

Oregon Real Estate News-Journal

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Commissioner
Steve Strobe

We Hear You Where We Go from Here

Steve Strobe, Real Estate Commissioner

*“We have but two ears and one mouth so that we may listen twice as much as we speak.”
- Epictetus*

As my leadership team and I plan our priorities for the next biennium and beyond, we have a good idea of where we want to go. And we’re not going there alone. The past several months we’ve enjoyed a great deal of active listening — with stakeholders, with colleagues from other regulatory agencies, and while attending two leading conferences.

As many of you know, Agency staff have played a key role at the Association of Real Estate License Law Officials (ARELLO) for many years. It is a valuable resource for staying informed on real estate regulatory issues that may affect our jurisdiction, as well as an opportunity to share concerns and best practices with our peers. Selina Barnes once again attended the ARELLO Annual Conference last month.

In order to gain a broader perspective, Anna Higley and I opted to attend the Council on Licensure, Enforcement, and Regulation (CLEAR) Annual Educational Conference instead. CLEAR is comprised of staff from regulatory agencies across all industries. It was very illuminating to hear which issues cross all professions, and how thought leaders and industry activists are trying to effect change. We had a few takeaways from some sessions that were led by non-real estate leaders, but who referenced our industry as well:

- How do we build trust and improve professionalism with evidenced-based reform without creating undue barriers to entry, or worse, engage in anti-competitive behavior?
 - Are jurisdictions adding continuing education requirements to demonstrate action without clearly defining objectives and measuring outcomes?
 - Are laws that facilitate licensure for the
- Please see **We Hear You** on page 7*



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Views from the Board

Compliance and Supervision in the Digital and Mobile World

Debra Gisriel, Oregon Real Estate Board Member



Debra Gisriel

“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.

“Beam me up Scotty! I have a contract to review.”

While we are not physically “beaming up,” our industry is changing at warp speed. Technological innovation has replaced so many traditional methods of communication, advertising, workspace, and client interaction. The cell phone has become the office and file cabinet, texting has become the most used method of communication, and social media has become the primary method of advertising and marketing. However, with all that exciting progress,

it feels like the wild, wild west out there. I hear often that the number one concern from managing principal brokers is a “lack of professionalism” and “untrained brokers” running amuck.

A couple of years ago, Stefan Swanepoel wrote [The DANGER Report](#). His research determined that the biggest threat to our profession was ourselves by allowing the proliferation of marginal, unprofessional, and untrained agents.

Several years ago the Oregon Association of Realtors began their campaign to “RAISE THE BAR.” Their research led to the conclusion that any improvements needed to start with the principal brokers, especially those that were managing and supervising other brokers. As a result, several initiatives began: The Oregon Legislature’s passage of the law requiring the Principal Broker Advanced Practice course, and the Oregon Association of Realtors’ creation of the Principal Broker Academy and the Principal Broker Forum.

The big question now is what can you do? Here are some suggestions:

Principal Brokers

- Have systems, checklists, templates, and

procedures in place.

- Communicate often with the brokers you supervise. Hold regular meetings in person or remotely.
- Be a champion of education and training.
- Be available.
- Make sure your files are complete, meet the Oregon Real Estate Agency’s requirements, and are the basis of your defensible position in the event of an issue or an audit.

Brokers

- Put your clients’ interests first, and communicate often and consistently.
- Attend your office meetings and office trainings regularly.
- When in doubt, reach out to your principal broker before taking action.
- Always be learning. Attend education and training classes as often as you can.
- Be courteous and cooperative with other brokers. Advocate for your client without being adversarial. ■

Next Board Meeting in Salem

December 2, 2019, 10:00 a.m.
[Oregon Real Estate Agency](#), Salem

All are welcome at this regularly scheduled general meeting of the Oregon Real Estate Board.

Hunter, MacLean Elected 2020 Chair, Vice Chair



Lawnae Hunter

Lawnae Hunter and Alex D. MacLean III were elected chair and vice chair respectively of the Oregon Real Estate Board at its October meeting.

