



Oregon Real Estate News-Journal

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CHECK CLEARING FOR THE 21ST CENTURY ACT

Scott W. Taylor, Real Estate Commissioner

The Real Estate Agency has received several calls from licensees concerned that the Check Clearing for the 21st Century (Check 21) Act will cause their clients' trust account to fall out of compliance with ORS 696.

Check 21 is Federal legislation that was signed into law by President Bush in October 2003. It becomes effective October 28, 2004.

The Act allows, but does not require, banks to transmit electronic images of a check through the check clearing process instead of using original paper checks. The goal of the Act is to avoid the necessity of original paper checks having to be transported all over the country as they are cleared, but rather to facilitate the use of electronic images for this purpose. If a consumer or a bank insists on receiving an original paper check at any point in the process, the Act allows the use of a "substitute check."

A substitute check is a magnetic ink character recognition (MICR) encoded paper reproduction of an original check which (1) contains

an image of the front and back of the check; (2) bears a MICR line containing all the information appearing on the MICR line of the original check; (3) conforms in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and (4) is suitable for automated processing in the same manner as the original check. (The MICR line is that line of odd-looking numbers and symbols at the bottom of your checks.)

To use the substitute check in the same manner you would use the original check, the substitute check must accurately represent all of the information on the original check at the time it was electronically imaged, and bear the required legal equivalence legend, which is, "This is a legal copy of your check. You can use it in the same way you would use the original check." The substitute check is then the legal equivalent of the original check. If a consumer or another bank, etc. requires an original check, under the Act, they will receive a "substitute check." Because the substitute



Commissioner Scott Taylor

check is the legal equivalent of the original check, neither a consumer nor a bank can refuse to accept it.

Check 21 does not mandate that banks use electronic imaging and send substitute checks. It requires banks accept substitute checks if a bank does not have the capability of accepting the electronic check image. The Agency does not know how many banks will begin elec-

CHECK 21: continued on page 2

IN THIS ISSUE

Board, Staff Changes	2	Where to Find Hard-to-Find Classes	5
New Background Check Application Form	3	Administrative Actions	6
Social Security Number Disclosure	3	Be Careful When Disclosing Square Footage	8
Agency Website Updates	3	Builder Deposits	9
Crime Prevention Training for Landlords	3	Informed Clients and Customers	9
Time is Running Out!	4	2004-2005 Calendar	10

ADVERTISING: continued from page 1

electronically imaging their checks and sending substitute checks on October 28. However, we are aware some have the technology now and will begin implementing it October 28.

The Act supersedes any provision of Federal or State law that is inconsistent with the Act. Therefore, a substitute check that is the legal equivalent of the original check is treated anywhere as if it were the original check.

This brings us to the expressed concern about how the new law fits

in with ORS 696, Oregon's real estate and escrow activities laws. ORS 696.243 "Substituting copy for original canceled check allowed; electronic fund transfers," is the applicable section of Oregon's law. ORS 696.243(1) states, "Any real estate broker, principal real estate broker, real estate property manager or escrow agent who is required by the Real Estate Commissioner to maintain the canceled checks used to disburse moneys from the licensee's trust account may substitute a copy of the original canceled check, if the copy is

provided by a bank and is produced by optical imaging or other process that accurately reproduces the original or forms a durable medium for reproducing the original, and the copy is at least 300 dots per inch in quality."

Because a substitute check is the legal equivalent of the original, and because the Federal law supersedes State law in any event, a licensee maintaining trust account records where substitute checks are provided in place of the actual canceled checks, is in compliance with ORS 696.243(1).

BOARD, STAFF CHANGES

Mike Graeper was elected by the Oregon Real Estate Board to serve as Chairperson. Mr. Graeper is a principal broker with Windermere/Cronin and Caplan Realty Group, Inc., in Portland. He has held a license since 1969, is past president of Oregon Association of Realtors and the Clackamas County Board of Realtors, and was a Regional Vice-President with the National Association of Realtors.

