

## Agency Needs Your E-Mail Address

September 02, 2011

In keeping with its efforts to be more efficient, the Oregon Real Estate Agency has made e-mail its main method for contacting licensees.

Starting September 1, 2011, all brokers, principal brokers and property managers must provide an e-mail address to the Agency. Any changes in an e-mail address must be submitted to the Agency within 10 business days. Please see [New Rules Effective September 1, 2011](#) for more information.

To notify the Agency of your e-mail address, e-mail [orea.info@state.or.us](mailto:orea.info@state.or.us) with your licensed name, license number and your e-mail address. You may also update your e-mail when submitting any forms to the Agency. (*Note: When E-License is available, you will update your license records, including e-mail and mailing addresses, online.*)

The Agency will email license renewal reminders, the Oregon Real Estate News-Journal, important announcements and more. Licensees who do not have e-mail addresses can sign up for a free service such as [AOL](#), [Gmail](#), or [Yahoo](#).



Gene Bentley, Oregon Real Estate Commissioner

## New Rules Effective September 1, 2011

September 02, 2011

The Oregon Real Estate Agency adopted a number of permanent rules that were effective September 1, 2011.

Most of the [new rules](#) align license application and renewal processes with the Agency's new electronic licensing system. Highlights of the new rules include:

- Licensees are required to maintain a [current e-mail address](#) with the Agency because notification about licensing will be sent to the licensee's e-mail address.
- Licensees must renew and pay fees online.
- License applications for real estate brokers, principal real estate brokers and property managers must be submitted to the Agency before any other information. *For example, the first step an applicant for a principal real estate broker license must complete is to submit the application to the Agency and pay the fees. The applicant does not submit a certificate of completion to the Agency for the required Brokerage Administration and Sales Supervision (BASS) course. The education provider will electronically certify that the applicant has completed the BASS course, but the Agency must have the application and fees before the provider certifies course completion.*

To remain up-to-date on all rule changes, subscribe to the [Administrative Rules Update Service](#).

# Short Sales-The Nightmare on Elm Street, An Escrow Perspective

George Slape

September 01, 2011

The short sale of 123 Elm Street finally closed on Friday. Everyone's patience and perseverance finally paid off. The transaction was in escrow for 18 months. The buyer secured a new renter and all was well in the world. That was on Friday.

Monday, the nightmare began. The escrow agent received notification that the short sale payoff wire was rejected. From the Escrow agent and title insurer's perspective the successful closing of a short sale transaction is based on the short sale lender's acceptance of the payoff funds and their subsequent reconveyance of the lien on the property.

As a real estate broker or escrow officer, you may have found yourself in this situation. What could possibly have gone wrong? The short sale lender received the minimum net proceeds, so what else do they want? Well, to everyone's surprise, the minimum net proceeds was not the only thing that mattered to the short sale lender. Short sale lenders have multiple requirements and a number of factors can cause rejection of the payoff funds.

## **What can cause the rejection of payoff funds?**

- Closing a short sale without final HUD approval is a common cause for rejection of payoff funds. Even if you are certain that all conditions have been met, final HUD approval is usually the last requirement prior to closing.
- If the short sale was approved under a specific buyer's name, changing the name without approval may cause rejection of payoff funds.
- Many short sale lenders prohibit refunds to the seller or buyer. If the buyer deposits excess funds into escrow, the resulting refund may cause a rejection of payoff funds.
- If the short sale lender's post closing audit reveals that private mortgage insurance approval was not obtained, a rejection may occur.
- If conflicts arise between the first and second lien holder's requirements, a rejection of payoff funds is likely. Additional money deposited by the buyer, or other third parties, such as real estate brokers willing to contribute commission towards a resolution, will likely be considered an increase in the sales price. The first short sale lender may require all additional monies be paid to them.
- If the final HUD and other required documents are not uploaded by the real estate broker through the Equator system, the payoff funds will be rejected.

## **Risks beyond closing:**

- If the short sale lender fails to cancel the pending foreclosure, the new owner will receive a notice of default. Sometimes the loss mitigation department does not coordinate with the foreclosure department.
- An immediate sale of the property by the new owner is often a violation of the short sale lender's agreement.

## **Remedies:**

- Since it is the escrow agent's wire that has been rejected, it is incumbent upon the escrow agent to negotiate a resolution with the short sale lender.
- The rejection of funds may have resulted because the short sale lender did not receive the final required documents. The escrow agent must upload, email or fax the final documents and re-wire the funds.
- In the event one of the provisions of the short sale lender's approval letter has not been met, the escrow agent must work with the lender to obtain a revised approval letter which fulfills the terms of the closing. This can require resubmitting documents and a re-approval process. Interfacing with management level personnel of the short sale lender is often required when re-approval is necessary.

- If a rejection is due to a refund to the buyer, the short sale lender may approve application of the excess funds to principal reduction on the buyer's new loan.

**When all else fails:**

When all attempts for remedial action fail, complete rejection of the short sale results in the complete failure of title for the buyer and the buyer's lender. In such an event, the buyer's ownership remains subject to the short sale lender's lien, which is superior to the buyer's ownership interest and the buyer's new loan. The escrow agreement with the buyer and seller typically provides for insuring title free and clear of the short sale lender's lien. If the short sale lender will not cooperate in finding another remedy, there are very limited options to make a buyer whole. The inability to resolve short sale deficiencies may result in an obligation of the title insurer or escrow agent to cover the monetary shortfalls. Generally speaking, closing short sales requires perfection, as the liability incurred when things go awry will be considerable. Real estate brokers may sometimes feel that their escrow officer is being a bit too picky when closing a short sale. However, when one considers the potential liability, precision seems appropriate.

**The nightmare continued...**

Although the nightmare on Elm Street manifested itself shortly after the closing, it all started with the sales agreement. The buyer had requested that the sales agreement be written in the name of Frederick Krueger, or designee. Krueger's intention was to use money from his self-directed IRA. As the actual closing date approached and it was time to prepare final documents, the real estate broker provided escrow with an addendum assigning the buyer's interest to Retirements 'R Us, Custodian FBO Fred Krueger IRA. Since the short sale lender had approved the sales agreement with the "or designee" language, everyone assumed this would not be a problem. After all, the buyer's individual name was still a part of the designee's name. The escrow officer, thinking that all conditions of the short sale approval had been met, made the fatal mistake of not obtaining final HUD approval. When the wire was sent and the final HUD was faxed to the short sale lender, the short sale lender disagreed. The short sale approval letter contained two provisions which clearly disallowed this substitution of the buyer's name:

- This approval is based on the purchase contract dated 10/31/09 between Frederick Krueger and Don and Marge Thompson.
- The purchase contract may not be assigned.

When the wire was rejected by the short sale lender the escrow officer realized that this was a critical situation. The escrow officer immediately contacted her supervisor for help, who escalated the matter to a supervisory level at the short sale lender. In the end, the short sale had to be re-submitted and re-approved in the name of the Krueger IRA. The short sale lender made no promises that the sale would be approved as re-submitted and could not say how long the process might take.

After a month of anxiety, word was finally received that the sale was approved in the Krueger IRA and the rejected wire could be re-sent. A catastrophe was averted and the nightmare faded with a new dawn.



George Slape, Oregon Real Estate Board Member

*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.*

## Next Board Meeting in Cannon Beach

The [Oregon Real Estate Board](#) will be holding its next meeting at 10 a.m. on Monday, October 3, 2011 in Cannon Beach. See the [Agency's website](#) for additional information.

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

## Governor Appoints New Board Member

September 02, 2011

Governor John Kitzhaber has appointed Diana Emami as a public member of the Oregon Real Estate Board.

