

**State of Oregon Real Estate Agency**

**REAL ESTATE BOARD**

**Regular Meeting Minutes  
December 19, 2006**

**MEMBERS PRESENT:** Michael Graeper, Chair  
Troy Costales  
Victor Kee  
Arthur Kegler  
Robert LaDu  
Vada Salinas  
Marianne Wood  
John Zupan

**MEMBERS ABSENT:** Maxine Ribera-Card (Excused)

**STAFF PRESENT:** Scott Taylor, Commissioner  
Katie Cannon, Deputy Commissioner  
Louann Rahmig, Board Liaison

**GUESTS PRESENT:** Molly Bjorklund  
Andrea Bushnell, Oregon Association of Realtors (OAR)  
Jana Jarvis, OAR  
Gene Bentley, Trammell Crow Company  
Jyl Meier, Oregon Escrow Council

**I. BOARD BUSINESS**

- A. Call to Order.** Chair Mike Graeper called the meeting to order at 10:03 a.m. at the Real Estate Agency office, 1177 Center Street NE, Salem, Oregon.
- B. Roll Call.** Maxine Ribera-Card was absent. There was a quorum.
- C. Approval of the Agenda and Order of Business.** Hearing no objections, the Chair ruled the agenda approved as submitted.
- D. Approval of the October 23, 2006, regular meeting minutes.** Hearing no objections, the Chair ruled the minutes approved as submitted.
- E. Elect Chair and Vice-Chair for 2007.** John Zupan nominated Mike Graeper. There were no other nominations. Mr. Graeper was unanimously elected. Art Kegler asked about “term limits.” Chair Graeper reported on the four members whose terms have not yet expired. Commissioner Taylor added that those with expired terms remain on the board until the Governor makes new appointments. Letters were supposed to be sent to those members asking them to remain on the board. Mr. Kegler nominated Troy Costales as Vice-

Chair. There were no other nominations. Mr. Costales was unanimously elected.

- F. Revisit 2007 board meeting schedule.** Mr. Taylor indicated that there are some expenses and challenges for the agency to hold meetings outside of Salem. Deputy Commissioner Cannon suggested moving the 2007 out-of-town meetings to later in the year after the legislative session. The Chair proposed having the October 15 meeting in Medford and asked if the board should continue meeting outside of Salem. Bob LaDu commented that attendance has been virtually nonexistent and suggested the area boards be involved, requesting some minimum attendance when meetings are in their area. The board liaison was asked to draft a letter to be sent to all 31 boards advising of this board's willingness to meet in their area providing there is participation by them at the board meeting. OAR was asked to provide an e-mail list of the boards and their executive officers. If there is no favorable response, this board can reschedule all the meetings for Salem.
- G. Date of the Next Meeting.** February 12, 2007, in Salem. After a brief discussion on changing the meetings to Tuesdays, it was decided to continue meeting on Mondays.

**II. PUBLIC COMMENT.** There was no public comment.

**III. REQUEST FOR WAIVERS.** Molly Ann Bjorklund requested a partial waiver of experience for a broker sole practitioner license. Ms. Bjorklund appeared and discussed her background. John Zupan asked how many transactions she had handled. Ms. Bjorklund responded that she was \$400,000 away from Diamond Club membership dealing mostly in high-end and long-term transactions. Marianne Wood asked about the advantage to going out on her own rather than being affiliated with a firm. Ms. Bjorklund indicated that there hasn't been stability in principal brokers at her firm (three in the last two years) so there is no consistent leadership. Ms. Wood asked how many licensees are in the office. Ms. Bjorklund answered that there was 65 but is now down to 37. Mr. Kegler asked if Ms. Bjorklund had sought GRI designation. She actually is looking for recommendations from the board on what to do. Victor Kee asked if she is looking for sole practitioner only. She answered, at this time, yes. Chair Graeper asked if she had taken the Advanced Real Estate Practices (AP) course. Ms. Bjorklund responded, no. Chair Graeper advised that the AP course is needed before the first renewal. Commissioner Taylor clarified that if Ms. Bjorklund becomes a sole practitioner, she does not need Brokerage Administration and Sales Supervision (BASS). The board can restrict her license but she would still need BASS for a principal broker's license. Ms. Wood expressed concern about someone wanting to hurry up to go out on their own. Ms. Bjorklund explained her three-to five-year business plan, to continue at her firm as a "mobile agent" working from a home office. Chair Graeper advised that she

should be registered as a branch office. Mr. Kegler asked about processing the paper work from a home office. She indicated that she faxed it in to John L. Scott.