John Boals was selected to perform Lead Worker duties among the Agency's Investigator Auditors. Mr. Boals holds a BS in Business Administration, was licensed as a broker in 1978, and has been an Investigator/Auditor with the Agency since 1999.

Greg DeMaderios was selected to fill a vacant Information Systems Specialist 4 position with the Agency. He is responsible for assisting with network operations including user support, and in planning, design, development and maintenance of the Agency's information systems. He was most recently owner of a technology consulting business, and was previ-

ously an I.T. Infrastructure Support Analyst and a Helpdesk Coordinator with the State of Nebraska.

Christy Davis was selected to fill a vacant Public Service Representative position with the Agency. She assists with Licensing Section workload and is the support staff for Land Development activities. She completed the real estate license program at Linn Benton Community College, was a sales associate for brokerages in Albany between 1994 and 1998, and was employed most recently as a Public Service Representative for the Oregon State Police.

Charlie Chaffin resigned from the Agency to pursue a private sector opportunity. He was licensed in 1984 as a designated broker. He was affiliated with Sunnyview Real Estate in Salem, and served as an Investigator/Auditor with the Agency since 1998.

On behalf of the Agency, Commissioner Scott Taylor congratulates Mr. Graeper and Mr. Boals, welcomes Mr. DeMaderios and Ms. Davis, and wishes Mr. Chaffin well in his new venture.

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Betty Reynolds, Editor

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NEW BACKGROUND CHECK APPLICATION FORM

Oregon law requires all real estate broker and real estate property manager applicants to submit a Background Check Application form and fingerprint card. Clearance must be given by the Agency before a license may be issued.

The Background Check Application form has been revised. The new three-page form is available to print from the Agency's website at www.rea.state.or.us. Beginning November 1, 2004 the Agency will no longer accept the two-page form.

Applicants who have a *Real Estate License and Examination Information* booklet that contains the old two-page form, and who have not yet submitted the Background Check Application, should use the new form from

the Agency website.

The background check takes an average of two to three months to complete. Clearance issued by the Agency is valid for one year. If an applicant does not apply for a license within that time, the background check must be completed again. Applicants currently licensed by the Agency (for example, renewal or re-activation applicants, or licensees wishing to change their license types) are not required to complete background checks.

For information regarding licensing requirements including the background check application, please visit the Agency website, or call the Agency at (503) 378-4170, and select option 2.



The Agency's website is frequently updated with information and tools useful to licensees. Most recent changes include addition of the Background Check Application to the forms and publications section, and the exam schedule has been updated through June 2005. Please also note that the Agency's "phone script" for incoming calls to the agency was simplified, and the website was modified to reflect the changes. Please visit the Agency website at www.rea.state.or.us.

In addition, the Agency will be moving its web pages to the state web portal, with the migration to be completed by December 2004.

The portal is a centralized system hosting web pages for all state agencies, boards, and commissions. The Agency's web address will be the same and the content will largely be the same, but the "look and feel" will be consistent with other state agencies. The reasons for the migration are to ease navigation within the state portal for anyone wanting to do business with the State of Oregon, and to provide a powerful search engine and multilingual capabilities. For more information about the new state portal please visit http://legov.oregon.gov/DAS/web_explanation.shtml.

SOCIAL SECURITY NUMBER DISCLOSURE

In coming weeks the Real Estate Agency will mail notices to all licensees regarding disclosure of Social Security Numbers (SSNs).

Federal and state laws require certain licensing agencies to disclose the SSNs of licensees for child support enforcement and other specified government purposes.

The notices will explain the procedures for objecting to Agency disclosure of a licensee's SSN, as well as provide an explanation of potential revocation proceedings that may follow an objection.

For more information please contact the Licensing Section at (503) 378-4170, press 0.

CRIME PREVENTION TRAINING FOR LANDLORDS

The Salem Police Department offers a crime prevention workshop for rental property owners, property managers, and on-site managers. The workshop focuses on reduction of crime in and around rental properties. It provides an update of Oregon's Landlord Tenant Law, and covers applicant screening, rental agreements, and the eviction process, drug house activity and warning signs, working with the police, the value of Neighborhood Watch, crime prevention through environmental design and property maintenance ordinances.

