

# Oregon Real Estate News-Journal

Official Publication of the Oregon Real Estate Agency

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Commissioner  
Gene Bentley

## Keeping Complete Real Estate Records

*Gene Bentley, Real Estate Commissioner*

As a real estate licensee, you must comply with Oregon statutes and rules about maintaining records of professional real estate activity. But more importantly, developing a good, well-organized record keeping system can help you mitigate risks, fulfill your affirmative duties, and monitor associated licensees' activities.

The requirements for record keeping are summarized below. For complete information, please review Oregon Revised Statute (ORS) 696.280 and Oregon Administrative Rules (OAR) 863-015-0125, 863-015-0250, and 863-025-0035.

### Advertising Records

Under OAR 863-015-0125, brokers must submit all advertising to their principal brokers for review and approval. Brokers must then keep and maintain a record of each approval and make it available to the Agency upon request.

### Transaction, Listing, and Buyer Representation Documents

Although the Agency makes recommendations about which specific records should be kept (see pages 4-7), OAR 863-015-0250 requires that a principal broker's records must include complete, legible copies of **all documents required by law or voluntarily generated during the real estate transactions** of the principal broker and any associated licensees. This includes, but is not limited to:

- A copy of any **written agreement creating an agency relationship** between a broker or principal broker and a client.
- A copy of any **written acknowledgment of an agency relationship** between a broker or principal broker and a client (e.g. final agency acknowledgement).
- A copy of any **written agreement for the listing, sale, purchase, rental, lease, lease**

*Please see Record Keeping on page 2*



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## Record Keeping

Continued from page 7

- option, or exchange of real property generated by a broker or principal broker.
- A copy of any **receipt issued by a broker or principal broker** to show proof of acceptance of funds or documents.
- A copy of any **vouchers or bills or obligations paid by the broker or principal broker** for the account of a client or customer.
- A copy of **any other document provided to or received by a client through a broker or principal broker** during the term of an agency relationship.
- **All financial records as required in OAR 863-015-0255 and 863-015-0275**, including clients' trust account records, promissory note records, and escrow fund documents.
- A copy of any **closing statement** showing receipts, disbursements, and adjustments, for any real estate transaction in which a principal real estate broker performed the closing.
- A **record of receipts and disbursements or check register** maintained for each clients' trust account or security deposits account.
- A legible copy of each **tenant agreement**
- A **tenant's ledger** for each tenant.
- A record of all **cash receipts**.
- All **paid bills and receipts** required under OAR 863-025-0040(8).
- A **record of electronic bank transactions** required under OAR 863-025-0040(9).
- **Records of the reconciliation of each clients' trust account and security deposits account**, including the reconciliation document.
- All **cancelled checks or bank-supplied images of cancelled checks** as provided under ORS 696.243(1) with the bank statements to which the checks pertain.
- A **record of all deposits** for each clients' trust account and security deposits account.

### Rental Real Estate Documents

Per OAR 863-025-0035, a property manager's or principal broker's records for managing rental real estate are considered complete and adequate if they include at least:

- A legible copy of each **executed property management agreement** and any executed addenda or amendments.
- **Clients' trust account and security deposit account records** required by OAR 863-025-0000 to 863-025-0080 and ORS Chapter 696.
- An **owner's ledger** for each property management agreement.
- All records must be kept for at least six years after the following dates:
  - For a notice of clients' trust account under ORS 696.245, the date the account was closed.
  - For real estate transactions, the date a transaction **closed or failed**, whichever is later.
  - For management of rental real estate, the date on which the record expired, was superseded or terminated, or otherwise ceased to be in effect.
  - For all other records, the date the record was created or received, whichever is later.

## Oregon Real Estate Board Meeting in Salem

**Monday, February 1, 2016, 10:00 a.m.**

[Oregon Real Estate Agency](#)

530 Center St. NE, Suite 100, Salem, Oregon 97301

## Views from the Board

# **What Real Estate Brokers Need to Know About the New TRID Closing Disclosure Requirements**

Patricia A. Ihnat, Oregon Real Estate Board

### **Q.) Why did the disclosure requirements and forms change?**

A.) In the wake of the 2008 financial meltdown, Congress created the Bureau of Consumer Financial Protection (CFPB), and mandated that CFPB devise rules for making the real-estate lending process for consumers more transparent and, ultimately, more fair.

