

State of Oregon Real Estate Agency

REAL ESTATE BOARD

**Regular Meeting Minutes
February 12, 2007**

MEMBERS PRESENT: Michael Graeper, Chair
Troy Costales, Vice-Chair
Victor Kee
Arthur Kegler
Robert LaDu
Maxine Ribera-Card
Marianne Wood
John Zupan

MEMBERS ABSENT: None

STAFF PRESENT: Katie Cannon, Acting Commissioner
Laurie Skillman, Land Development Manager
Dean Owens, Administrative Services Manager
Mesheal Heyman, Education Coordinator
Louann Rahmig, Board Liaison

GUESTS PRESENT: Jana Jarvis, Oregon Association of Realtors (OAR)
Jyl Meier, Oregon Escrow Council
Nora Brock
Joe Briscoe
Melina Tomson
Emily Oldham

I. BOARD BUSINESS

- A. Call to Order.** Chair Graeper called the meeting to order at 10:03 a.m. at the Real Estate Agency office at 1177 Center Street NE, Salem OR.
- B. Roll Call.** All members were present
- C. Approval of the Agenda and Order of Business.** The agenda was approved as submitted.
- D. Approval of the December 19, 2006, regular meeting minutes.** The minutes were approved as submitted.
- E. Date of the Next Meeting.** April 16, 2007, in Salem

II. PUBLIC COMMENT

Nora Brock appeared to express concerns about property management companies not returning refundable security and cleaning deposits. She read her statement into the record (**EXHIBIT A**) and requested investigation into the matter.

III. REQUESTS FOR WAIVERS

A. **Emily Rose Oldham requested a partial experience waiver for a principal broker's license.** Ms. Oldham appeared and outlined her background and the reason for the request. Mr. LaDu asked if she had read the brokers' real estate code of ethics and asked her to speak about risk management. Ms. Oldham responded and explained that the main reason she wants to be a principal broker is to have buyers' agents. Mr. LaDu inquired why she thought there was a three-year experience requirement. Ms. Oldham answered that it was to be sure people knew the rules and regulations thoroughly.

Mr. Zupan asked how many land transactions she had done. She replied about 11 (mostly bare land) and 10-15 residential over a two-year period. Mr. Kee asked if she had a CCIM. Ms. Oldham indicated no. Mr. Kegler asked why there was no recommendation from the present company. She responded that she can get one.

Ms. Wood asked how many agents there were in the office. Ms. Oldham stated that there are ten brokers but no principal broker in the branch office where she works. Ms. Wood inquired about supervision. Ms. Oldham indicated that transactions are done by fax. Ms. Wood expressed concern that there was no principal broker readily available for advice or risk management.

MOTION BY JOHN ZUPAN TO APPROVE THE WAIVER REQUEST. Discussion. Ms. Wood felt that Ms. Oldham didn't have sufficient background to be a principal broker. Mr. Kegler was concerned about the small number of transactions and that they were mostly bare land. He requested a recommendation letter.

Vote: In favor - Zupan
Against - LaDu, Wood, Kee, Costales, Ribera-Card, Kegler.

MOTION FAILED.

Chair Graeper suggested submitting a letter of recommendation from the principal broker and gaining more experience under him. Mr. Costales recommended some other items to be submitted. Mr. LaDu expressed that the three-year experience requirement is not just about the "mechanics" of a transaction but that a broker gains much from mentorship with a principal broker.

B. **Joe T. Briscoe requested a partial experience waiver for a principal broker's license.** Mr. Briscoe appeared and outlined his background. Ms. Wood inquired about the number of agents in the office. Mr. Briscoe

responded three. She asked about the type of paper work review he performed and if there is intent to add agents. Mr. Briscoe explained the review process and indicated that since their market area is small, there would be few agents added.

Mr. Kee inquired about Mr. Briscoe's reference to double receipt for earnest money. He answered that their policy is to do that. Ms. Ribera-Card asked about the experience of the brokers in the office. Mr. Briscoe indicated that their experience was mostly as business owners and not as brokers. The principal broker is located in Ashland and visits the branch office in Bandon every 7-10 days.

Mr. LaDu asked Mr. Briscoe where he received his degree and if he was familiar with the code of ethics.