Ms. Hunter is principal broker and co-owner of Windermere/Central Oregon Real Estate in Bend and Redmond. She has over 35 years of experience in general real estate brokerage, including land development, commercial and industrial land sales, new construction, property management, and general resale. She started her real estate career in 1968 in California. Ms. Hunter previously served as vice chair of the Board in 2019.

Alex MacLean has been an active member in the commercial real estate industry for over 32 years. He co-founded Commercial Realty Advisors NW, where he has served as a partner and the Managing Broker for Washington for almost 20 years. He is a member of a variety of organizations, including the International Council of Shopping Centers and the Retail Brokers Network. In 2014, he served as president of the Commercial Association of Brokers.



Alex MacLean

The Oregon Real Estate Agency congratulates Ms. Hunter and Mr. MacLean on their election. ■

Farley, Koch to Leave Board



Jef Farley

Oregon Real Estate Board members James E. “Jef” Farley and David J. Koch attended their last Board meeting on October 7, 2019, in Astoria.

Jef Farley is co-owner of Coldwell Banker Whitney and Associates in Pendleton. He specializes in residential and commercial real estate sales in Eastern Oregon. He has been a full-time real estate professional since 1991. He moved back to his home town of Pendleton in 1994 for the lifestyle rural Oregon offers.

Mr. Farley served as both vice chair and chair during his 8-year tenure on the Board.

Dave Koch, licensed in Oregon since 1976, is an independent principal broker. Most of Dave’s career has been as a managing broker with extensive experience in residential and rural real estate. He was the founding president of the Regional Multiple Listing Service (RMLS) in 1990-91.

Mr. Koch served on the Board for four years.

The Oregon Real Estate Agency thanks Mr. Farley and Mr. Koch for their service on the Board and to the state of Oregon. ■



Dave Koch

Affirmative Duties Owed By Brokers & Principal Brokers

Oregon Revised Statutes (ORS) 696.800 - 815 requires you to do certain things that are in the best interest of your client. You owe these affirmative duties to your clients and the other participants in a real estate sale transaction. Whether you are representing your client (seller or buyer) exclusively or multiple principals in a transaction under a disclosed limited agency agreement, these duties remain the same.

When the Oregon Real Estate Agency identifies violations of law through the investigation of a real estate sales transaction, they often involve a licensee failing to fulfill their affirmative duties. The seriousness of the violations determines if the Agency seeks administrative action against the licensee, as well as the type of action.

Rather than recite the full statutory language of [ORS 696.800 - 815](#), here is a breakdown of the affirmative duties commonly involved in complaints the Agency receives.

Duties to All Parties

You have the following obligations to your clients, the other principals in the transaction, and their agents:

- Deal honestly and in good faith.
- Present all written offers and other written communication to and from the parties in a timely manner.
- Disclose material facts that you know.

Duties to Your Clients

You owe these specific duties to your clients, which may not be waived:

- Exercise reasonable care and diligence.
- Timely account for money/property you receive.
- Be loyal to your client.
- Disclose any conflict of interest (existing or potential).
- Maintain confidential information, except when:
 - Your client specifically instructs you

to disclose the information.

- Failure to disclose would be fraudulent.

Unless your client agrees otherwise in writing, make a continuous, good faith effort to:

- Find a buyer for the property (if your client is the seller), except when the property is already under a sales contract.
- Find a property for the buyer (if your client is the buyer), except when the buyer is already under a sales contract on a different property.

Beyond Affirmative Duties

The law specifically allows you to:

- Show properties owned by other sellers.
- List competing properties for sale.
- Show the same property to multiple prospective buyers.

You are not required to investigate matters that are outside the scope of your expertise unless you or your principal broker agree to do so in writing. This includes, but is not limited to, matters such as the:

- Condition of the property.
- Legal status of the title.
- Property owner's past compliance with permitting requirements or building codes.

Tips from the Agency

All of the above may appear simple in concept. But when problems arise in a transaction, or you represent multiple parties, the situation may quickly become complex. What do you do? While not required by law, these tips may help you stay out of trouble:

- Clearly explain to your clients what you will and will not do.
- If you are a broker, maintain constant communication with your principal broker.
- Take time to "get it right."
- Seek legal advice.
- Document, document, document. ■

Property Managers Owe Affirmative Duties, Too

If you are a property manager, principal broker, or broker managing rental real estate, you owe affirmative duties to each property owner per Oregon Revised Statute (ORS) 696.890. This means you have a special relationship with the property owner that requires you to do certain things in the best interest of your clients.

