



Oregon Real Estate News-Journal

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MORE ON CONTINUING EDUCATION

Scott W. Taylor, Real Estate Commissioner

In a recent issue, I asked for comments regarding our continuing education system. I received numerous comments from licensees. Additionally, we received many comments on this subject in the recent focus groups held by the Agency around the state. Based upon the nature of these comments, it appears there is sentiment to pursue this subject further, and we expect to take up more discussions about continuing education in the near future. For those licensees who contributed; thank you and you have not been forgotten.

I have also received feedback from Agency staff as a result of what they are finding on compliance reviews.

The staff conducting compliance reviews has reported that there are Principal Brokers who believe they are exempt from continuing education requirements. Principal Brokers are not exempt from continuing education requirements. Property Managers are not exempt from continuing education requirements. ORS 696.174 (1) is not limiting. It speaks to all real estate licensees; "... the real estate licensee" They further report confusion about what constitutes continuing education,

the criteria to judge it, and certificate requirements. Hopefully, what follows will address those issues.

ORS 696.174 (1) states: "To qualify an active license for renewal, the real estate licensee must present evidence of attendance during the preceding two license years at 30 clock-hours of real estate-oriented continuing education courses, of which a minimum of 15 clock-hours shall be in required course topics."

All licensees have been required to attend 30 hours of continuing education since 1996.

During a compliance review, Agency staff verifies that the certifying licensee has retained copies of Certificates of Attendance for continuing education courses.

The rules for continuing education courses can be found at OAR 863-015-0055. These rules set out the topics for the 15 hours of required topics. They state that the minimum course length shall be one clock hour, exclusive of meal breaks or rest breaks. Though routine luncheons and meetings *per se* do not qualify as continuing education courses, classes given in conjunction with them may qualify. Re-



Commissioner Scott Taylor

peating the same course within the same two year period will not count as additional credit.

The rules further provide guidance as to certification criteria [OAR 863-015-0055 (3)], advanced practices courses for licensees in their first licensing cycle [OAR 863-015-0055 (4)], and alternate delivery [OAR 863-015-0055 (5)].

Certificates of attendance must con-
CONTINUING EDUCATION: *continued on page 2*

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CONTINUING EDUCATION: *continued from page 1* tain the following information: The licensee's name, the course title and date of completion, the instructor's name and course location, method of course delivery, and whether an examination was administered [OAR 863-015-0055 (6)].

Principal Brokers who are certifying courses for their affiliated licensees should pay particular attention to the certification criteria. It is ultimately the certifying licensee's decision as to whether the course warrants certification. A Principal Broker, for example, is not required to certify continuing education hours for courses he or she does not feel meet the criteria for certification. Affiliated licensees should verify with the Principal Broker as to whether he or she will certify a particular course if in doubt.

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Mesbeal Heyman, Editor
Carmen Twenge, Associate Editor

STAFF CHANGES

The Real Estate Agency has experienced a number of personnel changes in the second quarter of 2006.

Kathleen Presley retired as an Investigator/Auditor in April. She was with the Agency for over nine years, and spent a total of 25 years in service with the state. Ms. Presley plans to spend her time exploring the country in her recently purchased motor home.

After 11 years with the Agency, **Larry Taylor** retired as an Investigator/Auditor in May. Mr. Taylor will be keeping occupied with fishing trips and home improvement projects.

Rita Rush begins retirement in June after more than four years with the Agency as Administrative Services Manager. After spending over 12 years in state service, Ms. Rush will use her retirement years for traveling, spending time with family, and volunteering.

Dean Owens was selected to re-

place Ms. Rush. Mr. Owens has worked in state government since 1996, most recently for the Oregon Department of Energy. He comes to the Agency with solid experience in both state accounting and budgeting.

Tami Schemmel joined the Agency in May as a Customer Services Representative. Ms. Schemmel has over 20 years of experience in state government. She replaced **Christina Ulberg**, who accepted a position with the Department of Human Services after two and one-half years with the Agency.

Carmen Twenge left the Agency in June to spend more time with her family. Ms. Twenge has been Education Coordinator since December 2002, and worked previously at the Agency from 1988 to 1996.

The Agency welcomes Mr. Owens and Ms. Schemmel, and thanks Ms. Presley, Mr. Taylor, Ms. Rush, Ms. Ulberg, and Ms. Twenge for their contributions to the Agency.



NEW LANDLORD AND TENANT LAWS BOOK OFFERED BY LEGISLATIVE COUNSEL

The publication *2006 Landlord and Tenant Laws of Oregon* is now available from the Legislative Counsel. The book includes selected laws relating to the Residential Landlord and Tenant Act, hotels and motels, temporary and transitional housing, and farm labor housing. The cost is \$23. For information on ordering, contact the **Legislative Counsel** at (503) 986-1243, or visit <http://www.lc.state.or.us>.

RECEIVE RULE NOTICES BY MAIL OR E-MAIL

The *OREN-J's* publication schedule does not always provide for timely notification of changes to the Agency's administrative rules. The Agency has a rulemaking mailing list, and is in the process of creating an e-mail list.