Ms. Emami is owner and co-founder of Barrington Management LLC, which specializes in property development. She is also vice president of Oak Grove Cinemas, Inc. An active community member and an avid volunteer, she serves as a vice president of the Portland Lithuanian Community and as a board member on Umpqua Bank Metro Divisional Advisory Board.

She earned a Bachelor of Science degree in Business Administration from Vilnius University. Born in Lithuania, Ms. Emami currently resides in Lake Oswego with her husband David and their two children. In her free time, she enjoys boating, golfing, skiing, and photography.

The Oregon Real Estate Board consists of seven industry members and two public members. Meetings are held a minimum of six times a year. Board members are appointed by the Governor for four-year terms; however, the members serve at the pleasure of the Governor and members' terms may be extended until the Governor replaces them.

Board duties include providing advice to the Real Estate Commissioner and the Governor's office regarding real estate industry matters, reviewing proposed rulemaking, approving experience waiver requests of real estate licensing applicants, and overseeing the license examination process.



## New Record-Keeping Requirements for Continuing Education Records

September 01, 2011

New continuing education requirements became effective January 1, 2011. Licensees are now responsible for maintaining their own continuing education records.

### **As a real estate licensee (broker, principal broker or property manager), what continuing education records am I required to keep?**

You must maintain all certificates of attendance received from certified continuing education providers and you must complete and maintain the Agency-approved **Continuing Education Record form**. The Agency-approved form can be found on the Agency's website at [www.rea.state.or.us](http://www.rea.state.or.us).

### **Doesn't my principal broker keep records of all my completed continuing education courses?**

As of January 1, 2011 you are required to keep your own records for all courses completed on or after January 1, 2011. Principal brokers are not required to maintain continuing education records for other licensees for any courses completed on or after January 1, 2011.

### **Is my principal broker required to keep records of my continuing education courses I took prior to January 1, 2011?**

Yes, your principal broker or certifying licensee must keep your continuing education records for any courses completed prior to January 1, 2011 for a period of six years.

### **How long do I need to my continuing education records?**

You must maintain your own records for three years after the date the renewal form and fees are received by the Agency.

### **What if I don't keep my own records of continuing education?**

By law you are required to keep your own records for all courses completed on or after January 1, 2011. You must produce a copy of the continuing education records upon the Agency's request. The Agency will not contact principal brokers who supervise licensees to request records for courses completed after January 1, 2011. Principal brokers are no longer required to maintain continuing education records for others. The Agency will contact individual real estate licensees who must comply with the records request.

### **Do I need to send copies of my Certificates of Attendance and the Record-Keeping form to the Agency when I renew my license?**

No. Do not send copies of Certificates of Attendance or the Continuing Education Record form at renewal time. You must produce copies of your records only if the Agency specifically requests the copies from you.

## Agency Announces Staff Changes

September 02, 2011

**Philip Johnson** joined the Regulations Division on June 20 as a full-time, permanent Financial Investigator. Mr. Johnson was a real estate broker in the State of Hawaii for 12 years, during which he served four years as the chair of the grievance committee for the Kona Board of Realtors®. Mr. Johnson has 15 years experience as the compliance officer of a multi-state consumer lending company responsible for developing and implementing compliance training and tracking tools in order to meet rule and law requirements with local, state, and national regulators.

**Peter Bale** also joined the Regulations Division on June 20 as a full-time, permanent Financial Investigator. Mr. Bale was a Fellow of the Institute of Chartered Accountants in England and Wales, and has 20 years experience in various finance roles including financial accounts and reconciliation preparation, audit reporting, and commercial law application. Mr. Bale was an onsite property manager and leasing agent in Washington for over a year and was responsible for tenant procurement, tenant relationships, and bookkeeping records.

**Carolyn Foster** was hired as a Compliance Specialist for the Education Division on August 3. She earned a bachelor's degree in economics from the University of Oregon and graduated from Willamette University's College of Law. Previously, Ms. Foster worked as a claims adjuster at an insurance company.

The Agency welcomes Mr. Johnson, Mr. Bale, and Ms. Foster.

## Agency Division Reports - September 2011

September 01, 2011

### **ADMINISTRATIVE SERVICES DIVISION**

Manager - Erica Kleiner

The Administrative Services Division includes five full-time employees and two part-time (temporary) employees and acts as support to the Real Estate Agency (Agency). This division manages budget preparation, accounting, purchasing and contracting, inventory control, facilities, payroll and personnel contacts, special projects and the Agency's information systems.

The Agency recently had its budget approved during the 2009-11 regular legislative session. The Agency's Legislatively Approved Budget (LAB) totals \$7,461,430 Other Funds and 30 positions (30 full time-equivalents).

The division will be recruiting for a full-time, permanent, Information Systems Specialist 3 position in mid-August. This position will assist in the operation, maintenance, and installation of information systems for the Agency, as well as, modify and enhance existing systems, and help users accomplish work and solve system problems. The primary focus of this position will be to provide customer service to users, specifically relating to software, hardware, and other data. The Agency's IT staff will now be a part of the Administrative Services Division.

### **LAND DEVELOPMENT DIVISION**

Manager - Laurie Skillman

The Land Development Division has two staff members and 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 2011 roughly tracked the statistics for 2010. The economy and financing continue to negatively impact new condominium filings. Quite a few small, non-residential filings have been filed in the first three quarters. Several of these filings are low-income housing condominiums. Reviews are primarily for amendments to existing developments, disclosure statements for successor declarant banks and timeshares.

### **EDUCATION DIVISION**

Manager - Stacey Harrison

#### *Division Overview*

The Education Division has three staff members and 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 June 2011 showed a 10% decrease in the number of exams administered for the same period in 2010. As of August 2011, the division has certified a total of 253 continuing education providers.

#### *Current and Future Projects*

The new contract with PSI for development and administration of examinations began July 1, 2011. New requirements and changes under the contract include:

1. Examination and fingerprint services are provided exclusively by PSI and fees are paid directly to PSI.
2. Examination eligibility must be provided electronically by education providers to PSI
3. Fingerprints can only be taken at PSI test centers at time of examination, and
4. PSI now publishes the Candidate Bulletin.

On June 28, 2011, the division held an informational session for all pre-license and BASS education providers. The purpose of the meeting was to update the providers on new requirements for education providers, review new administrative rules for applicants and providers, and explain future changes to real estate education and licensing.

The division is assisting the Oregon Real Estate Board in revising the content of the Law and Rule Required Course (LARRC). The course content revisions will be based on recent legislation from the 2011 legislative session and recent changes to Oregon Administrative Rules.

## LICENSING DIVISION

Manager – Laurie Hall

### 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. There are over 24,000 individuals and facilities throughout the state of Oregon that are licensed and registered with the Agency.

So far this year, Division staff members have processed an average of almost 1,700 transactions and handled over 4,000 phone calls each month. Normal processing time for transactions (receiving money, input into database and mailing out license) is 7-10 days.

Online renewals were at 72% in July!