The day-long Salem workshop is offered quarterly for \$15 per person, \$20 per couple. The cost includes refreshments and a reference manual. The next training is scheduled for Saturday, November 6 from 8 a.m. until 5 p.m. To register for the Salem workshop, contact Meghan Schoenlaub at (503) 588-6259. For more information about similar workshops in other areas, contact your local law enforcement entities.



TIME IS RUNNING OUT!

KNOW THE EDUCATIONAL REQUIREMENTS TO KEEP YOUR LICENSE

Real estate license law changed July 2002. If you were licensed as a salesperson in Oregon on June 30, 2002, or obtained your first real estate license in Oregon after July 1, 2002, you must take action to keep your license. Here is what you must do.

**If you are an active or inactive
ASSOCIATE BROKER
(former SALESPERSON)*,
you must:**

1. Take the 30-hour Associate Broker Transition Course. [For a list of schools, visit our web site at www.rea.state.or.us or call us at (503) 378-4170.] The course can be used to satisfy continuing education requirements with your principal broker's permission.
2. After finishing the course, send the following items to the Real Estate Agency at 1177 Center Street NE, Salem, OR 97301:
 - your original Associate Broker Transition Course certificate; and
 - your original associate broker license.

We will send you a broker license.

DEADLINE: June 30, 2005. If the Agency does not receive your Associate Broker Transition Course certificate postmarked by June 30, 2005, your license will be canceled. For more information on canceled licenses, see below.

Note: You do not need to complete the broker licensing exam to make this transition.

* These requirements apply if you were licensed as a salesperson on June 30, 2002. You automatically received a temporary associate broker license from the Agency in July, 2002. If you supervise a licensed personal assistant, additional requirements apply. Effective January 2, 2004, only principal brokers can supervise licensed personal assistants.

**If you are an active
BROKER**

originally licensed after July 1, 2002, you must:

1. Take the 30-hour Advanced Real Estate Practices course from an approved course provider. [For a list of schools, see "Where to Find Hard-to-Find Classes" on page 5, visit our web site at www.rea.state.or.us or call us at (503) 378-4170.] The course can be used to satisfy continuing education requirements with your principal broker's permission.
2. Submit proof of completion of the Advanced Real Estate Practices course to your principal broker. Your principal broker will then certify on your license renewal form that you have completed the course. Do not send proof of course completion to the Real Estate Agency.

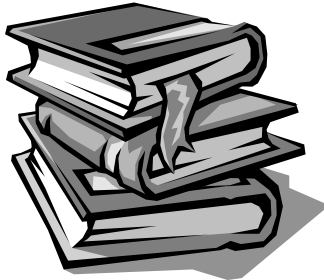
DEADLINE: First license renewal. Your first license is valid from the date of issue for one year and then onto the last day of the month of your birthday. **This means your first renewal date may be less than 13 months after obtaining your license.** For example, if your first license was issued in September 2003, and your birthday is in October, your license would renew October 31, 2004.

**If your license is
CANCELED:**

If you fail to complete the required transition course within the time allowed, your license will be canceled. If your license is canceled, you must immediately stop conducting licensed real estate or property management activity. To obtain a license again, you would need to complete all requirements for initial licensure before applying for a license. These requirements include pre-license education, the required license exam and a background check.

If you held any type of Oregon broker license prior to July 1, 2002, or you currently have a principal or sole practitioner broker license, you must meet the normal continuing education requirements at your license renewal. Visit www.rea.state.or.us for information on continuing education requirements. If you have questions about license requirements, please contact the Licensing Section at (503) 378-4170, selection 2. If you have questions about education or examination requirements, please contact the Education Section at (503) 378-4170, ext. 251 or 260.

WHERE TO FIND HARD-TO-FIND CLASSES



New courses are approved and added to the Agency's list of approved classes regularly. Check out the Agency's web site at www.rea.state.or.us for the latest list of providers approved to offer pre-license, post-license, and transition courses. You may also receive the list by mail by calling the Agency at (503) 378-4170, selection 2.