The Agency encourages anyone interested in receiving notices to send a postcard to the Agency with your name, address, e-mail address, and your preference for regular mail or e-mail notification. You may also provide this information by e-mail to Administrative Rules Coordinator Laurie Skillman at laurie.a.skillman@state.or.us.

COURSE REQUIRED FOR NEW AND RELICENSED BROKERS

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

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

The AP course is a specific 30-hour course that must be completed before your first active license renewal. Your first license is valid from the date of issue for one year and then onto the last day of the month of your birthday. This means your first renewal date may be less than 13 months after obtaining your license. For example, if your first

license was issued in May 2006, and your birthday is in June, your license would renew June 30, 2007.

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

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

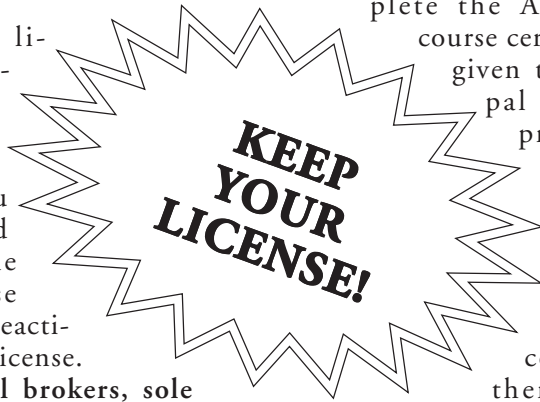
Although the AP course requirement is separate from continuing education requirements, a principal broker may let affiliated brokers use the AP course to meet the continuing education requirements.

If you do not know if you need to take the AP course, please

contact the Agency at (503) 378-4170.

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

A list of approved providers for the AP course can be found in the document called Approved Pre-License and Post-License Real Estate Education, which can be obtained from the Agency's website at www.rea.state.or.us, or by calling the Agency at (503) 378-4170.



BOARD MEETING TO BE HELD IN BEND

The next regularly scheduled Real Estate Board meeting will be held in Bend on Monday, August 21 at 10 a.m. The Bend location was not yet determined at the time of printing. Meeting location and additional information will be posted on the Real Estate Agency's website at www.rea.state.or.us as soon as it's available. Board meetings are open to the public.

The Real Estate Board, consisting of seven industry members and two public members, meets six times a year. Board members are appointed by the Governor for four-year terms. Board duties include providing advice to the Real Estate Commissioner and the Governor's office regarding real estate industry matters, re-

CURRENT REAL ESTATE BOARD MEMBERS		
Michael Graeper, Chair	Portland	Windermere/Cronin & Caplan
Troy Costales	Salem	Public Member
Victor Kee	Astoria	Pete Anderson Realty
Arthur Kegler	Boardman	American West Properties
Robert LaDu	Portland	Re/Max Equity Group, Inc.
Maxine Ribera-Card	Bend	COLM Commercial Real Estate Services
Vada Salinas	Salem	Public Member
Marianne Wood	Eugene	Prudential Real Estate Professionals
John Zupan	Medford	Windermere VanVleet & Associates

viewing proposed rulemaking, approving experience waiver requests of real estate licensing applicants, and overseeing the li-

cense examination process. Please contact the Agency at (503) 378-4170, extension 251, if you have any questions.

HOME INSPECTIONS: TIPS TO HELP YOUR CLIENTS

Editor's Note: Real estate brokers often recommend a home inspection in an effort to protect the interests of their clients. The following information from the Construction Contractors Board may help brokers assist their clients.

What is a home inspection?

An inspection is a general, visual inspection of the house and its appurtenances. An inspection report should cover the major systems of the house: structural, plumbing, electric, heating and cooling, general interior, insulation, ventilation, siding, windows, doors, roofs and attached garages. A WDO or wood destroying organism report (sometimes called a pest and dry rot) is sometimes included. Usually not included are septic systems, wells, underground piping, swimming pools and other items that are not considered part of the

main structure.

An inspection is the purchase of an *educated opinion, not a guarantee*. Reports by seller's and buyer's inspectors sometimes differ.

A report is not a warranty. It does not guarantee that the house is sound or that the buyer will never encounter any problems.

Some deficiencies can only be found by tearing apart the structure, which inspectors do not do. Inspectors will not move furniture, rugs or other obstacles. Inspectors will not inspect areas which are inaccessible (wall interiors, wet crawl spaces, steep or wet roofs, etc.).

How can my client check an inspector's qualifications?

First, clients can check with the Construction Contractors Board (CCB) to make sure the business is properly licensed. It is helpful if your clients have the CCB number for the business before calling the CCB. A license means the business is insured and bonded—some financial protection if problems happen later. Clients can also check how long a business has been licensed and if it has had any claims filed against it.

Anyone who performs home inspections of two or more components also must be certified with the CCB. (Examples of components of a house

are the roof, plumbing system, electrical system, etc.) CCB can provide information on who in the business is an Oregon certified home inspector. Certification means the individual has passed a comprehensive test and must complete continuing education courses.

A few general contractors are exempt from certification and may perform home inspections. If an inspector is not certified, CCB can confirm if he or she is allowed by law to perform inspections.

How does my client find a qualified inspector?

