

Oregon Real Estate News-Journal

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Commissioner
Steve Strobe

Looking Forward from a Solid Foundation

Steve Strobe, Real Estate Commissioner

Spring greetings from your Oregon Real Estate Agency. As I write my first Agency update, I'd like to share some of my initial observations about the Agency and about our commitment to our stakeholders.

estate transactions; Agency employees play an essential role in the arenas of licensure, education, and enforcement. That we're all in this together, and that the consumer is central to it all, is a culture which permeates the Agency.

Commitment to the industry

Having spent the better part of two decades as a broker, and numerous years in volunteer leadership roles, I know my former colleagues are passionate about their profession and the difference they make in their communities.

While Agency staff play a different role in the world of real estate, I was immediately impressed that they share the same enthusiasm for their role in the big picture. Real estate brokers, property managers, lenders, mortgage brokers, and title and escrow all occupy essential roles in real

Build on prior accomplishments

Under my predecessor, the Agency earned a reputation for continually striving to gain operational efficiencies and being very sensitive to how fee payers' money is utilized. Moreover, the Agency has earned respect for conducting investigations that are thorough and fair, taking an education versus sanction approach when appropriate.

With this solid foundation, we will look to find ways to improve service through better use of technology and with enhanced stakeholder engagement.

Please see Agency Update on page 4



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What Is Commingling?

Oregon Revised Statute (ORS) 696.241 prohibits commingling any other funds with trust funds in a clients' trust account.

How clients' trust accounts work

Trust funds are moneys received or handled by a licensee that belongs to another person in the course of professional real estate activity, including property management.

Licensees must deposit and hold trust funds for their clients in specially designated bank accounts called clients' trust accounts. The only exemptions to this requirement are

when a licensee deposits checks directly into escrow or when a licensee delivers a check made out to the owner directly to the owner.

A clients' trust account keeps a licensee's money separate from clients' trust funds. Security deposit accounts are special clients' trust accounts that hold security deposits.

[Oregon Revised Statute \(ORS\) 696.010\(5\)](#) defines commingling as "the mixing of funds from any source, including personal funds, with trust funds as defined in ORS 696.241, by a licensed real estate property manager or principal real estate broker, except as specifically authorized by this chapter."

Placing trust funds in a clients' trust account gives the trust funds protection from a licensee's creditors. When licensees put their own or business funds into a clients' trust account, they are putting their clients' funds and their licenses at risk.

When commingling happens

Opening clients' trust accounts

Some banks will not open a bank account without funds in the account. This can be an

issue for property managers because every active licensed property manager must have at least one clients' trust account opened and reported to the Oregon Real Estate Agency. There may be times, especially when a property manager is newly licensed, when the property manager will not have clients' funds to deposit or hold in a clients' trust account.

Licensees cannot use personal or business funds to open clients' trust accounts. They

must find banks willing to open, and keep open, a clients' trust account with a zero balance.

Covering bank fees

Licensees cannot put their own or business funds into

a clients' trust account to cover bank fees. Any licensee being charged bank fees for a clients' trust account must arrange with the bank to pay the fees from the licensee's business account.

Depositing rents and security deposit funds for personally owned properties

Some licensees manage their own rental properties in addition to the properties of others. Licensees cannot place rents and security deposits for personal rental properties into clients' trust accounts. These funds must be kept in bank accounts separate from designated clients' trust accounts.

Keeping earned compensation in clients' trust accounts

In a property management agreement, a licensee and a property owner may agree that management fees are paid out of the clients' trust account. Per [Oregon Administrative Rule \(OAR\) 863-025-0027\(6\)](#), the licensee

*Please see **Commingling** on page 5*



Principal broker renewing for the first time?

New Advanced Practices Course Required Starting July 1

Are you renewing your active principal broker license for the first time on or after July 1?

If you renewed your principal broker license inactive for its first renewal, are you reactivating it for the first time on or after July 1?

If you answered “yes” to either of the above questions, you need to take the Principal Broker Advanced Practices (PBAP) course.

The list of PBAP providers is [available online](#).

Your license expires for the first time *after* July 1:

- You must take the 27-hour PBAP course and the 3-hour Law and Rule Required Course (LARRC) to renew your license active.
- If you renew inactive, you don't need education. However, you will need the 27-hour PBAP course and the 3-hour LARRC when you reactivate your license.
- Any other courses you may have completed in the 2 years prior to your license expiration date, including the 40-hour Brokerage Administration and Sales Supervision (BASS) course, will not count toward your continuing education requirements for license renewal.
- You can't renew your license early to avoid the new course requirement. License renewal is available on the first day of the month in which your license expires.