The following is a list of approved course providers currently offering or scheduled to offer hard-to-find required courses:

BROKERAGE ADMINISTRATION AND SALES SUPERVISION

American College of Real Estate, live lecture, (503) 247-9311

First American Title and Insurance Company, live lecture, (503) 219-8723

Gloria Rohl, live lecture, (503) 390-6375

onlineEd, online and live lecture, www.onlineed.com or (503) 636-4580

ProSchools, live lecture, www.proschools.com or (800) 452-4879

Quality Real Estate School, independent study at home or school, (541) 389-9585

Warren's Real Estate School, live lecture, (541) 997-1142

REAL ESTATE PROPERTY MANAGER (PRE-LICENSE)

Lane Community College, live lecture, (541) 463-5906

Portland Community College, online or live lecture, (503) 977-4393

ProSchools, live lecture, www.proschools.com or (800) 452-4879

Warren's Real Estate School, live lecture, (541) 997-1142

ADVANCED REAL ESTATE PRACTICES

American College of Real Estate, live lecture, (503) 247-9311

The Coaching Institute, live lecture, (503) 302-4846

onlineEd, online and live lecture, www.onlineed.com or (503) 636-4580

Quality Real Estate School, independent study at home or school, (541) 389-9585

ProSchools, online, www.proschools.com or (800) 452-4879

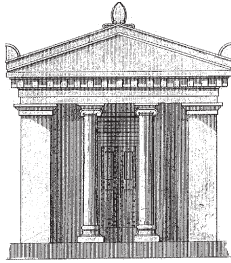
Oregon Association of Realtors® (OAR),* live lecture, (503) 362-3645 or (800) 252-9115

Real Estate Institute of Greater Portland, live lecture or independent study at home, (503) 665-6780

* Please note: In April 2004, OAR incorporated an Advanced Real Estate Practices (AP) component as part of its Graduate Realtor Institute (GRI) series. The Agency reminds licensees that OAR's entire GRI series (100, 200 & 300), plus a specially designed property management class offered by OAR and onlineEd, must be completed to satisfy the entire AP requirement, and these classes may require up to 24 months to complete. Because most licensees' first renewal periods run less than two years, please be aware there may not be enough time to complete the AP course requirements via the GRI series. For more information on renewal and AP course requirements, please see the Agency's brochure "Continuing Education Requirements", or call (503) 378-4170, extension 251 or 260.

ADMINISTRATIVE ACTIONS

June 1, 2004 through August 31, 2004



The Agency is required by Oregon Real Estate License Law to publish disciplinary actions. A list of those actions, a brief description of the situation, and the grounds for the Commissioner's action follows. Please note there are 60 days after the order date to file an appeal, and some of the orders listed may be within that appeal period. Please also note, there are individuals with real estate licenses that may have similar or the same names as those listed herein, or even work in the same market area. If you are in doubt if an individual listed here is someone you know or with whom you are dealing, please contact the Agency for verification.

Finally, please note that stipulated settlements do not necessarily reflect all the factual violations initially alleged by the Agency, and the sanction(s) may have been adjusted as part of the negotiation process. Such settlements may not, therefore, directly compare in severity/sanction with other cases.

REVOCATIONS

DeLeon, Tamra M. (Albany) Temporary Associate Broker #970600073 Default Order dated August 13, 2004, effective August 13, 2004; modified a listing agreement and advertised property in multiple listing based on the modified listing without the knowledge or consent of the seller, ORS 696.301(1); Knew or should have known that the documentation in the sale included an additional parcel, and failed to make the seller aware of the situation when DeLeon knew or should have known that the seller understood that only the originally listed lot was being sold, ORS 696.815(2)(b)(c); failed to obtain the sellers final agency acknowledgement at the time the seller accepted the offer, ORS 696.845; failed to no-

tify her seller that she had not presented or obtained agreement from the buyer regarding provisions of Addendum B, which required that a water sharing agreement to an existing well situated on the additional parcel would be drafted and executed by the parties; and by her actions deceived the seller about the terms of the sale including the specific legal description, consistently damaging the position of her seller to the reciprocal benefit of her buyer, ORS 696.301(31); failed to adequately provide a legal description of the property being sold on the sale agreement, OAR 863-010-0020(5); and failed to provide copies of the modified listing agreement and Addendum B to her broker, OAR 863-010-0025 (1999 Editions).