The following are recommendations you can make to your clients:

- Suggest that your client ask friends, co-workers, neighbors, personal attorney or lender for recommendations—someone with no vested interest in which inspector is chosen.
- The inspector's professional background is important. Advise your client to confirm that the inspector is experienced in the building trades.
- Recommend that potential home buyers contract for a separate inspection so the buyer can retain Construction Contractors Board claim rights. In most instances, buyers will not be able to hold the seller's inspector liable for deficiencies.
- Some inspectors may be members of a not-for-profit **trade association**. There are associations, both in Oregon and nationally, that many companies belong to that provide standards of practice, codes of ethics and industry-specific training. (See box, "Home Inspector Trade

HOME INSPECTION: continued on page 5

HOME INSPECTOR TRADE ASSOCIATIONS

National

American Institute of Inspectors
(800) 877-4770, www.inspection.org

American Society of Home Inspectors
(800) 743-2744, www.ashi.com

National Association of Home Inspectors
(800) 448-3942, www.nahi.org

Local

Central Oregon Association of Real Estate Inspectors
www.coarei.com

Northwest Oregon Certified Home Inspectors Association
(360) 574-5600, dbarkee@comcast.net

Oregon Association of Home Inspectors-ASHI
(503) 233-2225, www.oahi.org

Oregon Real Estate Inspectors Association
(503) 640-0607, www.oreia.net

Southern Oregon Certified Home Inspectors
(800) 877-4770

HOME INSPECTION: *continued from page 4*

Associations.”) The three national associations require some or all of their members to pass written competency tests and take continuing education. All their members must adhere to standards of practices and a code of ethics. Your client may also want to ask if the inspector belongs to a local trade association.

How can the CCB help my client?

The CCB provides consumer protection and regulates the home inspection industry. When disagreements occur between consumers and home inspection businesses, the CCB may be able to help.

A complaint may be filed with the CCB against the licensed business if: 1) there is a direct contract between the client and the licensee or if the client purchased real estate conditioned upon the inspection; 2) the client thinks the business has done negligent or improper work or breached the contract; and 3) it's been within one year from the time the inspection was performed.

If your contract contains an arbitration clause, a complaint can still be filed but the CCB may suspend its dispute process to allow arbitration to occur. The CCB may send a mediator/investigator to the site to look at the complaint issues and try to resolve the dispute.

If the dispute continues, the Construction Contractors Board offers a hearing process to determine the validity of the complaint and whether damages are due the complainant. The inspection contract may include a clause that limits the inspector's liability. Read your contract carefully. Complaints filed against unlicensed businesses or home inspection businesses using uncertified individuals to perform inspections are sent to the CCB's Enforcement Section, but will probably not result in direct benefit to the complainant.

For more information, please visit CCB's website at www.oregon.gov/CCB or call (503) 378-4621.

THE BUSINESS OF FLIPPING HOUSES

Editor's Note: This article was published at the request of the Construction Contractors Board.

“Renovation game pays in hot market”

June 24, 2005
Portland Tribune

“Remodeling pros tell how to ‘flip’ houses”

May 13, 2006
The Oregonian

And, then there was the March 23, 2006 article in *The Oregonian's* Neighborhood section which told about a couple's faith in a three and a half inch statue of St. Joseph placed in the yard to sell the home. In reading the story, it revealed the home was being “flipped”.

Flipping* houses is the term used to buy a home, fix it up and then selling it for a profit. It's big business. And it is a business, a regulated business.

The Construction Contractors Board (CCB) is the state agency which protects consumers by regulating the construction industry. Oregon law defines a contractor as a person who for compensation or with the intent to sell, arranges, undertakes, offers to undertake or submits a bid to construct, alter, repair, or improve any building or structure attached to real property. Contractors must be licensed with the CCB.

Below are listed a few of the exemptions from the licensing requirement:

- A person can work on their own home. [ORS 701.010 (1)]
- A person who furnishes the materials, supplies or equipment and does not for compensation,

install or arrange to have them installed. [ORS 701.010 (3)]

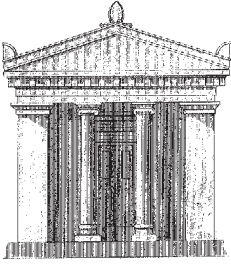
- An owner can arrange for the work to be done by a licensed contractor. But this exemption does not apply to a person who, in the pursuit of an independent business, does the work themselves or arranges for the work with the intent of offering the structure for sale before, upon or after completion. It is considered prima facie evidence that it was the intent to offer the structure for sale if the owner does not occupy the structure after completion. [ORS 701.010 (5)]
- A person can perform work on property they own even if they do not live there. And an owner's employee can perform work. [ORS 701.010 (6)]
- A real estate licensee when performing work on the structure that the real estate licensee manages under contract. [ORS 701.010 (12)]

Contractors in the business of flipping homes can be licensed as a Licensed Developer as long as they do not perform any of the work themselves. For more information, go to www.oregon.gov/CCB and click on Licensing. You can also call the CCB at (503) 378-4621.