To meet the charge, the CFPB created new disclosure requirements and forms so that consumers would better understand the terms of their residential loans and their loan-originating transactions. These disclosure requirements and rules are part of the TILA-RESPA Integrated Disclosure rule, or TRID for short. The CFPB also refers to the disclosure rules as “Know Before You Owe.”

TRID became effective for all loan applications submitted on or after October 3, 2015.

### **Q.) Does TRID change the terminology used in the real estate and lending industries?**

A.) Yes. A buyer/borrower now is known as a *consumer*. A lender now is known as a *creditor*. And the date on which the consumer becomes legally obligated to the creditor now is known as *consummation*. (Bear in mind that consummation is not necessarily the recording date. In Oregon, it is the date the consumer signs loan documents.)

### **Q.) What changes were made to disclosure forms under TRID?**

A.) The TRID rule introduced two new disclosure forms that consumers receive during the loan application and consummation process: the Loan Estimate and the Closing Disclosure. Both the Loan Estimate and the Closing Disclosure require timely delivery. TRID also potentially extended the amount of time allowed between Closing Disclosure and loan consummation.

### **Q.) How do the changes affect the Good Faith Estimate and the initial Truth in Lending Disclosure that we’ve worked with for years?**

A.) Under TRID, the Loan Estimate is a combination of the good Faith Estimate and the initial Truth in Lending Disclosure. The lender must issue the Loan Estimate to the consumer no later than the third business day after the consumer submits a loan application.

Under the TRID rule, a loan application is deemed to be submitted when the consumer has provided the lender with six items: consumer’s name, consumer’s income, consumer’s social security number, address of property for which the loan is sought, an estimate of the value of the property, and estimated amount of the loan sought by the consumer.

### **Q.) How can I as a real estate broker help a client who wishes to shop different loan programs?**

A.) A knowledgeable real estate broker working with a client who wishes to compare two or more loan programs can advise the client to obtain preliminary written estimates from the lender. This can be accomplished by providing the lender with five of the six items described above, omitting the address of the property for which the loan will be sought.

A loan originator initially may provide a preliminary written estimate to the consumer without knowing the address of the property. In this instance, any type of preliminary estimate provided by the lender to the consumer must include a disclaimer that distinguishes it from a Loan Estimate.

When the consumer is ready to proceed, the consumer will provide the sixth piece

*Please see TRID Q&A on page 10*



Patricia Ihnat

“Views from the Board” features the opinions of Real Estate Board members. The views expressed are not necessarily those of the *Oregon Real Estate News-Journal*, the Oregon Real Estate Agency, or Agency staff.

# Records of Professional Real Estate

Records of professional real estate activity are all the paper and electronic documents that Principal brokers must keep these for six years.

The Real Estate Agency recommends that principal brokers keep the following broker records. Not everything recommended will be in every file. Use this as a guide to help you maintain records.

For more information, see ORS 696.280 and OAR 863-015-0250.

## Buyer Representation - Service Agreement

- The service agreement (buyer's broker agreement).
- The buyer's "want list."
- Financial qualifications of the buyer.
- Pre-qualification letters obtained by the buyer from a lender.
- Disclosed Limited Agency agreement (if applicable).
- CMAs prepared for the buyer.
- Records of promises, pledges or agreements made by the licensee to obtain the service agreement.
- Marketing activity, including ad copy, date(s) of publication and copies of the actual ads.
- Record of properties shown to buyer.
- Record of modifications to, or extensions of, the service agreement.
- Evidence of timely supervision by principal broker (dated initials on all documents of agreement, including service agreement, modifications, extensions).
- Estimates of buyer's down payment and closing costs if provided.
- Licensee's diary notes.
- Copies of correspondence and faxes to/from the buyer.

## Buyer Representation No Service Agreement

- Disclosed Limited Agency agreement (if applicable).
- Record of properties shown to buyer.
- CMAs prepared for the buyer.
- Estimates of buyer's down payment and closing costs if provided.
- Licensee's diary notes.
- Copies of correspondence and faxes to/from the buyer.
- Financial qualifications of the buyer.
- Pre-qualification letters obtained by the buyer from a lender.

