27 4.31 Michelle Prescott made no written disclosure to Dong regarding a possible
28 conflict of interest with Michelle Prescott and Michael Prescott through Westview PDP, LLC.

29 **Violation:** ORS 696.301(14), (15), ORS 696.805(2), (3) and is subject to sanction
30 pursuant to ORS 696.301(3).

1 4.32 Michelle Prescott did not state in the Purchase and Sale Agreement that she, as
2 one of the buyers, was a real estate licensee.

3 **Violation:** OAR 863-015-0145 (2008 Edition, 11-15-07) and is subject to sanction
4 pursuant to ORS 696.301(3).

5 4.33 Dong subsequently lost the Milwaukie property. The second mortgage on the
6 Milwaukie property with Chase Home Finance LLC in the amount of \$40,500 was not forgiven.


7 ORDER

8 IT IS HEREBY ORDERED that Michelle Prescott's real estate broker's license be
9 revoked with said revocation to be effective September 1, 2010.

10 IT IS FURTHER ORDERED that ORDERED that pursuant to ORS 696.990(6) and
11 based upon the violation set forth above, Michelle Prescott pay a civil penalty in the sum of
12 \$10,000, said penalty to be paid to the General Fund of the State Treasury by paying the same
13 to the OREA.

14
15 Dated this 31st day of August, 2010.

16
17 OREGON REAL ESTATE AGENCY

18
19 

20
21 GENE BENTLEY
22 Real Estate Commissioner

23
24 DATE of service: 8/31/10

25
26 NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by
27 filing a petition for review within 60 days from the date of service of this order. Judicial review
28 is pursuant to the provisions of ORS 183.482.

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate Broker's
5 License of
6
7 TEMARA E. PRESLEY
8

}
} STIPULATED FINAL ORDER
}

9
10 The Real Estate Agency (OREA) and Temara E. Presley (Presley) do hereby agree and
11 stipulate to the following:

12 FINDINGS OF FACT

13 Prior to August 1, 2010, Presley was licensed as real estate broker with Meadows
14 Group, Inc. Realtors. Presley's license expired on July 31, 2010 and was not renewed until
15 October 5, 2010. During the time Presley's license was expired, August 1, 2010 to October
16 4, 2010, 66 days, Presley continued conducting professional real estate activity as if actively
17 licensed.

18 CONCLUSION OF LAW

19 By conducting professional real estate activity over the course of 66 days after her
20 license expired and before reactivating it, Presley violated ORS 696.020(2) and is subject to
21 discipline or civil penalty pursuant to ORS 696.301(3).

22 STIPULATION & WAIVER

23 I have read and reviewed the above findings of fact and conclusions of law which have
24 been submitted to me by OREA and further, the order which follows hereafter. I understand
25 that the findings of fact, conclusions of law and this stipulation and waiver embody the full and
26 complete agreement and stipulation between OREA and me. I further understand that if I do
27 not agree with this stipulation I have the right to request a hearing on this matter and to be
28 represented by legal counsel at such a hearing. Hearings are conducted in accordance with
29 the procedures set forth in ORS Chapter 183 and in accordance with the Rules of Practice and
30 Procedure adopted by the Attorney General of the State of Oregon. I freely and voluntarily

1 waive my rights to a hearing, to representation by legal counsel at such a hearing, and to
2 judicial review of this matter.

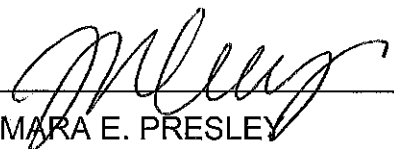
3 I hereby agree and stipulate to the above findings of fact and conclusions of law and
4 understand that the order which follows hereafter may be completed and signed by the Real
5 Estate Commissioner or may be rejected by the Real Estate Commissioner, in which case an
6 amended notice of intent may be issued in this matter. I understand that, in accordance with
7 the provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real
8 Estate News Journal.