MOTION BY BOB LADU TO APPROVE THE WAIVER REQUEST. Discussion. Mr. Zupan pointed out that Mr. Briscoe has had an active license for only seven months which would mean a two-year, five-month waiver. One year could be credited for his degree.

Mr. Kegler asked about the type of work he performed. Mr. Briscoe indicated that he does not perform principal broker duties but does review the paper work for completeness. Most of the transactions are general residential real estate.

Mr. Kee inquired how many units have been closed in the branch office. Mr. Briscoe responded that there are about 24 listings and he performs in a supervisory and support role to the brokers.

**VOTE: In favor – LaDu, Wood, Ribera-Card
Against – Kee, Zupan, Kegler, Costales**

MOTION FAILED.

Chair Graeper encouraged Mr. Briscoe to gain more experience and than make another request.

C. Melpo Melina Tomson requested a partial experience waiver for a broker sole practitioner's license. Ms. Tomson appeared. Mr. Zupan asked how many transactions she had done. Ms. Tomson responded 37.

Ms. Wood asked if she planned to be a sole practitioner. Ms. Tomson indicated, not at this time. Ms. Wood inquired how she would receive supervision since the principal broker is in Seattle. Ms. Tomson responded that they use e-fax and online transaction management system so both can access documents at any time.

**MOTION BY JOHN ZUPAN TO APPROVE THE REQUEST FOR
THREE-MONTH WAIVER CARRIED UNANIMOUSLY.**

IV. BOARD ADVICE/ACTION

A. Forum to resolve security deposit issues relative to the Landlord Tenant Law. HB 2545 was distributed (**EXHIBIT C**). Ms. Cannon explained that this bill requires (1) the agency to develop a handout describing the rights and responsibilities of a tenant renting a residential dwelling unit; (2) the landlord to provide the handout within a certain period of time; (3) the landlord to retain records showing provisions of handouts; (4) establishes a civil penalty for failures to do so; and (5) the agency to establish a dispute resolution program.

Laurie Skillman reported that the agency would receive complaints, investigate the complaints, do the mediation process and offer a solution, and that there would be an appeal process. She explained the infrastructure in place around the state to deal with all kinds of disputes. ORS chapter 36 covers mediation and requires neutral third parties. Contract mediation would cost about \$120 per hour.

Mr. Zupan felt the disclosure part is good but was uncomfortable with developing a mediation program. He doesn't feel the agency should be handling the mediation as there are enough opportunities around the state as well as small claims court.

Ms. Cannon reported there are about 516,000 rental units in the state. The agency cannot hire additional staff. She estimated that a conservative estimate would be \$2 million fiscal impact per year. There are no provisions for revenue. If we had to use our fund balance, it would be depleted in two years.

Mr. Kegler doesn't feel this agency should be investigating disputes between landlords and tenants. Ms. Wood outlined the Lane County community mediation services available. Ms. Skillman added that presently grants are allotted to 23 of the 36 counties in Oregon for these services. There are seven dispute resolution centers in Multnomah County alone. Chair Graeper commented that we don't have jurisdiction over all landlords, only over property managers. Ms. Ribera-Card was interested in knowing if this would apply to all property owners.

Ms. Cannon stated that we know how many licensed property managers there are but do not know how many brokers are doing property management, so the agency would have to notify all licensees.

Mr. Costales pointed out that Sections 2 and 3 appear to apply to any and all landlords. Section 4 is more specific to residential properties. This appears to be an unfunded mandate. Ms. Skillman commented that the agency has

regulatory authority over real estate transactions. This bill would expand the regulatory authority of the agency over any and all landlords and tenants.

Jana Jarvis, OAR, indicated that the association is not excited about this bill either. She suspects this is in response to a constituent concern. The board's discussion is very valuable.

Mr. Costales doesn't doubt there are issues but the proposed solution is problematic to him. He suggested perhaps the Department of Consumer and Business Services and the Attorney General need to collaborate on the issue.

Mr. Kegler pointed out that a rental agreement is a contract and should be handled in civil court.

Chair Graeper asked Ms. Brock for further comments. Her concern was with property management companies. This bill goes beyond that, but there needs to be some kind of oversight on these issues.

MOTION BY JOHN ZUPAN TO TAKE A POSITION AGAINST HB 2545 AS WRITTEN. Discussion. Ms. Cannon commented that she has not been able to determine how big the problem is and feels this agency is not the appropriate one to deal with it.