# State Activity: Brokers' Contracts

that are created or received by real estate licensees while they are conducting business.

contract records in their files. Not all buyers are the same; not all listings are the same. So in the most complete files.

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## Seller Representation - Property Listings

- Copy of listing agreement.
- Seller's Property Disclosure Statement.
- Disclosed Limited Agency Agreement.
- Evidence of ownership or right to sign listing.
- Building and/or lot size verification documents.
- Zoning and flood zone information where applicable.
- Record of how price was established and reason for subsequent changes.
- Written record of promises or agreements made by licensee to obtain listing.
- Documentation of marketing activity.
- Listing modifications.
- Proof of timely supervision by principal broker (OAR 863-015-0140).
- Any estimates of net sales provided to seller.
- CC&Rs, by-laws, special assessments.
- Licensees diary notes.
- Copies of correspondence, faxes and e-mails.

# Records of Professional Real Estate Activity

Records of professional real estate activity are all paper and electronic documents that are part of the real estate business. Principal brokers must keep these records for six years.

The Real Estate Agency recommends that principal brokers keep the following transactions and documents recommended will be in every file. Use this as a guide to help you maintain the most complete file.

For more information, see ORS 696.280 and OAR 863-015-0250.

## Accepted Offers and Sale Fails

- Transaction number.
- Full names and addresses of buyer and seller.
- Disclosed Limited Agency agreement (if applicable).
- Complete signed copy of the initial earnest money agreement.
- Final agency acknowledgement to both parties.
- Record of who presented the offer and any counter offers, and to whom, and any representations made at time of presentation.
- Full legal description of the property.
- Zoning and flood zone information, where applicable.
- Seller's Property Disclosure Statement, or exemption notation, together with evidence that the represented party's rights and/or obligations have been explained.
- Copy of the earnest money tendered (check, money order, promissory note, cash etc.).
- Disposition of earnest money tendered.
- Copy of the listing or co-op office listing information.
- Evidence of timely supervision by the principal broker (OAR 863-015-0145).
- Any addenda amending (or attempting to amend) the original agreement, including removal of contingencies.
- CMAs prepared for the buyer and seller related to this sale.
- Any estimates of buyer's debt service and closing costs, and/or seller's proceeds the broker may choose to retain.
- Copies of inspection reports, appraisals, estimates and clearances.
- Record of buyer's progress toward securing financing.
- Preliminary title report, with evidence that licensee has reviewed it and that no significant issues raised by the represented party.
- Copies of correspondence, including letters and e-mail messages, to or from the represented party.
- Licensee's diary notes generated during the transaction.
- A record of who attended closing and any problems encountered.
- Settlement statement(s).
- Seller's forwarding address.
- Reason for sale fail, if it occurs, and disposition of earnest money.

# Real Estate Activity: Transaction Files

Transaction records are created, generated, or received by real estate licensees while they are conducting real estate transactions. Not all transactions are the same. So, not everything recommended for all transaction files.

## Rejections: Offers and Counteroffers

- Disclosed Limited Agency agreement (if applicable).
- Complete signed copy of the offer, rejection or counter offer(s).
- Final agency acknowledgment to both parties.
- Copy of the earnest money tendered (check, money order, promissory note, cash).
- Disposition of earnest money tendered.
- Evidence of timely supervision by the principal broker (dated initials on all documents of agreement or disagreement).
- CMAs prepared for the buyer or seller related to this sale.
- Estimates of buyer's downpayment and closing costs, and/or seller's net proceeds.
- Copies of correspondence, including fax and e-mail messages to or from the represented party.
- Licensee's diary notes generated in the proposed sale transaction.

*A message from the Oregon Health Insurance Marketplace,  
part of the Oregon Department of Consumer and Business Services.*

# Open Enrollment is Here!

It's time for Oregonians to sign up, renew or change their health insurance plans at [HealthCare.gov](http://HealthCare.gov). Open enrollment began November 1 and goes through January 31, 2016. Visit [HealthCare.gov](http://HealthCare.gov) now, or call 1-800-318-2596 (toll-free) (TTY: 1-855-889-4325).