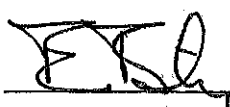
9 ORDER

10 IT IS HEREBY ORDERED that pursuant to ORS 696.990(1) to (9) and based upon the
11 violation set forth above, Presley pay a civil penalty in the sum of \$600, said penalty to be paid
12 to the General Fund of the State Treasury by paying the same to the OREA. The civil penalty
13 is computed in accordance with ORS 696.990(4) and (8) in that each 30-day period of
14 unlicensed activity is considered one violation. In this instance, there were two 30-day periods
15 of unlicensed activity.

16
17 IT IS SO STIPULATED:

IT IS SO ORDERED:

18
19
20 
21 _____
22 TEMARA E. PRESLEY

23 
24 _____
25 GENE BENTLEY

Real Estate Commissioner

26
27 Date 11/17/2010

Date 11.18.10

28
29
30 DATE of service: 11/18-10

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate Broker's
5 License of
6
7 CONNIE D. SCHULMERICH
8

STIPULATED FINAL ORDER

9
10 The Real Estate Agency (OREA) and Connie D. Schulmerich (Schulmerich) do hereby
11 agree and stipulate to the following:

12 FINDINGS OF FACT

13 Prior to June 1, 2010, Schulmerich was licensed as a real estate broker with Re/Max
14 Metro Gold. Schulmerich's license expired on May 31, 2010 and was not renewed until August
15 5, 2010. During the time Schulmerich's license was expired, June 1, 2010 to August 4, 2010,
16 66 days, Schulmerich continued conducting professional real estate activity as if actively
17 licensed.

18 CONCLUSION OF LAW

19 By conducting professional real estate activity over the course of 66 days after her
20 license expired and before reactivating it, Schulmerich violated ORS 696.020(2) and is subject
21 to discipline or civil penalty pursuant to ORS 696.301(3).

22 STIPULATION & WAIVER

23 I have read and reviewed the above findings of fact and conclusions of law which have
24 been submitted to me by OREA and further, the order which follows hereafter. I understand
25 that the findings of fact, conclusions of law and this stipulation and waiver embody the full and
26 complete agreement and stipulation between OREA and me. I further understand that if I do
27 not agree with this stipulation I have the right to request a hearing on this matter and to be
28 represented by legal counsel at such a hearing. Hearings are conducted in accordance with
29 the procedures set forth in ORS Chapter 183 and in accordance with the Rules of Practice and
30 Procedure adopted by the Attorney General of the State of Oregon. I freely and voluntarily

1 waive my rights to a hearing, to representation by legal counsel at such a hearing, and to
2 judicial review of this matter.

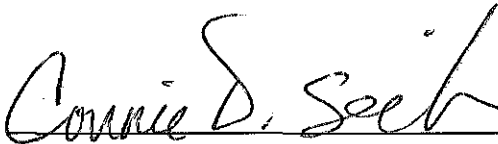
3 I hereby agree and stipulate to the above findings of fact and conclusions of law and
4 understand that the order which follows hereafter may be completed and signed by the Real
5 Estate Commissioner or may be rejected by the Real Estate Commissioner, in which case an
6 amended notice of intent may be issued in this matter. I understand that, in accordance with
7 the provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real
8 Estate News Journal.

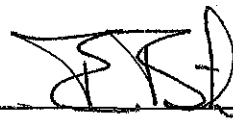
9 ORDER

10 IT IS HEREBY ORDERED that pursuant to ORS 696.990(1) to (9) and based upon the
11 violation set forth above, Schulmerich pay a civil penalty in the sum of \$600, said penalty to be
12 paid to the General Fund of the State Treasury by paying the same to the OREA. The civil
13 penalty is computed in accordance with ORS 696.990(4) and (8) in that each 30-day period of
14 unlicensed activity is considered one violation. In this instance, there were two 30-day periods
15 of unlicensed activity.

16
17 IT IS SO STIPULATED:

IT IS SO ORDERED:

18
19 



20
21 CONNIE D. SCHULMERICH

GENE BENTLEY

Real Estate Commissioner

22
23 Date 10-1-10

Date 10-12-10

24
25 DATE of service: 10-12-10
26
27
28
29
30