Your license expires for the first time *before* July 1:

- You need to meet the current continuing education requirements to renew your active license on time:
 - 27 hours of continuing education

from certified continuing education providers, and

- The 3-hour LARRC.
- If you renew inactive and don't reactivate your license by July 1, 2019, you will need to take the 27-hour PBAP course and the 3-hour LARRC before you can reactivate the license.
- If you renew late on or after July 1, 2019, you must take the 27-hour PBAP course and the 3-hour LARRC. (The fee for renewing late is \$450: \$300 renewal fee and \$150 late fee.)

Your first license renewal was inactive and it is still inactive:

- You can reactivate your license before July 1, 2019, by meeting the current continuing education requirements:
 - 27 hours of continuing education from certified continuing education providers, and
 - The 3-hour LARRC. (You may also need to take and pass a reactivation exam.)
- If you reactivate your license on or after July 1, 2019, you will need to take the 27-hour PBAP course and the 3-hour LARRC. (You may also need to take and pass a reactivation exam.)

Your license has already been renewed:

If you have already renewed your principal broker license, you don't need to take the PBAP course. You will need to meet continuing education requirements for your next license renewal:

- 27 hours of continuing education from certified continuing education providers, and
- The 3-hour LARRC. ■

License renewal reminders are sent by email. Check your email address by logging into your eLicense account.

Supervision and Control:

Written Supervisory Agreements

Are you a principal broker or licensed property manager who works in a real estate business with other principal brokers, property managers, or both? Then you must have at least one written supervisory agreement in place. Failure to have such an agreement in place may result in an administrative action.

The content required for written supervisory agreements depends on the makeup of your company.

For businesses with 2 or more principal brokers:

The principal brokers must execute one or more written agreements between them that assigns supervisory control and responsibility for the professional real estate activity of:

- Each broker in the business.
- Any brokers who join the business in the future.
- Any brokers not listed in the agreement.
- Any principal brokers being supervised.

In addition, the principal brokers must:

- Update the agreement(s) when a principal broker leaves and it affects the supervision assignments.
- Share equal supervisory responsibility for brokers not otherwise covered by the

written supervisory agreement.

For businesses with 2 or more property managers, or with property managers and principal brokers:

The licensed property managers and principal brokers must execute one or more written agreements between them. The agreement must assign supervisory control and responsibility for the management of rental real estate by all principal brokers and property managers in the business.

In addition, the licensed property managers and principal brokers must:

- Update the agreement if another property manager or principal broker joins the business.
- Update agreement if a property manager or principal broker leaves and it affects supervision responsibilities.

Property managers and principal brokers who do not exercise administrative or supervisory control over each other must include in the written supervisory agreement that they each are responsible for their own management of rental real estate. ■

Agency Update

Continued from page 1

Be responsive to change

We must recognize that the industry has changed significantly over the past decade, and the pace of change—like all aspects of our lives—seems to have accelerated. While we are bound by certain confines of being a state agency and cannot always change as fast as some would like, that can also be viewed as a positive. Any change to existing rules comes only from thoughtful and deliberate conversations with our Board, stakeholders, staff, and

the public. The entire leadership team is also involved in professional associations outside of state government, and as such, are committed to bringing best practices back to the Agency.

My goal is to work together to further the Agency's mission to provide quality protection for consumers balanced with an environment conducive to a healthy real estate market. We always welcome your comments about how well we are achieving our mission. ■

Get into Compliance with a DIY Compliance Review

A self-directed Compliance Review allows you to check your office processes and procedures. It reviews some of the commonly missed requirements found in [Oregon Revised Statutes \(ORS\) chapter 696](#) and [Oregon Administrative Rule \(OAR\) chapter 863 division 15](#).

Why complete a Compliance Review?

Principal brokers can use the Compliance Review to check the following:

- **Advertising:** Do licensees in the company have everything that is required in their advertising, including social media and websites? Is a principal broker reviewing and approving all associated licensees advertising?
- **Recordkeeping:** Are all documents for completed *and failed* transactions stored properly? Are all documents of agreement reviewed by a principal broker?
- **Supervision Agreement:** If there are more than one principal broker with the business, is there a written agreement that outlines the supervision and control responsibilities of each principal broker? (See *Written Supervisory Agreements* on page 4.)

How Can I Participate?

The Oregon Real Estate Agency sends invitations to principal brokers monthly. But you don't have to wait!

Principal brokers can access the Compliance Review at any time through their personal license account in eLicense. Just log in and select "Compliance Review" from the Online Menu.

What if I find I'm doing something wrong?

Just make the correction in your records,

processes, or procedures. Once done, indicate the actions taken on the follow-up survey.

The Compliance Review is completely educational; the Agency does not take disciplinary actions for non-compliance issues found during Compliance Reviews.

Free continuing education?

Completing a Compliance Review, including the follow-up survey, will earn a principal broker 1 hour of free continuing education. *Please note: This education does not count toward the Principal Broker Advanced Practice course or the Law and Rule Required Course.* ■

Commingling

Continued from page 2

must disburse the management fees monthly unless a different schedule is specified in the property management agreement. If the licensee does not disburse management fees monthly, or in accordance with the schedule in the property management agreement, the licensee is commingling his funds with trust funds.