SUSPENSIONS

Brady, Charlotte E. (Eugene) Broker #960900200 Hearing order dated July 1, 2004 issuing a 9-month suspension effective July 23, 2004. Brady was compensated outside a real estate transaction and agreed to take no commission from the sale of property. Escrow mistakenly issued a commission check to Brady for \$7800 as a result of the transaction, which should have been issued to the cooperating broker. When the error was detected, Brady returned half the commission amount when asked. Brady then gave the escrow company a check for the remaining half of the commission and then stopped payment on the check. Brady retained \$3,900 that did not belong to her, a violation of ORS 696.301(31).

Lampman, Douglas J. (Nampa, ID) Reciprocal Principal Broker #200012027

Order of Suspension dated June 30, 2004 issuing a suspension of Lampman's Oregon real estate license based on the suspension of his Idaho real estate license, OAR 863-015-080(10).

Wilson, Cindy D. (Eugene) Principal Broker #970300087

Stipulated order dated June 3, 2004 issuing a 30 day suspension effective July 1, 2004; as principal broker and disclosed limited agent for sellers and buyer, did not disclose to the sellers that the buyer was her husband, ORS 696.815(2)(a); failed to obtain a signed Disclosed Limited Agency Agreement for Buyer from the buyer, OAR 863-015-0205(1); failed to initial and date the rewritten earnest money agreement written by her agent, OAR 863-015-0140(6); and offered to discount her commission fee in exchange for the buyer receiving a corresponding credit on his closing costs, and later offered to credit the seller part of her commission, ORS 696.290(1).

REPRIMANDS

Arnason, Dennis O. (Portland) Broker #871200126

Stipulated order dated August 24, 2004; Buyers made a second offer on property listed by Arnason through a cooperating broker. On the professional inspection addendum, which was part of the sale agreement, the buyers asked the seller to pay for a home warranty. The seller signed the offer. The seller signed the offer containing the provision for the home warranty though the seller had indicated to Arnason at the time she was unwilling to pay for the warranty. The documents

were faxed to the Buyers' agent with the words "no home warranty" on a cover sheet. The buyers' agent noticed the discrepancy between the executed agreement and the cover sheet and left a voice mail for Arnason attempting to clarify the situation, asking Arnason to return her call. Arnason did not return the call, believing the buyers were insisting the sellers purchase a home warranty. He discussed the situation with the sellers who then withdrew from the transaction. Arnason obtained the sellers' signatures on an inspection addendum to the real estate agreement without changing the addendum provision to reflect the sellers' wishes regarding the home warranty, violating OAR 863-015-0135(5).

Bowers, Bobbi F. (Grants Pass) Temporary Associate Broker #900600177 Stipulated order dated June 15, 2004, which also requires the successful completion of certain education; failed to procure a disclosed limited agency agreement from the seller prior to representing both the buyer and seller, OAR 863-015-0205(1)(2); failed to secure the buyer's signature on the sale agreement and then proceeded with the transaction as though she had a legal and binding contract of sale between the parties, ORS 696.301(28); failed to secure the date and time of the seller's signature on the sale agreement, OAR 863-015-0135(3); failed to include an earnest money promissory note with the sale agreement she presented to the seller for acceptance, ORS 696.301(28); and gave the buyers possession of the property without obtaining the written permission of the seller to do so, ORS 696.810(2)(a)(b).