You must:

- Deal with the owner honestly and in good faith.
- Disclose any material facts you know about that are not apparent or readily ascertainable to the owner.
- Exercise reasonable care and diligence.
- Account in a timely manner for all funds received from or on behalf of the owner.
- Act in a fiduciary manner in all matters relating to trust funds.
- Be loyal to the owner by not taking action that is adverse or detrimental to the

owner's interest.

- Disclose in a timely manner to the owner any existing or contemplated conflict of interest.
- Advise the owner to seek expert advice on matters that are beyond the property manager's expertise.
- Maintain as confidential all information from or about the owner, except under subpoena or court order, even after the property management agreement is terminated.

These duties cannot be waived by you or the owner. Affirmative duties are in addition to any duties agreed upon in a property management agreement.

For further information, review [ORS 696.890](#). If you have questions about your legal obligations or affirmative duties in a particular situation, you should consult your attorney. ■

Realty Specialist Opening at Dept of Fish & Wildlife

The Oregon Department of Fish and Wildlife (ODFW) is hiring for a limited duration [Realty Specialist](#) (Procurement and Contract Specialist 2).

ODFW requested the help of the Oregon Real Estate Agency in spreading the word about this job that requires specific real estate knowledge.

The successful candidate will have four years of procurement and contract experience related to commercial real estate transactions. Education in business or public administration may meet some of the experience requirement.

Application deadline is **November 29, 2019**. Contact ODFW Human Resources at (503) 947-6041 for more information. ■

Missing News-Journals? Check Spam Folder

A change in how email services process the *Oregon Real Estate News-Journal* caused the last three issues to be delivered to many subscribers' spam folders. With the help of our email delivery service, we believe the problem is fixed.

If you think you were affected by this, try searching for the missing *News-Journals* in the spam folder of your email box. You can always find past issues at https://www.oregon.gov/real/Pages/news_journal.aspx.

Reporting Litigation Involving Licensees

Aaron Grimes, Investigator/Auditor, Oregon Real Estate Agency

A common misconception, with potentially serious consequences to your real estate license, is that the Oregon Real Estate Agency knows when you have gotten into legal trouble.

Information sharing between government entities is not how it is portrayed in the media. Maybe you assumed your supervising principal broker, attorney, court, or regulatory agency would take care of disclosing an adverse judgment to the Agency.

Failing to report convictions or judgments to the Agency may result in a sanction against your license.

Following the requirements in [Oregon Administrative Rule \(OAR\) 863-015-0175](#), which you can find on our website at www.oregon.gov/rea, is your key to compliance with the law.

Here is an abridged version of what you will find:

- You need to notify the Commissioner of:
 - Any criminal conviction, whether felony or misdemeanor;
 - Any adverse decision or judgment (see rule for exact language) where allegations concern any business conduct or professional

real estate activity is asserted; and

- Any adverse decision or judgment, from criminal or civil proceedings, that reflects adversely on the “trustworthy and competent” requirements of Agency law and rules.
- Notification must be made within 20 calendar days after receiving written notification of the adverse decision, judgement, or award, regardless of whether appealed.
- Notification must be in writing and include a brief description of the circumstances involved, the names of the parties, and a copy of the resulting paperwork that follows (see rule for exact language). If appealed, each subsequent decision is subject to this rule’s notification requirements.

Arbitration proceedings between licensees concerning only a commission payment dispute are not subject to this rule’s notification requirements. The Agency’s administrative actions on licenses are also not subject to this rule.

And remember: **You** are responsible for complying with these reporting requirements. Failing to do so may result in disciplinary action on your license. ■

Principal Broker Advanced Practices Course Now Required

If you need to renew an active principal broker license for the first time, or reactivate an inactive principal broker license after an inactive first renewal, you must take the 27-hour Principal Broker Advanced Practices (PBAP) course and the 3-hour Law and Rule Required Course (LARRC) first.