### Workload and Activity Indicators

#### **NUMBER OF ACTIVE AND INACTIVE LICENSEES - 2011**

	<b><u>Jan</u></b>	<b><u>Feb</u></b>	<b><u>Mar</u></b>	<b><u>Apr</u></b>	<b><u>May</u></b>	<b><u>Jun</u></b>	<b><u>Jul</u></b>
<b>Broker - Total</b>	<b>12,953</b>	<b>12,857</b>	<b>12,775</b>	<b>12,684</b>	<b>12,584</b>	<b>12,476</b>	<b>12,387</b>
Active	10,064	9,972	9,893	9,886	9,836	9,806	9,774
Inactive	2,889	2,885	2,882	2,798	2,748	2,670	2,613
<b>Principal Broker - Total</b>	<b>7,209</b>	<b>7,189</b>	<b>7,159</b>	<b>7,139</b>	<b>7,108</b>	<b>7,088</b>	<b>7,075</b>
Active	6,691	6,660	6,625	6,611	6,584	6,573	6,561
Inactive	518	529	534	528	524	515	514
<b>ALL BROKERS Total</b>	<b>20,162</b>	<b>20,046</b>	<b>19,934</b>	<b>19,823</b>	<b>19,692</b>	<b>19,564</b>	<b>19,462</b>
<b>Active</b>	<b>16,755</b>	<b>16,632</b>	<b>16,518</b>	<b>16,497</b>	<b>16,420</b>	<b>16,379</b>	<b>16,335</b>
<b>Inactive</b>	<b>3,407</b>	<b>3,414</b>	<b>3,416</b>	<b>3,326</b>	<b>3,272</b>	<b>3,185</b>	<b>3,127</b>
<b>Property Manager - Total</b>	<b>752</b>	<b>753</b>	<b>751</b>	<b>754</b>	<b>754</b>	<b>757</b>	<b>767</b>
Active	668	667	665	663	664	666	672
Inactive	84	86	86	91	90	91	95

#### **NEW LICENSEES: MONTHLY AVERAGE BY LICENSE TYPE**

	<b><u>2006</u></b>	<b><u>2007</u></b>	<b><u>2008</u></b>	<b><u>2009</u></b>	<b><u>2010</u></b>	<b><u>2011</u></b>
						<b>YTD</b>
Broker	242.6	184.9	103.3	59.4	59.3	48.7
Principal Broker	31.5	34.9	26.4	15.7	311.2	10.6
<b>TOTAL BROKERS</b>	<b>295.8</b>	<b>245.5</b>	<b>165.4</b>	<b>143.7</b>	<b>373.1</b>	<b>59.3</b>
Property Manager	7.9	8.3	9.7	6.6	7.3	6
MCC Salesperson	2.8	1.3	1.8	0.8	0.8	1.6
MCC Broker	0.2	0	0.1	0.2	0.1	0.3
<b>TOTAL INDIVIDUALS</b>	<b>306.8</b>	<b>255</b>	<b>176.9</b>	<b>151.2</b>	<b>381.3</b>	<b>67.1</b>

### Program Changes and Future Projects

The Licensing Division Staff continues to field many phone calls regarding the licensing process changes and are continuously working to streamline internal processes.

## REGULATION DIVISION REPORT

Manager – Selina Barnes

### Division Overview

The Regulation Division currently has ten staff members, with 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.

### Division Report

The vacant Financial Investigator positions have been filled. Peter Bale and Philip Johnson started on June 20, 2011. Please see the [article](#) introducing both of them. We are pleased to have them join the Regulation Division with their experience and knowledge.

### ARELLO CREI Designation

All of the Investigator/Auditors have completed the requirements for and been granted the designation of Certified Real Estate Investigator (CREI). This designation is earned through the Association of Real Estate License Law

Officials (ARELLO). ARELLO provides quality specialized training related to real estate regulatory investigations and audits.

## Administrative Actions

The Agency is required by Oregon Real Estate License Law to publish disciplinary actions. (ORS 696.445)  
Administrative actions from May 13, 2011 to August 18, 2011 are as follows:

Butterfield, Christopher Patrick  
Davies, Lee  
Head, Richard Allen  
Hoyt, Helen  
Hume, Gregory R.  
Kim, Byung J.  
Kowitz, Myliam Y.  
O'Neill, Christopher Thomas  
Simonson, Randall D.



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 CHRISTOPHER PATRICK BUTTERFIELD  
8

}  
} STIPULATED FINAL ORDER  
}

9  
10 The Real Estate Agency (OREA) and Christopher Patrick Butterfield (Butterfield) do  
11 hereby agree and stipulate to the following:

12 FINDINGS OF FACT  
13 CONCLUSION OF LAW

14 1.

15 1.1 From March 24, 2006 to February 6, 2008, Butterfield was licensed as a broker  
16 with Nuera. From February 6, 2008 to February 16, 2010, Butterfield was licensed first as a  
17 broker, then a sole practitioner broker, then a principal broker with Oregon First. From  
18 February 16, 2010 to the present time, Butterfield has been licensed as a principal broker with  
19 Encore Realty, LLC.

20 1.2 On September 1, 2010, OREA received notification from the Oregon Department  
21 of Consumer and Business Services (DCBS) that Butterfield had received a Final Order for  
22 noncompliance with Workers' Compensation laws.

23 1.3 On August 20, 2007, DCBS, through its Compliance Section/Workers'  
24 Compensation Division, filed a Proposed and Final Order Declaring Noncompliance and  
25 Assessing Civil Penalty against Butterfield Real Estate Solutions, LLC. Butterfield Real Estate  
26 Solutions, LLC was a domestic limited liability company with Mark Lanore as the registered  
27 agent and Chris and Dauna Butterfield as managers.

28 ///

29 ///

30 ///



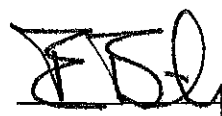
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ORDER

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

IT IS SO STIPULATED:

IT IS SO ORDERED:



CHRISTOPHER PATRICK BUTTERFIELD

GENE BENTLEY

Real Estate Commissioner

Date 7/13/11

Date 7-27-11

DATE of service: 7-27-11

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 LEE DAVIES  
8

STIPULATED FINAL ORDER

9  
10 The Real Estate Agency (OREA) and Lee Davies (Davies) 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, Davies was licensed as a principal broker with Lee  
16 Davies Real Estate.

17 1.2 On February 15, 2010, OREA received, from the Department of Justice, a copy  
18 of an arbitration filing relating to a property that had been listed by Davies and Lisa  
19 Migchelbrink (Migchelbrink). The arbitration was filed against the buyer's brokers and involved  
20 problems the buyer encountered with the settling of the backyard in-ground swimming pool.  
21 The arbitration was settled with the buyer's brokers. Neither Davies nor Migchelbrink were  
22 involved in the arbitration.

23 1.3 On April 22, 2009, Davies and Migchelbrink listed property at 13668 NW  
24 Lakeview Drive in Portland, Oregon. The property was listed for the purchase price of  
25 \$689,900.

26 1.4 On May 20, 2009, the sellers completed the Exterior Siding/Stucco/E.I.F.S.  
27 Disclosure and Seller's Property Disclosure Statement. The Seller's Property Disclosure  
28 Statement included an attached sheet titled Attachment A. Attachment A discloses and  
29 explains the settlement of the in-ground pool along with a description of the work that was  
30 completed due to the settlement.

1           1.5    On June 1, 2009, Katelin Baldus (Baldus), a broker with Prudential Northwest  
2 Properties, wrote a back-up offer on the subject property for Guiseppe Curello and Annalisa  
3 Cappellani (buyers). The offer was for the purchase price of \$670,000. On June 2, 2009,  
4 Davies presented the back-up offer to the sellers and wrote a Seller's Counter Offer. The  
5 counter offer was for the purchase price of \$680,000. The counter offer was accepted by the  
6 buyers on June 3, 2009. On June 4, 2009, the sellers terminated the first position transaction  
7 and the buyers automatically moved into first position.

8           1.6    On July 15, 2009, the transaction closed. After closing, the buyers had a pool  
9 company come to the property to teach them how to maintain the pool. The pool company  
10 noticed that the pool was not level to the extent that on the downhill (slope) side of the pool the  
11 water was at the edge, and on the house side of the pool the water barely was high enough to  
12 go into the skimmer. The pool company employee stated that he believed it would cost  
13 approximately \$5,000 to correct the level problem with the in-ground pool.

14           1.7    Robert Levy, Baldus's principal broker, contacted Migchelbrink and asked what  
15 information the sellers had about the pool. Migchelbrink responded that the sellers did know  
16 about the pool which is why they made the disclosures in Attachment A. Migchelbrink then  
17 sent Levy three property disclosures. Migchelbrink noted that she thought that she had  
18 previously sent copies, discussed the need for disclosures with Baldus, but could not find  
19 actual documentation to support her claim. Migchelbrink thought the disclosures were  
20 available on RMLS.