Lyons, Sharrol (Klamath Falls) Property Manager #930400015 Stipulated order dated July 27, 2004; failed to prepare and maintain an owner's ledger for an owner's five properties, OAR 863-025-0055(2); failed to keep a sufficient credit balance on the owner's ledger on two occasions, OAR 863-025-0025(3)(a)(e); failed to provide an owner with all unobligated funds timely, OAR 863-025-0070(3); improperly charged an owner a 10% management fee rather than the 9% fee stated in the property management agreement, ORS 696.301(28); removed management fees from the owner's ledger at the time the rent was collected rather than after the monthly cycle represented by the fees was completed, OAR 863-025-0025(3)(f); completed a number of clients' trust account reconciliations, operating and security deposit accounts, that were missing one or more requirements for a clients' trust account reconciliation and did not balance, OAR 863-025-0025(5)(6); and issued two checks from the security deposit clients' trust account and then coded them with different check numbers in the accounting system, OAR 863-025-0025(1).

Masters, Michael D. (Grants Pass) Principal Broker #801004242 Stipulated order dated June 7, 2004; as the seller, accepted the buyer's offer after it had expired rather than making a counter offer or asking the buyer to ratify or approve his untimely acceptance, ORS 696.301(28); and as the seller, agreed with the buyer to different terms than were stated in the sale agreement and failed to amend the sale agreement to reflect the change in terms, OAR 863-010-0020(5).

Price, David A. (Seaside) Principal Broker #780401251 Stipulated order dated August 13, 2004; removed earnest money from his clients' trust account and deposited it into escrow when he knew the transaction was failing and the earnest money was going to be disputed, ORS 696.301(31).

Serdar, Trina M. (Albany) Principal Broker #920300242 Stipulated order dated June 14, 2004; failed to obtain a copy of Exhibit A which included the legal description of the property being transferred for her broker file, ORS 696.280(1)(2); and failed to follow up on the development and maintenance of complete contract documentation, resulting in inadequate contract provisions and incomplete broker records of professional real estate activity, ORS 696.301(29).

Sorensen, Robin Lee (Keizer) Broker #970400150 Default order dated May 19, 2004; failed to specify on a listing agreement the disposition of forfeited earnest money, ORS 696.241(6); and failed exercise reasonable care and diligence in failing to advise buyer to check on the contractor's Construction Contractor's Board license and claims history, when facts were present indicating she should have realized the contractor's ability to perform was questionable, ORS 696.805(2)(a) (1999 Edition).

CIVIL PENALTIES

American Title Group, Inc. (Eugene) Escrow Agent #930800117 Stipulated order dated June 3, 2004 issuing a \$1,500 civil penalty; failed to meet bonding requirements for 63 days, from
ADMINISTRATIVE. . . : continued on page 8

ADMINISTRATIVE. . . : continued from page 7
January 1, 2004 through March 3, 2004, ORS 696.525(2)(c).

Castellano, Daniel B. (Medford) Temporary Associate Broker #200203120
Stipulated order dated June 15, 2004 issuing a \$500 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-15-0050(2).

First American Title Insurance Co of Oregon (Portland) Escrow Agent #850600257
Stipulated order dated June 7, 2004 issuing a \$3,000 civil penalty; used escrow instructions that did not mention the mobile home portion of the transaction, ORS 696.581(2); failed to deliver title to the mobile home to

the principals within a reasonable time, ORS 696.535(1)(h); act from the buyers and their lender by not informing them that the mobile home had not been de-titled, ORS 696.535(1)(g); and withdrew escrow fees from a closing escrow prior to the escrow function having been performed, OAR 863-050-0055(5).

Goldman, Benjamin A. (Medford) Broker #990500144
Stipulated order dated July 14, 2004 issuing a \$400 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-15-0050(2).

Vedder, Carol (Eugene) Property Manager #880900021
Stipulated order dated July 27, 2004 issuing a \$200 civil pen-

alty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-15-0050(2).

Way, Debra K. (Gold Beach) Broker #980400143
Stipulated order dated July 1, 2004 issuing a \$600 civil penalty; failed to renew real estate license for a period of time while continuing to conduct professional real estate activity, OAR 863-15-0050(2).