*The term flipping can also be used to describe the purchase of real estate, holding for a short time, even a matter of minutes, and reselling it for a profit because they either bought it below market value or market value is appreciating so rapidly. If **nothing** is done to the real estate, this action does not fall under the jurisdiction of the CCB.

ADMINISTRATIVE ACTIONS

February 1, 2006 through May 15, 2006



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

Brady, C. Elizabeth (Eugene)
Broker #960900200
Default order dated April 1, 2006, effective April 1, 2006. The order also levied a \$500 civil penalty. The Agency received two complaints regarding Brady. The first complaint involved Brady acting as a real estate broker and mortgage broker for Buyer P. Buyer P gave Brady \$1,000 earnest money subject to terms of the contract, indicating that Buyer P had been pre-approved for a VA loan sufficient to support his purchase. Buyer P never received loan approval and was forced to file action in small claims court for the return of his earnest money. Buyer P worked with Brady as a real estate broker looking for a property to purchase. Brady prepared a proforma loan estimate for Buyer P for the purchase of a \$155,000 prop-

erty, with 5% interest rate and a mortgage broker fee of 1%. Subsequently, Brady drafted an offer for Buyer P to purchase property for the price of \$169,000. Brady stated on the offer that Buyer P was pre-approved for a VA loan in the offered amount. Buyer P was not able to obtain a loan and the transaction failed. The sellers would not agree to give Buyer P the earnest money as the offer stated that Buyer P was pre-approved. Buyer P filed a small claims action for the return of the earnest money. Brady promised Buyer P that she would accompany him to court and testify that Buyer P had made all reasonable efforts to obtain financing. Brady did not follow through on her promise to Buyer P and did not appear in court. The parties settled outside court by dividing the earnest money equally. During the investigation into Buyer P's complaint, the Agency contacted Brady by letter requesting that Brady provide a complete copy of her broker files for the subject transaction. Brady responded that she did not represent Buyer P as a real estate broker and the only document Brady provided was an earnest money agreement. Brady stated she had no other real estate documentation in the matter other than the real estate contract provided to her as a mortgage broker by Buyer P. Brady claimed she did not locate the property for Buyer P and had no involvement in the transaction other than as a loan officer. The documents show that Brady continued to represent Buyer P as a real estate broker until August 2, 2004. Brady's real estate license had been suspended from July 23, 2004 until April 22, 2005 and Brady was conducting professional real estate activity without an active license.

The second complaint was filed by Seller R who stated that Brady

failed to repay Seller R for money Seller R loaned Brady in conjunction with a real estate transaction. Brady entered into an agreement to borrow \$7,500 from Seller R so Brady could close a transaction where Brady was purchasing a property in Eugene. The agreement stated that Brady would repay Seller R from loan fees paid to her from her mortgage broker employer on the property loan and from another property listing commission owed by another party. The agreement further stated that should the sale fall through that she was to receive a commission, that Brady would repay Seller R in the month of June 2004. On June 22, 2004, the Seller R sale closed escrow and Brady received a \$2,640 commission. Brady did not repay Seller R from her commission as agreed in their loan agreement. Separate from receipt of commission, on July 30 2004, Brady paid Seller R \$1,000. Seller R has received no additional money from Brady in this matter. Seller R filed a complaint in Lane County regarding Brady's failure to pay her promissory note. Brady did not appear at the hearing and Seller R obtained a General Judgment against Brady for \$7,097.10. The Agency requested that Brady provide documentation from this transaction, and Brady failed to respond. Brady did not notify the Agency of the adverse judgment secured by Seller R.

Violations: ORS 696.301(1), (11) and (31), OAR 863-015-0175(1), (2) and (3); and OAR 863-015-0180(3) (2001 Edition)

Hamilton, Tina M. (Medford)
Property Manager #200111019
Stipulated order dated February 3, 2006, effective February 10, 2006. Complainants alleged that Hamilton was using client trust

funds for Hamilton's own personal use. Hamilton signed the Stipulated Order of Revocation stipulating that the Agency had substantial evidence in its files to support, after hearing, findings of fact and conclusions of law that would result in the revocation of her license.

Johannesen, Rosalie M. (Coos Bay) Broker #840200001
Stipulated order dated April 11, 2006, effective April 11, 2006. Buyer alleged that Johannesen misrepresented a lakefront property in Lakeside that complainant attempted to buy. Buyer alleged that he gave Johannesen a check for \$1,900 and that Johannesen cashed the check and deposited the funds into her personal checking account. Johannesen knew Buyer from previous real estate transactions and knew that Buyer was interested in lakefront property. Johannesen contacted Buyer and represented to Buyer that a lakefront property facing foreclosure was available for sale. Johannesen alleged that the property could be purchased for back taxes only, which amounted to \$1,900, provided the owner did not pay the back taxes timely. Buyer gave Johannesen \$1,900, which Johannesen deposited into her personal checking account. The subject property had previously been listed by Johannesen's principal broker. Johannesen provided Buyer with a title company report for the property. Johannesen did not have the consent or authorization to market this property. Johannesen did not advise her principal broker about the funds she received from Buyer or about the subject transaction. After several months had passed and Buyer did not have title to the property, Buyer discovered through his own research that the subject property was not for sale or in a foreclosure status and had never been in a foreclosure status.