21           1.8    ORS 105.475(1) states, "If a seller issues a seller's property disclosure statement  
22 and a buyer has not then delivered to the seller a written statement waiving the buyer's right to  
23 revoke the buyer's offer, the buyer shall have five business days after delivery of the seller's  
24 property disclosure statement to revoke the buyer's offer by delivering to the seller a separate  
25 signed written statement of revocation disapproving the seller's disclosure.

26           1.9    Davies stated that the disclosures were posted on the RMLS website. There  
27 was, however, no indication that the disclosures were in fact available on RMLS. Nonetheless,  
28 posting disclosures on RMLS does not constitute delivery. Davies could not provide  
29 documentation to indicate that he provided the sellers property disclosure form to the buyers'  
30 agent.



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ORDER

IT IS HEREBY ORDERED be and hereby is reprimanded.

IT IS SO STIPULATED:

IT IS SO ORDERED:

  
\_\_\_\_\_  
LEE DAVIES

  
\_\_\_\_\_  
GENE BENTLEY

Real Estate Commissioner

Date 6/13/11

Date 6-15-11

DATE of service: 6-15-11

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 RICHARD ALLEN HEAD  
8

STIPULATED FINAL ORDER

9  
10 The Real Estate Agency (OREA) and Richard Allen Head (Head) do hereby agree and  
11 stipulate to the following:

12 FINDINGS OF FACT  
13 AND  
14 CONCLUSIONS OF LAW

15 1.

16 1.1 From October 22, 2008 to January 7, 2010, Head was licensed as a real estate  
17 broker with Windermere Real Estate/Lane County (Windermere Lane). From January 7, 2010  
18 to the present time, Head has been licensed with Turning Point Realty Group (Turning Point).

19 1.2 In October 2009, the principal brokers of Windermere Lane filed a complaint with  
20 OREA with allegations regarding Head's son, Tyler Head (T. Head).

21 1.3 Based on the complaint received, OREA initiated an investigation. The  
22 investigation documented Head's involvement in transactions involving three different  
23 properties: (1) 2790 Chambers St in Eugene, OR (Chambers Street); (2) 88065 Pine St in  
24 Veneta, OR (Pine Street); and (3) 3775 Peppertree Dr in Eugene, OR (Peppertree Drive).

25 Chambers Street Property

26 2.

27 2.1 On October 2, 2009, T. Head wrote an offer for Brandon Nickerson (Nickerson)  
28 to purchase the Chambers Street property. The offer shows Head as the listing licensee and  
29 T. Head as the selling licensee. Head signed the final agency acknowledgement as the listing  
30 licensee. However, T. Head actually represented both the seller and the buyer.









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ORDER

IT IS HEREBY ORDERED that Head's real estate license be suspended for a period of sixty (60) days with said suspension to be effective on the 27<sup>th</sup> day of August, 2011.

IT IS SO STIPULATED:

IT IS SO ORDERED:

  
\_\_\_\_\_

RICHARD ALLEN HEAD

Date 7-30-11

  
\_\_\_\_\_

GENE BENTLEY

Real Estate Commissioner

Date 8-8-11

DATE of service: 8-9-11

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 HELEN HOYT  
8

STIPULATED FINAL ORDER

9 The Real Estate Agency (OREA) and Helen Hoyt (Hoyt) do hereby agree and stipulate  
10 to the following:

11 FINDINGS OF FACT

12 Prior to April 1, 2011, Hoyt was licensed as a principal broker with Portland Creative  
13 Realtors LLC. Hoyt's license expired on March 31, 2011 and was not renewed until May 2,  
14 2011. During the time Hoyt's license was expired, April 1, 2011 to May 1, 2011, 31 days, Hoyt  
15 continued conducting professional real estate activity as if actively licensed.

16 CONCLUSION OF LAW

17 By conducting professional real estate activity over the course of 31 days after her  
18 license expired and before reactivating it, Hoyt violated ORS 696.020(2) and is subject to  
19 discipline or civil penalty pursuant to ORS 696.301(3).

20 STIPULATION & WAIVER

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

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

7 ORDER

8 IT IS HEREBY ORDERED that pursuant to ORS 696.990(1) to (9) and based upon the  
9 violation set forth above, Hoyt pay a civil penalty in the sum of \$100, said penalty to be paid to  
10 the General Fund of the State Treasury by paying the same to the OREA. The civil penalty is  
11 computed in accordance with ORS 696.990(4) and (8) in that each 30-day period of unlicensed  
12 activity is considered one violation. In this instance, there were one 30-day periods of  
13 unlicensed activity.

14  
15 IT IS SO STIPULATED:

IT IS SO ORDERED:

16  
17   
18 \_\_\_\_\_

19 HELEN HOYT

20  
21 Date 8/10/11

  
\_\_\_\_\_

22 GENE BENTLEY

23 Real Estate Commissioner

24 Date 8.11.11

25  
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27  
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29  
30  
DATE of service: 8-12-11

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 GREGORY R. HUME  
8

STIPULATED FINAL ORDER

9  
10 The Real Estate Agency (OREA) and Gregory R. Hume (Hume) do hereby agree and  
11 stipulate to the following:

12 FINDINGS OF FACT  
13 CONCLUSIONS OF LAW

14 1.

15 1.1 At all times mentioned herein, Hume was licensed as a principal broker with  
16 Hume Myers Tenant Counsel, LLC.

17 1.2 On September 15, 2010, OREA received a complaint from Flynn Case (Case)  
18 alleging that he was contacted by an out-of-state real estate company, Guardian Commercial  
19 Realty (Guardian), who was trying to negotiate a lease extension for Case's existing tenant,  
20 Interdent.

21 1.3 Case purchased a commercial building at 1160 Liberty St SE in Salem, OR in  
22 2005. The lease for the tenant, Interdent, operating as Gentle Dental, had been in effect since  
23 1998 and was due to expire on February 28, 2011.

24 1.4 On August 30, 2010, Case received an email from Vinscena Virissimo (Virissimo)  
25 with Guardian indicating that Guardian represented Interdent. Virissimo provided Case with a  
26 proposed lease extension on behalf of Interdent.

27 1.5 Case replied to Virissimo on August 30, 2010 saying that he had no  
28 documentation from Interdent indicating the Guardian was representing them. Case asked  
29 Virissimo to provide him with documentation that she works for Interdent before a discussion  
30 about a lease extension could occur.





1 both Hume and Guardian were members of ITRA. Hume does have representation  
2 agreements with other, non-ITRA out-of-state clients.

3 **Violation:** By failing to obtain a written representation agreement with an out-of-state  
4 licensee, Hume violated ORS 696.290(3)(a)(A) and is subject to sanction pursuant to ORS  
5 696.301(3).

6 3.

7 3.1 OREA reserves the right to investigate and pursue additional complaints that  
8 may be received in the future regarding this licensee.

9 STIPULATION & WAIVER

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

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

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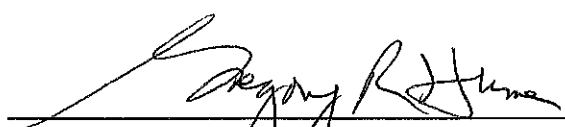
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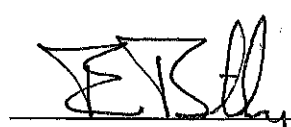
ORDER

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

IT IS SO STIPULATED:

IT IS SO ORDERED:

  
\_\_\_\_\_  
GREGORY R. HUME

  
\_\_\_\_\_  
GENE BENTLEY  
Real Estate Commissioner

Date 8-16-11

Date 8-17-11

DATE of service: 8-18-11

**BEFORE THE  
REAL ESTATE AGENCY  
STATE OF OREGON**

IN THE MATTER OF:  <b>BYUNG J. KIM, Licensee</b>	) <b>FINAL ORDER</b> ) ) OAH Case No. 1001926 ) Agency Case No. 200905-347
--------------------------------------------------------	-------------------------------------------------------------------------------------

This matter came before the Real Estate Agency to consider the Proposed Order issued by Administrative Law Judge (ALJ) Rick Barber on February 17, 2011. An Amended Proposed Order was issued on May 9, 2011. No exceptions were filed to the Proposed Order or the Amended Proposed Order.