OTHER

Bostrom, Eric (Bend) Unlicensed #200408187
Immediate Order to Desist & Refrain dated August 17, 1004; conducting membership camping contract activities without first obtaining a registration in Oregon, ORS 94.956.

BE CAREFUL WHEN DISCLOSING SQUARE FOOTAGE

Shelly Saffran, Director of Administration, Kentucky Real Estate Commission

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One of the first questions a buyer usually asks about a piece of property is: "What is the square footage?" Many buyers feel it is important because it allows them (although not always accurate) to estimate the value of the home and to compare it with other properties. However, when measuring square footage, there is not a statute or a regulation outlining the proper procedure.

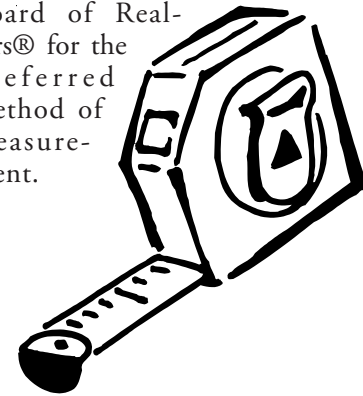
Under KRS 324.160(4)(b), licensees shall not make any substantial misrepresentation about a piece of property. [Editor's note: *The relevant law in Oregon is ORS 696.301.*] Licensees are not required under license law to report square footage. However, licensees must make sure that if they do choose to report square footage, they report it accurately. Licensees should also disclose exactly how

they calculated square footage and whether or not they actually measured the property themselves or relied on a third party's measurement. Licensees should also be aware that when they are reporting square footage, they only calculate "living area" square footage. It should be heated, finished and directly accessible from other living areas. If licensees rely on a previous listing, survey or appraisal report, they should disclose to the parties where they obtained the square footage amount. Licensees should not rely on a square footage total calculated by the home owner or a tax or PVA record. Licensees should encourage buyers to obtain their own square footage calculation if it is an important factor of their home-buying decision.

Licensees need to be trained on the proper procedure for measuring square footage. The American National Standards Institute (ANSI) has developed the American National

Standard for Single-Family Residential Buildings: Square Footage-Method for Calculating. The National Association of Realtors® was a contributing member in the development of this standard. For more information on obtaining these standards, call the NAHB Research Center at (800) 638-8556.

The Kentucky Real Estate Commission has not adopted a particular standard and licensees should check with their principal brokers or local Board of Realtors® for the preferred method of measurement.



BUILDER DEPOSITS

Lee B. Harris, General Counsel, Kentucky Real Estate Commission

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Often, when a buyer is purchasing a home that is under construction at the time, the builder will request a deposit or down payment. Sometimes, this deposit goes towards building expenses. In most cases, the deposit or down payment is not to be placed into escrow and is not refundable should the deal fall through for some reason.

The Commission has seen some problems arise out of these non-refundable deposits or down payments. Agents who are representing buyers on these deals should be particularly cautious and advise their buyer-clients of the risks associated with such a payment.

First, the contract should clearly and specifically state that the money is not being placed into an escrow account but that it is being paid directly to the builder – and that it will

be spent! Many times, buyers believe that the money is being paid to the builder to hold, but is not actually being spent. In addition, if there is standard, pre-printed language in the purchase contract indicating that the deposit will be placed into a broker's escrow account, be sure to mark out this clause. By no means should the contract indicate that the broker will hold the money when, in fact, it is going directly to the builder.

Second, the buyer's agent should tell the buyer that there are risks associated with paying a non-refundable deposit. For example, what if the property never closes and the builder has spent the money on building materials? Is the buyer truly prepared to lose that amount of money? Is there a provision in the contract to protect the buyer in case the property does not close due to the seller's default?