Violations: ORS 696.301(1), (10), (17), and (24) (2003 Edition)

Shirk, Tonya M. (The Dalles) Broker #981000045
Default order dated May 9, 2006, effective May 19, 2006. On January 29, 2002, Shirk was found guilty of (a) Aggravated Theft in the First Degree, a Class B Felony; (b) two counts of Theft in the First Degree, a Class C Felony; and (c) Forgery in the First Degree, a Class C Felony. On April 29, 2002, Shirk filed an appeal of her conviction with the Court of Appeals. The Court of Appeals affirmed Shirk's conviction. On May 26, 2004, Shirk filed a Petition for Review with the Supreme Court. Shirk's conviction was again affirmed. The Agency wrote to Shirk twice reminding her of the requirement to report adverse decisions within 21 days. Shirk responded that it had been a very trying time and she offered to take a lie detector test to prove that she did nothing wrong. Shirk has failed to provide the requested documentation. Shirk also failed to notify the Agency of a change to her address of record.

The Agency also received a complaint from a licensee stating that Shirk interfered in a listing obtained by the complainant. The complainant stated that Shirk was contacting the property owners for the listed property, held an open house on the property without the listing broker's knowledge or consent, and placed her own flyers in the listing broker's flyer box. Shirk claimed that she had an arrangement with the owners of record for this property as well as others. Shirk arranged for any work, cleanup, etc. for the properties and then shared in the net profit after the properties were sold. Shirk did not have a recorded interest in the subject property. The recorded owner listed the property with the complainant. Shirk attempted to have the owner cancel his listing with the complainant in order to list with a brokerage where Shirk's father was licensed. Shirk prepared a flyer for

the property showing the property was For Sale By Owner. Even though Shirk was licensed at the time, Shirk did not advertise the subject property in the name of her principal broker. Shirk removed the flyers provided by the listing broker (complainant) and replaced them with the flyers that Shirk prepared.

Violations: ORS 696.301(6), (16), (26) and (31), and OAR 863-015-0175(1) (2001 Edition); ORS 696.301(3) (2005 Edition)

SUSPENSIONS

Bellamy, Billy C. (Madras) Broker #821200052
Stipulated order dated March 28, 2006 issuing a 30 day suspension effective April 1, 2006. Buyer 1 submitted a complaint to the Agency regarding Bellamy. Buyer 1 and his wife made an offer to purchase property they were renting from Sellers. Bellamy represented both Buyer 1 and Sellers. The Sellers rejected Buyer 1's offer and provided him with a first right of refusal in the form of a letter. Subsequently, Bellamy was contacted by a developer (Buyer 2) who was interested in the subject property. Another real estate agent prepared an offer for Buyer 2 to purchase the subject property. Buyer 2's offer was accepted by the Sellers. Bellamy did not inform Buyer 2 or Buyer 2's agent about Buyer 1's first right of refusal. When Bellamy contacted Buyer 1 to schedule an appointment for Buyer 2 to view the property, Buyer 1 immediately contacted Bellamy to exercise Buyer 1's first right of refusal. Bellamy instructed Buyer 1 to contact a loan officer to get his documents in order. Bellamy recorded nothing in writing to document this discussion. Buyer 1 contacted an attorney and obtained loan approval and qualification. The property subsequently sold to Buyer 2. Bellamy also conducted property management activity between the Sellers

ADMINISTRATIVE ACTIONS: *continued on page 8*

ADMINISTRATIVE ACTIONS: *continued from page 7* and Buyer 1 without benefit of a property management agreement.

Violations: ORS 696.301(10), (24) and 696.805(2)(c); and OAR 863-015-0020(1) (2003 Editions)

REPRIMANDS

Bird, Wendy L. (McMinnville)
Broker #970700045

Stipulated order dated February 3, 2006. Seller alleged that Bird failed to meet her obligations to her client when Bird represented Seller. Seller alleged that Bird arranged for Seller's property to be re-roofed without Seller's authorization and without including the roof repair terms in the sale agreement. Bird listed Seller's property as a fixer. Buyer's father contacted Bird on behalf of Buyer as Buyer was out of state. Buyer's father, who was a licensed general contractor, noticed that the property had worn out roofing. Buyer made an offer which was accepted by Seller. Escrow was opened and the earnest money promissory note was redeemed. Bird advised Buyer's father that the lender could require the roof repairs be made before the Buyer could obtain a loan. Buyer's loan was denied as the property did not qualify for a loan due, in part, to the poor roof condition. Buyer sought financing from a second lender. One of the conditions of a loan was that the roof needed to be repaired. Buyer's father volunteered to put a new roof on the property. The Seller vacated the property and Buyer's father replaced the roof. Seller was not aware that the roof was replaced. Bird advised Buyer's father that the Seller had not agreed to pay for a new roof. Buyer's father expected to be paid for labor and materials out of closing. Bird did not address in writing the roof replacement or who would pay for it. A new offer was written between the parties on the recommendation of the Buyer's new lender. Despite knowing that the Buyer's father had replaced the roof and that com-

pensation issues remained, Bird did not address the repairs in the new offer. The Buyer was again denied a loan due to the condition of the property. Seller cancelled her listing and the transaction was terminated. After the transaction terminated, Buyer's father told Bird that he was going to put a lien on Seller's property. Buyer's father contacted Seller asking her to pay for the new roof, which Seller refused.