**MOTION BY VADA SALINAS TO APPROVE THE WAIVER REQUEST.** Discussion. Mr. Zupan spoke against the motion. He has no problem with sole practitioner at this time but in the past the board has granted a one-year waiver and this request is for more.

**MOTION BY JOHN ZUPAN TO AMEND TO ISSUE A SOLE PRACTITIONER'S LICENSE.** Mr. Costales spoke against the amendment indicating that he would be comfortable with April 2007 for this request, which would be a one-year waiver. Ms. Wood was not comfortable with the request right now. She felt that Ms. Bjorklund needs more supervision and that she should be in the office more to observe all the processes daily. Ms. Salinas felt Ms. Bjorklund was qualified and suggested approving for sole practitioner effective in April.

**VOTE ON AMENDMENT:**

**In Favor:** Salinas, Zupan, Kegler

**Against:** LaDu, Kee, Wood, Costales

**AMENDMENT FAILED.**

**MAIN MOTION FAILED BY UNANIMOUS VOTE.**

Mr. Costales cautioned the board about doing something four months in advance, and not setting a precedent. Mr. Taylor doesn't recall doing this before but there are no restrictions.

**MOTION BY TROY COSTALES TO APPROVE A SOLE PRACTITIONER'S LICENSE EFFECTIVE APRIL 2007.**

**MOTION CARRIED UNANIMOUSLY.**

**IV. BOARD ADVICE/ACTION**

A. **Discuss board member responses to the recommendations in the OREA Action Plan.** Chair Graeper reminded the board that copies of the plan had been sent to the members several times. Each portion of the action plan will be addressed. Ms. Cannon explained that input came from the task force, the board, focus groups and staff. The Commissioner also requested information on the educational aspects in the newsletter.

**Section 1. Improve customer service.** We summarized the comments to: increase efforts on customer service, improve consistency in responses, streamline license interaction with employees, reduce response times to issues and requests, improve internal and external educational

efforts, expand Web site information, increase board involvement, improve processes for investigation, education and administrative actions, improve relations with area associations of realtors. She reiterated the goals in the action plan and asked the board to look at each section to see if they were adequate or if change was needed.

Ms. Cannon indicated that the agency has been working on improved customer service. Mr. LaDu asked about the ongoing measurement of agency customer service. Ms. Cannon responded that all agencies have five required elements in performance measures with the Progress Board. We will continue to survey performance.

**MOTION BY TROY COSTALES TO APPROVE SECTION 1 AS PRESENTED.** Discussion. Chair Graeper asked about using “how are we doing cards?” Ms. Cannon indicated that surveys are done on the last 90 days of transactions.

**MOTION CARRIED UNANIMOUSLY.**

**Section 2. Improve the educational program.** Ms. Cannon reported that the focus groups felt there needed to be improvement in the education offered. The board has put together a committee to look at that. We want a more structured program as there is no formal education program. Information can be added to our Web site. In-office education is also needed. Two positions would be added, including one to concentrate on property management issues. The phone room is another educational piece. We need educated, knowledgeable staff. We are considering putting two people in the phone room for consistency. A coordinator is needed as well. All of the positions have been accepted in the Governor’s budget.

**MOTION BY JOHN ZUPAN TO APPROVE SECTION 2.**

**MOTION CARRIED UNANIMOUSLY.**

**Section 3. Improve the Web site.** We need to start communicating through the Web. Through surveys on online renewals, we will ask what other services our licensees want. We are concerned about the number of paper transactions and want to do more electronically, to reduce time. Mr. LaDu asked about the use of a consultant. Ms. Cannon reported that the contract for online renewal limited our capability. We are committed to looking at products that will fit all our needs. There is a Canadian online licensing database developed in Alberta and Saskatchewan available for about \$30,000. Mr. Zupan felt this approach would solve a lot of problems and recommended looking at the product. Ms. Cannon

explained that the agency is not going to implement anything until all the problems are worked out.

The Commissioner explained the relationship problems among brokers and businesses which challenge the SA program, which was not our first choice, but we were forced into a state contract. He has seen the Alberta program work, which is designed for real estate. Mr. Costales explained the process and costs involved in starting up with a program developed by another. He cautioned that a program with our needs may not be available “off the shelf.”