The Proposed Order and Amended Proposed Order indicated that the licensee requested a hearing on June 20, 2010, which is incorrect. Licensee actually requested a hearing on August 30, 2010.

After considering the records and the file herein, the Agency adopts the attached and incorporated Amended Proposed Order as the Final Order.

IT IS HEREBY ORDERED that Byung J. Kim's real estate license be suspended for a period of 90 days, effective the date of this order.

Dated this 9th day of June 2011.



\_\_\_\_\_  
Gene Bentley  
Real Estate Commissioner

Date of Service: 6-10-11

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

**REAL ESTATE AGENCY  
BEFORE THE REAL ESTATE COMMISSIONER**

IN THE MATTER OF:

) **AMENDED PROPOSED ORDER**

)

**BYUNG J. KIM**

) OAH Case No. 1001926

) Agency Case No. 200905-347

This matter came before the Real Estate Agency to consider the Proposed Order issued by Administrative Law Judge Rick Barber on April 4, 2011. Licensee did not file exceptions to the Proposed Order. After considering the record in the case, the Real Estate Agency issues this Amended Proposed Order. The Agency is issuing this Amended Proposed Order to address the violation of ORS 696.810(3)(c), the proposed sanction, as well as the ALJ's reasoning regarding the underlying contract. Modifications to the Proposed Order are indicated where they were made

**HISTORY OF THE CASE**

On August 10, 2010, the Real Estate Agency (Agency) issued a Notice of Intent to Suspend to Byung J. Kim (Licensee). On June 28, 2010, Licensee requested a hearing. On September 8, 2010, the Agency referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Rick Barber was assigned to preside at hearing.

Hearing was held on February 17, 2011, in Salem, Oregon. Licensee appeared, represented by Attorney Peter Appleton, and testified. The Agency was represented by Assistant Attorney General Raul Ramirez. The following witnesses testified: Licensee, Jennifer Pyon, Robert Richards, Jr., and Agency Lead Financial Investigator Gae Lynne Cooper. The record closed at the end of the hearing.

On February 21, 2011, after the hearing record closed, Licensee sent a letter contending that the Agency's standard of proof in the case was "clear and convincing evidence." The Agency responded by email on February 24, 2011, and the record was again closed on that date.

**ISSUES**

1. Whether Licensee violated ORS 696.810(3)(a) and/or (3)(c) by failing to include a statement that earnest money was refundable in an addendum to the earnest money agreement.
2. Whether, if Licensee did violate either or both of those statutes, he should be suspended for a period of 90 days.

## EVIDENTIARY RULINGS

Exhibits A1 through A23 were offered by the Agency. Licensee objected to Exhibits A7, A8, A15, A18, A20, A22 and A23; all were admitted over Licensee's objection. Exhibit A22 was admitted for the limited purpose of addressing the sanction issue, if it is reached. Licensee offered exhibits L1 through L5, all of which were admitted into evidence without objection. Procedural Documents P1 through P5 were also designated as part of the documentary record of the case.

## FINDINGS OF FACT

1. Licensee was a principal broker and is now a broker in Beaverton, Oregon. Barbara Heintz (Buyer) is a friend of Licensee's who has been a client for over 20 years. Buyer and her niece, Pyon, were interested in purchasing a commercial property in the Albany area. Acting as the Buyer's agent, Licensee prepared a standard form Earnest Money Agreement (EMA) for the purchase of the Albany property. The offer, designated "Sale Agreement # 21508," was made on February 15, 2008. The EMA contains a standard paragraph requiring the Seller to promptly return the earnest money in the event that the sale fails. (Ex. A8 at 1).

2. On February 19, 2008, the owner of the property, RRW, Inc. (Seller), made a counteroffer, with a higher sales price and presenting financing options such as loan assumption or an owner contract. (*Id.* at 9). On February 25, 2008, Buyer made another counteroffer on a standard form that referenced "Real Estate Agreement No. 21508." Buyer offered to pay \$1,075,000 for the real property and noted that all other terms and conditions would remain the same. (*Id.* at 12).

3. Addendum A to Real Estate Agreement No. 21508 was signed by Buyer on March 4, 2008 and by Seller on March 5, 2008. It stated:

- 1) Buyer to accept \$1,150,000 sale price
- 2) Buyer to have the choice of seller's contract or commercial loan
- 3) Due diligence period will be 15 days after mutual acceptance
- 4) All other terms and conditions are remaining same.

(Ex. A9). Earnest money was paid into escrow on March 10, 2008. (Ex. A10).

4. Addendum B to Real Estate Agreement No. 21508 was signed by Buyer on March 25, 2008. It stated:

- 1) Buyer to agree to release \$10,000 Earnest Money to Seller for repairing the property. \$17,500 the cost of repair to be share[d] by buyer and seller at closing
- 2) Buyer to remove "Due Diligence" contingent
- 3) Closing date to be on or before May 15, 2008
- 4) Buyer's name to be T & J LLC.

Seller did not sign this document. (Ex. A11).

5. Addendum C to Real Estate Agreement No. 21508 was signed by Seller on April 1, 2008 and by Buyer on April 5, 2008. It stated:

Seller rejects Item 1 on Addendum B dated 3-25-08. Items 2, 3 and 4 are accepted. Buyer to contribute \$15,000 at closing toward repairs. Earnest money in the amount of \$10,000 to be released to seller upon mutual acceptance of Addendum C.

Nothing in Addendum C addressed whether the earnest money would be repaid in the event of a sale fail. (Ex. A12).

6. On April 10, 2008, the earnest money in the amount of \$10,000 was paid to Seller. (Ex. A13).

7. The sale failed. Seller refused to return the earnest money, and has not done so as of the date of the hearing in 2011. (Test. of Kim, test. of Richards). It is a standard saying in real estate practice that "if it is not written down, it is not part of the contract." (Test. of Richards).

### CONCLUSIONS OF LAW

1. Licensee violated ORS 696.810(3)(a) by failing to include a statement that earnest money was refundable in an addendum to the earnest money agreement.
2. Licensee violated ORS 696.810(3)(c) by failing to include a statement that earnest money was refundable in an addendum to the earnest money agreement.<sup>1</sup>
3. Licensee should be suspended for 90 days.<sup>2</sup>

### OPINION

The Agency contends that Licensee violated the Agency's rules and that his license should be suspended. It must prove its case by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

Licensee argues that the appropriate standard of proof in the case should be one of "clear and convincing evidence," citing *In re: J. Kelly Farris*, 229 Or 209, 219 (1961). For two reasons, his argument fails. First, based upon later interpretations of the appropriate standard of proof, most notably *Sobel* cited above, the preponderance standard applies.

<sup>1</sup> The Agency added this conclusion of law because the ALJ's Proposed Order did not address the alleged violation of ORS 696.810(3)(c) other than to refer to it as an alternative allegation.

<sup>2</sup> The Agency modified the proposed sanction as explained in this Amended Proposed Order.

Second, while a clear and convincing standard of proof might apply in a fraud case, neither the Notice nor the evidence here establish any allegation of fraud against Licensee. Licensee's alleged violations include a failure to "exercise reasonable care and diligence" and failure to be loyal to the buyer by "not taking action that is adverse or detrimental to the buyer's interest in a transaction." Neither allegation alleges fraud. For the reasons set forth above, the appropriate standard of proof is one of preponderance of the evidence.