MOTION WITHDRAWN.

MOTION BY JOHN ZUPAN THAT THE BOARD REJECT THE BILL AS WRITTEN, BUT REALIZING THERE IS A PROBLEM, RECOMMENDS FURTHER RESEARCH INTO WHAT AGENCY SHOULD BE RESPONSIBLE CARRIED UNANIMOUSLY.

- B. Approve temporary advertising rules for permanent rulemaking.** Chair Graeper felt this will resolve the problem revolving around requiring everyone to indicate their license status, when advertising under the banner of a real estate broker.

MOTION BY ART KEGLER TO MOVE THE RULE TO PERMANENT RULEMAKING CARRIED UNANIMOUSLY.

- C. Approve permanent property management rules for filing.** Ms. Cannon explained that temporary rules are now in place. **(EXHIBIT D)** A work group has been reviewing all the property management rules for additional updating; however, those rules are not yet ready. We are asking the board for approval to move forward. Ms. Skillman reported that the only change from the temporary rules to permanent rules is in OAR 863-025-0035 which deals with records retention and storage outside of Oregon. ORS chapter 696 does not allow for records outside the state so this temporary rule will not be

replaced by permanent rule until the appropriate statute amendment allows it. This is being requested by amendment to SB 167. Ms. Cannon continued that temporary rules must be replaced with permanent rules within 180 days or the temporary rules go away. These rules expire March 12. The finishing touches are being made to the permanent rules now.

MOTION TO APPROVE ADOPTION OF PERMANENT PROPERTY MANAGEMENT RULES IN CONCEPT. Discussion. Copies of the permanent rules will be distributed to the board prior to filing.

MOTION CARRIED UNANIMOUSLY.

D. Waiver request process. A draft waiver request application form was included in the board packet. Ms. Cannon advised that it is inappropriate to include background check information on the form. Mr. Costales suggested that providing requestors with a copy of the log might be helpful so they know what the board will use to consider their request. After finalization of the form, future applicants will be required to complete and submit it with supporting documentation as outlined.

E. Returning license to the principal broker. Chair Graeper summarized the issue. The law used to require licenses to be sent to the agency. A statute change in 2005 repealed ORS 696.221 eliminating that requirement. Ms. Cannon referred to the proposal sent to the board members via e-mail to remedy the concerns expressed about the return of the physical license in broker transfers (**EXHIBIT B**). Mr. Graeper suggested that the license change form include a statement by the transferring broker certifying notification to the prior principal broker of a move. He indicated that a company's policy manual could include information on how to correctly document a move.

Mr. Kegler felt that there should be a stiff penalty for fraudulent information provided as the "vacating" broker could be placed in jeopardy on transactions.

MOTION BY JOHN ZUPAN TO MODIFY THE LICENSE CHANGE FORM TO INCLUDE A CERTIFICATION THAT THE BROKER HAS NOTIFIED THE PRINCIPAL BROKER IN WRITING OF DEPARTURE AND THE DATE OF THE DEPARTURE.

MOTION CARRIED UNANIMOUSLY.

The Chair directed Ms. Cannon to write Mr. Mistler and Phil Querin advising of the board's action.

V. NEW BUSINESS

A. Sales concessions – Raul Ramirez. (*Taken out of order to accommodate Mr. Ramirez’s schedule.*) Mr. Ramirez referred to the issue raised by Max Smith, which is more a matter of public policy (where the agency stands on the issue) and the implications for board members. There appears to be some controversy from Mr. Smith’s standpoint as far as what information appraisers can or cannot get from a realtor. The question seems to be what a house is actually worth and how much of that price is part of the concessions. Mr. Phil Querin believes that seller concession information is confidential under ORS 696.800(3), which is correct. It states “...information communicated to a real estate licensee or the licensee’s agent by the buyer or seller of one to four residential units regarding the real property transaction, including but not limited to price, terms, financial qualifications or motivation to buy or sell” is confidential. However, Subsection (a) of that statute “muddles” the matter. It says that “confidential information does not include information that the buyer instructs the licensee, or the licensee’s agent to disclose about the buyer to the seller...” or vice versa. Although that subsection is not as specific in terms of the kind of information that is disclosed, it seems to limit it to the information about the buyer. It is arguable that the buyer’s request to have certain concessions from the seller is that type of information. Arguments can be made on either side. What should the agency do, or what can it do? Go back to the basics; what are the agency’s responsibilities? They are twofold according to ORS 696.015: (1) To create a healthy real estate market atmosphere and (2) To assure that professional real estate activity is conducted with high fiduciary standards. There seems to be disagreement on the amount of access an appraiser should have over seller concessions. That appears to go beyond the scope of the purpose of the agency. It is not directly related but there is no “bright line” answer. As a regulatory agency, you get into issues on how a licensee conducts business. This type of issue appears to be closer to dictating how the stationery should look like than the issue about maintaining confidentiality, maintaining fiduciary standards, which go directly to licensee conduct.