Third, it is advisable to check out the builder's references and past cli-

ents, to determine whether there is any additional risk. The buyer's agent should advise the buyer to ask the builder for a list of other customers for whom the builder has worked. In addition, the buyer's agent can point the buyer to the local Homebuilder's Association to determine if the builder is a member of that organization. If so, the buyer should ask whether there have been any complaints filed and how those were resolved. The buyer's agent may want to advise the buyer to check with the Better Business Bureau and the local courts to determine whether the builder has had any complaints or lawsuits filed. Certainly, if the buyer's agent is aware of any past problems, the buyer's agent should inform the buyer of those facts.

If there are any red flags raised by any of the above steps, the buyer may want to consider negotiating a different sort of deposit or down payment, if possible.

INFORMED CLIENTS AND CUSTOMERS

Lee B. Harris, General Counsel, Kentucky Real Estate Commission

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There are numerous laws and issues involved in a real estate transaction. Oftentimes, consumers do not understand the complexities or nuances of contract, agency and license law. So long as everything goes smoothly, these issues may not be addressed; however, if a problem arises, it is a benefit to have a well-informed client or customer.

The question is: how can the client or customer become informed? The answer is simple: the agent or broker should inform the client or customer of the issues at each stage of the process.

For example, the Commission receives a lot of calls from consumers

who are in a multiple offer situation. The first buyer to make an offer believes that he or she will have the opportunity to counter or to raise his or her offer. The licensee should inform the offeror that this is simply not the case – if the buyer wants the property, he or she should make a reasonable and sound offer at the beginning of the process. Likewise, many buyers believe that a verbal acceptance is binding. Licensees should not verbally negotiate; however, if there are verbal negotiations, the licensee should make it absolutely clear to the consumers that there is no binding contract until an agreement is actually signed by the seller.

In addition, many consumers become frustrated when making offers on properties owned by out-of-state

mortgage or relocation companies. The frustrations stem from the fact that many of these companies will not agree to anything in writing until the very end of negotiations and will take several weeks to respond to any offers or counteroffers. This frustration can easily be avoided if the licensee informs the buyer of the possible delays and possible verbal counter-offers at the outset.

The point of these examples is that consumers do not like surprises or unexpected delays. If the licensee can impart his or her wisdom and experience on a consumer, then the transaction will likely be smoother. For instance, a buyer does not want to find out the rules of multiple offers after another buyer has already made a better offer.

**OCTOBER**

Tuesday, October 5, 2004 October License Examination Application Deadline
 Saturday, October 23, 2004 October License Examination
 Monday, October 25, 2004 Real Estate Board Meeting

NOVEMBER

Friday, November 5, 2004 November License Examination Application Deadline
 Thursday, November 11, 2004 Veteran's Day, State Offices closed
 Saturday, November 20, 2004 November License Examination
 Thursday, November 25, 2004 Thanksgiving Day, State Offices closed

DECEMBER

Monday, December 6, 2004 December License Examination Application Deadline
 Saturday, December 18, 2004 December License Examination
 Monday, December 20, 2004 Real Estate Board Meeting
 Friday, December 24, 2004 Christmas celebrated, State Offices closed
 Friday, December 31, 2004 New Year's celebrated, State Offices closed.

JANUARY

Wednesday, January 5, 2005 January License Examination Application Deadline
 Monday, January 17, 2005 Martin Luther King, Jr. Day, State Offices closed
 Saturday, January 22, 2005 January License Examination

FEBRUARY

Saturday, February 5, 2005 February License Examination Application Deadline
 Saturday, February 19, 2005 February License Examination
 Monday, February 21, 2005 Presidents' Day, State Offices closed

MARCH

Saturday, March 5, 2005 March License Examination Application Deadline
 Saturday, March 19, 2005 March License Examination

APRIL

Tuesday, April 5, 2005 April License Examination Application Deadline
 Saturday, April 23, 2005 April License Examination

MAY

Thursday, May 5, 2005 May License Examination Application Deadline
 Saturday, May 21, 2005 May License Examination
 Monday, May 30, 2005 Memorial Day, State Offices closed

JUNE

Monday, June 6, 2005 June License Examination Application Deadline
 Saturday, June 18, 2005 June License Examination

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