Violations: OAR 863-015-0135(5); and ORS 696.805(2)(a)

Culley, Ronald C. (North Bend)
Broker #870600046

Stipulated order dated April 11, 2006. Buyer alleged that Culley failed to give her a copy of the home inspection report prior to closing. In July 2004, Buyer made a full-price offer, through Culley, on property located in Coos Bay, Oregon. Buyer lived in California. The offer included that a professional home inspection be conducted. The time requirements regarding home inspections and a provision stating that a buyer's timely written disapproval of the inspection report would automatically terminate the transaction were cited in the Professional Inspection Addendum. The addendum stated that the inspection would be completed and the inspection report delivered to the buyer within 10 business days after written acceptance of the offer. The Buyer's offer was accepted with an October closing date. A home inspection was not completed until October 4, 2004 and Culley did not prepare an addendum extending the inspection period. The inspector did not send a copy of the report to the Buyer, but did send one to Culley with a note from the inspector to send a copy of the report to the Buyer. Culley did not consult with his principal broker regarding the inspector's instruction. Culley informed Buyer that the inspection had been completed. Buyer asked Culley for a copy of the report three

times prior to closing. After the Buyer's third request, Culley informed the Buyer that he had taken care of the problems cited in the report. Culley did not send a copy of the inspection report to the Buyer and did not review the findings of the report with the Buyer or convey its contents to her. After closing, the Buyer moved into the property and was dissatisfied with specific conditions of the property, some of which had been noted in the inspector's report.

Violations: ORS 696.810(3)(a) and (c)

Smith, Julie Mansfield (Kimberly) Broker #950300098

Stipulated order dated April 13, 2006. Sellers complained that Smith misrepresented a portion of the property that they were selling (8 acres adjoining property owned by Smith) as "not for sale" and that the property was improperly marketed. Sellers listed their property in Kimberly, Oregon consisting of 22 acres with Smith. The listed property was adjacent to property owned by Smith. Smith had been in communication with the Sellers before and during the period of the listing agreement regarding Smith's acquisition of 8 acres of the subject property. Sellers were aware of Smith's wishes to purchase the 8 acres and orally authorized Smith to market and advertise only the remaining 14 acres. Smith was told by the Sellers that she could purchase the 8 acres. However, the entire 22 acres was listed since it was legally described as such. Although Smith verbally discussed her purchase of the 8 acres from the Sellers, there was no written agreement to that effect between the parties at the inception of the listing, nor was a listing price set on the entire 22 acres. Smith informed potential purchasers that although the tax map showed 22 acres, she had an oral agreement with the Sellers to purchase 8 of those acres. The listing expired and was not renewed.

Smith subsequently entered into a buyer-broker agreement with a third party for them to purchase the entire 22 acres from the Sellers. Smith did not represent the Sellers in this offer. The transaction closed on the entire 22 acres with the third party. Approximately ten months after the purchase, Smith acquired the 8 acres from the buyer through a property line adjustment.

Violation ORS 696.805(3)(a)

Seymour, Richard A. (Gresham)
Broker #941100199

Stipulated order dated April 11, 2006. Seller alleged that Seymour, who represented himself and his wife as buyers in a transaction to purchase property from Seller, entered the subject property to begin remodeling work prior to the close of the transaction without first obtaining Seller's permission. Seymour's wife, through Seymour, made an offer to purchase the subject property from Seller on August 12, 2003, which was accepted on August 17, 2003. The offer included a promissory note for \$1,000 which was to be redeemed three days after mutual acceptance and then deposited into escrow. Seymour was later added as a buyer. Seymour's wife did not redeem her promissory note timely. The earnest money was not deposited into escrow. Seymour did not notify Seller's broker that the promissory note had not been redeemed or that the earnest money was not deposited into escrow. The Seymours signed closing documents on September 18, 2003. Seymour expected the transaction to close the following day upon funding of the transaction. On September 19, 2003, Seymour entered the subject property and removed some carpeting, a stove and some cabinets. The transaction had not yet closed because funding had not been achieved. Seymour did not obtain permission from the seller or the seller's broker to enter the subject property prior to closing. Seymour

did not call the escrow company to verify whether closing had occurred before he entered the property. The transaction closed on September 22, 2003.

Violations: ORS 696.810(2)(a) and ORS 696.301(28) (2001 Edition)

CIVIL PENALTIES

Adams, Darwin L. (Idaho)
Reciprocal Broker #200204235
Stipulated order dated April 4, 2006 issuing a \$100 civil penalty. Adams failed to renew his real estate license for five months while continuing to conduct professional real estate activity. Adams is a reciprocal broker and conducted only one transaction in Oregon during the time he was unlicensed.

Violation: OAR 863-15-0050(2).