**If you don't have insurance**, this is a great opportunity to get covered. Sign up by January 31. Otherwise, you may have to wait another year and could pay a penalty on your 2016 taxes.

**If you bought insurance last year**, now's the time to renew or change plans. Plans change every year, so first visit [HealthCare.gov](http://HealthCare.gov) to see if there might be a plan that better meets your needs.

**Financial help is available for many people.** In fact, three out of every four Oregonians who signed up through [HealthCare.gov](http://HealthCare.gov) last year qualified for financial help to pay for insurance. Come see if you qualify—you may be surprised.

**Overwhelmed?** Get free help to sign up from insurance agents and community organizations. Visit [OregonHealthCare.gov](http://OregonHealthCare.gov) or call 1-855-268-3767 (toll-free) to find help near you.

If you have problems after you sign up for insurance, please contact the Oregon Insurance Division. Visit [www.oregon.gov/DCBS/Insurance/gethelp](http://www.oregon.gov/DCBS/Insurance/gethelp), call 1-888-877-4894, or [email cp.ins@oregon.gov](mailto:cp.ins@oregon.gov).

Brought to you by the State of Oregon. Nine out of 10 Oregonians now have health insurance. Our goal is to help even more people find plans that fit their needs.

**Address Changes, Records Locations, Court Decisions**

# Notifying the Agency: What, When, and How

<b>Notify the Agency of</b>	<b>When</b>	<b>How</b>	<b>Law or Rule</b>
Personal <i>mailing address changes</i>	Within 10 days	eLicense	OAR 863-014-0062 OAR 863-024-0062
Personal <i>e-mail address changes</i>	Within 10 days	eLicense	OAR 863-014-0062 OAR 863-024-0062
A change in <i>location of a main or branch office of a real estate business</i>	Before the move	eLicense	ORS 696.200
The <i>opening of a clients' trust account</i>	Within 10 days	eLicense	ORS 696.241
The <i>closing of a clients' trust account</i>	Within 10 days	eLicense	ORS 696.241
<i>Location of principal broker's or property manager's records if different than main office or branch office</i>	Before moving records	In writing	OAR 863-015-0260 OAR 863-025-0035
Any <i>criminal convictions, including "no contest" and bail forfeiture</i>	Within 20 days after receiving written notification	In writing	OAR 863-015-0175
Any adverse decision or judgement resulting from a <i>civil or criminal suit, action or proceeding</i>	Within 20 days after receiving written notification	In writing	OAR 863-015-0175
Any adverse decision or judgement resulting from an <i>arbitration proceeding</i>	Within 20 days after receiving written notification	In writing	OAR 863-015-0175
Any adverse decision or judgement from any <i>administrative or Oregon State Bar proceeding</i> related to the licensee	Within 20 days after receiving written notification	In writing	OAR 863-015-0175

## **TRID Q&A**

*Continued from page 3*

of information — property address — to the lender, which completes the elements required for a loan application and triggers the requirement for the lender to issue a Loan Estimate within three business days.

### **Q.) How do the changes affect the closing disclosure process?**

A.) The old HUD-1 Settlement Statement and the old final Truth in Lending disclosure have been combined into one five-page Closing Disclosure form. The Closing Disclosure provides the consumer with the details of the transaction and many terms of the new loan.

### **Q.) What do real estate brokers need to keep in mind about new timelines?**

A.) One of the critical aspects of the new TRID rule is the shift in timelines that apply to the new disclosures, particularly the Closing Disclosure. A real estate broker must give careful consideration to these new timelines when assisting or advising clients regarding shopping and comparing loan programs, obtaining loan approval, submitting an offer to purchase, and choosing a realistic closing date. In other words, a broker's knowledge of the new requirements for lender issuance and consumer receipt of the required disclosures is critical to structuring a residential real estate transaction that concludes with a timely closing.

Remember: Variations or changes in loan program, loan terms, or transaction terms may require issuance of new disclosures, potentially resulting in multiple closing delays.