Chair Graeper advised that Mr. Smith had corresponded with him. The chair’s recommendation to solve the problem was to modify the listing and sales agreements, to allow their licensee to divulge the seller concessions, and have it preprinted in the form. For a multiple listing service, add a section to show the seller concessions. If those actions were taken, he felt that would resolve Mr. Smith’s problem.

Mr. Ramirez responded that he thought those actions would resolve Mr. Smith’s issue, with both the buyer’s and seller’s consent. There may be an issue on items that are not specific. The question is how that relates to the agency’s charge to create a healthy real estate market and assure high fiduciary standards are being employed in real estate activities.

Chair Graeper indicated that if both the buyer and seller agree that it is not confidential information, then there is no divulgence issue. The fiduciary obligation is then fulfilled. He agreed with Mr. Smith that often the actual sale price of the property is not disclosed because in some instances seller concessions are made, and in some instances they are not.

Mr. Zupan thought that the problem won't be solved if the seller doesn't want to disclose.

Ms. Cannon reiterated that the question for the board is, making sure an issue is appropriate for the board to deal with, for the board to look at these kinds of issues and determine if they are pertinent to a board member's role. We don't want to go beyond the scope of our authority.

Mr. Ramirez indicated that was the second issue he planned to discuss and Ms. Cannon articulated it very well.

Mr. Zupan commented that the board probably shouldn't be taking a position on this issue.

Mr. Ramirez stated that Mr. Smith feels lenders are being cheated because certain information is not disclosed. Is that part of the agency's role? Probably not. Board members must understand their role. He advises client agencies that an inquirer needs to understand "who" is responding. Is it a personal opinion or a board member's?

Ms. Wood asked if this issue should be in a business issues "KOG," Key Objective Group of the Oregon Association of Realtors (OAR).

Mr. Kegler felt that confidentiality needs to be defined and then seeing to it that it is applied in an appropriate fashion. This agency is not the place to do that. He agreed that that discussion at "KOG" would be appropriate.

Mr. Ramirez clarified that under certain circumstances nothing is confidential if it is something that the seller intends to release to the buyer. The same information can or cannot be confidential depending on the intent. A seller's disclosure to the buyer, because we are dealing with fiduciaries, the buyer is probably going to be treated the same as the buyer's agent. The fact that there are two people involved does not necessarily negate any confidentiality. If a seller tells the broker that they don't want to disclose certain information that is legal.

Mr. Kee requested clarification that this issue applies to people outside the transaction. The chair pointed out that the sale agreement stipulates the concessions, and that is privy to the lender. Mr. Smith alleges fraud. Concession information needs to be put in writing for all parties to agree to.

Mr. Costales commented that if appraisers belong to an association, that's where this belongs.

Ms. Cannon reminded the board that there will be issues come before them on which they need to determine if they are their issues. As a state agency, we can do only what statute allows.

Mr. Zupan suggested the board have Ms. Cannon write Mr. Smith a letter advising that we don't have authority over this matter based on advice from the Attorney General's office. The chair added that we have asked OAR to take up the issue at KOG and perhaps Mr. Smith should bring it up at the appraisers' association. Mr. LaDu also recommended Ms. Cannon send a letter to OAR as well. Mr. Kee recommended that OAR funnel the information to the local associations.

B. Future topics for discussion. None.

VI. COMMUNICATIONS

A. Waiver request log. Mr. Costales suggested placing the log in the waiver request portion of the agenda so board members can have all the information together. Mr. LaDu requested more information be included in the discussion column.