AmeriTitle (Bend) Escrow Agent
#960300017

Stipulated order dated February 22, 2006 issuing a \$3,000 civil penalty. A complaint was received regarding a property transaction. The property being purchased was a portion of a larger parcel. The Seller was unable to have the property surveyed and partitioned before the closing date. The parties decided to transfer the entire parcel to the builder, so the builder could obtain a building permit and commence construction for the Buyers. Prior to the open of escrow, an addendum was executed by the parties which stated that at closing title was to be placed in the builder's name. The intent of the addendum was not to make the builder the buyer, but only to allow the builder to obtain a building permit. The Buyers remained as the actual buyers of the property. Escrow was opened at AmeriTitle and AmeriTitle received the Buyers' earnest money deposit. AmeriTitle also received a check from the Buyers for the balance of the purchase price. Based on the addendum, AmeriTitle assumed

that the buyer was changing from the original Buyers to the builder, which was incorrect. AmeriTitle faxed escrow instructions to the real estate agent to obtain the Buyers' signatures stating that the balance of the purchase price received was to be applied toward the buyer's funds for the transaction between the Seller and the builder. The instructions stated that the funds were to be considered third-party gift funds and that any refund shall be made payable to the builder. The escrow instructions were signed by the Buyers.

Violation: ORS 696.581(2)

Bryan, Donald P. (Portland)
Broker #891000167

Stipulated order dated April 3, 2006 issuing a \$100 civil penalty. Bryan failed to renew his real estate license for four months while continuing to conduct professional real estate activity. Bryan works with a forestry consulting firm which serves the forest products industry exclusively, and real estate sales transactions are not its primary function. Bryan was involved in only one real estate transaction during the time he was unlicensed.

Violation: OAR 863-15-0050(2).

Courtney, Christopher S. (Eugene)
Broker #200003150

Stipulated order dated April 3, 2006 issuing a \$100 civil penalty. Courtney failed to renew his real estate license for one month while continuing to conduct professional real estate activity.

Violation: OAR 863-15-0050(2).

Eggers, Robert A. (Bend)
Broker #200111054

Stipulated order dated April 11, 2006 issuing a \$2,600 civil penalty. Eggers failed to renew his real estate license for six months while continuing to conduct professional real estate activity.

ADMINISTRATIVE ACTIONS: *continued on page 10*

ADMINISTRATIVE ACTIONS: *continued from page 9*

Violation: OAR 863-15-0050(2).

Herring, Jackie D. (Bend) Broker #840300066

Stipulated order dated April 11, 2006 issuing a \$600 civil penalty. Herring failed to renew his real estate license for two months while continuing to conduct professional real estate activity.

Violation: OAR 863-15-0050(2).

Schaeffer, Michael R. (Portland) Property Manager #780700020

Stipulated order dated May 12, 2006 issuing a \$100 civil penalty. Schaeffer failed to renew his real estate license for a period of time while continuing to conduct professional real estate activity.

Violation: OAR 863-15-0050(2).

Stone, Susan E. (Beaverton) Broker #900200277

Stipulated order dated May 3, 2006 issuing a \$100 civil penalty. Stone

failed to renew her real estate license for a period of time while continuing to conduct professional real estate activity.

Violation: OAR 863-15-0050(2).

Volk, Michael E. (Portland) Broker #930400182

Stipulated order dated March 27, 2006 issuing a \$100 civil penalty. Volk failed to renew his real estate license for ten months while continuing to conduct professional real estate activity. Volk works with a forestry consulting firm which serves the forest products industry exclusively, and real estate sales transactions are not its primary function. Bryan was involved in only one real estate transaction during the time he was unlicensed.

Violation: OAR 863-15-0050(2).

OTHER

Morgan, Glenn Alan (Sherwood) Applicant #200507263

Hearing order dated April 28, 2006

denying a real estate broker's license application. On July 6, 2005, Morgan completed his application and disclosed that he had pled guilty to 2 counts of Misdemeanor Sex Abuse. The Agency's background investigation disclosed that Morgan was indicted on 3 counts of Sexual Abuse in the Second Degree and pled guilty to 2 counts on March 3, 2002.

Violations: ORS 696.022(5), 696.301(25) (2003 Edition)

Timberlake, Charles Wayne (Washington) Applicant #200505287

Default order dated March 30, 2006 denying a membership camping contract registration application. Timberlake completed his application and disclosed that he had pled guilty of embezzlement of pension funds in 1994. Timberlake is still paying restitution.