**MOTION BY BOB LADU TO APPROVE SECTION 3 WITH AN AMENDMENT TO ADD USE OF THE CANADIAN PRODUCT IF IT PROVES TO BE APPROPRIATE FOR THE AGENCY.**

**MOTION CARRIED UNANIMOUSLY.**

**Section 4. Increase board involvement.** Ms. Cannon explained the background of this item and requested action by the board on each portion. We are now requesting agenda items from board members and staff and meeting with the chair on agenda preparation. The board will be involved in building the agency budget in the future. We will keep the board informed throughout session. She suggested use of board planning sessions.

The board members were requested to send the board liaison their bios by the end of January to post to the Web. After discussion on e-mail addresses, it was recommended to use an agency e-mail address and have all communications to board members and responses come through the agency.

**Local association meeting attendance.** Ms. Cannon explained that the intent was for board members to attend association meetings and communicate the board’s position on their issues. Mr. Zupan felt that would be difficult with the number of meetings that could result. Ms. Cannon indicated that there was no intention to attend every meeting but perhaps once a year would be helpful. Mr. Zupan reported that OAR already does that and perhaps with a better relationship with the association, that could be accomplished. Mr. Kegler reported that each member of the executive committee goes to three different boards.

The chair referred to the letter we are sending regarding meeting in their area. We could include an offer to have a board member speak at one of their meetings. Mr. Kegler pointed out that since the board has representation from different parts of the state, there could be geographical “assignments.” Mr. Costales had a question about public members’

representation at an association meeting. The Chair offered to work with the deputy commissioner and the new commissioner to develop talking points to use by board members at these meetings.

**MOTION BY BOB LADU TO APPROVE SECTION 4 WITH AN AMENDMENT TO F. TO ELIMINATE “BEYOND THE ONE TO WHICH THEY BELONG.”**

**MOTION CARRIED UNANIMOUSLY.**

**Section 5. Improve process for investigations, compliance education and administrative actions.** Ms. Cannon reported on the items that have already been undertaken. Mr. Zupan asked if the requirements can be changed to facilitate hiring. Ms. Cannon responded that if the requirements are lowered, so is the salary. Mr. Costales explained that the state has about 500 types of jobs identified and how specific positions are placed into those categories.

Mr. Taylor reported that the agency started this process six years ago. Our positions were reclassified. The challenge is, we don't know what future complaints are going to be so we need well-rounded individuals. Ms. Cannon reiterated that customer service needs to come first. Some understanding of accounting and auditing is key. Real estate experience comes last as we can train in that.

**MOTION BY BOB LADU TO APPROVE SECTION 5.**

**MOTION CARRIED UNANIMOUSLY.**

**Section 6. Improve relationship with Oregon Association of Realtors.** Ms. Cannon indicated that a suggestion was made to meet monthly with the OAR president to discuss upcoming issues. We encourage feedback to OAR on board business and their participation on committees. The Chair reported that he appointed Mr. Kegler to the Education Work Group as a representative of OAR.

Mr. Costales asked how often OAR meets. Mr. Kegler responded that the association meets twice a year.

**MOTION BY MARIANNE WOOD TO APPROVE SECTION 6 CARRIED UNANIMOUSLY.**

- B. **2007 legislation.** Commissioner Taylor referred to the legislative concepts distributed in the board packet.

**LC 353.** HB 2604 (2005) contained a problem relative to disputed earnest money in property management. We have established an optional procedure and removed funds held in relation to sale, exchange or purchase of real estate.

Mr. Kegler referred to line 7 on the first page, which states “shall maintain in this state one or more separate bank accounts that shall be designated a Clients’ Trust Account...” He knows of brokers who no longer use a clients’ trust account but send all their earnest money to a title company. Mr. Taylor responded that this is very old language but has not been an issue. We have not sanctioned brokers who do not have clients’ trust accounts. Mr. Costales pointed out that this is current language and not proposed for change.