Approved PBAP and LARRC providers can be found at <https://orea.elicense.iron-data.com/Lookup/GenerateRoster.aspx>.

See the [June 2018](#) issue of the *Oregon Real Estate News-Journal* for additional information on the PBAP course requirements. ■

Smiles, Respect, and Cares! Oh My!

Liz Hayes, Investigator/Auditor, Oregon Real Estate Agency

We're not in Kansas, and the yellow brick road of real estate doesn't always lead to that emerald commission. (Okay, I'll stop. It's a stretch I know.)

As a former broker myself, I recall how critical our role was in setting the tone of the transaction. The deal doesn't always go as smoothly as anyone would like, but conversations don't need to get heated — even if it feels like despite our best efforts the relationship is turning sour. That doesn't mean your customer service should fall short.

You may wonder how many complaints stem from a buyer, seller, or agent feeling ne-

glected, disrespected, or dismissed. On this end, we don't have to wonder. We see them often.

The Agency doesn't regulate how a licensee conducts business. But your efforts to communicate and resolve conflicts before, during, and after a transaction may reduce the likelihood of a complaint being filed. Sometimes it's the little things that can make the biggest difference.

So your best course of action is to resolve an issue before someone is upset enough to file a complaint with the Agency. It may be as simple as staying polite, remaining cooperative, being responsive and keeping communication open. ■

We Hear You

Continued from page 1

spouses of relocating active military personnel part of a larger trend? (e.g. Oregon's [Senate Bill 688](#))

- When the public primarily uses online reviews like Yelp or Google to research professionals, do they even know when a licensee has been sanctioned?

We all know that statute and rules cannot change to meet the latest trend, hottest phone app, or newest social media must-have. The industry is rapidly changing, and that's where we'll strive to strike a balance.

When we convene committees or work groups, we want a variety of voices at the table. Our commitment to our stakeholders is that we will do our research and bring as much data to the table. We'll pair that with your real-world experience. And to-

gether, we won't make change just for change sake, but make it meaningful and survivable from varying trends — and always through the lens, "How does this support the mission of the Agency?"

Oregon Real Estate Agency Mission Statement

To provide quality protection for Oregon consumers of real estate, escrow, and land development services, balanced with a professional environment conducive to a healthy real estate market.

The first endeavor of our new leadership structure was convening a LARRC Committee comprised of Real Estate Board members and Agency staff. Thank you to the committee, who put in extra time for the effort, and to the public, who provided additional comments.

Next up: Advertising rules. We know it's time, as the last revisions were in a different era of social media. Principal brokers are looking to us for guidance. We've listened and heard! This will be a thoughtful and thorough conversation, and we'll get started soon. ■

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Mesheal Heyman, Editor

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Law and Rule Required Course Approved for 2020

After convening a committee to review legislation passed this year and taking suggestions from the public, the Oregon Real Estate Board approved the required and elective topics for the [Law and Rule Required Course 2020-2021](#) (LARRC).

Continuing education providers are currently developing their courses with the new content.

As a real estate licensee (broker, principal broker, and property manager), you must take a 3-hour LARRC from a [certified continuing education provider](#) to renew your active license. Any LARRC class you take January 1, 2020 through December 31, 2021 must have the new content. Continuing education providers will indicate the new course with the name "Law and Rule Required Course 2020-2021" or "LARRC 2020-2021."

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 the same or similar 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 you are working with, 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 or sanction with other cases.

REVOCATIONS

[Williams, Teresa L.](#) (Rogue River) Prop-
erty Manager 970700012. Final Order by
Default dated September 17, 2019.

REPRIMANDS

[Booke, Terry G.](#) (Portland) Principal Bro-
ker 920300037 Stipulated Final Order dat-
ed August 29, 2019, issuing a reprimand.

CIVIL PENALTIES

Unlicensed Activity

[Allen, Elyse](#) (Meridian, ID) Unlicensed.
Stipulated Final Order and Order to Cease
and Desist issuing a \$250 civil penalty
dated July 23, 2019.