A licensee and an owner may also agree that the interest from an interest-bearing clients' trust account goes to the licensee per [ORS 696.241\(7\)](#). The licensee must disburse the interest out of the clients' trust account 10 days from the date of the bank statement on which the interest first appears per [OAR 863-025-0020\(3\)](#). If such disbursements to the licensee are not made appropriately, the licensee is commingling his funds with trust funds.

Commingling is a violation of Oregon Real Estate License Law and can result in disciplinary action. ■

New Asbestos Rules Take Effect

Courtesy of the Oregon Department of Environmental Quality

Questions about asbestos? Contact the Oregon DEQ at (503) 299-5696.

Oregon adopted new requirements in fall 2018 for handling asbestos. The Oregon Department of Environmental Quality requires property owners and contractors to identify asbestos and to properly handle, package and dispose of asbestos waste from demolition and renovation projects.

Properly handling asbestos protects public health. When asbestos is disturbed, tiny fibers are released into the air and may cause lung cancer and other illnesses. There's no known safe level of exposure.

There are three main changes to Oregon's asbestos requirements:

1. **Residential renovation asbestos survey:** All houses and other residential buildings constructed prior to 2004 must now have an asbestos survey conducted by an accredited inspector prior to demolition and renovation activities, with one main exception. Owner-occupants doing their own renovation work inside their home are exempt from this rule. This expands an existing asbestos survey requirement for residential demolitions and for commercial demolitions and renovations.
2. **Updated disposal requirements for**

nonfriable waste: Nonfriable asbestos waste must now be packaged the same as friable asbestos waste. Friable materials are those that can be easily crumbled and release asbestos fibers. Applying the same packaging standard for nonfriable and friable materials streamlines the packaging requirements for all asbestos waste and ensures a safer work environment for employees, residents, neighbors and disposal facility workers.

3. **Accredited laboratories for asbestos testing:** Starting January 1, 2021, the bulk asbestos samples collected during the asbestos surveying must be analyzed by a laboratory that participates in a nationally recognized accreditation or testing program. This new requirement establishes a common level of competency and reliability in analysis to properly identify asbestos content. DEQ will maintain a public list of accredited laboratories on its website.

Find more information about Oregon's asbestos rules on [DEQ's Asbestos Information webpage](#). ■

Agency Again Receives Fiscal Excellence Award

Oregon's Chief Financial Office awarded the Gold Star Certificate to the Oregon Real Estate Agency for fiscal year 2018.

The Gold Star Certificate is given to state agencies that provide accurate and complete fiscal year end information in a timely manner. It is Oregon's equivalent to the nationally recognized Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting.

Caty Karayel, the Agency's accountant, was instrumental in meeting the requirements for the award.

Administrative Actions

The Oregon Real Estate Agency is required by law to publish disciplinary actions. The final order for each action can be viewed by clicking on the individual names listed below.

Please note that there are individuals with real estate licenses that may have similar or the same names as those listed below, even in the same market area. If you are in doubt if an individual listed here is someone you know or with whom you are working, please contact the Agency for verification.

Stipulated settlements do not necessarily reflect all the factual violations initially alleged by the Agency. Sanctions may have been adjusted as part of the negotiation process. Such settlement may not, therefore, directly compare in severity/sanction with other cases.

REVOCATIONS

[Leitch, Brenda Dalton](#) (Hammond) 990700056. Default Order dated March 5, 2019.

REPRIMANDS

[Hoyer, Sherry Lee](#) (Bend) Property Manager 200702277. Stipulated Order dated February 19, 2019, issuing a reprimand with education.

[Fox, Marcus Andrew](#) (Sherwood) Principal Broker 200508221. Stipulated Order dated February 21, 2019.

CIVIL PENALTIES

Expired - Late Renewal

Civil penalties for late renewals are computed using each 30-day period as a single offense. The civil penalty for the first 30-day period can range from \$100-\$500, with each subsequent 30-day period ranging from \$500-\$1,000.

[McCaslin, Mimi](#) (Portland) Broker 910600032. Stipulated Order dated February 21, 2019, issuing a \$100.00 civil penalty. ■

Next Real Estate Board Meeting in Salem

June 3, 2019 at 10:00 a.m.
[Oregon Real Estate Agency](#)

Open to the public, the Oregon Real Estate Board will conduct its next general meeting at the office of the Oregon Real Estate Agency.

- Learn how the Real Estate Board works.
- Understand how the Oregon Real Estate Agency operates.
- Give your opinion to the Board during the public comment period.
- Meet Board members and Agency staff.

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The Oregon Real Estate News-Journal is published by the Oregon Real Estate Agency as an educational service to all real estate licensees in the state under the provisions of section 696.445 of the Oregon Revised Statutes.

Mesheal Heyman, Editor

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