**MOTION BY JOHN ZUPAN TO APPROVE LC 353 CARRIED UNANIMOUSLY.**

**LC 354.** Commissioner Taylor reported this concept still needs work. However, since this is the final draft, an amendment will be needed. Legislative Counsel made some “editorial changes” that changed the intent, clarity and meaning of the statute. The intent of this concept is to clarify current statute that uses several terms (expired licenses, inactive licenses, nonlicensed and unlicensed). Page 4 has the biggest change. “Nonlicensed individual” is defined as someone who has not obtained a license or is lapsed, expired, inactive, suspended or revoked. The argument is that someone with an inactive license is still licensed. Mr. Taylor felt that they have retained their property right in their license, but there is no license; therefore, they are not licensed. We need an amendment to Section 4 (3)(b) which changes the “flavor” of what it was and return to the original language.

Mr. Costales expressed concern about the relating clause, which is very broad. He suggested narrowing it. Mr. Taylor will take the recommendation under advisement.

Jana Jarvis (OAR) had a question about Section 12 on page 19, the change from “shall” to “may.” Mr. Taylor responded that Legislative Counsel has done that for years. If the board has a concern, we can deal with it. The intent initially was to clarify that jurisdictions cannot impose a business tax on “branch” offices.

Ms. Jarvis indicated that they have a draft initiative relating to that as well.

**MOTION BY BOB LADU TO APPROVE LC 354 WITH CONCERNS REGISTERED.** Discussion. Mr. Zupan strongly expressed that we don’t want the state or other municipalities to be able to

tax licensees every place they work but just where the main office is located.

**MOTION BY JOHN ZUPAN TO AMEND LINES 27 AND 28 ON PAGE 19, SECTION 12, TO PROHIBIT MUNICIPALITIES TO IMPOSE BUSINESS LICENSE TAX ON LICENSEES WHERE THEY WORK BUT THEIR OFFICE IS NOT LOCATED.**

**MOTION ON AMENDMENT APPROVED UNANIMOUSLY.**

Mr. Costales reemphasized that a request to amend should be made to the chair of the committee dealing with this bill.

Chair Graeper asked that the language in Section 4 discussed earlier be changed back to the original wording. Ms. Cannon advised that if other issues are discovered, the board will be e-mailed.

**MOTION AS AMENDED CARRIED UNANIMOUSLY.**

**LC 355.** Commissioner Taylor reported that there is no current provision to renew an escrow license late. Every other license can be renewed late with an additional fee. This bill will allow for late escrow license renewal.

**MOTION BY ART KEGLER TO APPROVE LC 355 CARRIED UNANIMOUSLY.**

*Break to pick up lunch.*

**V. NEW BUSINESS**

**A. Request article from a board member for March issue of *OREN-J*.**

The Chair offered to write an article on the education work groups and solicit input. It was suggested to include information on the off-site board meetings in the fall.

**B. Forum to resolve security deposit issues relative to the Landlord**

**Tenant Law.** Commissioner Taylor advised that when dealing with property management rules, we found some landlord tenant law issues. A method of discussion needs to be developed to resolve conflicts. The chair and the commissioner will discuss with Ms. Ribera-Card to include in that work group agenda. This item is to be placed on the February agenda for further discussion.

**C. Future topics for discussion.**

**VI. COMMUNICATIONS**

**Waiver request log.** This was included in the board packet. No discussion.

## **VII. REPORTS**

### **A. Commissioner Scott Taylor**

- 1. Status of property management administrative rules.** The agency has been working collaboratively with that industry to resolve some issues and update the rules. We have temporary rules but the permanent rules are not quite ready. For example, the old rules did not require a client's permission to write a check but permission was required for an electronic transaction. He hopes the agency will review other rules for updating.
  
- 2. Administrative Actions Summary.** Mr. Costales asked about what types of questions the board should ask in addition to the agency review. The Chair responded that a background check and an ARELLO check for out-of-state disciplinary actions are performed for new licensees. The Commissioner explained that limited licenses are usually issued to individuals who have pending actions against them, to be reviewed once final action is taken. We need to check with the Attorney General (AG) so as not to overstep our authority. Licensees renewing must now answer a question about legal actions since license issuance or last renewal.

The waiver request process was discussed. Ms. Cannon was asked to check with the AG to see if the board can ask if there are any pending disciplinary or legal actions against them. Mr. Costales felt that the board should be assured that the applicant has sufficient experience but also is trustworthy. Mr. LaDu added that requesters should be required to personally appear before the board. Mr. Taylor does not believe that is beyond the board's authority to require that.