### **Q.) What are some of the timing specifics for the new Closure Disclosure review period?**

A.) Under the new Closing Disclosure review period, the lender must issue the Closing Disclosure at least three business days prior to loan consummation. In these circumstances, the action by the lender to "issue" the Closing Disclosure means to deliver the disclosure directly to the consumer, to place the disclosure in the mail to the consumer, or to e-mail the disclosure to the consumer.

For the Closing Disclosure review period,

the term business day means all calendar days except Sundays and legal public holidays prescribed under federal law.

### **Q.) When does loan consummation occur in Oregon?**

A.) As discussed above, the Closing Disclosure must be issued at least three days, excluding Sundays and legal holidays, before loan consummation. Under the TRID rule, loan consummation occurs when the consumer becomes legally obligated to the lender. In Oregon, the consumer is considered to be legally obligated to the lender when the consumer signs the loan documents including the Note. Therefore, the lender must issue the Closing Disclosure directly to the consumer in person in order to have the consumer sign loan documents on the fourth business day.

If the lender does not deliver the Closing Disclosure to the consumer in person, and if the lender instead mails or e-mails the Closing Disclosure, then the TRID "mailbox" rule presumes the consumer has received the Closing Disclosure three business days after the lender has placed it in the mail or sent it by electronic means. In effect, the new timeline requirements for the Closing Disclosure likely will add a minimum of seven business days to any potential transaction closing date.

### **Q.) How can I help my client avoid additional closing delays?**

A.) Many changes can occur during the days before the anticipated closing date. Most of these changes will not require the lender to re-issue the Closing Disclosure and wait three more business days before the consumer signs loan documents. Instead, the lender will be required to provide an updated disclosure, in which case the additional three-day review period will not be triggered.

Circumstances that warrant an updated disclosure without extending the review period include items discovered on final walk-through where seller credits buyer for repairs, changes to prorations for property taxes and utilities, changes related to the amount of broker commissions, or corrections of obvious typographical errors.

On the other hand, changes to the basic loan product such as a switch from fixed to adjustable rate, or a switch from amortized to interest-only payments, or an increase in the annual percentage rate by more than 1/8 of a percent for fixed-rate or 1/4 of a percent for adjustable loans, will require re-issuance of the Closing Disclosure.

If the Closing Disclosure is re-issued, the review timelines described above will apply before the consumer can sign loan documents— three business days if the re-issued disclosure has been delivered in person, and six business days if mailed or electronically transmitted.

**Q.) Where can I find more information about TRID requirements?**

A.) The CFPB website includes resources

and explanatory materials such as [a sample TRID timeline transaction calendar](#), and [a detailed understandable treatment of the TRID rule in Q & A format](#), as well as [samples of all integrated forms including annotations](#).

A real estate broker who is armed with knowledge of the new TRID rule, and who works with competent lending and settlement professionals, can help eliminate consumer confusion and stress, successfully manage clients' expectations, and ultimately serve buyers and sellers in ways that deliver the best possible transaction experience. Knowledge and patience will give consumers, brokers, and lenders a chance to embrace what many have called "great new forms" and "a step in the right direction" toward additional transparency in residential lending. ■

# Administrative Actions

August 13, 2015 through November 23, 2015

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 settlements may not, therefore, directly compare in severity/sanction with other cases.

## REVOCATIONS

[Smith, Lynn H.](#) (Pendleton) Principal Broker 930400089. Default order dated November 9, 2015 revoking license and issuing a \$10,000 civil penalty.

## REPRIMANDS

[Rychlik, Jean Marie](#) (Portland) Principal Broker 201208002. Stipulated order dated November 9, 2015.

[McCravey, Denise A.](#) (Hood River) Principal Broker 880100100. Stipulated order dated November 23, 2015. ■

## CIVIL PENALTIES

**Expired - Late Renewals**  
*Civil penalties for late renewals are computed using each 30-day period as a single offense. The civil penalty for the first period can range from \$100 - \$500, with each subsequent 30-day period ranging from \$500 - \$1000.*

[Remmers, Anne Tracee](#) (Waldport) Broker 200604154. Stipulated final order dated October 2, 2015, issuing a \$1,100 Civil Penalty. ■

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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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