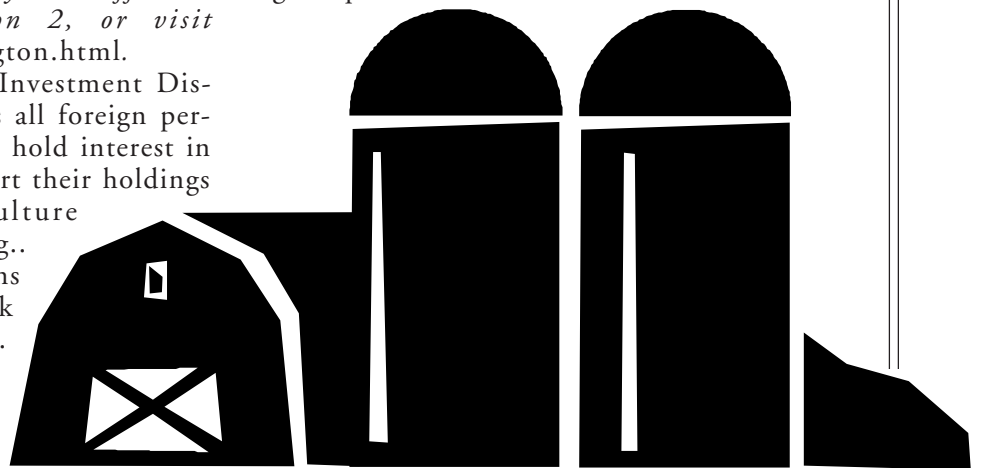
Violation: ORS 94.980(3)(a)(c)

FOREIGN INVESTORS IN AGRICULTURAL LANDS

Editor's Note: The following information was provided by the Farm Service Agency (FSA) of the United State Department of Agriculture (USDA). For more information, contact the Washington/Columbia County FSA office at (503) 648-3174, extension 2, or visit www.fsa.usda.gov/or/washington.html.

The Agricultural Foreign Investment Disclosure Act (AFIDA) requires all foreign persons who acquire, transfer, or hold interest in U.S. agricultural land to report their holdings to the Secretary of Agriculture within 90 days of the closing. This law includes corporations if 10% or more of their stock is held by foreign investors. Reporting is done by completing an FSA-153 form, which is available at any FSA office. Failure to report

could result in civil penalties of up to 25% of the fair market value of the property. The FSA asks real estate licensees to remind clients who might fall into this category of these reporting requirements.



THE CONDOMINIUM FORM OF OWNERSHIP IN OREGON

A "condominium" is a special form of property ownership which is created and governed in Oregon by statute (ORS 100.005 to 100.910 and 100.990), known as the "Oregon Condominium Act." A typical condominium is a combination of two kinds of ownership. The owner of a condominium unit holds title to his individual unit together with an undivided interest in common with all unit owners in the "common elements," that is, the land and those parts of the building or buildings intended for common use such as the foundations, framing, siding, roofs, stairways, utility services and the like, and may also include other facilities intended to be used by all unit owners such as landscaping and parking areas. Each unit owner is entitled to the exclusive ownership and possession of his unit. The undivided interest in the common elements is inseparable from the ownership of the individual unit.

A condominium is created by recording a condominium declaration in the office of the recording officer of the county in which the property is located. A plat of the property showing the vertical and horizontal boundaries of each unit in a building including unit designation, location and dimensions of each unit and

the common elements to which each has access, as well as a copy of the bylaws must be recorded simultaneously with the declaration.

The Oregon Condominium Act, the declaration and the bylaws control the rights and obligations of the unit owners with respect to each other, the common elements and their respective units. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. The Oregon Condominium Act requires that the condominium association be organized to serve as a means through which the unit owners may take action with regard to the administration, management and operation of the condominium. Each unit owner is automatically a member of the association.

A condominium may have residential or commercial units or both (mixed-use). A condominium may be new construction or an existing building may be converted to the condominium form of ownership. Condominium conversions require the developer to follow statutory procedures under the Oregon Condominium Act that protect the rights of existing tenants, in addition to the complying with the Landlord Tenant

Act under ORS Chapter 90.

Under the Oregon Condominium Act, the developer must provide residential purchasers with a condominium disclosure statement and a unit sales agreement, in addition to a number of other documents. In addition to statutory provisions under the Act, sales of condominiums are also governed by the Real Estate Licensing statutes under ORS Chapter 696 and the Conveyancing statutes under ORS Chapter 93.

The State of Oregon Real Estate Agency reviews and approves all condominiums. A condominium filing with the state is extensive and includes, but is not limited to, the following documents: declaration, bylaws, disclosure statement, unit sales agreement, title report, condominium filing forms and a plat. The county in which the property is located also reviews and approves the plat and approves the declaration for conformance to the plat.

Due to the legal complexity of a condominium filing, these documents are typically filed by experienced condominium attorneys. A condominium filing package may be obtained by contacting the Oregon Real Estate Agency at (503) 378-4170, ext. 239.



HAVE YOUR LICENSE ISSUED MORE QUICKLY

What is the secret to have a license issued (or renewed, transferred, changed) quickly? It is simple: Use the proper form, make sure the form is complete including all necessary signatures, include any required documents, and ensure proper payment is enclosed (if paying by check it must be for the correct amount, signed and made payable to the Real Estate Agency). Additionally, sending all documents, forms and payment in one package will also help expedite your transaction.

We encourage submitting Background Check Applications early, as they can take two to three months to process. If there is an issue which requires review and further investigation, it will take even longer to complete the process. Background Check Applications are considered incomplete if all the required documentation (e.g. detailed written explanation, employment history, reference letters, official documents) are not included, which further delays the process until the required documentation is submitted.

Please help us to better serve you by following the above steps. If you have any questions, call the Licensing Section at (503) 378-4170, selection 0.

This article is adapted from an article published by the State of Alabama Real Estate Commission.

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