**The Allegations.** Licensee is accused of violating ORS 696.810(3)(a) (failing to exercise reasonable care) or, in the alternative, ORS 696.810(3)(c) (failed to be loyal to the buyer by not taking action that was adverse or detrimental). Those statutory subsections state:

**696.810 Real estate licensee as buyer's agent; obligations.** (1) A real estate licensee other than the seller's agent may agree with the buyer to act as the buyer's agent only. The buyer's agent is not representing the seller, even if the buyer's agent is receiving compensation for services rendered, either in full or in part, from the seller or through the seller's agent.

\* \* \* \* \*

(3) A buyer's agent owes the buyer involved in a real estate transaction the following affirmative duties:

(a) To exercise reasonable care and diligence;

(b) To account in a timely manner for money and property received from or on behalf of the buyer;

(c) To be loyal to the buyer by not taking action that is adverse or detrimental to the buyer's interest in a transaction[.]

(Emphasis added).

**The Basic Facts are Undisputed.** There is no real dispute about the facts of the case. Licensee represented the buyers in a commercial transaction in Albany. The buyers had put \$10,000 in earnest money into escrow at the beginning of the deal. The Earnest Money Agreement (EMA) provided for a return of the earnest money in the event of a failed sale.

The Sellers asked if Buyers would be willing to release the earnest money to the Sellers in order to begin making the repairs that would be necessary to complete the sale. Addendum C, the document allowing the release of the earnest money, did not address whether the earnest money would be returned in the event of a sale fail. When the sale ultimately failed, the Sellers refused to repay the earnest money.

**The Interpretation of the Facts Is Disputed.** Based upon those facts, the Agency and Licensee have reached different conclusions about the effects of the sale fail and subsequent complaint. Licensee argues that he did not need to include or require any language about return of the earnest money in Addendum C because the initial EMA still applied. Because the original

EMA provided for the return of the earnest money on a sale fail, and because the addenda to the EMA did not change that provision, Licensee argues, Seller was required to return the earnest money.

The Agency contends, on the same facts, that the EMA was no longer valid because the period of due diligence had run. If Seller had so desired, it could have walked away from the deal because Buyers were taking too long.

The Proposed Order stated as follows (*in italics*) regarding the factual disagreement:

*Based upon the record, I conclude that the Agency's interpretation of the validity of the original EMA is incorrect and that Licensee's interpretation of the applicability of the EMA is probably legally correct. However, I also conclude that Licensee violated ORS 696.810(3)(a).*

*The Agency contends that the passage the "due diligence" period made Licensee's reliance on the return clause in the EMA unreasonable. Ms. Cooper testified that the rules regarding commercial real estate are the same as those for residential, but they are applied differently. However, no rule or statute was cited to explain how the Seller could disregard the return clause in the earnest money agreement and keep the earnest money if the deal took longer than expected. The Agency has failed to differentiate between a void contract and a voidable contract.*

*While a delay beyond the time periods set in the EMA meant that the Sellers could have walked away from the deal, the fact remains that they did not walk away from it. The EMA was voidable, but it was not void. Every one of the addenda executed by the parties, including Addendum C, referred back to the original contract. Both parties were operating with the goal of consummating the deal set forth in that agreement, as amended.*

*If this was an issue concerning the return of the earnest money to Buyers, the evidence presented in this hearing would convince me that Sellers had been unjustly enriched by keeping the earnest money, and that the maxim (quoted by Seller's agent in his testimony) that "if it's not written, it's not part of the contract" would be applied against Seller. There is simply nothing in the documents that gave Sellers the right to keep the earnest money. Licensee had a plausible basis to believe that the EMA protected his clients from the actions Seller eventually took.*

*However, this is not an action for the return of the earnest money. The issue here is whether Licensee violated his duty to his clients and should be sanctioned for it. For the reasons that follow, I find that he did violate his duty to his client.*

After considering the record, the Agency concludes it does not need to determine whether the contract was void or voidable because the determination whether Licensee violated any duty does not hinge on that determination. The portion of the Proposed Order above is therefore not adopted.



**Failure to Exercise Reasonable Care and Diligence.** Although Licensee had a plausible basis to expect the return of the earnest money because of the original agreement, his duty to his client went beyond plausibility. Licensee had a duty to advise his client, and to include language that would make the return of the earnest money clear. If Seller had a different interpretation and was planning to keep the earnest money, that fact would have been made clear in the acceptance or rejection of the terms of Addendum C.

It was Licensee's responsibility to advise his client and to insure that the terms were clear. Licensee does not remember what he discussed with his client, and did not include any language in Addendum C requiring return of the earnest money. The document itself makes it clear that he did not include clarifying language. By a preponderance of the evidence, Licensee failed to exercise reasonable care.

**Failure to Be Loyal.**

The ALJ did not discuss the alleged violation of ORS 696.810(3)(c). He stated as follows (*italics*)

*According to the language of the Notice, this allegation was offered as an alternate basis for discipline. Because I have found that Licensee failed to exercise reasonable care, I do not address this allegation in any detail*

The Agency finds that Licensee violated ORS 696.810(3)(c). The record indicates that Licensee allowed his client to release the \$10,000 earnest money deposit without taking any steps to ensure that the earnest money was refundable in the event of a failed sale. By doing so, Licensee was not loyal to his client and took actions that were detrimental to his client.

**The Appropriate Sanction.**

The Agency does not adopt the ALJ's reasoning regarding the sanction in this case. The ALJ's reasoning is set forth below in *italics*:

*Having established that a violation of the Agency's statutes or rules occurred, I turn to the appropriate sanction. ORS 696.301 states in part:*

*Grounds for discipline. Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:*

\* \* \* \* \*

*(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.*

*The Agency contends that Licensee should be suspended for a period of 90 days as a result of his violation addressed above. I disagree.*

*Licensee's violation was one of reasonable care and, based upon the record and his demeanor at hearing, he has learned a valuable lesson from this transaction and this discipline. The statute quoted above gives the Agency discretion regarding which sanction to apply in a given case. It has chosen suspension. Accepting that choice, I would recommend a suspension of no more than 30 days. The 90 day suspension sought by the Agency is, in my opinion, too severe a sanction for Licensee's actions in this case.*

The sanction to be imposed is a matter within the Agency's direction. *Olson v. Mortuary and Cemetery Board*, 230 Or App 376, 393 (2009). Imposition of a 90 day suspension in this case is appropriate under the Agency's statutory authority. Moreover, the Agency finds that a 90 day suspension is appropriate under ORS 696.396(2)(c)(A) because Licensee's conduct resulted in the loss of \$10,000 to his client, and his client has been unable to recover any of the money despite using additional resources taking legal action against seller.

### ORDER

Based on the foregoing, Licensee is hereby suspended for a period of 90 days effective the date the Final Order is signed.

Dated this 9<sup>th</sup> day of May, 2011

OREGON REAL ESTATE AGENCY



\_\_\_\_\_  
GENE BENTLEY  
Real Estate Commissioner

### NOTICE

This is the Agency's modification of the Administrative Law Judge's Proposed Order. If the Amended Proposed Order is adverse to you, you have the right to file written exceptions and argument to be considered by the Real Estate Commissioner in issuing the Final Order. Your exceptions and argument must be received by the 20th day from the date of service. Send them to:

Kris Ebelmesser  
Oregon Real Estate Agency  
1177 Center St. NE  
Salem OR 97301-2505

The Real Estate Commissioner will issue a Final Order, which will explain your appeal rights.