B. Administrative Actions Summary. Mr. Costales asked if there was any way of determining if a licensee granted a waiver has shown up in administrative actions. Ms. Cannon indicated that we can research that information.

C. Governor's Food Drive. The board was given the opportunity to donate toward the drive which runs through March 2. It was pointed out that the agency's goal this year is 7,000 pounds of food and that \$1 will purchase six pounds of food.

D. Board meeting schedule. The revised schedule approved at the December 19, 2006, meeting was included in the packet.

VII. REPORTS

A. Acting Commissioner Katie Cannon

1. Status of recruitments for vacant positions. Ms. Cannon reported that the agency filled a limited duration position in licensing but was unsuccessful in land development/board support. Interviews were conducted for two positions in regulations. The commissioner position is still in the governor's hands.

2. 2007 Legislative report. SB 324 (the task force bill) contains several things that were not part of the task force recommendations. Mr. Costales

asked for a “crosswalk” between the task force recommendations and what is in the bill. Jana Jarvis (OAR) commented that the most significant omission was the discussion on appointment of the commissioner. Ms. Cannon continued that SB 166, SB 167 and SB 168 are the agency’s bills.

Ms. Skillman reported that SB 167 is a “housekeeping” bill to provide consistent language and to define a “nonlicensed person” (**EXHIBIT E**). Amendments have been submitted to the bill. SB 449 adds to the definition of real estate and changes the securities statutes.

Ms. Jarvis stated that the bill was designed to create a “bright line” between real estate transactions and securities transactions.

Mr. Costales offered that all legislators had to have their requests for bill drafting in by the end of January. All bills must be printed by February 26. There are between 600 and 700 more bills session over last session. Bills not receiving a hearing by mid-April will probably “die.” Amendments to existing bills will be prepared after all new bills are drafted.

Ms. Cannon advised that any bills needing board attention before the next meeting will be e-mailed to the members for comment.

- 3. 2 percent budget reduction.** Ms. Cannon advised that state agencies are required by statute to propose a 10 percent budget cut every session. We were also asked to show a two percent reduction based on efficiencies, so we looked at the figures in the 10 percent and decided to put as much as we can on our Web site (as opposed to mailing). Two percent of the agency budget is \$165,000. Printing, copying and postage for the *OREN-J* come to \$54,000 per biennium. Printing and mailing the Real Estate Manual is \$19,338. The Q&As cost about \$22,000. Mailing of renewals is about \$48,000 per biennium. We are considering using a postcard notice of renewal and asking licensees to renew online. Another \$20,000 still needs to be reduced.

Mr. Kegler requested clarification that the reserves cannot be used and the two percent reduction is mandatory. Ms. Cannon confirmed this is correct.

Chair Graeper has no problem putting the Real Estate Manual and the Q&As online but feels the *OREN-J* should continue as hard copy. Ms. Cannon referred to the e-mail notification process used by ARELLO with “bullet points” of articles, which we are considering. We are now requiring e-mail addresses on the license renewal form.

Mr. Costales added an explanation of how the reduction process works.

B. Chair Michael Graeper

The chair gave a report from the Education Work Group which has met twice. He discussed the National Association of Realtors survey on continuing education which is being sent out. The work group will compile information and reach consensus on what to recommend to the board. They are awaiting information from the OAR education committee.

C. Board Member Maxine Ribera-Card. Ms. Ribera-Card reported on the Property Management Education/Exam Work Group. The first meeting will be February 14, 2007. She named the group members and staff participants.

VIII. ANNOUNCEMENTS

Vada Salinas has submitted her resignation from the board. Katie was asked to draft a letter to Ms. Salinas in appreciation of her service.

The Clatsop Board has requested the August 20, 2007, REA Board meeting be in Astoria.

IX. ADJOURNMENT

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

Respectfully submitted:

/s/ Katie Cannon

KATIE CANNON

ACTING COMMISSIONER

Respectfully submitted:

/s/ Michael R. Graeper

MICHAEL R. GRAEPER

BOARD CHAIR

Exhibits distributed:

- A. Copy of letter from Nora Brock on HB 2545 (Public Comment)
- B. OREA Broker Transfer/Return of License, **Agenda Item IV.D.**
- C. HB 2545, **Agenda Item IV.A.**
- D. Property Management administrative rules, **Agenda Item IV.C.**
- E. SB 167, **Agenda Item VII.A.2.**