### **MOTION BY BOB LADU TO REQUIRE INDIVIDUALS REQUESTING WAIVERS TO PERSONALLY APPEAR BEFORE THE BOARD CARRIED UNANIMOUSLY.**

- 2. Status of recruitment for new commissioner.** The Chair asked what happens in the interim if a new commissioner is not appointed by December 31. Mr. Taylor responded that he only knows who it won't be.
  
- 3. ARELLO information on distance learning.** Commissioner Taylor pointed to the information provided from ARELLO's distance education "frequently asked questions." Any distance learning can be subject to controversy. There is only one formal certification program for professional licensing distance education certification, and that is the ARELLO-IDECC model. ARELLO deals with real estate brokerage type courses and IDECC (a subsidiary of ARELLO) handles

professions other than real estate; i.e., appraisers. ARELLO certifies the method but not the content. On courses submitted to this process, ARELLO determines what they are certified for and the number of hours.

Mr. Taylor commented on the recent elimination of the requirement to return a license before a new license is issued. That was a part of HB 2097 (2005) which removed the statutory requirement. Most licensing issues are now in rule.

## **B. Deputy Commissioner Katie Cannon**

- 1. Costs of publishing and mailing the *OREN-J*.** The publication costs \$8,600 per issue, quarterly. Quite a few are being returned due to incorrect addresses costing an additional \$1,000, so it costs about \$40,000 per year to print and mail. Ms. Cannon felt that e-mailing it to licensees may be a good solution. We are also working on placing the blue manual online.
- 2. Hits on *OREN-J* on Web site.** No report was available due to changes to the state web site.
- 3. Status of recruitments for vacant positions.** There were nine candidates to be interviewed for the Administrative Specialist 1 (AS 1) to work with land development, the commissioner and the board. There were several candidates for the licensing position.
- 4. Status of condominium development filing costs.** The agency's intent was to train Kathie Forstrom in more of what Laurie Skillman does, and have the new AS 1 take on the clerical type work from Kathie. The costs will probably change but now Laurie is \$43.30 per hour and Kathie is \$25.62, including all benefits. We use 40 percent overhead, so total cost is about \$48 per hour. Additional time needed beyond the initial filing \$100 fee (for a maximum of two hours) is charged at \$60 per hour for Laurie. Mr. Kegler asked if there are still a significant number of condo filings. Ms. Cannon responded that they are still coming in at a high rate. State government is not in the business to make a profit and statute dictates that we recover the costs of doing the job. The fee is in statute.

## **C. Chair Michael Graeper**

- 1. Report of September 12 board member training.** All board members have now attended training. The board liaison was requested to inquire if this is taped. *Note: This training is not being videotaped at present but they are looking into doing so.*

**2. Report from Education Work Group.** Chair Graeper reported on the committee membership and on the subcommittee meetings to date.

**D. Board Member Maxine Ribera-Card**

**Report from Property Management Exam Questions Work Group.**

Ms. Ribera-Card faxed a report that was read into the record (**EXHIBIT A**). Her intent was to begin meeting after the holidays.

**E. Ancillary responsibilities discussion item – escrow.** Jyl Meier, Legislative Chair of Oregon Escrow Council, appeared. The Council has had a long-standing and good working relationship with the agency. They want to stay affiliated with the Real Estate Agency and not be moved to another agency. Chair Graeper reminded the board that the task force asked the board look into that recommendation. Ms. Meier read Mike DeRochier’s comments into the record. Commissioner Taylor felt that splitting the two would be a huge mistake. The agency doesn’t do the licensing but when something goes wrong with a transaction, it gets involved. From an investigative standpoint, our ability to get records from escrow oftentimes helps reveal what really happened, and we need to have that ability. Mr. Kegler agreed and offered that there has been a concern to some agents about escrow officers practicing real estate.

**VIII. ANNOUNCEMENTS**

The Chair announced the reception for Commissioner Taylor’s retirement starting at 3 p.m. He presented Mr. Taylor with a gift certificate from the Board.

**IX. ADJOURNMENT**

Chair Graeper adjourned the meeting at 1:30 p.m.

Respectfully submitted,

/s/ Katie Cannon

**KATIE CANNON  
DEPUTY COMMISSIONER**

Approved,

/s/ Michael R. Graeper

**MICHAEL R. GRAEPER  
BOARD CHAIR**

Exhibit distributed:

A. Property Management Education/Exam Work Group Report, **Agenda Item VII.D.**