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 MYLIAM Y. KOWITZ  
8

STIPULATED FINAL ORDER

9  
10 The Real Estate Agency (OREA) and Myliam Y. Kowitz (Kowitz) do hereby agree and  
11 stipulate to the following:

12 FINDINGS OF FACT  
13 CONCLUSIONS OF LAW

14 1.

15 1.1 From May 5, 2006 to March 8, 2010, Kowitz was licensed as a real estate broker  
16 with Pacific Lifestyle Homes, Inc. (PLH). From March 22, 2010 to the present time, Kowitz has  
17 been licensed with Oregon First.

18 1.2 On March 10, 2010, OREA received a complaint regarding Kowitz from Debra  
19 Rich (Rich), principal broker with PLH. Rich alleged that while Kowitz was licensed with PLH,  
20 Kowitz misrepresented herself to escrow as a principal broker and forged broker demands in  
21 order to be paid commissions directly from escrow.

22 1.3 During the investigation, four transactions were reviewed. Transactions reviewed  
23 involved property at: (1) 13001 SE Meadow Creek Lane in Boring, OR; (2) 12035 SE Wiese  
24 Road in Damascas, OR; (3) 2620 SE 47th Avenue in Portland, OR; and (4) 945 SW 19th Way  
25 in Troutdale, OR.

26 1.4 In three of the transactions, Kowitz represented herself as being licensed with PL  
27 Realty instead of PLH.

28 **Violation:** By representing that she was licensed with PL Realty instead of PLH, Kowitz  
29 made material misrepresentations in matters related to professional real estate activity, in  
30 violation of ORS 696.301(1).

1           1.5     In two of the transactions, Kowitz created written documents purporting to allow  
2 Kowitz to do outside sales and listings without her principal broker's knowledge. The  
3 documents directed that commissions be paid directly to Kowitz. The documents purported to  
4 be signed by Scott Brown (Brown), The documents were dated in March and May of 2009.  
5 Brown had been a principal broker with PLH from November 2007 to July 2008. Kowitz  
6 submitted the documents to escrow on three different occasions.

7           **Violation:** By creating documents allowing Kowitz to receive commissions directly and  
8 purportedly signed by Brown, Kowitz made material misrepresentations in matters related to  
9 professional real estate activity in violation of ORS 696.301(1) and committed an act of fraud  
10 or engaged in dishonest conduct substantially related to her fitness to conduct professional  
11 real estate activity in violation of ORS 696.301(14).

12           1.6     On the documents that Kowitz presented to escrow purported to be signed by  
13 Brown, Kowitz either signed Brown's name herself, or was aware that Brown's name was  
14 forged.

15           **Violation:** By signing Brown's name or knowing that Brown's signature was forged on  
16 the documents she created and submitted to escrow, Kowitz made material  
17 misrepresentations in matters related to professional real estate activity, in violation of ORS  
18 696.301(1) and committed an act of fraud or engaged in dishonest conduct substantially  
19 related to her fitness to conduct professional real estate activity, in violation of ORS  
20 696.301(14).

21           1.7     On four occasions, Kowitz submitted broker commission instructions to escrow  
22 instructing that the commission check should be made payable to Kowitz and that Kowitz  
23 would pick up the check when ready. These instructions were created without the principal  
24 broker's knowledge or consent.

25           **Violation:** By giving escrow instructions for commission checks to be directly payable  
26 to Kowitz and that Kowitz would pick up the checks thereby bypassing her principal broker,  
27 Kowitz committed an act of fraud or engaged in dishonest conduct substantially related to her  
28 fitness to conduct professional real estate activity, in violation of ORS 696.301(14).

29           1.8     In October 2009, Kowitz listed the Troutdale property. The flyer on the property  
30 shows the property was advertised by Kowitz as "PL Realty" and in small letters "a division of

1 Pacific Lifestyle Homes". The Regional Multiple Listing Service shows the property was listed  
2 with PLH. The sellers were Chris and Molly Lafrenz (Lafrenzes).

3 **Violation:** By advertising the property as being listed by PL Realty instead of PLH,  
4 Kowitz violated OAR 863-015-0125(1) and (2) and is subject to sanction pursuant to ORS  
5 696.301(3).

6 1.9 Kowitz then represented the Lafrenzes in the purchase of another property. Kowitz  
7 prepared an addendum on behalf of the Lafrenzes. Olivia Bjerke (Bjerke) representative of the  
8 seller/builder refused to sign the addendum. Kowitz signed Bjerke's name to the addendum.  
9 Kowitz also signed her principal broker's name to the addendum.

10 **Violation:** By signing Bjerke's name as well as her principal broker's name, Kowitz  
11 committed an act of fraud or engaged in dishonest conduct substantially related to her fitness  
12 to conduct professional real estate activity, in violation of ORS 696.301(14).

13 1.10 Kowitz purchased a cashier's check in the amount of \$2,300 made payable to the  
14 the Lafrenzes. Kowitz explained that there was a mix up at the title company.

15 **Violation:** By giving the Lafrenzes a check for \$2,300, Kowitz shared her commission  
16 with unlicensed individuals, in violation of ORS 696.290(1) and is subject to sanction pursuant  
17 to ORS 696.301(3).

18 1.11 Kowitz did not provide transaction documents to her principal broker on the  
19 Boring property transaction until 13 months after the offer was accepted.

20 1.12 On the Portland property, Kowitz provided her principal broker with listing  
21 documents seven months after the property was listed. Kowitz provided her principal broker  
22 with the transaction documents five months after the offer was accepted.

23 **Violation:** By failing to transmit to your principal broker all documents pertaining to  
24 your professional real estate activity timely on three occasions, Kowitz violated OAR 863-015-  
25 0255(3) and is subject to sanction pursuant to ORS 696.301(3).

26 2.

27 2.1 OREA reserves the right to investigate and pursue additional complaints that  
28 may be received in the future regarding this licensee.

29 ///

30 ///

1 STIPULATION & WAIVER

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

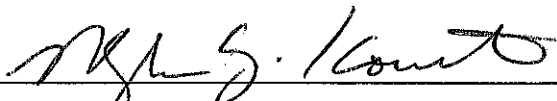
12 I hereby agree and stipulate to the above findings of fact and conclusions of law and  
13 understand that the order which follows hereafter may be completed and signed by the Real  
14 Estate Commissioner or may be rejected by the Real Estate Commissioner, in which case an  
15 amended notice of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

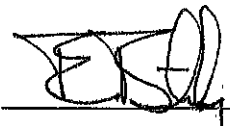
18 ORDER

19 IT IS HEREBY ORDERED that Kowitz' real estate license be revoked, with said  
20 revocation to be effective on the 1<sup>st</sup> day of September, 2011.

21  
22 IT IS SO STIPULATED:

IT IS SO ORDERED:

23  
24  
25   
26 MYLIAMY. KOWITZ

27  
28   
29 GENE BENTLEY

30  
Date 8/11/2011

Real Estate Commissioner  
Date 8.11.11

DATE of service: 8-12-11

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 CHRISTOPHER THOMAS O'NEILL  
8

STIPULATED FINAL ORDER

9  
10 The Real Estate Agency (OREA) and Christopher Thomas O'Neill (O'Neill) do hereby  
11 agree and stipulate to the following:

12 FINDINGS OF FACT  
13 CONCLUSION OF LAW

14 1.

15 1.1 From July 17, 2003 to June 28, 2010, O'Neill was licensed as a real estate broker  
16 with The Hasson Company (Hasson). From June 28, 2010 to the present time, O'Neill has  
17 been licensed with Re/Max Equity Group, Inc., now Re/Max Equity Group (Re/Max Equity).

18 1.2 On July 8, 2010, OREA received a complaint from Lynae Forbes (Forbes),  
19 principal broker with Hasson. Forbes alleged that O'Neill attempted to divert commission from  
20 Hasson to Re/Max Equity in his instructions to escrow.

21 1.3 At the time that O'Neill transferred his license from Hasson to Re/Max Equity, he  
22 had two pending transactions. One of the pending transactions involved property at 7945 SW  
23 Fanno Creek Dr, Tigard, Oregon. O'Neill was the selling broker. The Fanno Creek property  
24 closed on July 7, 2010, nine days after O'Neill left Hasson.

25 1.4 On June 30, 2010, O'Neill sent escrow an email captioned "New broker  
26 demands" with an attachment. The email may have implied that O'Neill had spoken to his  
27 principal broker at Re/Max Equity and was sending a new commission demand to pay him  
28 (O'Neill) at Re/Max Equity. The attachment was escrow instructions from Re/Max Equity with  
29 the typewritten name of Dave Koch followed by O'Neill's signature.

30 ///




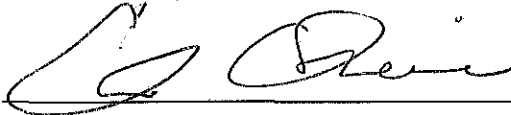


ORDER

IT IS HEREBY ORDERED that O'Neill be, and hereby is, reprimanded.

IT IS SO STIPULATED:

IT IS SO ORDERED:



CHRISTOPHER THOMAS O'NEILL

GENE BENTLEY

Real Estate Commissioner

Date 8-1-11

Date 8-3-11

DATE of service: 8-4-11

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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 RANDALL D. SIMONSON  
8

}  
} STIPULATED FINAL ORDER  
}

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

12 FINDINGS OF FACT

13 1.

14 1.1 At all times mentioned herein, Simonson was licensed as a principal broker with  
15 The Commercial Real Estate Co.

16 1.2 On October 13, 2009, OREA received a complaint from Joseph Weston (Weston)  
17 regarding his purchase of the Onyx Self Storage and Business Park (Onyx Park) from  
18 Simonson. Weston alleged that there were gross differences to revenue and occupancy  
19 claims in the documents.

20 2.

21 2.1 In June and August of 2008, Simonson was communicating with Joel Deis (Deis)  
22 with Marcus & Millichap Real Estate Investments (M&M) regarding the listing of Onyx Park.  
23 On August 26, 2008, Simonson sent Deis a rent roll for the condos dated July 31, 2008, which  
24 show a gross income of \$141,000 per year.

25 2.2 On September 3, 2008, Simonson signed listings with M&M to sell Onyx Park.  
26 One listing was for the storage units with a listing price of \$5,400,000, and the other listing was  
27 for the condo/warehouse units with a listing price of \$1,700,000. M&M used the information  
28 provided by Simonson as the basis to value the condos. The rent roll data was also the  
29 foundation of the information M&M provided in the marketing package.

30 ///

1           2.3    On September 12, 2008, Deis notified Simonson by email that Weston wanted to  
2 tour Onyx Park on Tuesday, September 16, 2008. Simonson replied stating that he would be  
3 at Onyx Park at noon to meet Weston.

4           2.4    On September 19, 2008, Deis emailed Simonson a Letter of Intent (LOI) from  
5 Weston to purchase Onyx Park in its entirety. Exhibit A to the LOI notes due diligent material  
6 to be supplied by seller within 5 days of seller's acceptance of LOI. Simonson accepted the  
7 LOI on September 24, 2008.

8           2.5    Deis received a rent roll from Simonson dated October 2, 2008 which shows both  
9 tenants and rents drastically different from what was provided in August. The difference in  
10 Gross Profit Index (GPI) was \$65,000 less a year and with an 8.5% cap it's about \$800,000 in  
11 value of the condos. Deis notified Simonson that Weston had received the updated rent roll  
12 and notes that they will need to update the marketing packages immediately. On the email,  
13 Simonson wrote Pro Forma with an arrow pointing to the July 31 date.

14           2.6    Since there were two July 31, 2008 Onyx Park rent rolls with conflicting  
15 information, Weston sent Simonson a letter with some questions, to which Simonson  
16 responded.

17           2.7    On October 10, 2008, Weston, through Weston Investment Co. LLC (WIC), made  
18 an offer to purchase Onyx Park. Weston was represented by Deis. Simonson accepted  
19 Weston's offer, but his signature was undated.

20           2.8    After closing, Weston changed the name of Onyx Park to U-Store and  
21 Simonson's onsite manager, Raul Pizano (Pizano), was hired to be the onsite manager for U-  
22 Store.

23           2.9    When employees of U-Store went to Klamath Falls to take over the Onyx Park  
24 facilities and go through the business accounts to transfer the Onyx Park computer files to the  
25 U-Store computer system, it appeared that the accounting of the rental income and tenants  
26 that Simonson had presented at escrow were not actual.

27           2.10   Mitch Thompson (Thompson), Vice President of the Self Storage Division of  
28 WIC, discovered emails between Simonson and Pizano discussing removing fake names from  
29 the rent roll and free or discounted rent on storage units by Simonson. Thompson approached  
30 Pizano about the emails and Pizano admitted that Simonson instructed Pizano to add

1 additional customers to the database and list them under names such as Wireless Toys,  
2 Homedale MFG, Floors and More, etc.

3 2.11 Pizano explained that he sent Simonson two versions of the rental rate status  
4 report, one with "actual rent" and one with actual and fake people. Pizano stated that  
5 sometime in the fall of 2008, Simonson asked Pizano to remove the created accounts and run  
6 the report. Shortly after the report was run, Simonson informed Pizano that Onyx Park had  
7 been sold and under foreclosure.

8 2.12 Pizano further stated that the five "free rent" units were occupied by Simonson  
9 under assumed aliases. It was also determined that Simonson family members also occupied  
10 units with no rents being paid.

#### 11 CONCLUSIONS OF LAW

#### 12 3.

13 3.1 By submitting Onyx Park certified rent rolls that included false tenant names and  
14 rental income figures, Simonson created a reasonable probability of damage or injury by  
15 making one or more material misrepresentations or false promises in a matter related to  
16 professional real estate activity in violation of ORS 696.301(1).

17 3.2 By submitting falsified certified rent rolls noting that Onyx Park was receiving  
18 monthly income on storage units being used by Simonson and Simonson's family members,  
19 Simonson created a reasonable probability of damage or injury by making one or more  
20 material misrepresentations or false promises in a matter related to professional real estate  
21 activity in violation of ORS 696.301(1).

#### 22 4.

23 4.1 OREA reserves the right to investigate and pursue additional complaints that  
24 may be received in the future regarding this licensee.

#### 25 STIPULATION & WAIVER

26 I have read and reviewed the above findings of fact and conclusions of law which have  
27 been submitted to me by OREA and further, the order which follows hereafter. I understand  
28 that the findings of fact, conclusions of law and this stipulation and waiver embody the full and  
29 complete agreement and stipulation between OREA and me. I further understand that if I do  
30 not agree with this stipulation I have the right to request a hearing on this matter and to be

1 represented by legal counsel at such a hearing. Hearings are conducted in accordance with  
2 the procedures set forth in ORS Chapter 183 and in accordance with the Rules of Practice and  
3 Procedure adopted by the Attorney General of the State of Oregon. I freely and voluntarily  
4 waive my rights to a hearing, to representation by legal counsel at such a hearing, and to  
5 judicial review of this matter.

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

12 ORDER

13 IT IS HEREBY ORDERED that Simonson's real estate broker's license be suspended  
14 for a period of thirty (30) days with said suspension to be effective on July 1, 2011.

15  
16 IT IS SO STIPULATED:

IT IS SO ORDERED:

17  
18 

18 

19  
20 RANDALL D. SIMONSON

20 GENE BENTLEY  
21 Real Estate Commissioner

22 Date 7/2/11

22 Date 7.11.11

23  
24 DATE of service: 7-11-11